The Washington Report

Americas FS Regulatory Center of Excellence

The week ended September 2, 2016

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1. Safety and soundness

1.1 BCBS publishes progress report for the G20 Leaders on implementation of Basel III regulatory reforms

On August 29, 2016, the Basel Committee on Banking Supervision (BCBS) published a report for G20 Leaders on the progress and challenges experienced by its member jurisdictions in implementing the Basel III regulatory reforms. It updates the most recent BCBS report to the G20, which was released in November 2015. The report summarizes steps taken to adopt the Basel III standards, progress made to bolster capital and liquidity positions, and the consistency of implementation across jurisdictions. It highlights that:

- Basel III capital and liquidity standards have generally been transposed into domestic regulations within the time frame set by the BCBS.
- Key components, including the risk-based capital standards and the Liquidity Coverage Ratio, are enforced by all member jurisdictions.
- The framework for global systemically important banks (G-SIBs) is in force in jurisdictions that are home to G-SIBS.
- The leverage ratio and the Net Stable Funding Ratio have not yet been fully adopted globally.
- Non-BCBS jurisdictions also report substantial progress in adopting the framework's core elements.

In addition, certain revised Basel standards have not yet been transposed into domestic regulations, including:

- Margin requirements for non-centrally cleared derivatives;
- The revised Pillar 3 framework;
- The standardized approach for measuring counterparty credit risk;
- Capital requirements for central counterparty exposures; and
- Capital requirements for equity investments in funds.

The implementation challenges were attributed in part to domestic legislative or rule-making processes as well as to difficulties in adjusting information systems to meet and report the new requirements. [Press Statement] [Progress Report]

1.2 Financial Stability Board publishes report for the G20 Leaders on the implementation and effects of G20 Financial Regulatory Reforms

On August 31. 2016, the Financial Stability Board (FSB) published a letter from its Chairman, Mark Carney, to the G20 Leaders along with its second annual report on the Implementation and Effects of the G20 Financial Regulatory Reforms. The letter indicates that the reforms have been effective in dampening the after-effects of recent shocks in the financial system. Specifically, large internationally active banks are considerably more resilient than before the crisis, and remain on track to meet the Basel III capital and liquidity standards.

The FSB letter also identifies areas where reforms have not yet been fully implemented, particularly with respect to cross-border resolution, over-the-counter derivatives, and shadow banking. It also highlights key challenges that G20 Leaders need to address to ensure effective implementation of the reforms, including:

- Putting legal systems in place for cross border information sharing;
- Removing legal barriers to reporting OTC derivatives to trade repositories and to authorities' access to such data; and
- Removing other legal, data, and capacity constraints that could hamper implementation efforts.

Additionally, the report provides further analysis on three areas identified in the 2015 report as warranting close attention: i) market liquidity; ii) effects of reforms on emerging market and developing economies; and iii) maintaining an open and integrated global financial system. [Press Statement] [Second Annual Report]

1.3 FDIC changes deposit insurance assessments rates after Deposit Insurance Fund surpasses milestone

The Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter 58-2016 on August 30, 2016, announcing that the Deposit Insurance Fund Reserve Ratio rose to 1.17 percent at the end of the second quarter of 2016. This increase triggers three major changes to deposit insurance assessments that will take effect in December 2016.

FDIC regulation require changes to assessment processes the quarter after the reserve ratio first reaches or surpasses 1.15 percent (i.e., the third quarter of 2016), which will be reflected in December 2016 assessment invoices:

- (1) the range of initial assessment rates for all institutions will decline from 5 to 35 basis points to 3 to 30 basis points;
- (2) insured depository institutions with total consolidated assets of $10 billion or more (large banks) will begin to pay a quarterly surcharge equal to an annualized rate of 4.5 basis points in order to bring the reserve ratio to the statutory minimum of 1.35 percent required by the Dodd-Frank Wall

Street Reform and Consumer Protection Act. If the reserve ratio does not reach 1.35 percent by December 31, 2018, the FDIC will impose a shortfall assessment on large banks in the first quarter of 2019, and collect it on June 30, 2019. Small banks will receive an assessment credit when calculating risk-based assessment rates for established small banks in the amount of the portion of their assessments that contribute to the increase in the reserve ratio from 1.15 to 1.35 percent after the reserve ratio reaches 1.38; and

- (3) Assessment rates for all established small banks will be determined using financial measures and supervisory ratings derived from a statistical model estimating the probability of failure over three years. The new pricing system eliminates risk categories, but establishes minimum and maximum assessment rates for small banks based on a bank's CAMELS composite ratings. [FIL-58-2016]

1.4 Financial Stability Board publishes progress report on measures to reduce misconduct risk

On September 1, 2016, the Financial Stability Board (FSB) published a second report on reducing misconduct risk.

The report anticipates the FSB, the International Organization of Securities Commissions (IOSCO), and the Bank for International Settlements (BIS) will complete the following throughout 2017 in fulfillment of the work plan regarding misconduct risk:

- The FSB, in collaboration with standard-setting bodies, will develop supplementary guidance / recommendations regarding the link between compensation and conduct by the end of 2017.
- The FSB, in collaboration with standard-setting bodies, will develop recommendations for consistent national reporting and data collection on the use of compensation tools to address misconduct risk in significant institutions by the end of 2017.
- Through its newly formed Working Group on Governance Frameworks, the FSB will collect information on efforts underway by international bodies, national authorities, industry associations, and firms to strengthen governance frameworks to address misconduct risk, and will report on its findings by March 2017.
- IOSCO will publish a detailed regulatory toolkit for wholesale market conduct regulation by January 2017.
- The BIS Foreign Exchange Working Group will finalize the FX Global Code and proposals to ensure greater adherence, by May 2017.
- The IOSCO Financial Benchmark Task Force will finalize guidance for benchmark administrators on their statement of compliance by the end of 2016.
- The FSB will issue a final report on the implementation of reforms to major interest rate benchmarks by the end of 2017. [Press Statement] [Progress Report]

1.5 FSB, BIS, and IMF publish paper on Elements of Effective Macroprudential Policies

On August 31, 2016, the Financial Stability Board (FSB), the Bank for International Settlements (BIS), and the International Monetary Fund (IMF) released a report identifying "Elements of Effective Macroprudential Policies." It responds to a request from the G20 Leaders to assess national and international experience in developing and implementing macroprudential policies aimed at limiting systemic risks.

The report concludes that there is no "one size fits all" approach. It identifies elements that have been found useful in macroprudential policymaking, including:

- A clear mandate for assigning responsibility for macroprudential policy decisions;
- Adequate institutional foundations for macroprudential policy frameworks;
- Well-defined objectives and powers that foster the ability and willingness to act;
- Transparency and accountability mechanisms to establish legitimacy and create commitment to take action;
- Measures to promote cooperation and information-sharing among domestic authorities;
- A comprehensive framework for analyzing and monitoring systemic risk as well as efforts to close information gaps;
- A broad range of policy tools to address systemic risk over time and from across the financial system; and
- The ability to calibrate policy responses to risks, including by considering the costs and benefits, addressing any leakages, and evaluating responses.

The report also provides guideposts for the relaxation of macroprudential constraints and buffers. It indicates that relaxation can be warranted "when systemic risks recede." In addition, it indicates that macroprudential buffers "may also be relaxed when risks materialize…especially where macroprudential measures are binding on the provision of credit to the economy."

Finally, the report highlights how the use of macroprudential tools can generate cross-border impacts. It suggests that policymakers consider creating a cross-border coordination and reciprocity process for managing potential spillovers from domestic macroprudential policies. The model for such coordination and reciprocity process highlighted in the report is the framework for assessing the countercyclical capital buffer in the Basel III framework. [Press Statement] [Elements of Effective Macroprudential Policies]

2. Enterprise and consumer compliance

2.1 CFPB releases monthly complaint report highlighting bank accounts and services

The Consumer Financial Protection Bureau (CFPB or Bureau) released its monthly complaint snapshot on August 31, 2016. This edition highlights consumer complaints about bank accounts and services, including:

- Difficulties opening accounts based on errors in consumer and credit reports;
- The imposition of overdraft fees and confusion about the availability of funds in an account; and
- Error resolution procedures, including prolonged response times and a lack of provisional credit for disputed transactions.

The CFPB has received nearly 955,000 complaints since it began accepting complaints in July 2011. [Press Statement] [Monthly Complaint Report]

2.2 FTC seeks comment on customer information standards under the Safeguards Rule

The Federal Trade Commission (FTC) is seeking public comment on its Standards for Safeguarding Customer Information, also referred to as the "Safeguards Rule." The revisions are part of the FTC's ongoing systematic review of all FTC rules and guides. The Safeguards Rule requires financial institutions to develop, implement, and maintain a comprehensive information security program for handling customer information. Key components on which the FTC seeks comments include:

- --The economic impact and benefits of the Safeguards Rule;
- --Possible conflicts between the Safeguards Rule and state, local, or other federal laws or regulations; and
- --The effect of any technological, economic, or industry changes.

The comment period is open through November 7, 2016. [Press Statement] [Federal Register Notice]

2.3 Enforcement actions

The Federal Trade Commission (FTC) announced that it had obtained court orders banning the principals of a mortgage relief operation and their companies (the defendants) from the mortgage modification and debt relief business. The FTC charged the defendants for involvement in a scheme that falsely promised financially distressed homeowners they would receive legal representation to prevent foreclosure or lower their mortgage payments and interest rates, and illegally charged thousands of dollars in advance for these services. The court subsequently ordered the defendants to stop misleading consumers and froze their assets pending litigation.

Under a stipulated order for permanent injunction, the court banned the defendants from selling secured and unsecured debt relief products or services, prohibited them from violating the Do Not Call Registry Rule, and imposed an $8 million judgment that will be suspended upon surrender of the frozen assets. The court separately granted the FTC's request for summary judgment against some of the individuals and their companies that did not enter into settlement with the agency. The court imposed a permanent order on these defendants that subjects them to the same conduct terms as the defendants who settled with the agency and includes a judgment of more than $13.5 million, which represents the defendants' net revenues. The orders bar the defendants from profiting from customers' personal information and failing to dispose of it properly.

3. Capital markets and investment management

3.1 SEC adopts final rule providing certain regulators and other authorities access to data obtained by security-based swap data repositories

On August 29, 2016, the Securities and Exchange Commission (SEC) adopted amendments to Rule 13n-4 of the Securities Exchange Act of 1934 requiring security-based swap data repositories to make data available to certain regulators and other authorities. Among other things, the amendments:

- Require a memorandum of understanding or other arrangement between the SEC and the recipient of data to address the confidentiality of the security-based swap data provided to the recipient;
- Identify five prudential regulators (the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency), along with the Federal Reserve banks and the Office of Financial Research, as being eligible to access the data; and
- Address the factors the SEC may consider in determining whether to permit other entities to access the data.

The rule will become effective 60 days following the publication of the rule in the Federal Register. The obligation of a security-based swap data repository to provide data pursuant to the rules will be conditioned on the SEC and a relevant authority entering into an MOU or other arrangement addressing the confidentiality of the security-based swap information that is made available. [Press Statement] [Final Rule]

3.2 CFTC extends compliance date for custodial arrangement requirements of the uncleared swap margin rules

On September 1, 2016, the Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight (DSIO) issued a time-limited, no-action letter extending the deadline to October 3, 2016, for swap dealers to comply fully with the custodial arrangement requirements of the CFTC's uncleared swap margin rules. The letter states that the DSIO will not recommend an enforcement action against a swap dealer subject to the September 1, 2016 compliance date prior to October 3, 2016, subject to certain conditions. [Press Statement] [No-Action Letter]

3.3 SEC Whistleblower Program awards top $100 million

On August 30, 2016, the Securities and Exchange Commission (SEC) announced a whistleblower award of more than $22 million to a company insider whose "detailed tip and extensive assistance" helped the SEC halt a "well-hidden" securities fraud. The SEC has awarded more than $100 million through the Whistleblower Program since its inception in 2011. [Press Statement]

3.4 CFTC seeks comment on proposed changes to its Whistleblower Program

The Commodity Futures Trading Commission (CFTC) announced on September 1, 2016, that it is soliciting comment on a variety of proposed amendments to the rules governing its Whistleblower Program. The amendments propose changes to the process for reviewing whistleblower claims in the following areas:

- Eligibility requirements;
- Award claims review;
- Contents of record for award determinations;
- Whistleblower identifying information;
- Improper employer confidentiality provisions; and
- The CFTC's anti-retaliation authority.

The amendments would also clarify the CFTC's position on awards for related actions, replace the Whistleblower Award Determination Panel with a Claims Review Staff, and provide the CFTC with the opportunity to review Proposed Final Determinations

The proposed rule will be open for comments through September 29, 2016. [Press Statement] [Proposed Rule]

3.5 Enforcement actions

The Securities and Exchange Commission (SEC) and the Federal Reserve Board (Federal Reserve) issued the following enforcement actions in the past week:

- The SEC charged an advisory firm with making materially false and misleading disclosures with respect to its valuation analysis on a merger deal. An SEC investigation revealed that the presentation made by the investment bank contained false and misleading statements which made the bid look more attractive. The false information was also included in the proxy statement filed to solicit shareholder approval for the deal. The bank was held accountable for causing its client to distribute material misstatements about its financial analysis to shareholders and agreed to pay nearly $580,000 in disgorgement and interest as well as a monetary penalty of $2 million to settle charges.

- The Federal Reserve announced that it is seeking $1.2 million in civil money penalties and a permanent ban on employment in the banking industry as part of a potential enforcement action against a foreign exchange (FX) trader that is alleged to have manipulated FX pricing benchmarks. The trader allegedly used electronic chat rooms to coordinate FX trading, facilitate manipulation of FX pricing benchmarks, disclose confidential customer information to traders at other organizations, and engage in other unsafe and unsound practices. The Federal Reserve released a combined Notice of Intent to Prohibit and Notice of Assessment of a Civil Money Penalty for the purpose of determining whether appropriate orders should be issued.

4. Financial Crimes

4.1 FinCEN proposes AML, CIP, and Beneficial Ownership Requirements for banks lacking a federal functional regulator

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) published a proposed rule on August 25, 2016, requiring banks that lack a federal functional regulator to establish and implement anti-money laundering (AML) programs. The rule would also extend customer identification program (CIP) requirements to these banks, as well as beneficial ownership requirements, consistent with the recently implemented Customer Due Diligence amendments. FinCEN estimates the proposal would apply to more than 600 banks and financial institutions considered banks under the Bank Secrecy Act (BSA), including private banks; non-federally insured state banks, savings associations, and credit unions; certain international banking entities; and certain trust companies. These banks are currently covered by many other BSA obligations, including filing suspicious activity reports and currency transaction reports. The comment period will remain open through October 24, 2016. [Proposed Rule]

4.2 Five federal regulatory agencies release fact sheet on foreign correspondent banking

On August 30, 2015, the U.S. Department of the Treasury (Treasury) released a Joint Fact Sheet on Foreign Correspondent Banking (Fact Sheet) developed in collaboration with the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency. The Fact Sheet outlines the expectations of the U.S. regulators in the area of correspondent banking as well as their related supervisory examination and enforcement processes with respect to the Bank Secrecy Act requirements for anti-money laundering and countering the financing of terrorism. It also outlines the sanctions programs administered by the Treasury's Office of Foreign Assets Control. [Press Statement} [Fact Sheet]

4.3 New York State fines foreign bank for AML deficiencies

A recent examination by the New York State Department of Financial Services (NYDFS) identified alleged deficiencies in the anti-money laundering (AML) program of a foreign bank (Bank) and its New York State Branch. The deficiencies are alleged to include an indifference by the Bank's head office towards AML risks associated with transactions involving Panama and its two branches in that country. The NYDFS also alleged that a substantial number of customer entities, which have or had accounts at several other of the Bank's branches, were apparently formed with the assistance of a Panamanian law firm that is "at the center of the formation of shell company activity."

Other alleged deficiencies included: a lack of familiarity with U.S. regulatory requirements; failure of the compliance staff to periodically review surveillance monitoring filter criteria; and procedures with limited guidance concerning the reporting of continuing suspicious activities.

The Bank agreed to a consent order with NYDFS that requires it to pay a $180 million penalty, install an independent consultant to assist with changes to its policies and procedures, and install an independent monitor for a period of two years to conduct a comprehensive review of the effectiveness of the New York State Branch's compliance program. .

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

Barbara C. Matthews, Managing Director, Americas FS Regulatory Center of Excellence bcmatthews@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