



The Washington Report

Americas FS Regulatory Center of Excellence

The week ended January 20, 2017

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1. Safety and soundness

1.1 Trump Administration publishes memorandum requesting 60-day freeze on regulations in process

On January 20, 2017, the White House Office of the Press Secretary released a "Memorandum" that requests, "on behalf of the president," Heads of Executive Departments and Agencies to immediately take action to:

- Send no regulation to the Office of the Federal Register (OFR) until a department or agency head appointed or designated by the President after noon on January 20, 2017 reviews and approves the regulation (subject to exceptions allowed by the Director or Acting Director of the Office of Management and Budget for emergency situations or other urgent circumstances relating to health, safety, financial, or national security matters, or otherwise).
- Immediately withdraw regulations that have been sent to the OFR but have not published in the Federal Register.
- Temporarily postpone, for a period of 60 days from the date of the Memorandum, the effective date of regulations that have been published in the OFR but have not taken effect (subject to the exceptions above). Where appropriate and permitted by law, a notice of proposed rulemaking and comment to delay the effective date for regulations beyond that 60-day period should be considered.

[\[Presidential Memorandum\]](#)

1.2 Federal Reserve finalizes inflation adjustments for civil money penalties

On January 18, 2017, the Federal Reserve Board issued a final rule amending its rules of practice and procedure to adjust the amount of each Civil Money Penalty (CMP) allowed by law within its jurisdiction to account for inflation. The rulemaking is made in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The amended CMPs will be applied to any penalties assessed on or after January 15, 2017, whose associated violations occurred on or after November 2, 2015.

[\[Press Statement\]](#) [\[Final Rule\]](#)

1.3 OCC issues revised booklet on conversions to a federal charter

The Office of the Comptroller of the Currency (OCC) issued OCC Bulletin 2017-5 on January 19, 2017 to announce the release of a revised "Conversions to Federal Charter" booklet, which is part of the Comptroller's Licensing Manual.

The OCC states the revisions:

- Provide an overview of policies and decision criteria that the OCC considers when reviewing applications from financial institutions seeking to convert to national banks or federal savings associations.
- Provide guidance on application requirements and explain under which circumstances expedited reviews are granted.
- Explain the applicability of Home Owners' Loan Act requirements, including qualified thrift lender and qualified thrift investments, to financial institutions converting to federal savings associations.
- Provide guidance on section 612 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which imposes restrictions on state-chartered banks or savings associations converting to national banks or federal savings associations.
- Update references and web links to informational resources and sample forms and documents that applicants may find useful during the conversion process.

[\[OCC Bulletin 2017-5\]](#)

2. Enterprise and consumer compliance

2.1 Enforcement actions

The Consumer Financial Protection Bureau (CFPB or Bureau) announced the following enforcement actions in the past week:

- The CFPB announced that it filed a complaint against a national bank based on the CFPB's findings the bank deceived consumers into paying for overdraft services. The CFPB alleges the bank designed its application process to obscure the fees and make overdraft services appear to be mandatory for new customers. The Bureau is seeking restitution for harmed consumers as well as injunctive relief and penalties.
- The CFPB filed a lawsuit against a student loan servicer for allegedly violating the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Fair Credit Reporting Act, and the Fair Debt Collections Practices Act by:
 - Failing to correctly apply or allocate borrower payments to customer accounts;
 - Steering struggling borrowers toward forbearance programs rather than applying for repayment plans;
 - Obscuring information consumers needed to maintain their lower payments;
 - Deceiving private student loan borrowers about requirements to release a co-signer from their loan; and
 - Harming the credit of disabled borrowers, including severely injured veterans.

3. Capital markets and investment management

3.1 DOL releases frequently asked questions directed toward consumers and financial advisers

On January 13, 2017, the Department of Labor (DOL) published two new sets of Frequently Asked Questions (FAQs) regarding its conflicts of interest rule, commonly referred to as the DOL Fiduciary Rule, which has a scheduled implementation date of April 10, 2017.

One of the FAQs is directed toward retirement investors and offers clarification on consumer protections under the new rule, which requires advisers to adhere to a fiduciary standard and provide advice that is in the investor's best interest. In general, advisers are required to:

- Satisfy a professional standard of care when making investment recommendations (give prudent advice);
- Put their customer's interest first when making recommendations (give loyal advice);
- Avoid misleading statements about conflicts of interest, fees, and investments;
- Follow policies and procedures designed to ensure adherence to the best interest standard and to prohibit financial incentives for advice that is not in the customer's best interest;
- Charge no more than reasonable compensation for their services; and
- Disclose basic information about fees and conflicts of interest to retirement investors.

The other FAQ focuses particularly on specific technical questions raised by financial services providers regarding fiduciary and non-fiduciary communications. Topics include:

- What constitutes a "recommendation" that can result in fiduciary investment advice;
- Clarification of investment education vs. general communications; and

- Application of the “sophisticated” independent fiduciary and investment platform exceptions.

The DOL previously released a set of FAQs in October 2016 addressing the Prohibited Transaction Exemptions of the Fiduciary Rule.

[\[FAQ Consumer\]](#) [\[FAQ Provider\]](#)

3.2 CFTC Division of Enforcement publishes advisories on cooperation for individuals and companies

The Commodity Futures Trading Commission (CFTC) Division of Enforcement (Division) issued two new Enforcement Advisories on January 19, 2017 that outline the factors the Division will consider in evaluating cooperation by individuals and companies in the agency’s investigations and enforcement actions. The CFTC gives credit for cooperation in determining whether enforcement action is warranted, the nature of charges that should be brought, and the appropriate level of sanctions to impose or seek. Factors considered in assessing whether cooperation warrants credit include:

- The value of the cooperation to the Division’s investigations and enforcement actions;
- The value of the cooperation to the Commission’s broader law enforcement interests;
- The culpability of the company or individual and other relevant factors; and
- Uncooperative conduct that offsets or limits credit that the company or individual would otherwise receive.

The Advisories each emphasize that the Division looks for more than ordinary cooperation or mere compliance with the requirements of law, including self-reporting and providing early and material assistance to the Division. The potential rewards for cooperation can range from the Division recommending no enforcement action to recommending reduced charges or sanctions in connection with enforcement actions.

[\[Press Statement\]](#)

3.3 SEC signs MOU with Hong Kong Securities and Futures Commission

On January 19, 2017, the Securities and Exchange Commission (SEC) announced that it had entered into a Memorandum of Understanding (MOU) with the Hong Kong Securities and Futures Commission (SFC) regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and Hong Kong. Through the MOU, the SEC and SFC will cooperate particularly in the areas of: protecting investors; promoting a compliance culture; fostering the integrity of and maintaining confidence in capital and financial markets; and reducing systemic risk. It also sets up formal arrangements for conducting on-site examinations of regulated entities.

The SEC states the arrangement is part of its long-term strategy to enhance the oversight of regulated entities that operate across national borders. It is intended to enhance the ability of the SEC and the SFC to share information about regulated entities, including investment advisers, broker-dealers, securities exchanges, and credit rating agencies. The new arrangement expands on a previous agreement that was limited to investment management activities.

[\[Press Statement\]](#)

3.4 FINRA seeks comment on distributed ledger technology

The Financial Industry Regulatory Authority (FINRA) issued a report on January 18, 2017 that discusses the use and implications of Distributed Ledger Technology (DLT), also known as blockchain, in the securities industry. It highlights some key applications of DLT being explored in the equity, debt and derivatives markets in addition to shared utilities, potential impacts of the technology, and key implementation and regulatory considerations for broker-dealers.

FINRA is seeking public comment through March 31, 2017 to help proactively identify and address any potential risks or hurdles to DLT. FINRA states that the report is intended to be its initial contribution to an ongoing dialogue with market participants about the use of DLT.

[\[Press Statement\]](#) [\[Distributed Ledger Technology report\]](#)

3.5 Enforcement actions

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

- The SEC entered into an agreement with a financial services company to pay \$500,000 to settle the SEC’s charges that the company violated hedge accounting rules and later took steps to impede potential whistleblowers. Separately, the company’s treasurer agreed to pay a \$20,000 penalty to settle charges that he caused the accounting violations. The SEC states the company violated the books and records provisions of the federal securities laws, internal accounting controls, and the SEC rule prohibiting actions that impede communications with the SEC.
- The SEC announced that 10 investment advisory firms have agreed to pay penalties ranging from \$35,000 to \$100,000 to settle charges that they violated the SEC’s investment adviser pay-to-play rule by receiving compensation from public pension funds within two years after campaign contributions were made by the firms’ associates. According to the SEC, investment advisers are subject to a two-year timeout from providing compensatory advisory services either directly to a government client or through a pooled investment vehicle after political contributions were

made to a candidate who could influence the investment adviser selection process or appoint someone with such influence. The SEC's orders found that these 10 firms violated the two-year timeout by accepting fees from city or state pension funds after their associates made campaign contributions to elected officials or political candidates with the potential to wield influence over those pension funds.

- The SEC announced that an asset manager has agreed to pay a \$340,000 penalty to settle charges that it improperly used separation agreements in which exiting employees were forced to waive their ability to obtain whistleblower awards. According to the SEC, more than 1,000 departing employees of the company signed separation agreements containing language stating that they "waive any right to recovery of incentives for reporting of misconduct" in order to receive their monetary separation payments from the firm. The SEC also found that the company voluntarily revised its separation agreement and took a number of remedial actions, including the implementation of mandatory yearly training, to summarize employee rights under the SEC's whistleblower program.
- The CFTC announced that it had issued an order filing and simultaneously settling charges against a registered futures commission merchant and provisionally registered swap dealer to address the CFTC's allegations the firm engaged in spoofing—the term given to the practice of placing bids or offers with the intent to cancel those orders before execution—in U.S. Treasury futures markets, and failed to diligently supervise the activities of its employees and agents in conjunction with the spoofing orders. The CFTC's order requires the company to cease and desist from violating the Commodity Exchange Act's prohibition against spoofing and the CFTC regulation governing diligent supervision. In addition, the firm is required to provide annual training regarding spoofing to its employees and supervisors involved in the U.S. futures markets, and maintain systems and controls reasonably designed to detect spoofing activity by its traders.

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