KPMG

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Americas FS Regulatory Center of Excellence

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1. Safety and soundness

1.1 Federal Reserve Board proposes rules to ease capital plan and stress testing rules

On September 26, 2016, the Federal Reserve Board (Federal Reserve or Board) issued a notice of proposed rulemaking (NPR) that would revise its capital plan and stress testing rules applicable to bank holding companies (BHCs) with $50 billion or more in total consolidated assets and U.S. intermediate holding companies (IHCs) of foreign banks in the 2017 cycle.

The proposed rules would define a new category of "large and noncomplex firms": include BHCs and IHCs with (i) total consolidated assets of $50 billion or more but less than $250 billion, (ii) on-balance sheet foreign exposure of less than $10 billion, and (iii) total consolidated nonbank assets of less than $75 billion. These "large and noncomplex firms":

- Would be exempt from the Federal Reserve's oversight and authorization responsibilities regarding bank capital plans;
- Would be exempt from the Federal Reserve's Comprehensive Capital Analysis and Review (CCAR) qualitative assessment but would continue to be subject to the quantitative component of the CCAR process. However, qualitative assessments would continue to be conducted outside of CCAR through the supervisory process; and
- Would be subject to less stringent reporting requirements, including higher materiality thresholds for reporting on specific portfolios and a reduced scope for stress test data collection.

In addition, the proposed rule suggests two revisions to the de minimis exception threshold regarding capital distributions for all BHCs and IHCs subject to the Federal Reserve's capital rules. First, the proposed rule would establish a "blackout period" during the second quarter of each calendar year when firms would not be able to use the de minimis exception. Second, the proposal would lower the de minimis threshold from 1.0 percent to 0.25 percent of tier 1 capital beginning April 1, 2017. Well capitalized BHCs and IHCs may make capital distributions in excess of the dollar amount in their approved capital plans without Board approval provided they meet certain conditions, including the de minimis exception threshold.

Federal Reserve Governor Daniel K. Tarullo also delivered a speech regarding the proposed new approach to stress testing on the same day that the NPR was released publicly. He stated the Federal Reserve was considering replacing the Basel III capital conservation buffer (set at 2.5 percent) with a "Stress Capital Buffer" that would be set at the maximum decline in CET1 (Common Equity Tier 1) within the severely adverse stress testing scenario. The Stress Capital Buffer would also be subject to a floor. The concept of the Stress Capital Buffer is not included in the NPR.

Finally, Governor Tarullo states the Federal Reserve is considering implementing new assumptions for the 2017 stress tests. Three main shifts in the assumptions were announced:

- Balance sheet assets and risk-weighted assets will remain constant in the severely adverse scenario;
- Less severe unemployment impact will be assumed during downturns (although the actual unemployment impact assumptions themselves were not announced); and
- Housing prices will be tied to disposable income.

The proposed rule will be open for comments through November 25, 2016. [Press Statement] [Proposed Rule] [Governor Tarullo Speech]

1.2 OCC adopts final rule and guidelines for large bank recovery plans

The Office of the Comptroller of the Currency (OCC) published a final rule and enforceable guidelines on September 29, 2016, establishing standards for recovery planning by insured OCC-regulated institutions. The rule applies to national banks, federal savings associations, and federal branches of foreign banks (collectively, Banks) with average total consolidated assets of $50 billion or more.

The rule requires recovery plans that are (i) specific to individual institutions, (ii) aligned with internal plans, and (iii) coordinated with the recovery and resolution planning for the holding company. In addition, recovery plans should be integrated into the overall risk governance framework and include triggers that alert to the risk or presence of severe stress. Recovery plans should also include a wide range of credible options to restore the institution's financial strength and viability as well as escalation and notification procedures.

Management reviews and board approvals regarding recovery plans should occur at least annually and in response to material events. Revisions should reflect material changes to Bank size, risk profile, activities, complexity, and external threats.

The final rule and guidelines create a new Appendix E under the OCC's Part 30 regulations. They become effective January 1, 2017. Compliance will be phased-in based on an institution's asset size:

- Six Months (June 2017): Banks with average total consolidated assets equal to or greater than $750 billion on the effective date;
- Twelve Months (January 2018): Banks with average total consolidated assets equal to or greater than $100 billion but less than $750 billion on the effective date;
- Eighteen Months (June 2019): Banks with average total consolidated assets equal to or greater than $50 billion but less than $100 billion on the effective date and Banks with less than $50 billion in average total consolidated assets on the effective date that subsequently become covered by the final rule and guidelines. [Press Statement] [Final Guidelines]

1.3 BCBS issues FAQs related to its supervisory framework for measuring and controlling large exposures

On September 28, 2016, the Basel Committee on Banking Supervision (BCBS) issued frequently asked questions (FAQs) on its *Supervisory framework for measuring and controlling large exposures*. The framework will take effect on January 1, 2019. The framework remains unchanged since it was finalized in April 2014. Consequently, exposures to qualifying central counterparties related to clearing activities remain exempt from the large exposure limit. However, the limit continues to apply to interbank exposures. [Press Statement] [FAQs]

1.4 BCBS extends Core Principles for Effective Banking Supervision to address financial inclusion

On September 27, 2016, the Basel Committee on Banking Supervision (BCBS) issued final guidance regarding the expansion of its *Core Principles for Effective Banking Supervision* (Core Principles) to address financial inclusion. The guidance identifies 19 of the total 29 Core Principles where refinements address the supervision of financial institutions engaged in serving the financially unserved and underserved.

The final guidance specifies certain "Essential Criteria" and "Additional Criteria" with specific relevance to financial inclusion.

The BCBS notes that the remaining 10 Core Principles are relevant to financial inclusion but require little or no supplementary information or illustration in order to be applicable to institutions targeting unserved and underserved customers. [Press Statement] [Guidance] [Core Principles for Effective Banking Supervision]

1.5 BIS Working Paper compares the risk-based capital ratios to the leverage ratio

On September 30, 2016, the Bank for International Settlements (BIS) released Working Paper No 586 entitled "*Leverage and risk weighted capital requirements*." The paper compares the Basel III risk-based capital ratios with the leverage ratio by answering three questions:

1. How does the leverage ratio behave over the economic cycle compared with the risk-weighted asset ratio?
2. What are the costs and the benefits of introducing a leverage ratio, in terms of the levels and volatilities of some key macro variables of interest?
3. What can we learn about the interaction of the two regulatory ratios in the long run?

The working paper conducts its analysis using a model featuring a banking sector, financial frictions, and economic agents with differing degrees of creditworthiness. The authors indicate that the results suggest the following conclusions:

1. The leverage ratio acts as a countercyclical backstop to the risk-sensitive capital requirement, tightening constraints during a boom and a softening constraint in a bust;
2. The net benefits of introducing the leverage ratio could be substantial; and
3. The steady state value of the regulatory minima for the two ratios strongly depends on the riskiness and the composition of bank lending portfolios. [BIS Working Paper]

2. Enterprise and consumer compliance

2.1 CFPB monthly complaint report highlights money transfers

On September 27, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) released its monthly complaint report highlighting consumer complaints about money transfers. The CFPB began receiving money transfer complaints in April 2013. Since then, it has received approximately 6,900 complaints related to both U.S. and international transfers. The primary complaint for these products concerns alleged frauds and scams. Other complaints include the placement of holds without explanation, various delays and restrictions, and problems with the dispute resolution process.

As of September 1, 2016, the CFPB has received more than 980,000 consumer complaints overall. Consistent with the past several months, the top three most complained about products and services included debt collection, credit reporting, and mortgages. [Press Statement] [Monthly Complaint Report]

2.2 Enforcement action

The Consumer Financial Protection Bureau (CFPB or Bureau), the Federal Trade Commission (FTC), and the Office of the Comptroller of the Currency (OCC) announced the following enforcement actions in the past week:

- The CFPB entered into a consent order with a specialty-finance company that originates and services automobile title loans through affiliates in multiple states. The consent order addresses the CFPB's allegations the company engaged in unfair and abusive practices by materially misrepresenting the terms and costs of loan renewals. The company is alleged to have engaged also in unfair debt collection practices by conducting in person visits to consumers' places of employment and personal residences, as well as disclosing the existence of their personal debt information to third parties. Without admitting or denying the allegations, the company agreed to the terms of the consent order, which included payment of a $9 million civil money penalty.
- The CFPB entered into a consent order with an online lender that offers single payment and installment loans in multiple states. The CFPB alleges the lender engaged in unfair and deceptive practices by (i) misrepresenting the benefits of borrowing from the company because not all advertised products were available in all states, (ii) misrepresenting the cost of fees to extend a loan term, and (iii) miscalculating the finance charge and annual percentage rate (APR) included in disclosures. In addition, the CFPB alleges the lender did not have policies and procedures regarding the accuracy and integrity of information furnished to consumer reporting agencies (violating the Fair Credit Reporting Act) and, in some instances, failed to disclose APRs (required by the Truth-in-Lending Act). Without admitting or denying the allegations, the company agreed to the terms of the consent order, which included the payment of a $1.8 million civil money penalty as well as approximately $1.8 million in redress to harmed consumers.
- The FTC announced that it will refund nearly $20 million to more than 145,000 consumers harmed by a company and its two partner companies (the defendants) in an online credit monitoring scheme. This refund implements a 2014 settlement agreement with the FTC regarding FTC allegations the company violated Section 5 of the FTC Act and the Restore Online Shoppers' Confidence Act (ROSCA). Specifically, the settlement agreement indicated the defendants had deceived consumers into paying for a credit monitoring service they did not order by advertising free access to credit reports. ROSCA prohibits charging consumers for goods or services sold online via a negative option unless the seller (i) clearly discloses all material terms before obtaining the consumer's billing information, (ii) obtains the consumer's consent before making the charge, and (iii) provides an option to stop recurring charges.
- The OCC entered into a consent order with a national bank to address the OCC's allegations the bank violated the Servicemembers Civil Relief Act (SCRA) for a period of ten years by failing to: (i) provide the 6-percent interest rate limit to servicemember liabilities incurred before military service; (ii) disclose accurately servicemembers' active duty status to the court via affidavits prior to evicting servicemembers; and (iii) obtain court orders prior to repossessing servicemembers' automobiles for a failure to repay liabilities. The consent order requires the bank to pay a $20 million civil money penalty, provide restitution to harmed servicemembers, and to establish an enterprise-wide SCRA compliance program to detect and prevent future SCRA violations. The OCC coordinated its actions with the Department of Justice, which separately announced that it had entered into a consent order with the bank to address the allegations it violated the SCRA by repossessing servicemembers' automobiles without obtaining a court order. The consent order requires the bank to pay approximately $4 million in combined restitution to harmed consumers and civil money penalties.

3. Insurance

3.1 Federal Insurance Office releases fourth Annual Report on the Insurance Industry

On September 30, 2016, the U.S. Department of the Treasury's (Treasury) Federal Insurance Office (FIO) released its fourth Annual Report on the Insurance Industry. The Dodd-Frank Wall Street Reform and Consumer Protection Act requires FIO to report annually on the state of the insurance industry to the President and Congress. The current report:

- Provides an overview of the domestic insurance industry;

- Analyzes the financial performance and condition of the key U.S. insurance industry sectors;
- Addresses a range of developments at the state, federal, and international levels over the past year that would have implications for the U.S. insurance sector;
- Offers an overview of the progress made by Treasury and the Office of the United States Trade Representative (USTR) on the covered agreement being negotiated with the European Union; and
- Addresses FIO's engagement with international standard-setting organizations and with stakeholders concerning international matters. [Annual Report]

3.2 House subcommittee conducts hearing on the impact of U.S.-EU dialogues on the U.S. insurance market

The House Committee on Financial Services, Subcommittee on Housing and Insurance conducted a hearing on September 28, 2016, regarding the dialogues between the United States (U.S.) and the European Union (EU) on insurance markets. The Federal Insurance Office (FIO) at the Department of the Treasury, the Board of Governors of the Federal Reserve System (Federal Reserve), and the National Association of Insurance Commissioners (NAIC) testified. The United States Trade Representative (USTR) was invited to participate, but did not appear at the hearing and did not prepare testimony.

Topics covered by the witnesses included the:

- Negotiations toward a U.S.–EU covered agreement;
- Standard setting efforts through the International Association of Insurance Supervisors (IAIS), including an international capital standard;
- EU-U.S. Insurance Project, which serves as an essential forum for sharing information and regulatory practices, especially in relation to regulatory modernization and implementation initiatives;
- Conceptual regulatory frameworks proposed by the Federal Reserve for large, complex, systemically important institutions and insurance savings and loan holding companies;
- Financial Stability Board's designation of global systemically important insurers.

The Treasury Department's FIO made clear that "the United States will not submit to the EU's formal Solvency II equivalence process to assess and rule on the adequacy of the U.S. system. Instead, the bilateral dialogue is expected to generate a process "through which U.S.-based insurers and reinsurers receive an assurance of balanced regulatory treatment when operating in the EU market." In addition, the bilateral negotiations "could allow EU-based reinsurers to operate in the United States with less restrictive use of reinsurer capital while continuing to ensure consumer protection." The Federal Reserve testimony endorsed the Treasury Department's FIO and USTR initiative. The NAIC testimony instead pressured policymakers to pursue equivalence determinations under Solvency II. [Subcommittee hearing] [FIO testimony] [Federal Reserve testimony] [NAIC testimony]

3.3 U.S. and EU continue to negotiate covered agreement

On September 27, 2016, the U.S. Department of the Treasury (Treasury) published a joint statement of the United States (U.S.) and the European Union (EU) following their September 21 and 22 meeting to discuss a bilateral agreement on prudential insurance and reinsurance measures. The statement indicated:

- Both parties continue to discuss in good faith matters pertaining to group supervision, exchange of confidential information between supervisory authorities on both sides, and reinsurance supervision, including collateral.
- Representatives of the U.S. and EU have made progress on key issues, and identified next steps to draw closer towards a completion of negotiations in the near future.

Treasury and the Office of the U.S. Trade Representative (USTR) first announced their intention to begin negotiating a covered agreement with the EU in November 2015. Previous rounds of bilateral negotiations during 2016 occurred in February, May, and July. [Press Statement]

4. Capital markets and investment management

4.1 SEC adopts final rule establishing an enhanced regulatory framework for systemically significant securities clearing agencies and proposes enhanced oversight for CCPs, CSDs, and securities settlement systems

On September 28, 2016, the Securities and Exchange Commission (SEC) adopted final rules establishing enhanced standards for the operation and governance of securities clearing agencies that have been designated systemically important by the Financial Stability Oversight Council (FSOC) or that are involved in complex transactions, such as security-based swaps.

The final rules create new requirements with respect to financial risk management, governance, recovery planning, operations, and disclosures to market participants and the public. They become effective 60 days after publication in the Federal Register. Securities clearing agencies must comply with the requirements 120 days after the effective date.

The SEC also proposed to apply the enhanced standards to other categories of securities clearing agencies, including all SEC-registered central counterparties, central securities depositories, and securities settlement systems. A sixty-day comment period will occur upon publication of the proposed rule in the Federal Register. [Press Statement] [Proposed Rule]

4.2 SEC proposes to shorten the standard settlement cycle to two days after the trade date

The Securities and Exchange Commission (SEC) proposed a rule on September 28, 2016to shorten the standard settlement cycle for broker-dealer transactions from three days after the trade date (T+3) to two days after the trade date (T+2), subject to certain exceptions. The action would occur as an amendment to Rule 15c6-1(a) of the Securities Exchange Act of 1934. Comments will be accepted for a period of 60 days following publication of the proposed rule in the Federal Register. [Press Statement] [Proposed Rule]

4.3 CFTC adopts final rule expanding the clearing requirements for interest rate swaps

On September 28, 2016, the Commodity Futures Trading Commission approved a final rule expanding the existing clearing requirements for interest rate swaps. The new rule requires market participants to submit certain swaps denominated in certain currencies and with certain termination dates to a derivatives clearing organization (DCO) for clearing. The expanded interest rate swap classes covered by the final rule include:

- Fixed-to-floating interest rate swaps denominated in Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK), and Swiss franc (CHF);
- Basis swaps denominated in AUD;
- Forward rate agreements (FRAs) denominated in NOK, PLN, and SEK; and
- Overnight index swaps (OIS) denominated in AUD and CAD, as well as U.S. dollar-, euro-, and sterling-denominated OIS with termination dates up to three years

The clearing requirement does not apply to entities eligible for an exemption from clearing, such as non-financial entities, small banks hedging commercial risk, certain affiliated counterparties, and certain cooperatives.

The final rule will become effective 60 days after publication in the Federal Register. Compliance with the expanded interest rate swap clearing requirement will be phased-in according to an implementation schedule based on when similar clearing requirements take effect in non-U.S. jurisdictions. A two-year time limit on this phasing schedule also applies in order to provide certainty to market participants. [Press Statement] [FAQ] [Final Rule]

4.4 CFTC Chairman delivers keynote speech to SIFMA Annual Meeting

Timothy Massad, Chairman of the Commodity Futures Trading Commission (CFTC) delivered the keynote speech before the SIFMA (Securities Industry and Financial Markets Association) Annual Meeting on September 27, 2016. He focused on three major areas: 1) ensuring the strength and stability of clearinghouses; 2) confronting technology changes and innovations; and 3) finishing and fine-tuning the rules required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

With regard to clearinghouse resiliency, recovery, and resolution planning, the CFTC is:

- Conducting supervisory stress tests across multiple clearinghouses and their clearing members to assess systemic impacts and interdependencies across these entities. The first phase is expected to be completed during the fourth quarter of 2016. A public report based on these stress tests will be issued at a later date.
- Working with systemically important clearinghouses to ensure they have in place recovery and wind down plans and that the final recovery rules are effective.
- Coordinating with the Federal Deposit Insurance Corporation on resolution planning for clearinghouses.
- Facilitating multiple international working group efforts, addressing:
  - Resilience and recovery issues, including the granularity of international regulatory standards for margin methodologies, liquidity, governance, and stress testing;
  - Implementation of international regulatory standards at ten representative clearinghouses;
  - Resolution planning, including international coordination; and
  - Interdependencies among global clearinghouses and major clearing members.

Regarding technology changes and innovations, Chairman Massad noted that the CFTC recently finalized rules requiring exchanges, clearinghouses, trading platforms, and trade repositories to evaluate regularly their exposure to cyber risks and test their cybersecurity and operational risk defenses. Cybersecurity continues to be an examination priority. In addition, the CFTC expects to release soon a supplemental proposal regarding proposed Regulation AT, which addresses the risk of disruption posed by automated trading.

Finally, regarding Dodd-Frank implementation, the CFTC is:

- Exploring alternative actions to address potential consequences in the event that the European Commission's (EC) delay in implementing margin rules persists. The CFTC's margin rule for uncleared swaps went into effect on September 1, 2016. Second wave filers are expected to begin compliance on March 1, 2017.
- Considering delaying the planned decrease in the de minimis threshold for swap dealing. The threshold is currently scheduled to decrease from $8 billion to $3 billion in December 2017.
- Expecting to re-propose a rule on capital requirements for swap dealers and major swap participants. Chairman Massad indicated this proposal seeks to recognize the diversity of different types of dealers while still promoting safety and soundness.
- Considering a proposed rule on issues pertaining to when non-U.S. swap dealers use personnel in the United States to "arrange, negotiate or execute" swaps. The CFTC previously issued guidance on this subject but the guidance has been postponed. [Massad Speech]

4.5 Enforcement actions

The Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) announced the following enforcement-related matters in the past week:

- The SEC announced an agreement with a wealth management firm to settle charges the firm had maintained ineffective internal trading control systems that failed to prevent erroneous orders from being sent to markets and causing "mini-flash crashes." The firm was found to have caused such market disruptions on at least 15 occasions between 2012 and 2014 violation of the Market Access Rule. The firm agreed to pay a penalty of $12.5 million and agreed to be censured.
- The SEC announced that it had reached a settlement with a financial services firm to settle charges the firm failed to implement policies and procedures to educate and train adequately its registered representatives regarding the sale of certain complex financial products, known as reverse convertible notes (RCNs), that it sold to retail investors. Without adequate education and training, certain registered representatives made unsuitable recommendations in the sale of RCNs to certain retail customers in light of their investment profiles. The firm agreed to pay more than $9 million disgorgement plus interest and a $6 million penalty.
- The SEC imposed a penalty on a casino-gaming company for firing an employee who reported to senior management and the SEC that the company's financial statements might be distorted. This is the second whistleblower retaliation case being administered by the SEC since the Dodd-Frank Act authorized the agency to bring such charges. The SEC found that the employee was removed from significant work assignments within weeks of raising concerns about the company's cost accounting model and was terminated approximately three months later. Without admitting or denying the SEC's findings, the company agreed to pay a penalty of $500,000 and to cease and desist from committing further violations of the Section 21F (h) of the Securities Exchange Act of 1934.
- The CFTC issued an order filing and simultaneously settling charges against a company for solicitation fraud and failure to register with the CFTC as a Commodity Trading Advisor (CTA). The CFTC alleges the company fraudulently solicited clients to purchase access to an online trading room, which

was described as an online forum in which the clients could learn to trade futures contracts by observing the company's experienced professional traders. This claim was false, as the traders never traded any futures contracts in the room and only engaged in hypothetical or simulated trading. The company also provided information on market conditions and advised when clients should purchase or sell futures contracts, thereby acting as a CTA. It also solicited clients to participate in a managed account program pursuant to which its traders had the authority to manage clients' futures trading accounts for a monthly fee without being registered. To settle charges, the company agreed to disgorge $470,000 in unlawful gains and to pay a civil monetary penalty of $470,000. The order also imposed permanent trading, solicitation, and registration bans against the company.

- The CFTC filed a civil enforcement action against two traders and a finance company (the defendants) with the fraudulent promotion of an online futures trading forum that the defendants promoted as a way to observe live trades in futures contracts. The CFTC alleges that the defendants made false and misleading statements about the experience and success of the traders, including the past profitability of "live" trading. Additionally, one of the traders was charged with soliciting clients to open managed futures trading accounts without being registered with the CFTC as an Associated Person (AP) of a Commodity Trading Advisor (CTA). The CFTC is seeking restitution, disgorgement, civil monetary penalties, permanent registration and trading bans, and a permanent injunction against future violations, to settle charges.
- The CFTC filed and simultaneously settled charges against a bank for failing to comply with its obligations to submit accurate large trader reports for physical commodity swap positions, in violation of provisions of the Commodity Exchange Act (CEA) and CFTC regulations. The CFTC order requires the bank to pay a civil monetary penalty of $400,000 and to cease and desist from committing further violations of the CEA and CFTC regulations.
- The CFTC issued an order filing and simultaneously settling charges against a financial services firm registered with the CFTC as a Futures Commission Merchant bank for its participation in wash transactions and related supervision failures. The firm was found to be lacking in adequate controls to detect and prevent the execution of non-bona fide exchange of futures for physical (EFP) transactions. EFPs are transactions between two parties in which a futures contract on a commodity is exchanged for the actual physical good. A wash occurs when two transactions cancel each other out. In this case, the EFP trades were executed on the same contract, at the same quantity, and at the same price, with the buyer and seller for each EFP, with the buyer and seller being parties from entities under common control and ownership. The CFTC found that account representatives of the firm either knew that clients desired to net out futures positions across commonly owned and controlled accounts through the use of EFPs, or failed to inquire why clients were routinely on both sides of the EFPs. Such transactions are expressly prohibited in Section 4c (a) of the Commodity Exchange Act (CEA). To settle charges, the firm must pay a civil monetary penalty of $750,000 and comply with an undertaking to improve its internal controls and procedures to detect and prevent the execution, clearing and reporting to an exchange of non-bona fide EFP transactions.
- The CFTC filed a civil enforcement action against a CFTC-registered Introducing Broker and its sole owner for recordkeeping and supervision failures. The defendants allegedly failed to ensure that policies and procedures were in place to maintain records as required by the CFTC. They also failed to adopt adequate procedures to handle customers' margin deficiencies. These failures contributed to recordkeeping violations of the Commodity Exchange Act (CEA) and CFTC Regulations. The CFTC additionally seeks disgorgement, civil monetary penalties, trading and registration bans, and permanent injunctions against further violations of the CEA and CFTC Regulations. These additional remedies are being pursued through ongoing litigation.
- The CFTC issued an order requiring a firm to pay a civil penalty of $250,000 for acting as an unregistered commodity trading advisor and for disclosure violations. Since October 2012, the firm engaged in the business of advising more than 15 clients in trading over-the-counter (OTC) commodity option and swap contracts and acted as a CTA without being registered as such with the CFTC. The CFTC order also alleged the firm failed to disclose adequately to its clients certain conflicts of interest. Specifically, the firm failed to adequately disclose that it held financial interests in the commodity option and swap transactions that the clients had been advised to enter into. Furthermore, the firm did not disclose that a markup was embedded in the premium price the clients paid for the options transactions.

5. Financial crimes

5.1 Comptroller Curry delivers speech to Anti-Money Laundering and Financial Crimes Conference

On September 28, 2016, Thomas J. Curry, Comptroller of the Currency delivered a speech to the 15th Annual Anti-Money Laundering and Financial Crime Conference entitled "*Re-evaluation of risks associated with foreign correspondent banking*." Comptroller Curry acknowledged banks are "de-risking" or undertaking "risk reevaluation," particularly of their foreign correspondent relationship accounts. He stated that this type of evaluation can have the *unintended* effects of isolating particular regions from the benefits of the modern financial system and limiting broader financial inclusion. Consequently, he believes that de-risking of these accounts is not the solution.

Comptroller Curry noted that existing Bank Secrecy Act (BSA)/ Anti-Money Laundering (AML) and Office of Foreign Asset Control (OFAC) guidance regarding Regulatory Supervision and Enforcement approaches to foreign correspondent bank relationships. He highlighted a fact sheet, issued jointly by the Federal banking regulators and the U.S. Department of the Treasury, that reminds banks of their duty to conduct adequate assessments of the foreign financial institutions with which they do business. The joint guidance also acknowledges that no general U.S. rule requires that U.S. depository institutions conduct due diligence on the customers of their foreign correspondent partners.

Comptroller Curry also previewed guidance the OCC will issue regarding their expectations that banks establish and follow their policies and procedures for regular risk evaluations of their foreign correspondent portfolios. The guidance will describe some best practices that banks can use when re-evaluating their risks and making decisions about whether to retain or terminate foreign correspondent accounts, including:

— Establishing effective governance over the risk re-evaluation process and monitoring of resulting recommendations;

— Regularly communicating with senior management about decisions to terminate or retain these accounts;

— Establishing lines of communication with foreign correspondent customers during this process in order to better evaluate if the customer can provide further information in order to mitigate the risks of retaining the relationship and to provide time for the customer to establish financial relationships elsewhere; and

— Having clear audit trails documenting the reasons and methods used for considering account closure.

Comptroller Curry also explained that the OCC has established an annual Foreign Supervisors AML School that helps foreign bank supervisors increase their knowledge of money laundering and terrorism financing, and improve their understanding of U.S. laws, regulations, and processes. [Speech]

5.2 Federal Reserve Board issues enforcement action against a Chinese bank over AML compliance

A recent examination of a New York branch of a Chinese bank conducted by the Federal Reserve Bank of New York revealed significant deficiencies in the branch's risk management and compliance with regulations pertaining to Bank Secrecy Act (BSA) / anti-money laundering (AML) requirements. The corrective measures prescribed by the Federal Reserve require the bank to:

— Submit a plan to enhance oversight by the management of the branch and the bank regarding the branch's compliance with the BSA/AML requirements and the Office of Foreign Assets Control (OFAC) regulations;

— Submit a revised BSA/AML Compliance Program, including the customer due diligence program and the suspicious activity monitoring and reporting program;

— Engage an independent third party to conduct a transaction review of the branch's U.S. dollar clearing transaction activities from October 1, 2014 to March 31, 2015;

— Submit a plan to enhance the bank's compliance with the OFAC regulations; and

— Submit a revised internal audit program for the branch.

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