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# Safety & Soundness

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## Federal Reserve Highlights Progress toward Improving the U.S. Payment System

On February 2, 2016, the Federal Reserve Board (Federal Reserve) released a report highlighting the progress made in the past year and outlining upcoming steps to enhance the speed, efficiency, and security of the U.S. payment system. The report follows from the publication of the Federal Reserve's *Strategies for Improving the U.S. Payment System*, an initiative now formally comprised of two task forces and more than 1,000 individuals participating in efforts to bring about faster and more secure payments in the United States. The accomplishments of the task forces include: identification of thirty-six criteria that describe desired attributes of a faster payment system and that can be used to assess the effectiveness of potential solutions; efforts to enhance payment system efficiency through work on standards, directories, and business-to-business payment improvements; and, the agreement of plans between the Federal Reserve and industry participants to implement the financial messaging standard ISO 20022 for U.S. wire transfer systems as well as advanced plans to implement widespread same-day ACH settlement. [\[Press Statement\]](#) [\[Progress Report\]](#)

## FDIC Issues Winter Supervisory Insights Featuring Cybersecurity and Marketplace Lending

On February 1, 2016, the Federal Deposit Insurance Corporation (FDIC) announced release of the Winter 2015 issue of *Supervisory Insights*, which features the following articles:

- *A Framework for Cybersecurity*, which discusses the cyber threat landscape and how financial institutions' information security programs can be enhanced to address evolving cybersecurity risks as well as an overview of steps taken by the FDIC to combat cyber threats;
- *Marketplace Lending*, which provides an overview of the marketplace lending model and the associated risks, including the risks from third-party arrangements;
- *Lending Viewpoint: Results from the FDIC's Credit and Consumer Products/Services Survey*, which describes recent lending conditions and risks as reported at the conclusion of risk-management examinations; and
- *Regulatory and Supervisory Roundup*, which provides an overview of recently released regulations and supervisory guidance. [\[FIL-9-2016\]](#) [\[Winter 2015 Issue\]](#)

# Enterprise & Consumer Compliance

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## CFPB Releases Guidance on Accuracy and Integrity in Consumer Reporting to Strengthen Consumer Deposit Account Services

On February 3, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) issued Bulletin 2016-01 to "emphasize the obligation of furnishers under Regulation V" (which implements the *Fair Credit Reporting Act*) to establish and implement written policies and procedures regarding the accuracy and integrity of information relating to consumers that they furnish to consumer reporting agencies (CRAs), including specialty CRAs. The CFPB states that if it determines a furnisher has engaged in acts or practices that violate Regulation V or other federal consumer financial laws and regulations, it will take appropriate supervisory and enforcement actions to address the violations and seek all appropriate remedial measures, including redress to consumers.

The Bulletin is being released as part of an initiative “to improve checking account access” in response to CFPB concerns that financial institutions do not generally offer consumers a variety of checking account options, including options that do not permit accountholders to overdraft their accounts, and that new account screening processes rely on inaccurate information furnished to and then provided by specialty CRAs. The CFPB also announced that it had sent a letter to the 25 largest retail banks encouraging them to: increase the availability of lower-risk deposit accounts that are designed not to authorize overdrafts and that do not charge overdraft fees; and, feature such products prominently in their marketing efforts, online and in-store checking account menus, and during sales consultations. [\[Press Statement\]](#) [\[Letter\]](#)

## U.S. and European Commission Reach Agreement on Consumer Data Privacy

On February 2, 2016, the European Commission and the United States announced they had reached an agreement in principle on a framework to govern certain transatlantic data flows. Referred to as the EU-US Privacy Shield, the framework is intended to provide obligations on companies in the U.S. to protect the personal data of Europeans and to provide for monitoring and enforcement by the U.S. Department of Commerce and the Federal Trade Commission (FTC), including through increased cooperation with European Data Protection Authorities. That same day, FTC Chairwoman Edith Ramirez issued a statement that the FTC “will continue to prioritize enforcement of the framework as part of [its] broader commitment to protect consumers’ personal information and privacy.” [\[EU Press Statement\]](#) [\[FTC Statement\]](#)

## DoD Extends Deadline for Direct Connection to Military Lending Act Database

In response to requests from a variety of industry trade groups, the Department of Defense has extended until February 15, 2016, the deadline for financial institutions to request direct access to the Department of Defense Manpower Data Center (DMDC), which can be used by creditors to identify borrowers covered by the protections of the *Military Lending Act* (MLA). Creditors using the DMDC to verify the military status of consumer applicants obtain a safe-harbor under the MLA regulations, which, as amended, require compliance beginning October 3, 2016, for an expanded number of non-mortgage consumer credit transactions and, beginning October 3, 2017, for credit cards transactions. Interested creditors are encouraged to contact the Department of Defense by February 15.

## House of Representatives Passes Bill Protecting Individual Customer Accounts from Termination Based on Reputation Risk

The House of Representatives passed H.R. 766, the *Financial Institution Customer Protection Act*, on February 4, 2016. The bill would prohibit a federal banking agency from formally or informally requesting or ordering a depository institution to terminate a specific customer account or group of customer accounts or to otherwise restrict or discourage a depository institution from entering into or maintaining a banking relationship with a specific customer or group of customers unless the agency has a material reason for such a request or order, and, such reason is not based solely on reputation risk. Press statements from the House Committee on Financial Services suggest the bill is a direct response to a Department of Justice initiative commonly referred to as “Operation Choke Point.” [\[Press Statement\]](#) [\[H.R. 766\]](#)

## Enforcement Actions

During the week ended February 5, 2016, the following enforcement actions were announced:

- The Consumer Financial Protection Bureau (CFPB) and the Department of Justice (DOJ) resolved actions against an auto-finance company to settle charges the company engaged in discriminatory loan pricing practices in violation of the *Equal Credit Opportunity Act*. The company agreed to the CFPB’s order without admitting or denying the charges, and agreed to limit the amount of discretionary dealer mark-up on loans going forward and to pay up to \$21.9 million in restitution to thousands of affected borrowers.
- The Federal Reserve Board announced that it had imposed a \$131 million civil money penalty against a foreign bank holding company and its affiliates to address deficiencies in residential mortgage loan servicing and foreclosure processing. The penalty is being assessed in conjunction with an agreement between the institution and the U.S.

Department of Justice, the Department of Housing and Urban Development, the CFPB, and a number of state attorneys general to address similar deficiencies. The penalty may be satisfied by providing borrower assistance or remediation in conjunction with the Department of Justice settlement, or by providing funding for nonprofit housing counseling organizations.

## Capital Markets and Investment Management

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### CPMI and IOSCO Clarify Guidance on Clearing Deliverable FX Instruments by CCPs

On February 5, 2016, the Committee on Payment and Market Infrastructure (CPMI) and the International Organization of Securities Commission (IOSCO) jointly issued a statement on clearing of deliverable FX (foreign exchange) instruments by central counterparties (CCPs). The statement clarifies the expectations of CPMI and IOSCO as originally set out in the *Principles for Financial Market Infrastructures* with respect to CCP clearing of deliverable FX instruments and the associated models for effecting their settlement. According to the statement, a CCP is not obliged to use any particular settlement process for deliverable FX instruments and can use "paired settlement" arrangements. However, the statement also adds that irrespective of the settlement process used, the CCP remains responsible for that process and participants need to be able to understand and manage any bilateral risks that might arise during the settlement. Furthermore, CCPs are to maintain sufficient, qualifying reliable liquid resources to cover liquidity shortfalls that could arise in the settlement of cleared transactions. [\[Statement issued by CPMI and IOSCO\]](#)

### Legislative Actions include Bill to Expand Definition of Accredited Investor

On February 1, 2016, the House approved a series of bills intended to support small business and community investment. The bills include:

- H.R. 2187, the *Fair Investment Opportunities for Professional Experts Act*, which would amend the definition of an accredited investor to expand the pool of potential investors and enhance the ability of small and mid-sized business to raise capital.
- H.R. 2209, which would allow banks to use highly rated municipal bonds to help satisfy new regulations that threaten to stop the flow of funding for infrastructure projects like roads, bridges and schools.
- H.R. 3784, the *SEC Small Business Advocate Act*, which would establish the Office for Small Business Capital Formation and the Small Business Advisory Committee within the SEC, to ensure that the SEC takes into account the impact of regulatory burdens on small businesses.
- H.R. 4168, the *Small Business Capital Formation Enhancement Act*, which would require the SEC to respond to any findings and recommendations put forth by the SEC's Government-Business Forum on Small Business Capital Formation. [\[Press Statement\]](#)

### Enforcement Actions

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

- The SEC charged a senior executive of a public company with insider trading in his company's stock.
- The SEC announced enforcement actions against 14 municipal underwriting firms for violations in municipal bond offerings. The charges were made as part of the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative based on the SEC's findings that the firms sold municipal bonds using offering documents that contained materially false statements or omissions about the bond issuers' compliance with continuing disclosure obligations,

and failed to conduct adequate due diligence to identify the misstatements and omissions before selling the bonds to their customers. Without admitting or denying the charges, the firms agreed to cease and desist from such violations, and to pay civil penalties based on the number and size of the fraudulent offerings identified, up to a cap based on the size of the firm. The firms also agreed to retain an independent consultant to review their policies and procedures on due diligence for municipal securities underwriting. This action concludes the SEC's MCDC Initiative.

- The SEC announced charges of fraud against a lending company and its owner for deceiving investors purchasing high-yield securities. The SEC alleges they promised investors an annual return of 12 percent, made false claims regarding audits of the company's financial statements, misrepresented management information in offering documents, and concealed information about deteriorating loan values that could impair the full payment of promised returns.
- The CFTC made the following charges with respect to illegal off-exchange precious metals transactions:
  - A civil injunction was filed by the CFTC against a financing company and its owner for engaging in illegal, off-exchange transactions in precious metals with retail customers on a leveraged / margined basis. Under the Dodd-Frank Act, leveraged or financed transactions, are illegal off-exchange transactions, unless they result in actual delivery of metals within 28 days. In this case, the metals were never actually delivered. In settling charges with the company and its owner, the CFTC sought disgorgement of ill-gotten gains, civil monetary penalties, restitution to affected customers, permanent registration and trading bans, and a permanent injunction from future violations of the *Commodities Exchange Act* (CEA).
  - In a similar action, the CFTC entered a Consent Order of permanent injunction against a wholesale bullion dealer and its owner for defrauding retail precious metals customers and engaging in illegal, off-exchange retail commodity transactions. The company falsely represented that it would physically purchase and store precious metals, when in fact it merely covered its obligations through unallocated spot forward contracts with third parties. The Order requires the defendants to comply with the law governing their financed precious metals transactions with immediate effect, to pay restitution of \$1,250,000 and a civil monetary penalty of \$1,250,000.

## Financial Crimes

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### Basel Committee Revises General Guide to Account Opening and Customer Identification

The Basel Committee on Banking Supervision (Basel Committee) announced on February 4, 2016, that it has revised its *General guide to account opening and customer identification*, which was first published in 2003, and re-issued it as an annex to the guidelines on *Sound management of risks related to money laundering and financing of terrorism*, which was first published in January 2014. The Basel Committee states that the policies and procedures for account opening must reflect AML/CFT (anti-money laundering / combatting the financing of terrorism) obligations. In addition, the Basel Committee states the revised general guide takes into account the enhancements to the Financial Action Task Force (FATF) Recommendations and related guidance, adding that the guide aims to support banks in implementing the FATF standards and guidance, which require the adoption of specific policies and procedures, particularly on account opening. [\[Press Statement\]](#) [\[Guidelines\]](#)

### Trade-Based Money Laundering is Focus of Task Force to Investigate Terrorism Financing

The House Committee on Financial Services' Task Force to Investigate Terrorism Financing conducted a hearing on February 3, 2016, to consider testimony on trade-based money laundering (TBML) and customs fraud. Four witnesses provided testimony, including former special agents for the Department of the Treasury and U.S. Customs and Border Protection. The Task Force identified as key findings:

- TBML is responsible for laundering billions of dollars annually.
- The high volume of trade, the complexity of foreign exchange transactions, and the limited ability to exchange customs data between countries contribute to the vulnerability of international trade activity to illicit exploitation.
- TBML appears to be less understood than traditional forms of money laundering. [\[Press Statement\]](#)

## Enforcement Actions

The Securities and Exchange Commission (SEC) announced that a brokerage firm agreed to pay a \$1 million penalty to settle charges that it violated anti-money laundering (AML) rules by allowing foreign entities to buy and sell securities without verifying the identities of the non-U.S. citizens who beneficially owned them. The SEC noted that during examinations the firm twice failed to provide required books and records identifying certain foreign customers whom they were soliciting directly and providing investment advice. Federal law requires all financial institutions to maintain an adequate customer identification program (CIP) to ensure financial institutions know their customers and do not become a conduit for money laundering or terrorist financing. In addition to the penalty, the firm agreed to appoint an independent entity to review its AML and CIP policies for the next two years.

In a separate action, the SEC announced it had reach a settlement with a software company to address charges the company violated provisions of the *Foreign Corrupt Practices Act* (FCPA). Based on an investigation, an executive of the company was found to have made payments to senior foreign government officials in exchange for sales contracts and the company's internal controls program failed to detect the activity. In settling charges, the company consented to the entry of a cease-and-desist order and agreed to pay disgorgement of \$3.7 million in sales profits along with prejudgment interest of approximately \$190,000, without admitting or denying the findings.

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