

## In This Issue

### Safety & Soundness

Federal Reserve Finalizes Rule for GSIB Surcharges .....	1
Federal Reserve Finalizes Enhanced Prudential Standards for Designated Nonbank Financial Company.....	1
Federal Reserve Announces Steering Committee Members for Faster Payments and Secure Payments Task Forces.....	1
Comptroller Curry Speaks About Risks and Opportunities Facing Financial Services.....	2
Congressional Hearings Activity .....	2

### Enterprise & Consumer Compliance

Agencies Finalize Flood Insurance Rules for Special Flood Hazard Areas.....	2
CFPB and OCC Coordinate Actions Against a Bank and Its Subsidiaries to address Unfair and Deceptive Practices Related to Credit Card Add-on Products .....	2
Department of Defense Finalizes Rule Expanding Protections of the Military Lending Act.....	3
October 3, 2015 Becomes Effective Date of TILA/RESPA Integrated Disclosure Rule .....	3
CFPB Takes Enforcement Actions Related to Student Loans.....	3

### Capital Markets & Investment Management

Basel Committee and IOSCO Release Final Criteria for Simple, Transparent, and Comparable Securitizations.....	4
CFTC Chairman Massad Outlines Progress on Dodd-Frank Derivatives Markets .....	4
Enforcement Actions .....	5

# Safety & Soundness

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## Federal Reserve Finalizes Rule for GSIB Surcharges

On June 20, 2015, the Federal Reserve Board (Federal Reserve) approved a final rule that establishes risk-based capital surcharges for the largest, most interconnected U.S. bank holding companies. Under the rule, a U.S. top tier bank holding company that is an advanced approaches institution must calculate a measure of its systemic importance. A bank holding company whose measure of systemic importance exceeds a defined threshold would be identified as a global systemically important bank holding company, or GSIB, and would be subject to a risk-based capital surcharge (GSIB surcharge).

The final rule establishes the criteria for identifying a GSIB and the methods that those firms will use to calculate a risk-based capital surcharge. A GSIB must calculate its surcharge under each of two methods and use the higher of the two surcharges. The first method is based on the framework agreed to by the Basel Committee on Banking Supervision and considers a GSIB's size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. The second method uses similar inputs, but is calibrated to "better address the risk posed by the firms to U.S. financial stability." It also replaces substitutability with a measure of the firm's reliance on short-term wholesale funding. The surcharge requirement will be phased in beginning January 1, 2016, and become fully effective on January 1, 2019. [\[Press Statement\]](#) [\[Final Rule\]](#)

## Federal Reserve Finalizes Enhanced Prudential Standards for Designated Nonbank Financial Company

The Federal Reserve Board (Federal Reserve) issued a final order on July 20, 2015, that establishes enhanced prudential standards specifically for one of the nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve. The enhanced prudential standards established by the order are similar to those that apply to large bank holding companies, but are tailored to reflect the company's unique characteristics. In addition, the order provides they will be phased-in over two periods in recognition of the company's announced and ongoing plan to divest certain assets and business lines and reorganize its operations. The standards for both phases include: 1) capital requirements; 2) capital-planning and stress-testing requirements; 3) liquidity requirements; and 4) risk-management and risk-committee requirements. Phase I requirements will become effective January 1, 2016, and the Phase II requirements will become effective January 1, 2018, provided the company continues to be designated by the FSOC.

## Federal Reserve Announces Steering Committee Members for Faster Payments and Secure Payments Task Forces

The Federal Reserve Board announced the members of the steering committees for both the Faster Payments Task Force and the Secure Payments Task Force described in its paper, the *Strategies for Improving the U.S. Payment System*, released in January 2015. The steering committees will advise the Federal Reserve task force chair on meeting agendas and assist in prioritizing the various task force activities. The committees will also assist in establishing and recommending the scope of work groups, synthesizing task force perspectives and determining items in need of task force deliberation. [\[Press Statement\]](#)

## Comptroller Curry Speaks About Risks and Opportunities Facing Financial Services

Comptroller of the Currency Thomas J. Curry spoke before the New England Council on July 24, 2015, on the *Risks and Opportunities Facing Financial Services*. The Comptroller's remarks included interest rate risk, compliance risk, cybersecurity, and the role collaboration can play in mitigating these risks. He also discussed opportunities to improve business operations as well as service to customers. [\[Press Statement\]](#) [\[Comptroller's Remarks\]](#)

## Congressional Hearings Activity

In the Senate:

- The Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment met in open session to conduct a hearing on "*Oversight of the Financial Stability Oversight Council Designation Process*" on July 22, 2015. The witness for this hearing was a representative of the Financial Stability Oversight Council. [\[Hearing\]](#)
- On July 23, 2015, the Senate Committee on Banking, Housing, and Urban Affairs held a hearing on "*Measuring the Systemic Importance of U.S. Bank Holding Companies*." Four witnesses provided testimony, all of whom were from academia. [\[Hearing\]](#)

In the House of Representatives:

- The House Committee on Financial Services Subcommittee on Monetary Policy and Trade conducted a hearing on "*Examining Federal Reserve Reform Proposals*" on July 22, 2015. The four witnesses included one academic and three "think tank" representatives. [\[Hearing\]](#)
- The House Committee on Financial Services conducted a hearing on July 23, 2015 that considered the question, "*Ending 'Too-Big-To-Fail': What is the Proper Role of Capital and Liquidity?*" Four witnesses provided testimony including representatives from academia and the industry. [\[Hearing\]](#)

# Enterprise & Consumer Compliance

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## Agencies Finalize Flood Insurance Rules for Special Flood Hazard Areas

The Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board, the National Credit Union Administration, and the Farm Credit Administration (collectively, Agencies) published a joint final rule to amend their respective regulations regarding loans in special flood hazard areas. The final rule amends their flood insurance regulations to incorporate and implement certain provisions in the *Biggert-Waters Flood Insurance Reform Act of 2012* (BW Act) and the *Homeowner Flood Insurance Affordability Act of 2014* (HFIAA) regarding detached structures, force placement of flood insurance, and escrowing of flood insurance premiums and fees. The escrow and notice requirements become effective on January 1, 2016. The detached structures exemption became effective upon enactment of the HFIAA on March 21, 2014. The force-placed flood insurance provisions became effective upon enactment of the BW Act on July 6, 2012. [\[Press Statement\]](#) [\[Joint Final Rule\]](#)

## CFPB and OCC Coordinate Actions Against a Bank and Its Subsidiaries to Address Unfair and Deceptive Practices Related to Credit Card Add-on Products

The Consumer Financial Protection Bureau (CFPB or Bureau) announced on July 21, 2015, that it had taken an enforcement action against a large bank and its subsidiaries to address the CFPB's findings the entities violated the

*Consumer Financial Protection Act's* (CFPA) prohibitions against unfair, deceptive, or abusive acts or practices (UDAAP) by engaging in deceptive marketing, billing, and administration of debt protection and credit monitoring add-on products. The CFPB also charged one of the subsidiaries with deceptively charging expedited payment fees during debt collection calls. The Consent Order requires the bank to pay approximately \$700 million in relief to nearly 8.8 million consumers and a \$35 million civil money penalty.

The Office of the Comptroller of the Currency (OCC) also entered into a Consent Order with the bank and its subsidiary to address the OCC's findings that they violated the prohibitions against unfair or deceptive acts or practices (UDAP) of Section 5 of the *Federal Trade Commission Act* (FTC Act). The OCC's Consent Order similarly requires the payment of a \$35 million civil money penalty and restitution to certain customers who enrolled in and paid for identity theft protection products but did not receive the full benefit of the products, and certain customers who purchased a debt cancellation product based on deceptive marketing. The OCC's restitution requirements are satisfied by the CFPB's relief requirements.

## Department of Defense Finalizes Rule Expanding Protections of the Military Lending Act

The Department of Defense published a final rule on July 22, 2015, that amends its regulation that implements the *Military Lending Act* (MLA) for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products. In particular, the rule applies the protections of the MLA to all forms of payday loans, vehicle title loans, refund anticipation loans, deposit advance loans, installment loans, unsecured open-end lines of credit, and credit cards. The implementing regulation is enforceable by the Consumer Financial Protection Bureau (CFPB) and other federal regulators, and provides certain protections to active duty service members and their families, including:

- A 36 percent Annual Percentage Rate limit, which is referred to as the Military Annual Percentage Rate or MAPR, which covers all interest and fees associated with the loan, including charges for most ancillary "add-on" products such as credit default insurance and debt suspension plans;
- Prohibitions against creditors requiring service members to: submit to mandatory arbitration and certain legal notice requirements; waive their rights under the *Servicemembers' Civil Relief Act*; provide a payroll allotment as a condition of obtaining credit (other than from relief societies); refinance a payday loan; and secure credit using a post-dated check, access to a bank account (other than at an interest rate of less than 36 percent MAPR), or a car title (other than with a bank, savings association or credit union); and
- Changes to definitions of credit that bring any closed or open-end loan within the scope of the regulation, except for loans secured by real estate or a purchase-money loan, including a loan to finance the purchase of a vehicle.

The new rule will go into effect October 1, 2015, and compliance is required beginning October 3, 2016, for consumer credit transactions or accounts consummated or established on or before October 3, 2016, for most products, and as of October 3, 2017, for credit cards. [\[Press Statement\]](#) [\[Final Rule\]](#)

## October 3, 2015 Becomes Effective Date of TILA/RESPA Integrated Disclosure Rule

The Consumer Financial Protection Bureau (CFPB or Bureau) finalized its proposal to extend the effective date of the TILA/RESPA Integrated Disclosure Rule, also referred to as the Know Before You Owe Rule, to October 3, 2015. [\[Press Statement\]](#) [\[Final Rule\]](#)

## CFPB Takes Enforcement Actions Related to Student Loans

During the week beginning July 20, 2015, the Consumer Financial Protection Bureau (CFPB or Bureau) announced two enforcement actions related to student loan activities.

- The CFPB filed a complaint and a proposed consent order against a company that operated Web sites and related call centers where it offered fee-based assistance to consumers filling out the federal government's Free Application for Federal Student Aid (FAFSA). The Web sites were not (prior to July 13, 2015) affiliated with the federal government's

FAFSA program. The CFPB alleges the company enrolled consumers in its annual subscriptions for financial advisory services without adequate disclosures and imposed recurring fees without consumers' authorization. In particular, the CFPB alleges the company: violated the *Consumer Financial Protection Act's* (CFPA) prohibitions against unfair, deceptive, or abusive acts or practices (UDAAP) by misleading consumers about the recurring charges; violated the *Electronic Fund Transfer Act* by failing to get appropriate authorization for future electronic withdrawals from consumer accounts; and violated the *Telemarketing Sales Rule* by engaging in deceptive telemarketing practices. The company would be required to pay approximately \$5.2 million in relief to consumers charged recurring fees without providing authorization.

- The CFPB entered a Consent Order with a student loan servicer and its affiliates to address the CFPB's findings they violated the CFPA's UDAAP prohibitions as well as the *Fair Debt Collection Practices Act* (FDCPA) by: failing to furnish clear information regarding the student-loan interest consumers paid; initiating collection calls to consumers at inconvenient times; overstating the minimum amounts due on consumer billing statements; and failing to follow the disclosure notice requirements associated with collection activities regarding acquired defaulted student loans. The Servicer agreed to return approximately \$16 million to harmed consumers and to pay a \$2.5 million civil money penalty.

## Capital Markets and Investment Management

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### Basel Committee and IOSCO Release Final Criteria for Simple, Transparent, and Comparable Securitizations

The Basel Committee on Banking Supervision (Basel Committee) and the International Organization of Securities Commissions (IOSCO) released final *Criteria for identifying simple, transparent and comparable securitizations* on July 23, 2015. The stated purpose of the criteria is to assist in the financial industry's development of "simple, transparent and comparable" securitization structures to help transaction parties – including originators, investors, and other parties with a fiduciary responsibility – evaluate the risks of a particular securitization across similar products. A total of fourteen criteria grouped into three risk categories (asset risk, structural risk, and fiduciary and servicer risk) are included in the final document.

The criteria apply only to term securitizations and are non-exhaustive and non-binding. Additional and/or more detailed criteria may be necessary based on specific needs and applications. The criteria are not, of themselves, a prescription for regulatory action, but the Basel Committee states that it is exploring how these criteria could be incorporated into the securitization framework revised in December 2014. [\[Press Statement\]](#) [\[Final Criteria\]](#)

### CFTC Chairman Massad Outlines Progress on Dodd-Frank Derivatives Markets

Timothy Massad, Chairman of the Commodity Futures Trading Commission (CFTC), spoke before the District of Columbia Bar on July 23, 2015. His remarks reviewed the progress made in implementing the reforms of the derivatives markets mandated by the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. He also spoke about priorities for the near term, including: clearinghouse resiliency; enhancing oversight (margin and the swap dealer de minimis rule); enhancing trading; and harmonizing and standardizing reporting. [\[Speech\]](#)

## Enforcement Actions

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

- The SEC charged three foreign nationals with fraud for engaging in a “pump and dump” scheme related to microcap stocks. The SEC is seeking penny stock bars, return of ill-gotten gains plus interest and financial penalties. The U.S. Attorney’s Office announced criminal charges in a parallel action.
- The CFTC announced that a U.S. District Court had entered a Consent Order against a Florida-based attorney that requires the individual to pay a \$150,000 civil monetary penalty and restitution of \$733,000 in connection with actions to aid and abet multiple clients in their operation of illegal and fraudulent precious metals schemes in violation of the Commodity Exchange Act. The Consent Order also prohibits the individual from appearing or practicing as an attorney before the CFTC until such time as he has been reinstated by Order of the CFTC.

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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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