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Americas FS Regulatory Center of Excellence

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Contents

1. Safety and soundness

1.1 Federal Reserve and FDIC extend deadline for resolution plans of certain firms

On August 2, 2016, the Federal Reserve Board and the Federal Deposit Insurance Corporation extended by one year (to December 31, 2017) the deadline for thirty-eight individual firms to submit their resolution plans. The firms include a total of thirty-six domestic bank holding companies and foreign banking organizations along with two nonbank financial companies designated by the Financial Stability Oversight Council for supervision by the Federal Reserve. Each firm's resolution plan must describe its strategy for rapid and orderly resolution under the U.S. Bankruptcy Code or other applicable insolvency regime in the event of material financial distress or failure of the company. The agencies expect to provide feedback and guidance for use in the December 2017 submissions. A list of the firms affected is included on each of the agencies' Web sites. [Joint Press Statement]

1.2 Agencies encourage financial institutions to submit information on self-assessments of diversity policies and practices

On August 2, 2016, the federal banking regulators – the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency - jointly issued Frequently Asked Questions (FAQs) providing guidance to financial services firms regarding their "*Interagency Policy Statement Establishing Joint Standards for Assessing Diversity Policies and Practices*" (Joint Standards). The Joint Standards were released in 2015 by the federal banking regulators together with the Consumer Financial Protection Bureau, the Securities and Exchange Commission, and the National Credit Union Administration (collectively, the Agencies). They encourage financial services firms to self-assess their diversity and inclusion policies and practices at least annually, to submit information to their primary federal regulator, and to disclose the relevant policies and practices on their Web sites. The FAQs indicate that financial firms may now submit self-assessments for the calendar year 2015 to their primary federal regulator. They may also submit successive annual self-assessments within 90 days of each calendar year end. The Agencies indicate they may use the submissions to monitor trends in the industry and to identify "best practices." [Press Statement]

1.3 Federal Reserve issues interim final rule amending civil money penalties

On August 1, 2016, the Federal Reserve Board (Federal Reserve) issued an interim final rule amending its rules of practice and procedure to adjust the amount of civil monetary penalties allowed by law to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This law requires federal agencies to adjust their maximum civil monetary penalty limits annually, pursuant to a specific formula. The Federal Reserve's interim final rule became effective on August 1, 2016. The Federal Reserve is accepting comments on the interim final rule through August 30, 2016. [Press Statement] [Interim Final Rule]

1.4 FDIC extends comment period for proposed guidance on third-party lending

On August 4, 2016, the Federal Deposit Insurance Corporation (FDIC) extended to October 27, 2016, the open comment period applicable to its proposed guidance regarding third-party lending. The FDIC released the proposed guidance on July 29, 2016, seeking to set safety and soundness and consumer compliance measures for third party lending conducted by FDIC-supervised institutions. It outlines risks associated with third-party lending as well as related expectations for a risk-management program, supervisory considerations, and examination procedures. [Press Statement] [FIL-50-2016]

1.5 Agencies propose new Call Report for small institutions

The federal banking agencies – the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation – are proposing a new Consolidated Reports of Condition and Income (Call Report) for eligible small financial institutions (FFIEC 051) which they estimate will require 40 percent fewer data items than the current FFIEC 041 Call Report. Institutions with only domestic offices and total assets less than $1 billion would be eligible to submit the new report.

The agencies also seek comment on proposed revisions to form FFIEC 041 and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031) that would remove certain data items and subject others to new or higher reporting thresholds.

The proposed FFIEC 051 and the proposed revisions to FFIEC 041 and FFIEC 031 would take effect as of the March 31, 2017, report date. A sixty-day comment period will begin following publication of the proposed information collection in the *Federal Register*. [Press Statement]

1.6 Enforcement actions

The Federal Reserve Board imposed a monetary penalty of more than $36 million on a bank holding company to address allegations that former employees of the organization obtained confidential supervisory information and used it to solicit business in client presentations. The confidential supervisory information included reports of examination and other confidential reports prepared by banking regulators. The settlement agreement also requires the bank to strengthen its policies and to implement an enhanced program to ensure the proper use of confidential supervisory information. Additionally, the Federal Reserve instituted enforcement proceedings against a former executive at the firm to impose a fine and permanently bar the individual from the banking industry to address the individual's and his subordinates' unauthorized use of confidential supervisory information.

2. Enterprise and consumer compliance

2.1 CFPB finalizes amendments to the mortgage servicing rules

The Consumer Financial Protection Bureau (CFPB or Bureau) issued a final rule on August 4, 2016, amending its mortgage servicing rules to provide certain borrowers with additional consumer protections, including with regard to foreclosure proceedings. The final rule amends the mortgage servicing provisions of Regulation X (which implements the Real Estate Settlement Procedures Act) and Regulation Z (which implements the Truth-in-Lending Ac) to, among other things, establish new consumer protections. These include:

- Requiring servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan;
- Expanding consumer protections to surviving family members and other homeowners, known as "successors in interest;"
- Providing more information to borrowers in bankruptcy, including a modified early intervention notice and periodic statements;
- Requiring servicers to notify borrowers when loss mitigation applications are complete;
- Protecting borrowers seeking loss mitigation during servicing transfers by requiring the new servicer to comply with the loss mitigation requirements within the same timeframe as the transferor servicer;
- Clarifying servicers' obligations to avoid dual-tracking and prevent wrongful foreclosures; and
- Clarifying when a borrower becomes delinquent.

Additional amendments address force-placed insurance and the small servicer exemption.

The final rule will generally take effect 12 months after publication in the Federal Register, except for the provisions related to successors in interest and the periodic statements for borrowers in bankruptcy, which will go into effect 18 months after publication in the Federal Register. [Press Statement] [Final Rule]

2.2 CFPB outlines principals for future loss mitigation programs

The Consumer Financial Protection Bureau (CFPB or Bureau) released a document on August 2, 2016, outlining guiding principles for developing loss mitigation programs in the residential mortgage market. The CFPB's document follows the July 25, 2016, joint release of a whitepaper by the U.S. Department of the Treasury, the U.S. Department of Housing and Urban Development, and the Federal Housing Finance Agency on the same subject. The guiding principles seek to assist mortgage servicers, investors, government housing agencies, and policymakers in the development of new foreclosure relief programs after current foreclosure prevention programs, such as the *Making Home Affordable* program and the *Home Affordable Modification Program*, expire at the end of 2016. The CFPB's principles are applicable across the spectrum of home-retention options, such as forbearance, repayment plans, modifications, and home-disposition options including short sales and deeds-in-lieu. The principles promote:

- Accessibility: Consumers should easily be able to obtain and use information about loss mitigation options, and how to apply for those options.
- Affordability: Repayment plans and mortgage loan modifications should generally be designed to produce a payment and loan structure that is affordable for consumers.
- Sustainability: Loss mitigation options used for home retention should be designed to provide affordability throughout the remaining or extended loan term.
- Transparency: Consumers should get clear, concise information about the decisions servicers make.

[Press Statement] [CFPB's Consumer Protection Principles] [Whitepaper Press Release]

2.3 FTC schedules FinTech Forum focusing on crowdfunding and peer-to-peer payment systems

The Federal Trade Commission (FTC) will host its second FinTech Forum on October 26, 2016, focusing on crowdfunding and peer-to-peer payment systems. The Forum seeks to bring together industry participants, consumer groups, researchers, and government representatives for the purposes of examining various models of crowdfunding and peer-to-peer payments used by companies, the potential benefits they can provide to consumers, and possible consumer protection concerns.

The agency's first FinTech Forum in June 2016 focused on marketplace lending. A "business blog" on the findings from the marketplace lending forum was published on August 3, 2016. [Press Statement] [Marketplace Lending Blog]

3. Insurance

3.1 OFAC issues finding against two insurance companies for violations of the SDN List

The Department of the Treasury's Office of Financial Asset Control (OFAC) has issued a Finding of Violation to an insurance company for violations of the Foreign Narcotics Kingpin Sanctions Regulations, 31 C.F.R. part 598 (FNKSR). On December 3, 2009, OFAC added three of the company's policyholders with long-term interest in two health insurance policies (they had held interests since 1992), to its Specially Designated Nationals (SDN) List. Neither the company nor its third party administrator (TPA) screened the names of its policyholders to identify that they had been added to the OFAC SDN List and as a result both companies failed to identify and block the policies and premium payments rendered between December 3, 2009 and May 11, 2011.

Separately, OFAC issued a Finding of Violation to the parent company of a second insurance company for violations of the FNSKR. As a TPA for a series of insurance policies issued by a separate unaffiliated entity, the insurance company facilitated and/or processed payments and serviced two health insurance policies from December 3, 2009 to approximately May 11, 2011, in which one or more SDNs had an interest. While the company screened the names of its insurance providers in connection with servicing these policies, it did not screen policyholders against the SDN List and therefore failed to identify and block the policies and premium payments rendered during this timeframe.

4. Capital markets and investment management

4.1 Agencies finalize rule exempting certain commercial and financial end-users from the initial and variation margin requirements

On August 1, 2016, five federal agencies (the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, and the Farm Credit Administration – collectively, the Agencies) jointly issued a final rule exempting from margin requirements non-cleared swaps and non-cleared security-based swaps (together, non-cleared swaps) of commercial end users, small banks, savings associations, farm credit system institutions, and credit unions with $10 billion or less in total assets. The non-cleared swaps of certain treasury affiliates, financial cooperatives, and captive finance companies also are exempted. All non-cleared swaps must hedge or mitigate the commercial risk of these counterparties and satisfy the requirements of the final rule to qualify for the exemption from mandatory clearing. The final rule becomes effective on October 1, 2016. [Press Statement] [Final Rule]

4.2 IOSCO publishes consultation paper on liquidity in the secondary corporate bond market

The International Organization of Securities Commissions (IOSCO) is seeking comments on a consultation report entitled "Examination of Liquidity of the Secondary Corporate Bond Markets," which it released on August 5, 2016. Key findings of the report include:

— No substantial evidence indicates that liquidity in secondary corporate bond markets has deteriorated markedly from historic norms for non-crisis periods.

— No reliable evidence indicates that regulatory reforms have decreased market liquidity.

— Structural changes in the secondary corporate bond markets include: changes to dealer inventory levels, increased use of technology and electronic trading venues, and changes in the role of participants and execution models (i.e., dealers shifting from a principal model to an agency model).

— Data collection methods, scope, quality, and consistency vary by jurisdiction making it challenging to analyze data across jurisdictions. Based on this finding, IOSCO intends to undertake a study of data reporting and public disclosure requirements regarding the corporate bond markets.

— The level of post-trade transparency in the corporate bond markets may impact liquidity. Based on this finding, IOSCO intends to commence updating its 2004 Report on the Transparency in the Corporate Bond Markets.

The consultation report is open for comment through September 30, 2016. [Press Statement] [Consultation Paper]

4.3 Agencies summarize progress toward strengthening U.S. Treasury market and announce a conference for October 2016

The U.S. Department of the Treasury (Treasury), the Federal Reserve Board (Federal Reserve), the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC) issued a joint statement on August 2, 2016, recounting significant actions they have taken with regard to the U.S. Treasury market since the July 2015 issuance of their last Joint Staff Report on the that market. That report analyzed the significant volatility experienced in the U.S. Treasury market on October 15, 2014, and offered several next steps to enhance the public and private sectors' understanding of changes to the structure of the U.S. Treasury market and their implications. Since the release of the report, the agencies have taken a number of steps to promote understanding, transparency, risk management, and inter-agency coordination with respect to the U.S. Treasury market. These steps include:

— A request for information on the evolution of the U.S. Treasury market structure, published by the Treasury as part of a comprehensive official sector review of the U.S. Treasury market;

— A memorandum of understanding signed by the four agencies that permits the sharing of information on U.S. Treasury cash and related derivative markets among the agencies, which will facilitate the analysis of major market events;

— An SEC proposed rule and request for comment regarding a proposed rule by the Financial Industry Regulatory Authority (FINRA) that would require its member brokers and dealers to report Treasury cash market transactions to a centralized repository;

— SEC proposed amendments to enhance transparency and oversight of Alternative Trading Systems (ATSs) and to solicit public comment on whether such rules should be applied to systems that only trade Treasury securities; and

— A CFTC proposed rule and request for comment on specific aspects of automated trading in futures markets, including Treasury futures, which covers pre-trade risk controls and requirements (registration with CFTC, development, testing and monitoring standards) for market participants using algorithmic trading systems on U.S. futures exchanges.

The agencies plan to host a conference on October 24, 2016, to discuss and continue progress on these efforts including undertaking key policy initiatives. [Joint Press Statement]

4.4 CFTC extends No-Action Letter for certain swap dealers

On August 4, 2016, the Commodity Futures Trading Commission's (CFTC) Divisions of Swap Dealer and Intermediary Oversight (DSIO), Clearing and Risk, and Market Oversight, issued a time-limited no-action letter extending a November 2013 exemption for non-U.S. CFTC-registered swap dealers. The exemption covers certain transaction-level requirements under the *Commodity Exchange Act* regarding swaps arranged, negotiated, or executed in the U.S. The relief has been extended from September 30, 2016, until the earlier of September 30, 2017 or the effective date of any CFTC action with respect to matters addressed by the DSIO advisory. [Press Statement] [CFTC Staff Letter 16-64]

4.5 Enforcement actions

The Financial Industry Regulatory Authority (FINRA) and the Commodity Futures Trading Commission (CFTC) announced the following actions during the past week:

— FINRA filed a complaint charging a broker with securities fraud for fraudulently, unsuitably and excessively trading the accounts of an elderly client. The broker allegedly engaged in a deceptive and fraudulent scheme using the client's accounts over a three-year period to maximize his compensation, charging more than $243,000 in commissions while the customer realized approximately $184,000 in net losses. The case is currently under investigation. If the allegations are proven to be true, possible remedies could include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations and payment of restitution.

- FINRA fined a firm $1.3 million for reporting violations with respect to the Order Audit Trail System (OATS), and related supervisory failures. FINRA requires firms to report complete and accurate data with respect to events in the lifecycle of an order, referred to as Reportable Order Events (ROEs) to OATS. A FINRA investigation revealed that certain system issues at the firm gave rise to OATS reporting violations, leading to the reporting of more than 3 billion inaccurate or incomplete ROEs, including omitted special handling codes; inaccurate timestamps, execution quantities and member type codes; and duplicate or erroneous reports. In addition, millions of ROEs failed to be transmitted to OATS. In settling the case, the bank neither admitted nor denied the charges but consented to the entry of FINRA's findings.
- The CFTC obtained a federal court Consent Order for permanent injunction against an individual and his trading firm (the defendants), for defrauding clients through the operation of a commodity futures software trading system. The defendants induced clients to pay a 10 percent monthly fee to use the firm's software trading system to trade commodity futures by making false claims about the profitability of the trading system and the owner's successful trading background. In reality, the trading software failed to produce any profits for clients. The defendants were required to jointly and severally disgorge nearly $480,000 of ill-gotten gains and pay a civil monetary penalty $1 million to settle the charges. The Order also permanently prohibited the defendants from trading on any registered entity; from registering with the CFTC, and from engaging in any commodity-related activities.
- The CFTC charged an individual and his trading company (the defendants) with committing fraud and misappropriation in the operation of a commodity pool that offered leveraged or margined off-exchange foreign currency transactions. The defendants fraudulently solicited funds from investors to make pooled investments in retail off-exchange forex transactions, while none of the funds were actually deposited in pooled accounts or used for retail forex transactions. Instead, the funds were misappropriated and used for business and personal expenses of the defendants. The CFTC issued an Order requiring the defendants to pay a civil monetary penalty of $680,000 and a restitution of $341,500. The Order also imposed permanent trading and registration bans.
- The CFTC charged a registered Futures Commission Merchant with failing to diligently supervise its officers', employees', and agents' processing of exchange and clearing fees charged to customers for trading and clearing product on the Chicago Mercantile Exchange, Inc., which led to customer overcharges. The firm was found to have not maintained adequate systems for reconciling invoices from exchange clearinghouses with the amounts of fees actually charged to its customers through its back-office accounting software. It also failed to implement adequate policies and procedures with respect to reconciliation, and adequately train its staff. The CFTC Order requires the firm to pay a civil monetary penalty of $800,000 and cease and desist from violating the CFTC regulation governing diligent supervision.

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5. Financial crimes

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6. Alternative finance

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

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