The Washington Report

Americas FS Regulatory Center of Excellence

The week ended September 15, 2017

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Contents

1. Safety and soundness

1.1 Basel Committee issues Basel III Monitoring Report

The Basel Committee on Banking Supervision (BCBS) has released the 12th report on its the Basel III monitoring exercise, which looks at the risk-based capital ratio, the leverage ratio, and liquidity metrics using data collected by national supervisors. The current report is based on data as December 31, 2016 for 200 banks, including 105 large internationally active banks (Group 1 banks) inclusive of all 30 banks that have been designated as global systemically important banks (G-SIBs). Highlighted results indicate:

— On a fully phased-in basis, all banks in the sample meet both the Basel III risk-based capital minimum Common Equity Tier 1 (CET1) requirement of 4.5 percent and the target level CET1 requirement of 7.0 percent (plus any surcharges for G-SIBs, as applicable).

— Of the banks in the liquidity coverage ratio (LCR) sample, 91 percent of the Group 1 banks (including all G-SIBs) and 96 percent of the Group 2 banks reported an LCR that met or exceeded 100 percent, while all Group 1 and Group 2 banks reported an LCR at or above the 70 percent minimum requirement that was in place for 2016.

— Ninety-four percent of the Group 1 banks (including all G-SIBs) and 88 percent of the Group 2 banks in the net stable funding ratio (NSFR) sample reported a ratio that met or exceeded 100 percent, while 100 percent of the Group 1 banks and 96 percent of the Group 2 banks reported an NSFR at or above 90 percent.

[Press Release] [Report]

1.2 FDIC revises Guidelines for Appeals of Material Supervisory Determinations

The Federal Deposit Insurance Corporation (FDIC) has adopted revisions to its *Guidelines for Appeals of Material Supervisory Determinations*, which govern appeals by FDIC-supervised institutions to Division Directors and the Supervision Appeals Review Committee (SARC). The revisions expand the circumstances under which banks may appeal a material supervisory determination. They also make FDIC appeals processes more consistent with the other federal banking agencies. The revisions:

— Permit the appeal of the level of compliance with an existing formal enforcement action, the decision to initiate an informal enforcement action, and matters requiring board attention;

— Provide that a formal enforcement-related action or decision does not affect a pending appeal; and

— Provide for the publication of annual reports on Division Directors' decisions on material supervisory determinations.

The FDIC is also rescinding FIL-52-2016, entitled FDIC Seeks Comment on Bank Appeals Guidelines as well as FIL-113-2004, entitled FDIC Appeals Processes.

[Press Statement] [Guidelines]

1.3 Enforcement action

The Federal Reserve Board ordered a Nebraska-based state member bank to pay a penalty of $55,500 for violations of the National Flood Insurance Act.

2. Enterprise and consumer compliance

2.1 CFPB issues first no-action letter to online lender

On September 14, 2017, the Consumer Financial Protection Bureau (CFPB or Bureau) announced the issuance of its first-ever no-action letter, which was provided to an online lending platform that uses non-traditional, alternative data and modeling techniques in making credit and pricing decisions. The letter applies specifically to the company's model for making credit and pricing decisions, and states that the CFPB has no present intent to recommend supervisory or enforcement action against the company with respect to the Equal Credit Opportunity Act. As a condition of the letter, the company will share with the CFPB information regarding the loan applications it receives, its approval process, how it mitigates risk to consumers, and how its model expands access to credit for traditionally underserved populations.

The CFPB states that its no-action letter program is done to facilitate consumer-friendly innovations where regulatory uncertainty may exist for certain emerging products or services. In a related blog post, the Bureau stated that it hopes the conditions of the no-action letter "create an important opportunity to further our own understanding of the use of alternative data and modeling techniques in lending decision-making, how such variables and modeling techniques impact consumer access to credit, and how entities can establish strong compliance management systems for these emerging practices."

[Press Statement] [Blog Post]

2.2 Agencies propose CRA amendments to conform to Regulation C changes

The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation issued a joint notice of proposed rulemaking on September 13, 2017 that would amend the Community Reinvestment Act (CRA) regulations to conform to recent changes to Regulation C, which implements the Home Mortgage Disclosure Act (HMDA).

The agencies propose to amend the CRA regulations to revise the definitions of "home mortgage loan" and "consumer loan" as well as the public file content requirements. These revisions would maintain consistency between the CRA regulations and the Consumer Financial Protection Bureau's (CFPB) recent changes to Regulation C, which become effective on January 1, 2018. The proposal also contains technical revisions and would remove obsolete references to the Neighborhood Stabilization Program.

Comments on the proposed rule will be accepted for 30 days after publication in the Federal Register.

[Joint Press Statement] [Joint Proposed Rulemaking]

2.3 CFPB issues summer 2017 Supervisory Highlights

On September 12, 2017, the Consumer Financial Protection Bureau (CFPB or Bureau) issued the Summer 2017 edition of its Supervisory Highlights, which reported on examination findings in several areas, including auto loan servicing, credit cards, debt collection, deposits, mortgage servicing and origination, remittances, short-term, small dollar lending and fair lending. The report reflected information from supervisory activities between January and June 2017.

[Press Statement] [Supervisory Highlights]

2.4 Senators introduce legislation that would permit consumers to place a credit freeze without charge

In response to a recently announced data breach at a credit reporting agency (CRA), Senator Elizabeth Warren (D-MA) and Senator Brian Schatz (D-HI) introduced legislation that would create a uniform federal process for obtaining and lifting a credit freeze. In particular, CRAs would be required to promptly freeze, and temporarily lift or permanently unfreeze, access to credit files at a consumer's request and at no cost. The legislation would also enhance fraud alert protections, including extending the term of an alert from 90 days to one year.

[Press Statement]

3. Capital markets and investment management

3.1 SEC focuses on Small Businesses

Jay Clayton, Chairman of the Securities and Exchange Commission (SEC), delivered opening Remarks before the SEC Advisory Committee on Small and Emerging Companies on September 13, 2017 in which he announced the committee would be succeeded by a new permanent committee named the Office of the Advocate for Small Business Capital Formation. The SEC has launched a nationwide search for its first "Advocate for Small Business Capital Formation." The Advocate will be appointed and report to the SEC Chairman and Commissioners and will be responsible for establishing and overseeing the new office with the mission of advocating for the interests of small businesses and small business investors.

[Press Statement] [Remarks]

3.2 FINRA issues warning against stock fraud after hurricanes

The Financial Industry Regulatory Authority (FINRA) issued an investor alert warning of the potential for stock and investment fraud following natural disasters. FINRA noted that unsolicited communications about fraudulent investments often include price targets or growth predictions; the use of facts from respected news sources to bolster claims; mention of contracts or affiliations with federal government agencies or well-known companies; standard business developments presented as major events; statements touting the growth opportunities of low-priced stocks; and pressure to invest immediately.

[Alert]

3.3 FINRA Foundation announces inaugural Ketchum Prize for research and new study on financial health of veterans

On September 13, 2017, the Financial Industry Regulatory Authority (FINRA) Investor Education Foundation (FINRA Foundation) awarded Dr. J. Michael Collins the inaugural Ketchum Prize for outstanding service and research to advance investor protection and financial capability in the United States. Dr. Collins studies consumer decision-making in the financial marketplace, including the study of financial capability with a focus on low-income families and other vulnerable populations.

On September 15, 2017, the FINRA Foundation released the first comprehensive comparative analysis of the financial health of U.S. veterans relative to non-veterans. The study shows that while veterans struggle under the weight of credit card debt and underwater mortgages, they are faring slightly better financially than civilians. The study found that veterans are 22 percent less likely to be unemployed than civilians and 2 percent more likely to be covered by health insurance. The study also found that veterans are 40 percent more likely to be underwater on their home and 28 percent more likely to have made a late home payment in the past year. They are also 9 percent more likely to engage in problematic credit card behavior.

[Award Press Statement] [Study Press Statement]

3.4 CFTC Chairman Giancarlo discusses U.S.-EU coordination on swaps

During the week of September 11, Commodity Futures Trading Commission (CFTC) Chairman Chris Giancarlo discussed U.S.-EU coordination on swaps regulations on multiple occasions.

On September 11, 2017, Giancarlo published an op-ed in a French financial daily newspaper in which he discussed post-crisis swaps reform efforts. Giancarlo emphasized that the best way for "consistent implementation" is the "mutual deference" to regulatory frameworks. He noted the reform efforts to strengthen the global financial system, such as the central clearing of swaps, and the need to make sure that "the current international posture on cross-border regulation is well suited for the financial markets of today; markets that continue to evolve and move towards greater and greater globalization."

Giancarlo discussed how different approaches to central counterparty (CCP) cross-border supervision can lead to "regulatory redundancies and legal uncertainty" and argued that the best way for "consistent implementation," as pledged by the G-20 leaders, is "through mutual deference to comparable foreign regulatory frameworks." The CFTC does this by allowing "non-U.S. intermediary firms direct access to U.S. customers on the basis of compliance with regulation of their home jurisdiction." Giancarlo stated that these arrangements support cross-border activities and help "avoid fragmentation in the markets, protectionism, and regulatory arbitrage." He said the CFTC is looking for ways to apply deference to other regulatory areas.

Giancarlo also noted that the CFTC will pursue improvements to its swaps regulations to enhance market durability, increase trading liquidity, and stimulate broad-based economic growth and revival. He noted the importance of keeping pace with changes in markets and technology "or our regulations will become outdated and ineffective."

[Op-Ed]

Chairman Giancarlo addressed the Global Forum for Derivatives Markets 38th Annual Bürgenstock Conference on September 12, 2017, where he discussed the post-crisis reforms and the 2016 agreement between the CFTC and the European Commission (EC) on CCP equivalence. He said the agreement signaled the ability of the U.S. and Europe to work together successfully on critical cross-border issues and contributed to stronger and more productive relations between the CFTC and its European counterparts.

He also discussed the EC's June 2016 proposed amendment to the European Market Infrastructure Regulation (EMIR) that would regulate third-country CCPs and introduce a CCP location policy. Noting that this regulation comes after the UK vote to exit the European Union, Giancarlo said he "would consider any unilateral change by EU authorities to the CFTC-EC Equivalence Agreement to be a violation of trust and cooperation between the U.S. and Europe." He stated that any new approach in Europe regarding the supervision of cross-border CCPs must be developed with the cooperation and support of the CFTC. He warned against "piecemeal and contradictory rulemaking" and argued for a "comprehensive and universal solution that supports strong cross-border markets, recognizes and builds upon the strengths of our respective supervisory programs, and preserves as much as possible the basic tenets of the CFTC-EC Equivalence Agreement."

[Speech]

Finally, Chairman Giancarlo addressed the Eurofi Financial Forum on September 14, 2017 during which he discussed the CFTC's policies of substituted compliance and regulatory coordination for the global swaps markets, again arguing that deference to comparable foreign regulatory frameworks is the optimal approach to balancing competition, growth, and innovation.

He discussed the CFTC's recognition and coordination programs, including its 2013 Guidance on swap dealing outside of the United States and the 2016 agreement between the CFTC and the European Commission for a common approach in the regulation and supervision of cross-border CCPs.

Giancarlo also outlined current comparability discussions, which include comparability analyses of margin and trading requirements, work toward equivalence and comparability determinations for trading venues, and the harmonization of key data standards for trade reporting. He argued that the current European Commission proposal that European authorities exercise new direct oversight over U.S. CCP could reopen the previous U.S.-EU agreement. In response, he proposed a supervisory framework based on extensive risk surveillance, examination authority, and a rule review mechanism.

[Speech]

3.5 SEC releases statement on T+2 implementation

On September 11, 2017, the Securities and Exchange Commission (SEC) released a statement on the move to a two business day standard settlement cycle, known as T+2, stating that the change represents a significant milestone for the securities markets. The SEC stated that the shortened settlement cycle "should reduce certain risks in the clearance and settlement process, including credit, market, and liquidity risks for central counterparties, their members, and other market participants" as well as "enhance efficiency by promoting innovation and changes in market infrastructures and operations."

The T+2 settlement cycle went into effect on September 5, 2017 and the first transactions covered by the new rule were settled on September 7.

[Press Statement]

3.6 Senate passes a series of SEC-directed bills

On September 11, 2017, the Senate passed six bills to amend securities regulations.

- S. 327, the Fair Access to Investment Research Act, directs the Securities and Exchange Commission (SEC) to provide a safe harbor that certain investment fund research reports are not offers to sell securities.
- S. 416, the Small Business Capital Formation Enhancement Act, would amend the Small Business Investment Incentive Act of 1980 to require an annual SEC review of the annual government-business forum on capital formation.
- S. 444, the Supporting America's Innovators Act, would amend the Investment Company Act of 1940 to expand the investor limitation for qualifying venture capital funds under an exemption from the definition of an investment company.
- S. 462, the Securities and Exchange Commission Overpayment Credit Act, would require the SEC to refund or credit certain excess payments made to the Commission.
- S. 484, the U.S. Territories Investor Protection Act, would amend the Investment Company Act of 1940 to terminate a section 6(a)(1) exemption for companies located in Puerto Rico, the Virgin Islands, and any other possession of the United States.
- S. 488, the Encouraging Employee Ownership Act, would increase the threshold for disclosures required by the SEC relating to compensatory benefit plans, and for other purposes.

[S. 327] [S. 416] [S. 444] [S. 462] [S. 484] [S. 488]

4. Alternative Finance

4.1 Senate banking committee holding Fintech hearing

On September 12, 2017, the Senate Committee on Banking, Housing, and Urban Affairs held a hearing entitled "Examining the Fintech Landscape." The Committee heard testimony from three witnesses representing the government, business, and academic sectors.

Lawrance L. Evans, Director, Financial Markets and Community Investment for the Government Accountability Office (GAO), discussed the GAO's April 2017 report on the financial technology (FinTech) industry entitled *Financial Technology: Information on Subsectors and Regulatory Oversight*. The report discussed the risks, benefits, and trends of the growing FinTech sector and identified four FinTech subsectors: marketplace lending, mobile payments, digital wealth management, and distributed ledger technology. It noted that regulation of the subsectors "depends on the extent to which the firms provide a regulated service and the format in which the services are provided, with responsibilities fragmented among multiple entities that have overlapping authorities" and noted the variation in state licensing laws and oversight.

Eric Turner, Financial Technology Research Analyst at S&P Global Market Intelligence, provided background on the industry and an overview of the digital lending, mobile payments, digital investment management, insurance, and distributed ledger segments of the industry. He noted how FinTech overall can provide increased access to financial services, lower costs, and reduced frictions. He stated that regulation has been unevenly applied to the sector and noted the need for a clear regulatory framework to support innovation.

Frank Pasquale, Professor of Law at the University of Maryland Francis King Carey School of Law, discussed regulatory issues regarding FinTech. He critiqued the Office of the Comptroller of Currency's (OCC) approach of using a special purpose national bank charter as a "one-size-fits-all, cookie-cutter approach" and outlined possible negative consequences, including "regulatory arbitrage around state restrictions on payday lending." He also highlighted the recent applications by online lenders and payments companies for Industrial Loan Company (ILC) charters. He argued that more study of the FinTech sector is needed before these applications can be granted in order to determine whether they would upset the separation between banking and commerce. He also noted that there are still concerns over financial inclusion, consumer benefits, supervision, and regulation. Overall, Pasquale said regulators need a better understanding of what FinTech firms are doing and how they are handling data.

[Hearing] [GAO Report 17-361]

Contact us

This is a publication of KPMG's Financial Services Regulatory Risk Practice and KPMG's Americas FS Regulatory Center of Excellence

Amy Matsuo, Principal, National Leader, Financial Services Regulatory Risk Practice amatsuo@kpmg.com

Ken Albertazzi, Partner and National Lead, Financial Services Safety & Soundness kalbertazzi@kpmg.com

Kari Greathouse, Principal and National Lead, Enterprise and Consumer Compliance cgreathouse@kpmg.com

Tracy Whille, Principal and National Lead, Capital Markets and Investment Management twhille@kpmg.com

Deborah P. Bailey, Managing Director, Americas FS Regulatory Center of Excellence Lead dpbailey@kpmg.com

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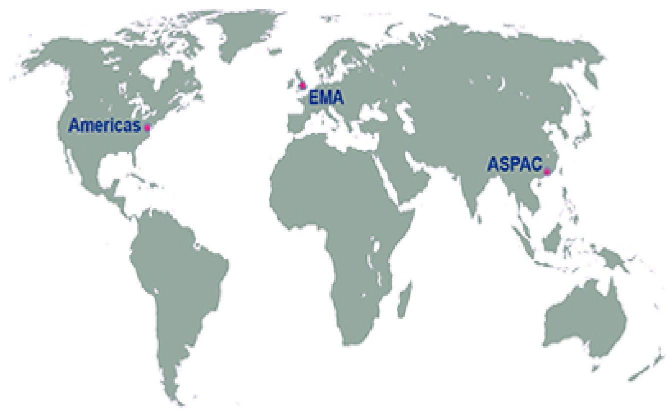

Additional Contacts

Asset Management, Trust, and Fiduciary
Bill Canellis wcanellis@kpmg.com

Bank Regulatory Reporting
Brett Wright bawright@kpmg.com

Capital Markets Regulation
Stefan Cooper stefancooper@kpmg.com

Capital/Basel II and III
Paul Cardon pcardon@kpmg.com

Commodities and Futures Regulation
Dan McIsaac dmcisaac@kpmg.com

Consumer & Enterprise Compliance
Stacey Guardino sguardino@kpmg.com

Cross-Border Regulation & Foreign Banking Organizations
Paul Cardon pcardon@kpmg.com

Financial Crimes
Terry Pesce tpesce@kpmg.com

Insurance Regulation
Matthew McCorry memccorry@kpmg.com

Investment Management
Larry Godin lgodin@kpmg.com

Safety & Soundness, Corporate Licensing & Governance, and ERM Regulation
Greg Matthews gmatthews1@kpmg.com

FS Regulatory Center of Excellence
Karen Staines kstaines@kpmg.com

kpmg.com/socialmedia

kpmg.com/app