The Washington Report

Americas FS Regulatory Center of Excellence

The week ended September 8, 2017

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Contents

1. Safety and soundness

1.1 Senate Banking Committee advances key agency nominations

On September 7, 2017, the Senate Committee on Banking, Housing, and Urban Affairs (Committee) approved the nomination of Randal Quarles to serve as the Federal Reserve Board's Vice Chair of Supervision.

The same day, the Committee also approved the nomination of Joseph Otting to serve as the Comptroller of the Currency.

Both nominations will now advance to the full Senate for a vote.

1.2 Fischer resigns from Federal Reserve Board

Stanley Fischer, Vice Chairman of the Board of Governors of the Federal Reserve System (Board), has announced his resignation effective on or around October 13, 2017. Vice Chairman Fischer has been a member of the Federal Reserve Board since May 28, 2014 and his term was set to expire January 31. 2020. He has served as chairman of the Board's Committee on Financial Stability as well as the Committee on Economic and Financial Monitoring and Research. He also represented the Board internationally at the Financial Stability Board, the Bank for International Settlements, the Group of 20, the Group of Seven, the International Monetary Fund, and the Organisation for Economic Co-operation and Development.

[Press Statement]

1.3 Federal Reserve issues paper on payment system improvement

The Federal Reserve Board (Federal Reserve) published a paper on September 6, 2017 entitled *Strategies for Improving the U.S. Payment System: Federal Reserve Next Steps in the Payments Improvement Journey*, which outlines updated tactics the Federal Reserve will pursue to improve the speed, safety and efficiency of the U.S. payment system. The paper is a follow up to the 2015 paper entitled *Strategies for Improving the U.S. Payment System*, which called for the commitment of all payment industry stakeholders to improve i) speed, ii) security, iii) efficiency, iv) international payments, and v) collaboration. With regard to each of the five desired outcomes, the Federal Reserve's updated strategies and new tactics include:

— Speed: Support efforts to facilitate industry development of a faster payments ecosystem as described by the Faster Payments Task Force in its final report, issued on July 21. Explore and assess the need for Federal Reserve engagement as a service provider, beyond providing settlement services, in the faster payments ecosystem to support industry achievement of the desired outcome.

— Security: Analyze payment security vulnerabilities, assessing potential approaches to mitigate, and identifying misalignment of incentives that may hinder progress. Also, focus on collaborating with stakeholders to better understand barriers to improvement and pursuing adoption of standards and other solutions to address them.

— Efficiency: Support industry efforts to develop and promote adoption of standards that enable end-to-end electronic processing of business invoices, payments and remittance information.

— International: Engage stakeholders to understand and assess the challenges and opportunities to enhance the timeliness, cost effectiveness, and convenience of cross-border payments.

— Collaboration: Facilitate ongoing stakeholder engagement in payments improvement efforts through a highly interactive and flexible payments improvement community. Further outreach and education efforts to create awareness and encourage adoption of identified improvements and initiatives.

[Press Statement] [Paper]

1.4 Federal Reserve issues supervisory guidance for Qualified Thrift Lender test

The Federal Reserve Board (Federal Reserve) on September 7, 2017 issued Supervision and Regulation Letter (SR) 17-9 to provide supervisory guidance for the Qualified Thrift Lender (QTL) test under section 10(m) of the Home Owners' Loan Act (HOLA). Provisions of HOLA permit a state savings bank or insured cooperative bank that meets the QTL test to be deemed a savings association for the purpose of determining the status of the electing bank's parent holding company as a savings and loan holding company (SLHC) under section 10 of HOLA. The guidance outlines the Federal Reserve's QTL requirements and the consequences of failing the QTL test for electing banks that are members of the Federal Reserve System and their parent holding companies.

[SR 17-9]

1.5 Federal agencies issue FAQs on Current Expected Credit Losses Methodology (CECL)

The Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency jointly issued frequently asked questions (FAQs) on the Financial Accounting Standards Board's (FASB) new accounting standard for credit losses. The new standard introduces the current expected credit losses (CECL) methodology for estimating allowances for credit losses. The new FAQs, issued September 6, 2017, expand on the agencies' June 2016 Joint Statement on the New Accounting Standard on Financial Instruments – Credit Losses. The agencies state they plan to issue a series of new and updated FAQs until the implementation date of the standard (generally beginning 2020 though certain entities are subject to later effectives dates) to address questions on the implementation of CECL.

[Press Statement]

1.6 FFIEC launches new industry outreach website

On September 6, 2017, the Federal Financial Institutions Examination Council (FFIEC) announced the launch of a new Industry Outreach website for financial institutions, trade associations, third-party providers, and consultants. The new site is designed to share information about current issues related to financial institution supervision, and to provide updates to supervisory guidance and regulations. The website also provides access to selected past and upcoming FFIEC-sponsored webinars.

[Press Statement]

1.7 Senators write letter to Treasury Secretary in opposition to easing of Volcker Rule

On September 7, 2017, Democratic senators Jeff Merkley and Sherrod Brown publicly released a letter they jointed to Treasury Secretary Steven Mnuchin in which they opposed a roll-back of the Volcker Rule. The senators wrote that there is "little credible evidence that the Volcker Rule has harmed markets, or the economy" and urged the Treasury Secretary to reject the "unnecessary, costly, and disruptive re-litigation of the final Volcker Rule."

[Press Release]

2. Enterprise and consumer compliance

2.1 Agencies issue joint guidance for Hurricane Irma; CFPB reiterates "financial toolkit"

The Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Conference of State Bank Supervisors issued a joint supervisory statement September 6, 2017 regarding Hurricane Irma in which the agencies committed regulatory assistance to affected institutions subject to their supervision. The joint guidance, mirroring that issued for Hurricane Harvey, stated that banks should work constructively with borrowers in communities affected by the hurricane. The agencies stated that "prudent efforts to adjust or alter terms on existing loans in affected areas should not be subject to examiner criticism." The agencies also stated that they do not expect to assess penalties or take other supervisory action against institutions that take reasonable and prudent steps to comply with reporting requirements if those institutions are unable to fully satisfy those requirements because of the effects of Hurricane Irma. The statement noted that institutions affected by Hurricane Irma that expect to encounter difficulty meeting the agencies' reporting requirements should contact their primary federal regulatory agency.

On September 8, 2017, the Consumer Financial Protection Bureau reposted its September 1, 2017 blog outlining steps that consumers affected by Hurricanes Harvey or Irma, or other natural disasters, should take to secure their home and finances. The guidance includes practical steps, such as contacting insurance, credit card, and utility companies to guidance related to forbearance and insurance settlements. It also included warnings about the potential for consumer frauds.

[Joint Press Statement] [CFPB Blog Post]

2.2 CFPB offers guidance on identify theft protection

The Consumer Financial Protection Bureau (CFPB or Bureau) published consumer guidance on identity theft protection, including steps consumers should take to protect themselves from identify theft and steps they should take if they suspect they have been the victim of identity theft. The Bureau emphasizes the need to address anything out of the ordinary on financial statements or credit reports, and recommends consumers contact the national credit reporting agencies to review their credit reports and possibly pursue additional options for protection. These options can include placing a security freeze on a consumer's credit report and fraud alerts that require creditors to take additional steps before opening a new account, issuing an additional card, or increasing the credit limit on an existing account. The CFPB also discussed the use of identity monitoring or credit monitoring services.

[Blog post]

2.3 OCC issues revised "Flood Disaster Protection Act" booklet

The Office of the Comptroller of the Currency (OCC) issued a revised "Flood Disaster Protection Act" booklet for the Comptroller's Handbook, which provides information on changes to the flood insurance requirements resulting from amendments to the Flood Disaster Protection Act in 2012 and 2014, and revisions to the flood insurance regulations. The booklet also makes clarifying changes that include an exemption for certain detached structures from the mandatory purchase of flood insurance requirements; escrow requirements for flood insurance premiums and fees for any loan secured by residential real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016; and amendments related to the force placement of flood insurance. The OCC, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Farm Credit Administration jointly issued rules addressing the detached structures exemption, the escrow requirement, and the force placement provision in July 2015.

[Revised Comptroller's Handbook booklet]

2.4 Enforcement actions

The Consumer Financial Protection Bureau (CFPB or Bureau) and the Federal Trade Commission (FTC) announced the following enforcement actions in the past week

- The CFPB entered into a Consent Order with an online lead aggregator for selling consumers' payday and installment loan applications to lenders it knew offered illegal or unlicensed loans in the consumer's state. Under the terms of the Order, the company agreed to end the illegal conduct and pay a $100,000 penalty. The CFPB separately proposed an order in a separate case that would resolve a pending lawsuit against the lead aggregator's owner for engaging in similar conduct at a previous company. If the proposed order is approved by the court, the individual would be required to pay a $250,000 civil money penalty.
- The FTC settled charges with three U.S. companies for misleading consumers about their participation in the European Union-United States Privacy Shield framework, which allows companies to transfer consumer data from EU member states to the United States in compliance with EU law. The FTC alleged the companies each claimed they were certified to participate in the EU-US Privacy Shield when in fact they were not. As part of the settlements, the three companies are prohibited from misrepresenting the extent to which they participate in any government-sponsored privacy or data security program or any self-regulatory or standard-setting organization. The companies must also comply with FTC reporting requirements.

  These are the FTC's first actions to enforce the EU-U.S. Privacy Shield framework, which was put in place in 2016.

3. Capital markets and investment management

3.1 Benham sworn in as CFTC commissioner

Rostin Behnam was officially sworn in as a Commissioner of the Commodity Futures Trading Commission (CFTC) on September 6, 2017. He was unanimously confirmed by the U.S. Senate on August 3, 2017 to a term that expires in June 2021. Prior to joining the CFTC, Behnam had served as senior counsel to U.S. Senator Debbie Stabenow of Michigan since 2011. Previously, he practiced law in New York and worked at the New Jersey Office of the Attorney General.

[Press Statement]

3.2 FINRA changes BrokerCheck policy on data access

The House Subcommittee on Capital Markets, Securities, and Investment conducted a hearing on the "Oversight of the Financial Industry Regulatory Authority" on September 7, 2017. Robert Cook, President and Chief Executive Officer of the Financial Industry Regulatory Authority (FINRA), was the sole witness

During the question and answer session of the hearing, Mr. Cook said that FINRA had changed its policy with regard to public access to "bulk" information on its BrokerCheck database. In particular, he said that FINRA had changed its policy on allowing the public to scrap information from its Web site, realizing there was potential opportunity for consumers to see patterns in their firms in addition to their individual brokers. He said this was an area FINRA was looking at but did not say more specifically when or how the policy changed.

[Subcommittee Hearing]

3.3 Piwowar addresses SEC-NYU Dialogue on Exchange-Traded Products

On September 8, 2017, Securities and Exchange Commission (SEC) Commissioner Michael S. Piwowar provided brief remarks before the SEC-NYU Dialogue on Exchange-Traded Products. He outlined the growth of exchange-traded products (ETPs) with both retail investors and institutional investors as well as the benefits and challenges that these types of instruments can present. Participants in the SEC-NYU Dialogue focused on three aspects of Exchange-Traded Products (ETPs): how ETPs affect the efficiency and quality of financial markets; potential implications for investors who hold ETPs; and the future of ETPs.

[Piwowar speech]

3.4 Enforcement actions

The Securities and Exchange Commission (SEC) announced the following enforcement actions in the past week

— A broker-dealer agreed to pay more than $35 million to settle the SEC's charges that it fraudulently charged secret markups for transition management services, and separately omitted material information about the operation of its platform for trading U.S. Treasury securities. The broker-dealer and the SEC entered into two orders, one that alleged the company generated approximately $20 million in improper revenue from the overcharges by using false trading statements, pre-trade estimates, and post-trade reports to misrepresent its compensation on various transactions. The firm agreed to pay a civil money penalty of $32.3 million to settle these charges. In a second order, the SEC alleged the firm failed to inform subscribers to its government securities trading platform that it provided one subscriber with a "last look" trading functionality that allowed it a short time period to reject a match to a submitted quote. The company agreed to pay a $3 million penalty, without admitting or denying the findings, that its disclosure failures violated Section 17(a)(2) of the Securities Act of 1933.

4. Legislative actions

4.1 President Trump signs debt-ceiling and hurricane relief legislation into law

On September 8, 2017, President Donald J. Trump signed into law H.R. 601, the "Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017." The law provides $15.25 billion in emergency funding for the Departments of Homeland Security and Housing and Urban Development and the Small Business Administration to support disaster response and assistance. The law also temporarily suspends the statutory debt limit through December 8, 2017.

[Press Statement] [H.R. 601]

4.2 House Subcommittee considers several pieces of financial services legislation

On September 7, 2017, the House Subcommittee on Financial Institutions and Consumer Credit Subcommittee considered several pieces of financial services legislation:

— H.R. 1849 – The Practice of Law Technical Clarification Act of 2017: This bill would amend the fair Debt Collection Practices Act to exclude law firms and licensed attorneys engaged in the practice of law from the definition of a debt collector. The bill would also amend the Consumer Financial Protection Act of 2010 to prevent the Bureau of Consumer Financial Protection from exercising supervisory or enforcement authority over attorneys engaged in the practice of law and not offering or providing consumer financial products or services.

— H.R. 2359 – The FCRA Liability Harmonization Act: This bill would amend the Fair Credit Reporting Act (FCRA) to establish the lesser of $500,000 or one percent of the net worth of the defendant as a limit on certain potential liability for statutory damages. This bill also eliminates punitive damages under the FCRA.

— H.R. 3312 – The Systemic Risk Designation Improvement Act of 2017: This bill would replace the Dodd-Frank Act's $50 billion threshold used to designate firms as "systemically important financial institutions" and subject them to enhanced regulatory standards with an indicator-based measurement approach based on an institution's size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity.

— The Facilitating Access to Credit Act: This bill would amend the Credit Repair Organizations Act (CROA) to create a process under which an Authorized Credit Services Provider (ACSP) can be exempted from the application of certain requirements under CROA only to the extent it offers, sells, provides, or performs services related to credit and identity protection, and credit education.

- The Community Institution Mortgage Relief Act of 2017: This bill would amend the Truth in Lending Act (TILA) to direct the Consumer Financial Protection Bureau (CFPB) to exempt from certain escrow or impound requirements a loan secured by a first lien on a consumer's principal dwelling if the loan is held by a creditor with assets of $50 billion or less. The CFPB must also provide either exemptions to, or adjustments from, the mortgage loan servicing and escrow account administration requirements of the Real Estate Settlement Procedures Act of 1974 for servicers of 30,000 or fewer mortgage loans.
- The TRID Improvement Act of 2017: This bill would amend the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) to expand the period during which a creditor is allowed to cure a good-faith violation on a loan estimate or closing disclosure from 60 to 210 days after consummation. This bill would also amend the RESPA to allow for the calculation of a simultaneous issue discount when disclosing title insurance premiums.

[Press Statement]

Contact us

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