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Bank & Thrift

SSG Issues Progress Report on Counterparty Data

Senior financial supervisors from ten countries, collectively known as the Senior Supervisors Group (SSG), issued a document entitled *Progress Report on Counterparty Data* on January 15, 2014. The report summarizes the insights and experiences gained from the SSG's "Top 20" Counterparty project, which began in 2008 in response to the financial crisis. The counterparty exposure data collection program had two primary aims: to inform supervisors of the level of and changes in significant bilateral derivatives and other counterparty exposures, and to enhance the ability of firms to produce accurate and timely counterparty information.

The progress report concludes that, while firms have made improvements in assessing counterparty risk, their current practices and progress toward consistent, timely, and accurate reporting of top counterparty exposures fail to meet supervisory expectations or industry self-identified best practices on the whole. Some firms have met expectations for timeliness and frequency, data aggregation capability, and data quality; however, others failed to make as much progress as anticipated. One particular area of concern remains firms' inability to produce and submit to supervisors high-quality data on a consistent basis.

Additionally, the SSG believes the supervisors of these firms must prioritize the effort within the scope of their own work and commit to impressing upon firms the importance of being able to quickly and accurately aggregate top counterparty exposures. The SSG notes that it will continue to monitor and review these practices periodically to ensure ongoing effectiveness.

The report also states that the successful transition of the Top 20 Counterparty project from the SSG to the newly established, independent, and permanent International Data Hub at the Bank for International Settlements represents a milestone in the development of critical data collection and analysis. The SSG states that it believes the Financial Stability Board's strong leadership in the transition and shared governance of this effort will lead not only to greater communication of vital information for supervisors and policymakers, but also to a more heightened focus on improving firms' ability to aggregate and report their counterparty exposures in a consistent, timely, and accurate manner.

Basel Committee Issues Report on Fundamental Elements of a Bank's Capital Planning Process

The Bank for International Settlements' Basel Committee on Banking Supervision (Basel Committee) issued *A Sound Capital Planning Process: Fundamental Elements* on January 23, 2014, which sets out sound practices observed by the Basel Committee to foster overall improvement in banks' capital planning practices. The paper is based on an exercise conducted by the Basel Committee "to understand how capital planning processes at banks of different sizes, risk profiles and business models have evolved." It was prepared using "informal data collection" from member countries and comparison of existing supervisory knowledge and practice.

The Basel Committee states “an important lesson from the financial crisis points to the need for banks to improve and strengthen their capital planning processes. Some of the observed weaknesses reflected processes that were not sufficiently comprehensive, appropriately forward-looking or adequately formalised. As a consequence, some banks underestimated the risks inherent in their business strategies and, in turn, misjudged capital needs.”

More recently, supervisors have begun to codify their expectations for what constitutes sound capital planning. Those planning processes enable a bank's management to make informed judgments about the appropriate amount and composition of capital needed to support the bank's business strategies across a range of potential scenarios and outcomes.

Federal Reserve Issues Supervisory Guidance on Heightened Expectations for Recovery and Resolution Preparedness

The Federal Reserve Board (Federal Reserve) released Supervision and Regulation (SR) Letter 14-1 on January 24, 2014 to clarify its heightened supervisory expectations for recovery and resolution preparedness that is applicable to the eight domestic bank holding companies (BHCs) the agency states may pose elevated risk to U.S. financial stability. SR Letter 14-1 serves as a supplement to SR letter 12-17/CA letter 12-14, “*Consolidated Supervision Framework for Large Financial Institutions*” and provides detailed information regarding the capabilities that a BHC subject to the guidance should maintain for effective recovery or resolution preparedness. The Federal Reserve cautions, however, that the list of capabilities should not be viewed as exhaustive, noting that additional practices for effective recovery and resolution preparedness may be appropriate for a particular BHC. The Federal Reserve indicates it plans to incorporate reviews of key capabilities for recovery and resolution preparedness in its ongoing supervisory work for each of the BHCs covered by the guidance.

The Federal Reserve summarizes that BHC subject to the heightened expectations should have:

- Effective processes for managing, identifying, and valuing collateral it receives from and posts to external parties and affiliates
- A comprehensive understanding of obligations and exposures associated with payment, clearing, and settlement activities
- The ability to analyze funding sources, uses, and risks of each material entity and critical operation, including how these entities and operations may be affected under stress
- Demonstrated management information systems capabilities for producing certain key data on a legal entity basis that is readily retrievable and controls in place to ensure data integrity and reliability
- Robust arrangements in place for the continued provision of shared or outsourced services needed to maintain critical operations that are documented and supported by legal and operational frameworks.

The Federal Reserve expects to develop additional supervisory and operational guidance “in the future” to further clarify supervisory expectations around recovery and resolution preparedness for all large financial institutions. The guidance in SR 14-1 is immediately applicable to domestic BHCs that filed initial resolution plans on or before July 1, 2012. It will be applicable to those that filed initial resolution plans on July 1, 2013 as of July 1, 2014.

OCC to Host Workshops for Bank Directors in Miami and Los Angeles

The Office of the Comptroller of the Currency (OCC) will host two workshops in Miami from February 4 to 5, 2014 and one workshop in Los Angeles from February 10 to 12, 2014 for directors of national community banks and federal savings associations. The workshops are designed exclusively for directors of institutions supervised by the OCC and are taught by OCC supervision staff.

The “Compliance Risk” workshop in Miami will focus on major compliance risks and consumer protection regulations, such as the Bank Secrecy Act and Community Reinvestment Act, along with key elements of an effective compliance risk management program. The “Credit Risk: A Director’s Focus” workshop, also in Miami, will focus on current and emerging industry trends and news, such as allowances for loan and lease losses, and the roles of the board and management.

The “Mastering the Basics: A Director’s Challenge” workshop in Los Angeles will provide “practical information on the roles and responsibilities of board participation.” The workshop focuses on directors’ duties and core responsibilities, major laws and regulations, board reports, and bank ratings.

FDIC to Host Savings Strategies Webinar for Banks

The Federal Deposit Insurance Corporation's Division of Depositor and Consumer Protection (DCP) Community Affairs Branch announced that it will host a webinar titled *Savings Strategies During America Saves Week 2014* on February 4, 2014. The webinar will highlight potential strategies and approaches for institutions to consider pursuing to promote savings during America Saves Week. This webinar is one in a series highlighting strategies institutions can use to promote community development and expand access to the banking system.

FFIEC Approves Call Report Revisions

The Federal Financial Institutions Examination Council (FFIEC) approved revisions to the Consolidated Reports of Condition and Income (Call Report) on January 22, 2014 that will take effect March 31, 2014, and March 31, 2015. The Call Report revisions include certain reporting changes proposed by the FFIEC's member agencies in February 2013 that were modified in response to comments received on the proposal, including concerns about reporting burden.

Changes taking effect in March 2014 include information requests for:

- International remittance transfers (additional information required for institutions with more than 100 transactions per calendar year)
- Trade names used to identify physical offices and addresses of public-facing Internet Web sites at which the reporting institution accepts or solicits deposits from the public
- Offerings of deposit account products primarily intended for consumers.

In March 2015, institutions with \$1 billion or more in total assets that offer consumer deposit account products will begin to report in Call Report Schedule RI, Income Statement, the year-to-date income earned from three types of service charges on these products

The FFIEC and the agencies also finalized changes to the regulatory capital components and ratios portion of Call Report Schedule RC-R, Regulatory Capital, and revisions to the FFIEC 101, Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, which were proposed in August 2013. The FFIEC 101 report is completed only by advanced approaches institutions, who generally have consolidated total assets of \$250 billion or more or consolidated total on-balance sheet foreign exposure of \$10 billion or more, is a subsidiary of a depository institution or holding company that is an advanced approaches institution, or has elected to use the advanced approaches to calculate its total risk-weighted assets. The changes are consistent with the revised regulatory capital rules approved by the agencies in July 2013 and would be effective in Call Reports beginning March 31, 2014.

The U.S. Office of Management and Budget must approve all of the revisions to the Call Report and the FFIEC 101 before they become final.

Enterprise & Consumer Compliance

CFPB Proposes Rule to Oversee Larger Nonbank International Money Transfer Providers

The Bureau of Consumer Financial Protection (CFPB or Bureau) proposed a rule on January 23, 2014 that would allow it to supervise certain nonbank international money transfer providers for the first time. The proposed rule would bring new oversight to larger nonbank international money transfer providers in order to make sure they are adhering to the CFPB's new protections for consumers sending money abroad.

Prior to the passage of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), international money transfers were generally not covered by federal consumer protection regulations. The Dodd-Frank Act expanded the scope of the *Electronic Fund Transfer Act* to provide protections for consumers who send remittance transfers. In October 2013, the CFPB's Remittance Rule, which implements these new protections for consumers who send remittance transfers, went into effect.

"The CFPB's Remittance Rule provides strong consumer protections like better disclosures and the correction of errors," said CFPB Director Richard Cordray. "Today's proposed rule would help us provide oversight across the entire market so consumers get the protections they deserve."

CFPB examiners already have the authority to assess the largest banks' and credit unions' compliance with the Remittance Rule. The CFPB's proposed rule would also subject any nonbank international money transfer provider that provides more than 1 million international money transfers annually to the CFPB's supervisory authority. The Bureau estimates that nonbank providers transfer approximately \$50 billion annually through about 150 million individual international money transfers. The Bureau estimates that the proposed rule would

bring new oversight to about 25 of the largest providers in the market.

Comments on the proposed rule may be submitted for sixty days after its publication in the *Federal Register*.

Capital Markets & Investment Management

CFTC Reopens Comment Period for Risk Controls and System Safeguards for Automated Trading Environments Concept Release

On January 17, 2014, the Commodity Futures Trading Commission (CFTC) announced that it will reopen the comment period for its Concept Release on Risk Controls and System Safeguards for Automated Trading Environments (Concept Release). The new comment period opens on January 21, 2014 and extends through February 14, 2014.

The Concept Release was originally published in the *Federal Register* on September 12, 2013, with a comment period that ended on December 11, 2013. It provides an overview of the automated trading environment, including its principal actors, potential risks, and responsive measures taken to date by the Commission or industry participants. It also discusses a series of: (1) pre-trade risk controls; (2) post trade reports and other measures; (3) system safeguards related to the design, testing and supervision of automated trading systems (ATSs); and (4) additional protections designed to promote safe and orderly markets. In each case, the CFTC seeks extensive public comment regarding these measures, including 124 enumerated questions on measures and safeguards discussed in the Concept Release.

Comments may be submitted electronically through the CFTC's Comments Online process.

CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting

On January 21, 2014, the Commodity Futures Trading Commission (CFTC) announced the formation of an interdivisional staff working group to review certain swaps transaction data recordkeeping and reporting provisions. The working group, led by the director of the Division of Market Oversight, will formulate and recommend questions for public comment regarding, among other things, compliance with part 45 reporting rules, and related provisions, and consistency in regulatory reporting among market participants. Acting Chairman Wetjen has directed the working group to publish the request for public comment in the *Federal Register* by March 15, 2014. He also directed the working group to review the public comments submitted in response to this request and make recommendations to the Commission in June.

CFTC Announces Trade Execution Mandate for Certain Interest Rate Swaps

On January 16, 2014, the Commodity Futures Trading Commission (CFTC) announced that trueEX, LLC's (trueEX) self-certification of available-to-trade determinations (MAT Determinations) for certain interest rate swap contracts is deemed certified. This self-certification includes certain interest rate swap contracts made available to trade via an earlier determination that was deemed certified on January 16, 2014, as well as additional swap contracts. Under CFTC regulations, the additional swaps in this MAT Determination, whether listed or offered by trueEX or any other designated contract market (DCM) or swap execution facility (SEF), will become subject to the trade execution requirement under section 2(h)(8) of the *Commodity Exchange Act* 30 days after certification, on February 21, 2014.

All transactions involving swaps that are subject to the trade execution requirement must be executed through a DCM or a SEF. To the extent that swaps subject to the trade execution requirement are executed on a SEF, they must be executed in accordance with the execution methods prescribed by CFTC regulation.

FINRA Issues New Investor Alert on IRA Rollovers

The Financial Industry Regulatory Authority (FINRA) issued a new Investor Alert called *The IRA Rollover: 10 Tips to Making a Sound Decision* on January 23, 2014 to help the investing public decide if an IRA rollover is right for them. According to the Employee Benefit Research Institute, the largest source of IRA contributions comes from individuals who move their money from their employer-sponsored retirement plans.

"Workers and retirees should understand that in many cases they don't have to act immediately upon switching jobs or retiring. Taking the time to compare costs and investment options can help you keep your nest egg from suffering unnecessary cracks," said Gerri Walsh, FINRA's Senior Vice President for Investor Education.

Enforcement Actions

The Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) recently announced the following enforcement actions:

- The SEC announced that a former portfolio manager of an investment bank has agreed to be barred from the securities industry and pay a \$100,000 penalty for making misrepresentations about the valuation of a fund consisting of other private equity funds. In 2013, the investment bank agreed to pay \$2.8 million in a settlement of related charges.
- The CFTC announced a U.S. District Court Judge entered a Consent Order for Permanent Injunction against four defendants for fraudulent sales practices (including false and misleading statements and omissions of material fact) in connection with the sale of two automated trading systems (ATS). The Order requires the defendants to pay, collectively, more than \$29 million in disgorgement and civil money penalties. The Order further imposes permanent trading and registration bans on the defendants.

Recent Supervisory Actions against Financial Institutions

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Agency	Institution Type	Action	Date	Synopsis of Action
CFPB	Mortgage lender	Consent Order	1/16	The Bureau of Consumer Financial Protection ordered a Missouri-based mortgage lender and its former owner and current president to pay \$81,076 for funneling illegal kickbacks to a bank in exchange for real estate referrals.
OCC	Large financial institution	Order for Civil Money Penalty	1/7	The Office of the Comptroller of the Currency announced a \$350 million civil money penalty against three affiliated banks for Bank Secrecy Act (BSA) violations. The penalty follows a January 2013 cease and desist order in which the three banks were directed to correct deficiencies in their compliance programs.
Federal Reserve Board	State member bank	Civil Money Penalty	01/09	The Federal Reserve Board entered into an Order of Assessment of Civil Money Penalty with a Texas-based state member bank to address violations of the National Flood Insurance Act.
Federal Reserve Board	State member bank	Civil Money Penalty	01/09	The Federal Reserve Board entered into an Order of Assessment of Civil Money Penalty with a New York-based state member bank to address violations of the National Flood Insurance Act.
CFPB	Large financial institution	Consent Order	12/23	The Bureau of Consumer Financial Protection entered into a Consent Order with a large financial institution to resolve the CFPB's claims that the institution engaged in a pattern or practice of discrimination on the basis of race and national origin in residential mortgage lending in violation of the Equal Credit Opportunity Act. The Consent Order requires the institution to pay \$35 million in restitution.
CFPB, OCC, FDIC	Various	Consent Order, Order for Restitution, Order for Civil Money Penalty	12/23	The Bureau of Consumer Financial Protection, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation each participated in actions against a financial institution and certain of its subsidiaries to address unfair and deceptive marketing practices related to credit card "add on" products. Collectively, the orders require \$59.5 million in restitution and civil money penalties of \$16.2 million.
CFPB	Large financial institution	Consent Order, Civil Money Penalty	12/20	The Bureau of Consumer Financial Protection entered into a Consent Order to with a resolve the CFPB's claim that the financial institution, an indirect auto lender, violated the anti-discrimination provisions of the Equal Credit Opportunity Act. The institution was required to pay \$80 million in damages to affected borrowers and an additional \$18 million civil money penalty.
CFPB	Nonbank financial institution	Proposed Consent Order	12/19	The Bureau of Consumer Financial Protection and authorities in 49 states released a proposed Consent Order that would require a nonbank mortgage servicer to pay approximately \$2 billion in principal reduction for certain borrowers that were harmed by the mortgage servicers practices. CFPB claims the company engaged in "significant and systemic misconduct...at every stage of the mortgage servicing process." The proposed Consent Order would also require the company to pay \$125 million in refunds to approximately 185,000 foreclosed borrowers.

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