



In This Issue

Bank & Thrift Regulatory Update

Janet Yellen Succeeds Ben Bernanke as Chair of the Federal Reserve Board	1
OCC Survey Shows Banks' Underwriting Standards Continuing to Ease	1
OCC and Boston University to Host Symposium Commemorating 150 Years of National Banking	1
FDIC Issues Guidance on Registration of Municipal Advisors	2

Enterprise & Consumer Compliance

CFPB Issues Consumer Advisory on Industry's Data Breach	3
CFPB 2013 Supervision Report Highlights Mortgage Servicing Issues	3

Capital Markets & Investment Management

SEC Issues Risk Alert on Investment Advisers' Due Diligence Processes for Selecting Alternative Investments	4
CFTC Announces Trade Execution Mandate for Certain IRS and CDS Contracts	4
SEC Approves Merger of BATS Global Markets and Direct Edge	5
Enforcement Actions	5

Financial Services Legislation

Senate Passes Bill to Delay Certain Flood Insurance Premium Increases	6
Senate Banking Subcommittee Hears Testimony on "Monitoring Systemic Risk: The Annual Report and Oversight of the Office of Financial Research," including the Status of Data Collection and Analysis by the Office of Financial Research	6

Recent Supervisory Actions	8
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Bank & Thrift

Janet Yellen Succeeds Ben Bernanke as Chair of the Federal Reserve Board

The Federal Open Market Committee of the Federal Reserve Board (Federal Reserve) unanimously selected Janet L. Yellen to serve as its Chair, effective February 1, 2014. She was sworn in as Chair of the Federal Reserve at 9 a.m. EST on February 3, 2014. The U.S. Senate confirmed her nomination to succeed Ben Bernanke on January 7, 2014.

OCC Survey Shows Banks' Underwriting Standards Continuing to Ease

The Office of the Comptroller of the Currency (OCC) released its 19th Annual *Survey of Credit Underwriting Practices* on January 30, 2014. The survey identified trends in lending standards and credit risk for the most common types of commercial and retail credit offered by national banks and federal savings associations. It covers the 18-month period ending June 30, 2013.

The survey presented OCC examiner assessments of credit underwriting standards at eighty-six banks with assets of \$3 billion or more. Examiners reported on loan products for companies with loan volume of at least 2 percent of their committed loan portfolio, or greater than \$10 billion in committed exposure. The survey covered loans totaling \$4.5 trillion representing approximately 87 percent of total loans in the national bank and federal savings association system.

Results of the survey reveal that banks continued to adapt to changing economic conditions and competition. Examiners noted easing underwriting standards and increasing loan volume. Examiners reported banks' increasing risk appetite and greater market liquidity were factors that contributed to easing standards. As a group, the 19 largest banks reported the highest share of eased underwriting standards. Loan portfolios that experienced the most underwriting easing included indirect consumer, credit cards, large corporate, asset-based lending, international, and leveraged loans. Loan portfolios that experienced the most underwriting tightening included high loan-to-value home equity and conventional home equity.

OCC and Boston University to Host Symposium Commemorating 150 Years of National Banking

The Office of the Comptroller of the Currency (OCC) and the Boston University Center for Finance, Law & Policy announced they will host a symposium in Boston on March 31, 2014 to commemorate the 150th anniversary of the founding of the OCC and the national banking system.

Comptroller Curry will deliver the keynote address, and other speakers will discuss the current state of domestic and international banking in the context of recent and historical events, including:

- Sheila Bair, former Chairman of the Federal Deposit Insurance Corporation (FDIC)

- Sharon Bowles, Chair of the Economic and Monetary Affairs Committee of the European Parliament
- Christopher Dodd, former U.S. Senator and Chairman of the Senate Committee on Banking, Housing and Urban Affairs
- Camden Fine, President of the Independent Community Bankers of America
- Barney Frank, former U.S. Congressman and Chairman of the House Financial Services Committee
- Thomas Hoenig, Vice Chairman of the FDIC
- Professor Cornelius Hurley, Director of the Boston University Center for Finance, Law & Policy
- Raymond Natter, Partner in Washington Law Firm Barnett, Sison & Natter, P.C. and former Deputy Chief Counsel, Office of the Comptroller of the Currency
- Timothy Pawlenty, former Minnesota Governor and President of The Financial Services Roundtable
- John Reed, former Chairman of Citicorp
- Paul Volcker, former Chairman of the Board of Governors of the Federal Reserve System.

Specific topics will include a discussion of the state of the dual banking system, preemption in the wake of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, a view on banking from Europe, a discussion of the Volcker Rule, a discussion on banking reform, the future of universal banking, a dialogue on Too Big to Fail, the future of banking in light of globalization, and emerging alternatives to traditional banks.

FDIC Guidance on Registration of Municipal Advisors

The Federal Deposit Insurance Corporation (FDIC) released Financial Institution Letter (FIL) 6-2014 to highlight the Securities and Exchange Commission's (SEC) final rule establishing a permanent registration system for municipal advisors, which goes into effect July 1, 2014. The guidance also notes that to provide a transition between the permanent and temporary registration systems, the SEC has extended the temporary registration period to December 31, 2014.

The FDIC states, "A 'municipal advisor' is defined as any person who is not a municipal entity or an employee of a municipal entity who provides advice to or on behalf of a municipal entity or obligated person regarding municipal financial products or the issuance of municipal securities." Banks providing advice related to deposit accounts and deposit instruments, extensions of credit, funds held in a sweep account, or any investment when acting in a fiduciary capacity would not be considered a municipal advisor.

Enterprise & Consumer Compliance

CFPB Issues Consumer Advisory on Industry's Data Breach

The Bureau of Consumer Financial Protection (CFPB or Bureau) published a consumer advisory on January 27, 2014 to help consumers protect themselves in the wake of the recent breaches of payment card and other data that have exposed millions of payment card accounts and consumer information to potential fraud. The advisory also contains information on where to get help if consumers suspect their information has been compromised.

The CFPB reports that payment cards, such as credit, debit, and prepaid cards, are among the most commonly used consumer financial products. Over 70 percent of Americans have at least one credit card, debit cards are now used for more consumer purchases than credit cards, and prepaid card use is continuing to grow.

The consumer advisory includes the following steps consumers can take to protect themselves from data theft:

- Regularly monitor accounts for unauthorized charges or debits
- Alert bank or card provider immediately if fraud is suspected
- Follow up with the bank or card provider and maintain records
- Avoid phishing scams that ask for personal information over email or by phone
- Contact the CFPB if they "have an issue" with their bank or card provider's response.

CFPB 2013 Supervision Report Highlights Mortgage Servicing Issues

The Bureau of Consumer Financial Protection (CFPB or Bureau) issued the third edition of its Supervisory Highlights on January 30, 2014 to report key findings identified through its examination program. In this report, the CFPB identified unfair and deceptive practices in markets such as the mortgage servicing market, and weaknesses in compliance management systems

Several instances of violations of unfair, deceptive, or abusive practices are described including:

- Unfair practices with servicing transfers, where two servicers failed to honor existing permanent or trial loan modifications after a servicing transfer, resulting in borrowers being charged the wrong amount or being told to pay the wrong amount.
- Waiving consumer rights, where two servicers were requiring borrowers to waive any existing claims in order to get a forbearance or loan modification agreement. These broad waiver clauses were found to be unfair as they were done without regard to individual circumstances.
- Poor payment processing, where a servicer was found marketing bi-weekly payment plans and misrepresenting how the plans worked, resulting in consumers not saving money the way they thought they would. Another servicer told some borrowers they would receive refunds from their escrow accounts, when in fact they would not.

- Failing to provide correct information to consumer reporting agencies, where servicers were found misreporting short sales as foreclosures, which the CFPB states have a much more negative impact on a consumer's ability to get certain types of credit.

The CFPB reports that in all cases where examiners found mortgage servicing problems, they alerted the company to their concerns and specified necessary remedial measures. When appropriate, the CFPB opened investigations for potential enforcement actions.

Capital Markets & Investment Management

SEC Issues Risk Alert on Investment Advisers' Due Diligence Processes for Selecting Alternative Investments

On January 28, 2014, the Securities and Exchange Commission's Office of Compliance Inspections and Examinations (OCIE) issued a Risk Alert on the due diligence processes that investment advisers use when they recommend or place clients' assets in alternative investments such as hedge funds, private equity funds, or funds of private funds.

The alert describes current industry trends and practices in advisers' due diligence. When comparing observations from prior periods, the OCIE staff noted that advisers are:

- Seeking more information and data directly from the managers of alternative investments
- Using third parties to supplement and validate information provided by managers of alternative investments
- Performing additional quantitative analysis and risk assessment of alternative investments and their managers.

Additionally, OCIE staff observed certain deficiencies in several of the advisory firms examined, including:

- Omitting alternative investment due diligence policies and procedures from their annual reviews, even though these investments comprised a large portion of certain advisers' investments on behalf of clients
- Providing potentially misleading information in marketing materials about the scope and depth of due diligence conducted
- Having due diligence practices that differed from those described in the advisers' disclosures to clients.

CFTC Announces Trade Execution Mandate for Certain IRS and CDS Contracts

On January 28, 2014, the Commodity Futures Trading Commission (CFTC) announced that TW SEF LLC's (Tradeweb) self-certification of available-to-trade determinations (MAT Determinations) for certain interest rate swap (IRS) and credit default swap (CDS) contracts is deemed certified. This self-certification includes (1) certain IRS contracts made available to

trade via an earlier determination that was deemed certified on January 16, 2014 and January 22, 2014, respectively, (2) additional IRS contracts, and (3) certain CDS contracts. Under CFTC regulations, the CDS contracts and additional IRS contracts, whether listed or offered by Tradeweb or any other swap execution facility (SEF) or designated contract market (DCM), will become subject to the trade execution requirement under section 2(h)(8) of the *Commodity Exchange Act* 30 days after certification, on February 26, 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 regulations.

SEC Approves Merger of BATS Global Markets and Direct Edge

The Securities and Exchange Commission (SEC) approved the merger of exchange operators BATS Global Markets, Inc. and Direct Edge Holdings LLC on January 23, 2014.

At the closing of the merger, BATS Global Markets, Inc. and Direct Edge Holdings LLP will each become intermediate holding companies, held under a single new holding company. The new holding company, currently named "BATS Global Markets Holdings, Inc.," will at that time change its name to "BATS Global Markets, Inc."

The combination of the two exchanges will purportedly create the second largest equities exchange in the United States in terms of trading volume, ahead of the Nasdaq OMX Group, Inc. and just behind IntercontinentalExchange Group's NYSE Euronext exchange.

Enforcement Actions

The Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) recently announced the following enforcement actions:

- The SEC charge two individuals with perpetrating a naked short selling scheme that resulted in more than \$400,000 in illicit profits. The individuals agree to settle the SEC's charges by paying more than \$670,000 in disgorgement, prejudgment interest, and penalties.
- The SEC announced sanctions against a California-based investment adviser for concealing investor losses that resulted from a coding error and engaging in cross trading that favored some clients over others. The investment adviser, which is a subsidiary of an investment firm, agreed to pay more than \$21 million to settle the SEC's charges as well as a related matter announced by the U.S. Department of Labor.
- The SEC announced charges against the former director of internal audit at a Chicago-based health care information technology company for insider trading ahead of the release of its financial results and making more than a quarter-million dollars in illicit profits. The complaint seeks a judgment permanently enjoining the individual from future violations of these provisions of the federal securities laws and ordering disgorgement of ill-gotten gains plus prejudgment interest and a penalty.
- The SEC charged a St. Louis-based broker-dealer with failing to provide the agency with complete and accurate information about trades done by the firm and its customers, known as "blue sheet" data. The broker-dealer agreed to settle the charges by paying a \$2.5 million penalty and admitting it violated the recordkeeping provisions of the federal securities laws.

- The SEC charged a New York-based money manager and his firm with making false claims through social media, newsletters, and other communications about the success of their investment advice and a mutual fund they manage. The individual agreed to pay a penalty of \$100,000, and he and the firm agreed to be censured and comply with certain undertakings, including the retention of an independent compliance consultant for three years.
- The SEC charged a Manhattan-based private equity manager and his firm with stealing \$9 million from investors in their private equity fund. The complaint seeks final judgments that would require a disgorgement of ill-gotten gains with interest, payment of financial penalties, and that the individual and related entities be barred from future violations of the antifraud provisions of the securities laws.
- FINRA announced that it fined a New York-based securities firm that services Mexican clients investing in U.S. and global securities, \$475,000 for not having adequate anti-money laundering (AML) systems and procedures in place and for failing to register approximately 200 to 400 foreign finders who interacted with the firm's Mexican clients. FINRA also suspended the securities firm's former AML Officer and Chief Compliance Officer for thirty days in a principal capacity, as this individual was deemed responsible for the firm's AML procedures and for monitoring suspicious activities. As a result of the firm's AML compliance failures, the securities firm opened an account for a corporate customer owned by an individual with reported ties to a drug cartel, and did not detect, investigate, or report the "suspicious rapid" movement of \$28 million in and out of the account.

Financial Services Legislation

Senate Passes Bill to Delay Flood Insurance Premium Increases

On January 30, 2014, the U.S. Senate passed the *Homeowner Flood Insurance Affordability Act*, S. 1926, which would delay an increase in certain flood insurance rates mandated by the *Biggert-Waters Flood Insurance Reform Act* passed in 2012 until the Federal Emergency Management Agency (FEMA) completes an affordability study and certifies the flood maps are accurate. Companion legislation has been introduced in the House of Representatives.

Senate Banking Subcommittee Hears Testimony on "Monitoring Systemic Risk: The Annual Report and Oversight of the Office of Financial Research"

Richard Berner, Director of the Office of Financial Research (OFR), provided testimony before the Senate Banking Subcommittee on Economic Policy on January 29, 2014. Mr. Berner's comments focused on the information presented in the OFR's 2013 Annual Report and served to fulfill the OFR's statutory requirement to annually "assess the state of the United States financial system and analyze threats to U.S. financial stability."

Mr. Berner noted that the OFR is developing a prototype tool, the Financial Stability Monitor, to identify and monitor potential threats to financial stability and "to assess the interplay among them." The monitor tracks five functional areas of risk (macroeconomic, market, credit, funding and liquidity, and contagion), and quantifies risks through a mix of economic indicators,

market indexes, and OFR-calculated measurements. The OFR is also currently working to incorporate new, forward-looking indicators into the framework.

Mr. Berner also offered information on the OFR's efforts to improve the scope and quality of financial data with the goal of better measuring financial activity and better understanding the workings of the financial system. Among other things, he stated the OFR:

- Has produced and published the public portion of an Interagency Data Inventory, which is a catalog of the data that member agencies of the Financial Stability Oversight Council collect from the industry. It is considered a key building block to the OFR's data analysis and reporting architecture.
- "Is making needed investments in the development and implementation of data standards," including the fields and formats for collection. The OFR is also working on implementation of the Legal Entity Identifier (LEI), a global standard for uniquely identifying parties to financial transactions, a universal mortgage identifier, as well as standards to improve the quality of data collected from trade and swap data repositories.
- Has established an information security program policy and data handling procedures for proper safekeeping of information at the highest level of the Federal Information Processing Standards, as required by the *Federal Information Security Management Act*.

Recent Supervisory Actions against Financial Institutions

Last Updated: February 3, 2014

Agency	Institution Type	Action	Date	Synopsis of Action
CFPB	Mortgage lender	Notice of Charges	1/29	The Bureau of Consumer Financial Protection initiated an administrative proceeding against a New Jersey-based mortgage lender and its affiliates for an alleged mortgage insurance kickback scheme. The Bureau is seeking a civil fine, a permanent injunction to prevent future violations, and restitution.
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 two separate Orders of Assessment of Civil Money Penalty, one with a Texas-based state member bank and another 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. The orders require a total of \$59.5 million in restitution and \$16.2 million penalties.
CFPB	Large financial institution	Consent Order, Civil Money Penalty	12/20	The Bureau of Consumer Financial Protection entered into a Consent Order to resolve the CFPB's claim that an indirect auto lender violated the anti-discrimination provisions of the Equal Credit Opportunity Act and to require it to pay \$80 million in damages to affected borrowers and \$18 million in penalties.
CFPB	Nonbank financial institution	Proposed Consent Order	12/19	The Bureau of Consumer Financial Protection and 49 state authorities released a proposed Consent Order to require a nonbank mortgage servicer to pay approximately \$2 billion in principal reduction to certain borrowers and \$125 million in refunds to foreclosed borrowers. CFPB claims the company engaged in "significant and systemic misconduct...at every stage of the mortgage servicing process."

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