

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

October 30, 2015

Compliance News

BMO Harris Bank NA Receives a Finding of Violation Regarding Violations of the Iranian Transactions and Sanctions Regulations

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has issued a Finding of Violation to BMO Harris Bank NA ("BMO Harris"), as the successor to Marshall and Ilsley Bank ("M&I Bank"), in connection with M&I Bank's processing of six funds transfers totaling \$67,357. M&I Bank originated these six funds transfers on behalf of its customer in early 2011, prior to its merger with Harris NA, in violation of § 560.204 of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (ITSR). Subsequent to processing these funds transfers, M&I Bank merged with Harris NA on July 5, 2011 to form BMO Harris.

Between February 3, 2011 and March 10, 2011, M&I Bank originated six funds transfers totaling \$67,357 on behalf of its customer, a company specializing in carpets that included the word "Persian" in its name (the "Company"), for the purpose of paying an outstanding balance owed to an Iranian entity located in Iran for the purchase of Iranian-origin carpets. The Company had been a customer of M&I Bank since 2009, at which time the importation of Iranian-origin carpets from Iran or a third country to the United States was authorized under a general license (formerly § 560.534 of the ITSR). M&I Bank stated that it added the Company to the bank's "False Hit List" on May 29, 2009, after its OFAC interdiction software generated multiple alerts due to the word "Persian" in the Company's name. OFAC revoked the general license for the importation of Iranian-origin carpets in § 560.534 of the ITSR effective September 29, 2010; however, M&I Bank did not remove the Company from the False Hit List or implement any additional measures to prevent or identify possible violations involving the Company.

On February 3, 2011, M&I Bank processed a funds transfer for the Company. A downstream financial institution stopped the funds transfer and requested additional information from M&I Bank regarding the transaction. An M&I Bank staff member subsequently obtained information showing that the Company had initiated the funds transfer to pay an Iranian national residing in the United States for an outstanding balance owed to an Iranian entity located in Iran for the purchase of Iranian-origin goods. The M&I Bank staff member failed to escalate the transaction to the Corporate Compliance Department. M&I Bank subsequently processed five additional funds transfers on behalf of the Company that violated the ITSR.

The determination to issue a Finding of Violation to BMO Harris in connection with the above transactions reflects OFAC's assessment that M&I Bank may have been unaware of the risks associated with a false hit

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list that was not reviewed and updated regularly, as well as OFAC's consideration of the following facts and circumstances, pursuant to the General Factors under OFAC's Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. A Finding of Violation is appropriate given that staff-level M&I Bank personnel had actual knowledge of the conduct that led to two of the violations and, based on the customer's line of business, reason to know that the customer may process additional transactions in violation of the ITSR; and M&I Bank's OFAC compliance program failed to include procedures for updating its internal sanctions list following changes to the sanctions programs administered by OFAC (other than updates to the SDN List). OFAC also considered the fact that no M&I Bank managers or supervisors were aware of the conduct that led to the violations; M&I Bank has not previously received a penalty notice or Finding of Violation from OFAC; M&I Bank took appropriate remedial action in response to the violations; and M&I Bank (and later BMO Harris) substantially cooperated with OFAC during the course of the investigation, including by identifying and reporting four of the violations.

This enforcement action highlights the particular sanctions risks associated with failing to implement proper procedures and controls to ensure that internal proprietary sanctions lists are properly reviewed following changes to the SDN List and/or to the sanctions programs administered by OFAC. [OFAC has also issued guidance](#) regarding the use and maintenance of false hit lists.

For more information regarding OFAC regulations, please visit: <http://www.treasury.gov/ofac>.

Sprint to Pay \$2.95M CMP for FCRA Violations

The Federal Trade Commission has announced that mobile service provider [Sprint will pay \\$2.95 million in civil penalties](#) to settle charges that the company failed to give proper notice to consumers who were placed in a program for customers with lower credit scores and charged an extra monthly fee.

The [complaint](#) filed by the FTC alleges that Sprint placed consumers with lower credit scores in an Account Spending Limit (ASL) program. The ASL program requires consumers to pay a monthly fee of \$7.99 in addition to the charges for cell phone and data services. Because Sprint allows customers to be billed for services after they are used, they are subject to the requirements of the Fair Credit Reporting Act and its Risk-Based Pricing Rule. The Rule requires that companies inform consumers whenever they are offered service on less favorable terms, such as the ASL program, as a result of information from their credit reports or scores.

Source: FTC

NCUA Legal Recoveries Reach \$2.2 Billion with Wachovia Settlement

Total recoveries from litigation against banks that sold faulty residential mortgage-backed securities to corporate credit unions will reach \$2.2 billion with the completion of an agreement with Wachovia, the National Credit Union Administration announced today.

Wachovia will agree to pay \$53 million to resolve the agency's claims arising from losses related to purchases of the securities by corporate credit unions. NCUA uses the net proceeds to reduce Temporary Corporate Credit Union Stabilization Fund assessments charged to federally insured credit unions to pay for the losses caused by the failure of five corporate

looking for, we now provide individual loan reviews and a basic annual compliance package that includes BSA, ACH, SAFE Act, and Website compliance.

For more information about our compliance services, please contact Melia Heimbeck at: mheimbeck@mwcua.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



Frequently Asked Questions

Q. Do credit unions need to have two separate policies, one for OFAC regulations and another for the Bank Secrecy Act?

A. According to [NCUA Letter to Credit Unions 01-CU-25](#), a credit union must have policies and procedures in place for the purpose of complying with OFAC regulations and the various laws that OFAC is responsible for administering. However, the Letter does not indicate that there is any prohibition from combining it with the BSA policy. Therefore it appears that the credit union may incorporate the OFAC policy into your BSA policy, provided that the current BSA policy is in compliance with Part 748 of NCUA Rules and Regulations.

Q. Does the credit union need to file an OFAC Annual Report of Blocked Property if it has had no hits on the SDN List in the last year?

A. There is no need to file the report if there were no hits on the SDN List in the last year and the credit union is not holding any blocked property.

InfoSight ([AZ](#), [CO](#), [WY](#))



The [CUNA Regulatory Advocacy Report](#) keeps you on top of the most important changes in Washington for credit unions--and what CUNA is doing to monitor, analyze, and influence government agencies and federal law. You can view the current report and past reports from the archive.



credit unions.

"NCUA's litigation efforts are helping minimize the costs of the corporate crisis to the credit union system, and those efforts will continue," NCUA Board Chairman Debbie Matz said. "The agency has a statutory obligation to protect credit unions from those costs, and we will pursue the available legal remedies in order to hold the institutions that sold the faulty securities accountable for their actions."

NCUA filed suit against Wachovia in 2011. Once the settlement is completed, NCUA will dismiss pending claims against the firm in federal district courts in California, Kansas and New York. Wachovia does not admit fault in the settlement.

NCUA continues to pursue litigation in federal courts in New York, Kansas and California against financial firms, including Goldman Sachs, UBS, Credit Suisse and Morgan Stanley, based on the sale of faulty securities that caused the collapse of five corporate credit unions.

The agency has other litigation pending against securities firms alleging violations of state and federal anti-trust law by manipulation of interest rates through the London Interbank Offer Rate (LIBOR) system. NCUA also has pending suits against financial firms alleging their failure to perform their duties as trustees of residential mortgage-backed securities trusts.

NCUA was the first federal regulatory agency for depository institutions to recover losses from investments in these securities on behalf of failed financial institutions.

Source: NCUA

Advocacy Highlight

2016 CUNA GAC – The Biggest CU Advocacy Event of the Year

February 21-25, 2016 • Washington, D.C.

CUNA Governmental Affairs Conference is the largest gathering of credit union advocates rallying on behalf of America's more than 103 million credit union members.

Join thousands of credit union leaders to leverage the power of our united system and share credit unions' positive impact with lawmakers from all 50 states.

Click [here](#) to register and get more information.

NCUA Finalizes Risk-Based Capital Rule

On October 15, 2015, the NCUA Board voted 2 to 1 to finalize its second Risk-Based Capital (RBC2) proposal. Board member J. Mark McWatters expressed a number of concerns with the rule prior to voting against it. As proposed, this final rule is effective on Jan. 1, 2019. This extended implementation timeline is something that CUNA pushed hard for.

Upon the NCUA's final vote, CUNA President/CEO Jim Nussle said, "Make no mistake--CUNA firmly believes the NCUA's risk-based capital rule is a solution in search of a problem. Since the initial proposal 20 months ago, CUNA and the leagues worked together to execute one of the most coordinated and successful advocacy campaigns in the past 15 years to ensure we significantly impacted the final rule to get the best possible

Compliance Calendar

October 1

- ♦ Flood Insurance Rule Effective Date – Part 1

October 1

- ♦ Credit/Debit Card Liability Shift

October 3

- ♦ CFPB: Know Before You Owe Disclosure - Effective Date

October 3

- ♦ CFPB: Integrated Mortgage Disclosures - Effective Date

October 23

- ♦ 5300 Call Report Due to NCUA

November 11

- ♦ Veterans Day - Federal Holiday

November 26

- ♦ Thanksgiving Day – Federal Holiday

December 25

- ♦ Christmas Day – Federal Holiday

December 31

- ♦ Foreign Account Tax Compliance Act Effective Date

Effective Dates New and Revised Rules

December 31, 2015~IRS

"Foreign Account Tax Compliance Act" (FATCA) Rule

CUNA Comment Calls – Due Dates on Proposed Rules

October 19, 2015~CFPB

Request to Develop Survey on POS/ATM Overdraft Disclosure

November 19, 2015~NCUA

Investment & Deposit Activities – Bank Notes



Training & Events Calendar

November 9

Webinar: Preparing for the Impact of Same Day ACH

November 12

Webinar: Regulatory Requirements for the Board &

results for credit unions. Without our advocacy efforts, there is absolutely no question that the final rule would have been much worse for credit unions."

The NCUA identified the following as the most significant changes made in the final rule:

- Reducing the effective weight for equity investments in CUSOs, perpetual contributed capital at corporate credit unions, and certain other higher risk equity investments to 100% if the total equity exposure is less than 10% of the sum of the credit union's capital elements of the RBC ratio numerator. The NCUA estimates 95% of credit unions with such investments will receive a lower risk weight;
- Reducing the risk weight to zero percent for share-secured loans where the shares securing the loan are on deposit at the credit union; and
- Allows a lower risk weight for certain charitable donation accounts.

The NCUA plans a separate proposal for supplemental capital and says it will be made final before the RBC2 implementation in 2019. We are glad to have the supplemental capital rule in place by the effective date of the RBC rule, in order to allow supplemental capital for purposes of RBC compliance. We also appreciate Chair Matz's statement that NCUA is not currently planning a separate interest rate risk rule.

In our broad advocacy on RBC, we sought removal of the capital adequacy provisions, reduction in a number of the risk weights, further explanation of the conditions under which goodwill could be included in the risk-based capital ratio, and delayed implementation until 2021. While we are disappointed that NCUA kept the "capital adequacy" requirement, we will be pushing for examiner guidance and training to place some boundaries around "this wild card capital requirement."

While discussing the final rule, Chair Matz said that it is calibrated to affect only a "few dozen" credit union "outliers" that are not carrying sufficient capital to match risks on their balance sheets. In response to a congressional request that NCUA voluntarily conduct a study on the effects of the proposal, she said the agency would do so "shortly after" the board's consideration of the rule. She also said at the meeting that report should be available in a few weeks. All documents will be posted on the RBC resource center on the NCUA's website, www.ncua.gov.

Guidance on the new rule is expected by early 2018, and NCUA will not be examining for the final rule until 2019. Nussle remarked today, "This final rule remains deeply unpopular and CUNA is disappointed the NCUA didn't release a study on its rulemaking approach, and its impact and costs of the rule, to lawmakers, stakeholders and credit unions before finalizing. We encourage the agency to disclose this information."

Source: CUNA

Senior Management

November 24

Webinar: [Top 10 Mistakes in Deposit Compliance Exams](#)

December 3

Webinar: [Advanced ACH Specialist Series: Reg E Error Resolution Rules vs NACHA Operating Rules – Obligations, Consumer Disputes & Case Studies](#)

December 9

Webinar: [BSA Special Risks: Policy, Law Enforcement & Regulator Issues](#)

December 14

Webinar: [Revised TRID Mortgage Exam Procedures: Reviewing September 15, 2015 Changes](#)

December 15

Webinar: [Robbery Prevention, Apprehension & Recovery](#)

CUNA Schools and Webinars

November 19

Webinar: [Identify Interest Rate and Market Risk](#)

December 17

Webinar: [Managing Credit Risk](#)

Please respond to [Mark Robey](#) with any questions or concerns regarding content of this newsletter.

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