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The Washington Report

Americas FS Regulatory Center of Excellence

The week ended August 26, 2016

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1. Safety and soundness

1.1 Financial Stability Board publishes progress report on action plan to address decline in correspondent banking

The Financial Stability Board (FSB) published a report on August 25, 2016, entitled "*Progress report to the G20 on the FSB action plan to assess and address the decline in correspondent banking.*" The report describes the progress made by the FSB's Correspondent Banking Coordination Group (CBCG) throughout 2016 in implementing a four-point action plan announced in November 2015. Key highlights of include:

- The July 2016 publication of a final report on correspondent banking by the Committee on Payments and Market Infrastructures (CPMI), with recommendations on (i) Know-Your-Customer utilities; (ii) use of the Legal Entity Identifier (LEI) in correspondent banking; (iii) information-sharing initiatives; (iv) payment messages; and (v) use of the LEI as additional information in payment messages. The CPMI's report also finds evidence of increased concentration in correspondent banking relationships.
- The publication of a discussion note by the International Monetary Fund (IMF) analyzing evidence of decreased correspondent banking relationships and suggesting actions to address the issue.
- Implementation of a CBCG survey focused on certain data gaps, declines in specific categories of customers, and the extent of the concentration of correspondent banking in specific markets.
- The expected release of guidance by the Financial Action Task Force (FATF) in the fourth quarter of 2016 on the application of its standards to correspondent banking, as well as the expected release of further clarifications by the Basel Committee on Banking Supervision regarding its own existing guidance on correspondent banking.

FSB will publish a more comprehensive progress report by the end of 2016 that includes results of the CBCG survey. Work under the action plan will continue into 2017, including efforts to assess whether the action plan is having the intended impact. [Press Statement] [Progress Report]

1.2 FDIC issues Summer 2016 edition of Supervisory Highlights

On August 22, 2016, the Federal Deposit Insurance Corporation (FDIC) issued Financial Institution Letter (FIL) 57-2016 containing the Summer 2016 edition of its Supervisory Insights Journal. It contains two articles.

The first article focuses on *de novo* banking, including an overview of trends in *de novo* formation; the process by which the FDIC reviews applications for deposit insurance; the supervisory process for *de novo* institutions; and steps the FDIC is taking to support *de novo* formations. Data in the article show that de novo banking charters continue to register very low activity. The FDIC anticipates that applications for *de novo* institutions will increase once interest rates "normalize".

The second article discusses the Matters Requiring Board Attention (MRBA) page within the Risk Management Report of Examination. It reports that the most frequently cited categories for MRBAs at satisfactorily rated banks in the past five years include issues associated with loans and management. With regard to loans, the report indicates an increasing proportion of loan-related MRBAs address concentration risk management. The management issues cited primarily related to policies and procedures and the audit function, highlighting the need for enhancements to corporate governance. Other categories of MRBAs included violations, interest rate risk, earnings, information technology, and the Bank Secrecy Act. [FIL-57-2016] [Summer 2016 Supervisory Insights]

2. Enterprise and consumer compliance

2.1 CFPB finalizes amendments to the mortgage servicing rules

On August 23, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) released a report on the effectiveness of community networks to protect elders from financial exploitation. It finds that only 25 percent of all counties in the United States currently have a community network addressing elder abuse issues and only 6 percent of those known networks specialize in preventing and responding to financial exploitation. The report finds that a collaboration among community stakeholders, such as financial institutions, adult protective services organizations, and law enforcement, can protect older individuals from financial exploitation through a variety of activities, including case review and consultation, community education, and professional training and advocacy.

The CFPB recommends that financial institutions help to create, and participate in, community networks, or "protection partnerships," seeking to expand the capacity of these networks to prevent, detect, and respond to financial exploitation. The CFPB encourages the participation of law enforcement as well, especially regarding education and case review efforts.

In conjunction with the release or the report, the CFPB also released a resource guide with best practices to help communities establish sustainable protection partnerships to fight elder financial exploitation. The partnerships are expected to pool information, expertise, and resources in addressing this issue. [Press Statement] [Report and Recommendations] [Resource Guide]

2.2 Enforcement actions

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

- The CFPB entered into a Consent Order with a national bank to address the CFPB's findings the bank violated the unfair, deceptive, or abusive acts or practices (UDAAP) provisions of the Consumer Financial Protection Act and provisions of the Fair Credit Reporting Act in conjunction with its private student loan servicing practices. The CFPB alleges the bank: failed to disclose how it allocated partial payments across multiple loans; allocated partial payments in a manner that increased costs and unfairly penalized certain borrowers; charged illegal fees; and failed to update inaccurate credit report information. The bank agreed to the terms of the order without admitting or denying the CFPB's allegations. The order requires the bank to improve its payment processing practices by allocating partial payments made by a borrower in a manner that satisfies the amount due for as many of a borrower's loans as possible, unless directed otherwise by the borrower. The bank must also enhance its consumer billing disclosures regarding the allocation of payments. Finally, the Order requires the bank to provide $410,000 in relief to borrowers improperly charged late fees, pay a civil penalty of $3.6 million, and to remove any negative student loan information that has been inaccurately or incompletely provided to a consumer reporting agency.
- The CFPB entered into a Consent Order with a national bank to address the CFPB's findings the bank engaged in unfair and deceptive acts or practices in violation of the Consumer Financial Protection Act with regard to the marketing, sales, and administration of credit-card add-on products. The CFPB alleges the bank: mislead consumers regarding the cost of the product and the relevant eligibility requirements; billed consumers for services they did not receive; and hindered consumers' ability to obtain the product benefits or to cancel the product. The bank agreed to the terms of the order without admitting or denying the CFPB's allegations. The order requires the bank to provide $27.75 million in relief to approximately 257,000 harmed consumers and to pay a civil money penalty of $4.5 million.

  The CFPB's action was coordinated with the OCC, which separately entered into a Consent Order with the bank to address the OCC's allegations the bank engaged in unfair billing practices in violation of Section 5 of the Federal Trade Commission Act in conjunction with the sale of certain credit-card add-on products. These products were marketed by the bank and sold by its vendor. The OCC's order requires the bank to pay a $3 million civil money penalty and to make restitution to customers that were unfairly billed for, and paid for, identity theft protection they did not receive between December 1997 and July 2013. The order also requires the bank to improve governance of third-party vendors.
- The FTC announced receipt of a stipulated final order settling the FTC's charges against a debt collector and his companies (the defendants) for knowingly collecting on false loans from consumers who did not owe the debts, and using deceptive and abusive tactics to obtain the payments. The order imposes a judgment of more than $18 million, which will be partially suspended based on the defendants' inability to pay. The order also bans the defendants from the business of debt collection. The action forms a part of the FTC's Operation Collection Protection, which is an ongoing federal-state-local crackdown on collectors who use deceptive and abusive collection practices. At the request of the FTC and the Attorney General of the State of New York, the court halted the defendants' operations and froze their assets.

3. Capital markets and investment management

3.1 Financial Stability Board reports on progress toward reforms in the OTC derivatives market

On August 26, 2016, the Financial Stability Board (FSB) published two reports on the implementation of reforms to the over-the-counter (OTC) derivatives market.

The first report, "*OTC Derivatives Market Reforms: Eleventh Progress Report on Implementation*," indicates that a substantial number of jurisdictions will not have implemented margin requirements for OTC derivatives in accordance with the internationally agreed implementation schedule for these reforms, and that platform trading frameworks are relatively undeveloped in most jurisdictions. It also indicates that 19 of 24 jurisdictions have implemented trade reporting requirements for OTC derivatives and higher capital requirements for non-centrally cleared derivatives (NCCDs).

The second report, "*Report on FSB Members' Plans to Address Legal Barriers to Reporting and Accessing OTC Derivatives Transaction Data*," finds that significant work remains across FSB member jurisdictions to address agreed legal and data gathering commitments regarding both trade reporting and official sector access to the data by the June 2018 deadline. In some jurisdictions, concrete implementation plans have not yet been articulated. [Press Statement] [OTC Derivatives Market Reforms] [FSB Members' Plans to Address Legal Barriers]

3.2 IOSCO publishes final paper on good practices for fees and expenses of collective investment schemes

The International Organization of Securities Commission (IOSCO) published its final report on "*Good Practice for Fees and Expenses of Collective Investment Schemes*," on August 25, 2016. The report identifies examples of common international regulatory practices that can be applied to the structure of fees and expenses of Collective Investment Schemes (CIS). The report sets out 23 examples of good practices identified by regulators, including:

- Permitted or prohibited costs for a CIS;
- Disclosure of fees and expenses to the investor, including use of electronic media;
- Remuneration of the CIS operator;
- Performance-related fees;
- Transaction costs;
- Hard and soft commissions on transactions;
- Fees associated with CIS that invest in other funds;
- Fee differentiation in multi-class CIS; and
- Changes to the fees and expenses of a CIS. [Press Statement] [Report]

3.3 SEC adopts final rule enhancing reporting requirements for investment advisers

On August 25, 2016, the Securities and Exchange Commission (SEC) adopted a final rule amending several rules under the Investment Advisers Act as well as the investment adviser registration and reporting form (Form ADV) in order to enhance the reporting and disclosure of information by investment advisers to investors and the SEC. The amendments:

- Require investment advisers to provide additional information regarding their separately managed account business, including aggregate data with respect to the use of borrowings and derivatives, and information about other aspects of their advisory business, including branch office operations and the use of social media.
- Facilitate streamlined registration and reporting for groups of private fund adviser entities operating a single advisory business.
- Require investment advisers to maintain additional records related to the calculation and distribution of performance information.

The amendments will become effective 60 days after publication in the Federal Register. Compliance with the rule will be required beginning October 1, 2017, for advisers filing an initial Form ADV or amendments to an existing Form ADV. Amendments to the Investment Advisers Act books and records rule will apply to communications circulated or distributed after October 1, 2017. [Press Statement] [Final Rule]

3.4 OFR working paper presents joint OFR/FRB/SEC survey results for securities lending activity

The Office of Financial Research (OFR) released a working paper titled "*A Pilot Survey of Agent Securities Lending Activity*", on August 23, 2016. The survey analyzes data measuring securities lending activity that was obtained as part of a voluntary data collection project conducted by the OFR, the Federal Reserve

Board, and the Securities and Exchange Commission during 2015. The project responded to a request by the Financial Stability Oversight Council (FSOC) to obtain high-quality securities lending activity data in order to enhance assessment and monitoring of risks in the collateral markets. Based on the survey results, the FSOC has recommended permanent data collection be established for securities lending. The OFR is working to implement the recommendation. A similar data collection project was completed for repurchase agreements and the FSOC has similarly recommended permanent data collection of bilateral repurchase agreements. [Press Statement] [Survey Paper]

3.5 Enforcement actions

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

- The SEC charged four affiliated private equity fund advisers with misleading fund investors about fees and for failing to supervise a senior partner who charged personal expenses to the funds. An SEC investigation found that the advisers failed to disclose adequately the benefits they received to the detriment of fund investors by accelerating the payment of future monitoring fees owed by the funds' portfolio companies upon the sale or IPO of those companies. Failure to take remedial or disciplinary steps with the senior partner, other than to provide a verbal reprimand and require repayment of improperly submitted expenses, was found to have resulted in additional misconduct. The firms agreed to cease and desist from further violations, and to pay more than $37.5 million in disgorgement, $2.7 million in interest, and a $12.5 million penalty.
- The SEC charged thirteen investment advisor firms with violating securities laws for accepting and negligently relying on false claims made by an investment management firm about its flagship product. The advisory firms also used these claims while making investment recommendations to their own clients without obtaining sufficient documentation to substantiate the information being advertised. The SEC imposed penalties on the advisory firms ranging from $100,000 to $500,000 based on the fees each firm earned from the flagship product.

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