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Safety & Soundness

U.S. and EU Participants in FMRD Meet on Financial Regulatory Developments

The U.S. Department of the Treasury (Treasury) announced that U.S. and EU participants in the Financial Markets Regulatory Dialogue (FMRD) met on February 3, 2016 to exchange views on financial regulatory developments. U.S. participants included Treasury staff and other independent regulatory agencies, including the Federal Reserve Board, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Office of the Comptroller of the Currency, and the Public Company Accounting Oversight Board. EU participants included representatives of the European Commission, the Single Supervisory Mechanism, and the Single Resolution Board. Topics discussed included bank capital and liquidity measures, approaches to cross-border bank supervision, bank structural reform, recent developments in bank resolution, central counterparty resolution, over-the-counter derivatives reforms, alternative investment fund managers, benchmarks, insurance, cooperation on audit oversight, and information sharing for supervisory and enforcement purposes. The FMRD has met regularly since 2002 and the next meeting is expected to take place in July 2016. [\[Joint Press Statement\]](#)

FDIC Publishes 2016 Stress Test Scenarios

On February 9, 2016, the Federal Deposit Insurance Corporation (FDIC) released economic scenarios to be used by financial institutions with consolidated assets of more than \$10 billion when conducting the 2016 stress tests required under the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The FDIC developed the three scenarios, including baseline, adverse, and severely adverse, in consultation with the Federal Reserve Board and the Office of the Comptroller of the Currency. [\[Press Statement\]](#)

OCC Issues Revised Booklets to Comptroller's Handbook for Installment Lending and Country Risk Management

On February 12, 2016, the Office of the Comptroller of the Currency (OCC) released Bulletin 2016-3 to announce that it had revised the *Installment Lending* booklet of the Comptroller's Handbook. The new booklet replaces one previously issued by the OCC in March 1990 and also replaces Section 217, *Consumer Lending*, issued in January 2000 as part of the former Office of Thrift Supervision Examination Handbook. The OCC summarizes that the revised booklet:

- Rescinds OCC Bulletin 2004-59, *Retail Lending: Interim Examination Procedures*;
- Provides updated guidance to examiners for assessing the quantity of risk associated with installment lending activities and provides guidance for assessing the quality of installment lending risk management; and
- Provides updated guidance to examiners on the administration of installment lending practices and the controls and processes necessary to effectively manage the associated risks, including underwriting or account eligibility criteria, charge-off, risk management and control systems, and third-party management. [\[OCC Bulletin 2016-3\]](#)

The OCC also issued Bulletin 2016-4 to announce that it had revised the *Country Risk Management* booklet of the Comptroller's Handbook to replace the booklet issued in March 2008. The release of the booklet also makes OCC Bulletin 2002-10, *Country Risk: Sound Risk Management Practices*, applicable to federal savings associations. The OCC highlights that the new *Country Risk Management* booklet:

- Provides updated and expanded guidance and examination procedures to examiners concerning country risk management;
- Reflects lessons learned from the financial crisis of 2008 and the European banking and debt crises;

- Updates the risks associated with international activities by providing more in-depth discussion of the effects of country risk, cross-border risk, and sovereign risk on the OCC's eight risk categories (credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation);
- Adds an internal control questionnaire and a glossary;
- Expands the sample request letter; and
- Addresses the risk management of third-party providers. [\[OCC Bulletin 2016-4\]](#)

Enterprise & Consumer Compliance

Federal Reserve Repeals Regulation AA and Proposes to Repeal Regulation C

On February 11, 2016, the Federal Reserve Board (Federal Reserve) announced that it had issued a final rule to repeal its Regulation AA (Unfair or Deceptive Acts or Practices), as originally proposed in August 2014. The Federal Reserve's authority to write rules addressing unfair or deceptive acts or practices was rescinded by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), which gave separate authority to the Consumer Financial Protection Bureau (CFPB) to write rules to identify and prohibit unfair, deceptive, or abusive acts or practices. The final rule will become effective 30 days after publication in the *Federal Register*. In addition, the Federal Reserve announced that it was inviting comments on a proposal to repeal its Regulation C (Home Mortgage Disclosure), for which its rulemaking authority was also transferred to the CFPB by the Dodd-Frank Act. The CFPB has issued final rules superseding the Federal Reserve's Regulation C. Comments on the proposal are requested by April 22, 2016.

[\[Press Statement\]](#) [\[Notice for Regulation AA\]](#) [\[Notice for Regulation C\]](#)

Enforcement Actions

During the week ended February 12, 2016, the following enforcement actions were announced:

- The Federal Trade Commission (FTC) announced that it had reached an agreement with a payments processor to settle the FTC's charges that it enabled a deceptive telemarketing operation to obtain and maintain merchant accounts in order to process unlawful credit card payments through certain payment networks. The FTC alleges the payments processor ignored red flags regarding the deceptive telemarketing operation, such as a high rate of chargebacks on credit cards, chargeback requests from consumers indicating fraudulent or unauthorized charges, and alerts from financial institutions. The FTC's complaint charges the payment processor with assisting and facilitating deceptive telemarketing acts in violation of the *Telemarketing Sales Rule* (TSR). Under the settlement order, the payment processor is banned from payment processing or acting as an independent sales organization for several categories of clients, prohibited from facilitating any merchant known to be violating the FTC Act or the TSR, and must screen prospective clients that meet certain criteria and monitor their sales activity to detect indications of deceptive conduct. The order also imposes a penalty of \$2.6 million that was partially suspended because of the firm's financial condition.

Capital Markets and Investment Management

CFTC and European Commission Reach Common Agreement on Transatlantic Central Clearing Counterparties

On February 10, 2016, the European Commission and the U.S. Commodity Futures Trading Commission (CFTC) jointly announced they had reached an agreement on a common approach pertaining to requirements for central clearing counterparties (CCPs) in Europe and the United States. Under the agreement, the European Commission intends to adopt a directive with respect to CFTC requirements for U.S. CCPs that will allow the European Securities and Markets Authority (ESMA) to recognize U.S. CCPs. Once recognized by ESMA, U.S. CCPs may continue to provide services in the EU whilst complying with CFTC requirements. Similarly, the CFTC will propose a determination of comparability with respect to EU requirements, which will permit EU CCPs to provide services to U.S. clearing members and clients while complying with corresponding EU requirements. On this occasion, CFTC Chairman Timothy Massad issued a statement, that the approach, “will permit U.S. and European CCPs to continue providing clearing services to entities in each other’s jurisdiction. Doing so will ensure that our global derivatives markets remain robust, while keeping our financial system as stable and resilient as possible.” [\[Press Statement\]](#) [\[CFTC Chairman’s Statement\]](#)

SEC Adopts Cross-Border Security-Based Swaps Rule Regarding Activity in the U.S.

On February 10, 2016, the Securities and Exchange Commission (SEC) adopted final rules requiring a non-U.S. company that employs U.S. personnel to execute a security-based swap transaction, to include such transactions in its dealer threshold calculations that determine security-based swap dealer registration requirements. The rules, adopted under provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), are intended to assist in assuring that both U.S. and foreign dealers are subject to Title VII of the Dodd-Frank Act when they engage in security-based swap dealing activity in the United States. At an open meeting held to adopt these rules, SEC Chair Mary Jo White noted that, “these rules are integral to the SEC’s regulation of the security-based swap market. They will help ensure that security-based swap dealing activity carried out in the U.S. is treated similarly for purposes of registration requirements for dealers, whether carried out by a U.S. person or by a non-U.S. person.” The final rules will become effective 60 days after publication in the *Federal Register*, though compliance is not required until the latest of either 12 months following the publication date or the SBS Entity Counting Date, which was specified in the SBS Entity Registration Adopting Release. [\[Press Statement\]](#)

FINRA Notice Addresses Private Placements and Public Offerings Subject to a Contingency

On February 8, 2016, the Financial Industry Regulatory Authority (FINRA) published Regulatory Notice 16-08 to provide guidance to broker-dealers on the *Securities Exchange Act of 1934* requirements with regard to private placements and public offerings subject to a contingency, and to remind broker-dealers to have procedures in place to ensure compliance with these rules. The guidance has three sections, including: an overview and explanation of best efforts contingency offerings; a description of a broker-dealer’s responsibilities in best efforts contingency offerings; and a description of the requirements for handling investor funds until the contingency is met. [\[Regulatory Notice 16-08\]](#)

FINRA Proposes Rule Change Expanding Securities Trader Registration Requirements

The Financial Industry Regulatory Authority (FINRA) released SR-FINRA-2016-007 to announce that it has filed a proposed rule change with the Securities and Exchange Commission (SEC) that would require associated persons responsible for the design, development, or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision of such activities, to register with FINRA as Securities Traders. If the SEC approves the proposed rule change, FINRA will announce the effective date in a Regulatory Notice to be published no later than 60 days following SEC approval, and the effective date will be no sooner than 180 days following publication of the Regulatory Notice but no later than 300 days following SEC approval. [\[SR-FINRA-2016-007\]](#)

Enforcement Actions

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

- The SEC and a company agreed to settle charges the company violated accounting rules and misstated company earnings because of insufficient internal accounting controls over rebates offered to retailers and distributors. The company consented to the SEC's order without admitting or denying the findings that it violated sections of the Securities Act of 1933, and the reporting, books-and-records, and internal accounting control provisions of the Securities Exchange Act of 1934. The company agreed to pay a penalty of \$80 million and appoint an independent compliance consultant. Three accounting and sales executives also agreed to pay penalties to settle charges against them in this case.
- The CFTC announced that a Federal Court ordered a firm and its principal to disgorge more than \$2.7 million they misappropriated from pool participants and to pay a civil money penalty of more than \$8.2 million in connection with a foreign currency trading Ponzi scheme. The defendants were found to have solicited more than \$4.8 million from pool participants based on false claims and false promises.
- The CFTC announced that it obtained a Federal Court Consent Order imposing a permanent injunction against two individuals to settle charges they fraudulently solicited customers and misappropriated customer funds in connection with illegal, off-exchange transactions in precious metals. The individuals are each required to pay a civil monetary penalty of \$1 million, and jointly pay \$986,763 in restitution to defrauded customers. The Order also imposes permanent trading and registration bans, and prohibits the individuals from further violations of the anti-fraud and off-exchange trading provisions of the *Commodity Exchange Act* and CFTC Regulations.
- FINRA barred two brokers from the securities industry for fraud and misconduct in connection with sales of a hedge fund. FINRA alleges the individuals made material misrepresentations and omissions about the fund as well as about the professional experience of the fund's Chief Investment Officer. The individuals neither admitted nor denied the charges but consented to the entry of FINRA's findings.

Financial Crimes

Acting Director of OFAC Provides Testimony on Sanctions Relief in Acknowledgement of the Iran Implementation Day

On February 11, 2016, the House Committee on Foreign Affairs conducted a hearing entitled, "Iran Nuclear Deal Oversight: Implementation and Its Oversight." Two witnesses provided testimony, including the Acting Director of the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC). His testimony addressed the Joint Comprehensive Plan of Action (JCPOA) with Iran that was implemented by five (5) permanent members of the United Nations (UN) Security Council, plus Germany and the European Union (EU) on January 16, 2016 (Implementation Day).

The JCPOA lifted U.S. nuclear-related secondary sanctions applicable to non-U.S. persons and established limited changes to U.S. primary sanctions. Concurrently, the OFAC, in part, issued licenses to permit certain specified activities otherwise prohibited under U.S. primary sanctions. This includes General License H, which authorizes foreign entities owned or controlled by U.S. persons (inclusive of foreign subsidiaries of U.S. financial institutions) to engage in certain Iran-related transactions. In addition, OFAC issued certain general licenses for U.S. persons' activities. Generally, however, U.S. persons, including U.S. banks, remain prohibited from engaging in direct dealings with Iran aside from activity covered by general licenses. OFAC also removed approximately 400 company and individual names from the List of Specially Designated Nationals and Blocked Persons, though the Acting Director indicated that approximately 200 of these names were placed on a new OFAC list (pursuant to Executive Order 13599) to indicate they remain blocked persons under U.S. law. [\[Hearing Announcement\]](#)

Enforcement Actions

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) announced on February 8, 2016, that it had reached an agreement with a foreign bank for allegedly processing transactions through financial institutions in the United States, including its New York branch, in violation of the Zimbabwe Sanctions between July 2008 and September 2013. The violations are alleged to have occurred for or on behalf of corporate customers of a subsidiary bank in Zimbabwe that were 50 percent or more owned, directly or indirectly, by a person or entity identified on OFAC's List of Specially Designated Nationals and Blocked Persons. The bank agreed to pay a civil penalty of nearly \$2.5 million to settle the apparent violations. OFAC noted that it had considered a number of mitigating factors in the case, including, among others, the bank's remedial response to the apparent violations and its cooperation with OFAC's investigation.

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