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# Safety & Soundness

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## FDIC Chairman Outlines Progress with Resolution of SIFIs

Martin Gruenberg, Chairman of the Federal Deposit Insurance Corporation (FDIC), [addressed](#) the Petersen Institute for International Economics on May 12, 2015, on the topic of resolving systemically important financial institutions (SIFIs). He outlined the U.S. requirement for SIFIs to prepare orderly resolution plans under the U.S. Bankruptcy Code as well as the FDIC's Orderly Liquidity Authority provided by Title II of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. In addition, Chairman Gruenberg outlined the FDIC's efforts to work with other "major jurisdictions" that have enacted resolution authorities similar to those in the U.S. and the collective efforts of all of these countries to identify issues and address obstacles to cross-border resolution.

He concluded his remarks saying, "Prior to the crisis, the major jurisdictions of the world, including the United States, lacked the basic statutory authorities to address this issue. No solutions were available to address the critical resolution challenges of capital, liquidity, derivative contracts, maintenance of critical operations, and cross-border cooperation. No authorities were available to require firms to make essential changes in their organizational structures and operations to address major impediments to resolution prior to a failure. In the United States, all of those issues have been or are in the process of being addressed."

## Upcoming Congressional Hearings

The U.S. House Committee on Financial Services' Subcommittee on Financial Institutions and Consumer Credit is scheduled to conduct a [hearing](#) entitled "*Protecting Critical Infrastructure: How the Financial Sector Addresses Cyber Threats*," on May 19, 2015.

On May 21, 2015, the U.S. Senate Committee on Banking, Housing and Urban Affairs is scheduled to conduct a [mark-up](#) of *The Financial Regulatory Improvement Act of 2015*, which was released as a discussion draft on May 12, 2015 by the Committee Chairman, Senator Richard Shelby. The proposed legislation contains amendments to nearly every title in the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, including an amendment to Title II that would require bank holding companies (BHCs) with \$500 billion or more in total consolidated assets to be considered as systemically important financial institutions, and those BHCs with more than \$50 billion and less than \$500 billion in total consolidated assets to be evaluated for designation as a SIFI by the Federal Reserve Board and the Financial Stability Oversight Council based on certain criteria, including size, interconnectedness, substitutability, cross-border activity, and complexity.

# Enterprise & Consumer Compliance

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## CFPB Seeks Comment on Student Loan Servicing

The Consumer Financial Protection Bureau (CFPB or Bureau) issued a [notice and request for information](#) on May 14, 2015 to seek comment on the market for student loan servicing. In particular, the CFPB is requesting information that will

assist in identifying potential improvements to customer service practices and the consumer protection framework specific to student loans, as well as innovative practices and business models. The CFPB is partnering with the Department of Education and the Department of the Treasury to identify initiatives to strengthen student loan servicing. The notice and request for information further states that comments received might also be used to inform a report required by a Presidential Memorandum signed on March 10, 2015, which outlined a "Student Aid Bill of Rights." Comments are requested no later than July 13, 2015.

Speaking at a [field hearing](#) on May 14, 2015, CFPB Director Richard Cordray acknowledged the Bureau's request for information. He said, "As a growing share of student loan borrowers reach out to their servicers for help, the problems they encounter bear an uncanny resemblance to the situation where struggling homeowners reached out to their mortgage servicers before, during, and after the financial crisis. Having seen the improper and unnecessary foreclosures experienced by many homeowners, the Consumer Bureau is concerned that inadequate servicing is also contributing to America's growing student loan default problem. At this point, about 8 million Americans are in default on more than \$100 billion in outstanding student loan balances."

## Department of Education Proposes Rules Governing Access to Student Loan Funds and Related Fees

On May 15, 2015, the Department of Education [announced](#) the release of [proposed rules](#) that would amend the cash management regulations and other sections of Student Assistance General Provisions regulations under the *Higher Education Act* (including Pell Grant and Direct Loan Program funds). The amendments are intended to provide students with the ability to choose how to access their federal student aid funds and to ensure they do not incur "unreasonable and uncommon" financial account fees for those funds. In particular, the proposed rules would:

- Prohibit institutions from requiring students or parents to open a certain account into which their credit balances are deposited.
- Require institutions to ensure that students are not charged overdraft fees if students select an account offered directly or indirectly by contractors that assist institutions in making direct payments of federal student aid.
- Require an institution to provide a list of account options that a student may choose from to receive credit balance funds, where each option is presented in a neutral manner and the student's preexisting bank account is listed as the first, most prominent, and default option.
- Require institutions to ensure electronic payments made to a student's preexisting account are as timely as, and no more onerous to the student than, payments made to accounts marketed through the institution.

Comments are requested no later than July 2, 2015.

## CFPB Takes Action Against Two Companies to Address UDAAP Violations Related to Billing Practices

The Consumer Financial Protection Bureau (CFPB or Bureau) announced on May 12, 2015 that, in conjunction with state attorneys general and the Federal Communications Commission, it has filed proposed consent orders in federal court against two telecommunications companies that allegedly permitted third-parties to place unauthorized charges on the account billing statements of the companies' customers. The Bureau is charging each of the companies, as payments processors for their third parties, with violations of unfair, deceptive, or abusive acts or practices (UDAAP) provisions of the *Consumer Financial Protection Act* (CFPA).

If approved by the courts, the proposed consent orders would require the companies to:

- Collectively pay approximately \$120 million in redress to customers. One of the companies must also pay approximately \$38 million in federal and state fines;
- Present third-party charges in a separate and clearly labelled section of a consumer's bill;
- Obtain informed consent before a consumer is charged by a third party and provide purchase confirmation for third-party charges, such as an email or text message to the consumer;

- Improve dispute resolution practices; and
- Enhance customer-service training.

## CFPB and FTC Announce Separate Actions Related to Bi-Weekly Payment Plans

On May 11, 2015, the CFPB filed a complaint against two related nonbank financial services providers for allegedly providing misleading information to consumers about a bi-weekly mortgage repayment program, in violation of the Telemarketing Sales Rule and the unfair, deceptive, or abusive acts or practices (UDAAP) provisions of the *Consumer Financial Protection Act* (CFPA). The CFPB is seeking compensation for harmed consumers, civil money penalties, and injunctions against the companies and their owner.

On May 15, 2015, the Federal Trade Commission (FTC) announced that it had approved a final consent order against a company that it claimed had deceptively advertised its bi-weekly auto payment plan. The order requires the company to pay approximately \$1.5 million in refunds to consumers and to waive an additional \$949,000 in fees for current customers.

# Capital Markets and Investment Management

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## SEC Director Outlines the Benefits of Cooperation Agreements

Andrew Ceresney, Director of the Securities and Exchange Commission's (SEC) Division of Enforcement offered [remarks](#) at the Government Enforcement Institute sponsored by the University of Texas' School of Law on May 13, 2015. His remarks focused on the use of cooperation agreements and other cooperation tools used by the Division of Enforcement, which he said "has succeeded in making the Commission's enforcement program more effective by obtaining significant results which protect investors and deter misconduct."

## BIS Governors Seek Initiatives to Strengthen Foreign Exchange Market Best Practices

Following a meeting of the Bank for International Settlements' (BIS) Economic Consultative Committee (ECC) and Global Economy Meeting (GEM), Agustín Carstens, Chairman of the ECC and GEM released a [statement](#) indicating that the BIS Governors "welcome current initiatives of the foreign exchange committees to strengthen code of conduct standards and principles in foreign exchange markets." He also stated the BIS Governors have "agreed to set up a working group under the auspices of the [BIS] Markets Committee to take these issues forward with a view to facilitating the establishment of a single global code of conduct standards and principles ... and providing input into the wider official effort on market conduct coordinated by the Financial Stability Board."

## CFTC Releases Final Interpretation on Forward Contracts with Embedded Volumetric Optionality

The U.S. Commodity Futures Trading Commission (CFTC) released its *Final Interpretation on Forward Contracts with Embedded Volumetric Optionality* on May 12, 2015. The [Interpretation](#) identifies when an agreement, contract, or transaction would fall within the forward contract exclusions from the "swap" and "future delivery" definitions in the *Commodity Exchange Act*, notwithstanding that it allows for variations in the delivery amount (i.e., contains "embedded volumetric optionality"). The Interpretation was issued jointly with the Securities and Exchange Commission (SEC) after consultation with the Federal Reserve Board as required by the *Dodd-Frank Wall Street Reform and Consumer Protection*

Act; however, it is an Interpretation solely of the CFTC and does not apply to the exclusion from the swap and security-based swap definition for security forwards or to the distinction between security forwards and security futures products.

## FINRA Amends Sanction Guidelines for Fraudulent Conduct

On May 12, 2015, the Financial Industry Regulatory Authority (FINRA) announced that a review of its *Sanction Guidelines* conducted by the National Adjudicatory Council has resulted in revisions to the overarching principles that apply to sanctions determinations as well as more stringent sanctions against those who commit fraud or make unsuitable recommendations to customers. In particular, the revised *Sanction Guidelines* now advise FINRA adjudicators to strongly consider barring an individual respondent, or expelling a firm, for cases involving fraud. For individuals who violate FINRA's suitability rule, the range of the suspension has increased from one year to two years, and adjudicators are advised to strongly consider barring an individual respondent where aggravating factors predominate over mitigating ones.

The NAC also revised the *Sanction Guidelines*' General *Guidelines* to emphasize that FINRA's disciplinary system should be designed to protect the investing public, deter misconduct and uphold high standards of business conduct. Please refer to FINRA Regulatory Notice 15-15 for additional information.

## 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 charged a "self-described" retirement planning firm and its principals with fraudulently offering and selling life settlement interests and for acting as unregistered broker-dealers. The SEC is seeking injunctive relief, return of allegedly ill-gotten gains with interest, and financial penalties.
- The SEC charged an insurance company with "routinely violating pricing rules in its daily processing of purchase and redemption orders for variable insurance contracts and underlying mutual funds." Without admitting or denying the charge, the company agreed to pay an \$8 million penalty.
- The SEC charged two related individuals with fraud for conducting a serial insider trading scheme that generated approximately \$1.1 million in illicit proceeds. In a parallel action, the U.S. Attorneys' Office filed criminal charges against the individuals.
- The CFTC issued an Order filing and settling charges against a foreign-based agricultural trading company for failing to comply with its legal obligation as a reportable trader, which required it to file weekly reports. The company agreed to pay a \$480,000 civil monetary penalty as well as to adopt written procedures regarding future compliance with the CFTC reporting requirements and to adopt and maintain internal controls that are reasonably designed to ensure that it complies fully with those written compliance procedures.
- The CFTC issued an Order filing and settling charges against two companies and their owners (Respondents) with illegally offering off-exchange financed transactions in precious metals with retail customers, and failure to register as a Futures Commission Merchant. The CFTC Order requires the Respondents jointly to pay restitution of approximately \$600,000 to their customers and a \$100,000 civil monetary penalty.
- FINRA announced that it has fined a large, international bank \$2 million for short interest reporting and short sale rule violations that spanned a period of more than six years, and for failing to implement a supervisory system reasonably designed to detect and prevent such violations. The firm neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

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This is a publication of KPMG's Financial Services Regulatory Risk Practice and KPMG's Americas FS Regulatory Center of Excellence

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