



# The Washington Report

**Americas FS Regulatory Center of Excellence**

The week ended June 2, 2017

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# 1. Safety and soundness

## 1.1 FSB regional group discusses issues for the Americas

On May 30, 2017, the members of the Financial Stability Board (FSB) Regional Consultative Group (RCG) for the Americas met to discuss regional macroeconomic and financial markets developments as well as financial stability issues. The topics discussed included:

- The FSB's Key Attributes of Effective Resolution Regimes and its new assessment methodology for bank resolution, the role of authorities not represented in crisis management groups for systemically important financial institutions, and efforts to strengthen host authority cooperation on resolution issues;
- Regulatory and supervisory issues raised by FinTech, including distributed ledger technology and peer-to-peer lending;
- Implications of the newly released FX Global Code, which provides global principles of good practice in the foreign exchange market and is designed to promote a robust and transparent global wholesale foreign exchange marketplace; and
- Experiences and challenges in implementing the agreed regulatory reforms and the impact of reductions in correspondent banking relationships.

[\[Press Statement\]](#)

## 1.2 Federal Reserve announces final amendments to Regulation CC

The Federal Reserve Board (Federal Reserve) on May 31, 2017 finalized amendments to the check collection and return provisions in Regulation CC (Availability of Funds and Collection of Checks). The amendments, which will become effective July 1, 2018, create a framework for electronic check collection and return as well as new warranties for electronic checks intended to develop a consistent warranty chain regardless of the check's form.

Separately, the Federal Reserve also requested public comments on a proposed amendment to the liability provisions of Regulation CC to address situations where there is a dispute about whether a check has been altered or forged and the original paper check is not available for inspection. Comments on the proposal must be submitted by August 1, 2017.

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

## 1.3 Basel Committee chair delivers keynote on "Designing an Optimal Deposit Insurance System"

On June 2, 2017, Stefan Ingves, Chairman of the Basel Committee on Banking Supervision and Governor of Sveriges Riksbank, delivered the keynote address at the International Association of Deposit Insurers (IADI) Conference. His address focused on three challenges that deposit insurance systems face: (1) the interaction between deposit insurance and the resolution framework; (2) the relationship between deposit insurance and public guarantees; (3) and cross-border banking issues.

- Deposit insurance and the resolution framework: Ingves raised a series of issues on bail-ins and deposit insurance, including whether the development of resolution regimes would have consequences for deposit insurance fees, the role of deposit insurance in the resolution process, and how resolution regimes affect market discipline and moral hazard.
- Deposit insurance and public guarantees: Ingves also raised the issue of whether private deposit insurance systems are as viable as public systems. He noted that deposit insurance systems have changed since 2009, including adopting the principle that member banks should provide funding on an ex ante basis. Ingves noted that while deposit insurance is different throughout the world, varying on whether the system is private or public and in the amount and types of coverage, a commonality is that they are not intended to cover a full systemic crisis. He also raised concerns as to whether a private system can be as credible as a public one, if private deposit insurance can provide the same public confidence as public insurance, and how private schemes interact with public resolution schemes in times of stress.
- Cross-border issues: Ingves noted the difficulties in gaining cooperation between the authorities of different countries and the risks of taxpayers in one country bailing out depositors of another country. He also emphasized how the structure of a failing bank has important implications for deposit insurance, notably home and host country obligations with regard to supervision, deposit guarantees, and the treatment of "foreign" depositors. Ingves also noted that currency mismatches could be an issue for liquidity support and deposit guarantees. He said changes in the operations of cross-border banking groups should be met with stricter requirements on the bank to maintain liquidity buffers in all relevant currencies. These issues should also raise discussions on the relevant size and composition of central bank foreign exchange reserves, the deposit guarantee fund, and possible swap agreements among central banks.

[\[Speech\]](#)

## 2. Enterprise and consumer compliance

### 2.1 CFPB monthly complaint report highlights complaints from older consumers

The Consumer Financial Protection Bureau (CFPB or Bureau) released its monthly complaint snapshot on May 31, 2017. The snapshot highlights the more than 103,000 complaints received across all consumer financial products and services by consumers that have self-identified as age 62 or older. Some of the key complaints identified by this group during 2017 included:

- Servicing problems with reverse mortgages, especially following the death of the borrower;
- Difficulty recovering from financial scams and identity theft, such as correcting credit reports, disputing charges with credit card companies, and attempting to regain money that was withdrawn from their bank accounts.
- Confusion about credit card terms and conditions, including deferred interest and zero interest credit card offers.
- Unwanted add-on products and services and associated fees, such as credit monitoring services that they did not sign up for or were enrolled in without proper disclosure of the program and its costs.

The CFPB states that slightly more than half of all consumers that submit consumer complaints to the CFPB voluntarily report their age. Of those, close to 20 percent are age 62 or older. Debt collection complaints are the most common complaint for this category of consumers.

[\[Press Statement\]](#) [\[Monthly Complaint Report\]](#)

### 2.2 Regulators issue advisory on appraiser availability

In May 31, 2017, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency jointly issued an advisory on appraiser availability in response to the concerns raised over the limited availability of state-certified and state-licensed appraisers during the agencies' Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) review process. The advisory highlights the following options to help insured depository institutions and bank holding companies facilitate the timely consideration of loan applications in areas facing a shortage of appraisers:

- Temporary practice permits: Allows certified and licensed appraisers to provide their services subject to state law in states experiencing a shortage of appraisers. The advisory also discusses reciprocity, a practice in which one state recognizes the appraiser certification and licensing of another

state, permitting state certified and licensed appraisers to perform appraisals across state lines.

- Temporary waivers: Temporarily waives any requirement relating to the certification or licensing of individuals to perform appraisals in states where a shortage of appraisers has resulted in delays in obtaining appraisals for federally related transactions. This is authorized by the Title XI of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

[\[Interagency Press Statement\]](#) [\[Advisory\]](#)

### 2.3 FTC staff provides annual financial acts enforcement report to the CFPB

On June 1, 2017, the Federal Trade Commission (FTC) provided its 2016 Annual Financial Acts Enforcement Report to the Consumer Financial Protection Bureau (CFPB or the Bureau) on enforcement activities regarding Regulation Z (Truth in Lending Act), Regulation M (Consumer Leasing Act), and Regulation E (Electronic Fund Transfer Act). The FTC has the authority to enforce these rules with regard to entities within its jurisdiction, which includes most nonbank financial services providers. The report highlighted enforcement actions related to automobile finance, payday lending, mortgage credit assistance scams, and negative options plans associated with electronic fund transfers. The FTC also noted that it had conducted consumer outreach and education as well as research and policy development on issues relevant to these regulations in the areas of FinTech, military lending, and payday lending.

[\[Press Statement\]](#)

### 2.4 Enforcement Actions

The Federal Trade Commission (FTC) announced the following enforcement action in the past week:

- A federal district court judge approved a default judgment and a \$2.7 million civil money penalty against the owner of nine entities whom the agency charged with making billions of illegal telemarketing robocalls to consumers without their permission, including calls made to numbers listed on the Do Not Call (DNC) Registry. The FTC's complaint alleges the defendant assisted telemarketer clients in placing the robocalls with inaccurate, or "spoofed," caller ID information, in violation of the FTC's unfair and deceptive practices provisions and the Telemarketing Sales Rule. The court order permanently bans the individual and his companies from all telemarketing activities, including initiating robocalls, calling numbers on the DNC Registry, and

selling data lists containing consumer phone numbers and other information.

## 3. Capital markets and investment management

### 3.1 IOSCO publishes a report on objectives and principles of securities regulation

On May 31, 2017, the International Organization of Securities Commissions (IOSCO) published a report entitled “Objectives and Principles of Securities Regulation,” which sets out 38 principles of securities regulation based on the following objectives:

- Protecting investors: Investors should be protected from misleading, manipulative or fraudulent practices, including insider trading, front running or trading ahead of customers, and the misuse of client assets.
- Ensuring fair, efficient, and transparent markets: Market fairness is closely linked to investor protection and to the prevention of improper trading practices. Regulators can help ensure fairness through the approval of exchange and trading system operators and trading rules. Market structures should not unduly favor some market users over others, and
- Reducing systemic risk: Regulators should promote effective risk management and ensure that capital and other prudential requirements are sufficient to address appropriate risk taking.

The IOSCO notes that individual domestic securities markets are increasingly becoming integrated with global markets, which poses challenges to regulation and interdependence among regulators. It states that high regulatory standards and effective international cooperation will achieve the objectives (investor protection, fair markets, and reduced systemic risk), adding that the international regulatory community should provide advice and a means to measure progress toward effective regulation.

The 38 principles outlined in the report are intended to set the bar for high regulatory standards globally. IOSCO expects member countries will implement the principles within their relevant legal frameworks. They are grouped into 10 categories by relevance: the regulator; self-regulation; securities; cooperation in regulation; issuers, auditors, credit rating agencies and other information service providers;

collective investment schemes; market intermediaries; secondary and other markets; clearing and settlement.

[\[Objectives and Principles of Securities Regulation\]](#)

The IOSCO concurrently published a report on “Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation,” which is designed to provide the IOSCO’s interpretation of the three objectives and the 38 principles of securities regulation and to give guidance on the conduct of a self-assessment or third-party assessment of principles implementation.

[\[Methodology\]](#)

### 3.2 FINRA revises rule 4530 form and product and problem codes for reporting customer complaints

On May 31, 2017, the Financial Industry Regulatory Authority (FINRA) announced the following revisions and additions to Rule 4530, which requires firms to report written customer complaints alleging theft or misappropriation of funds or securities, or forgery:

- Addition of a new Problem Code 69 to address changes made by the U.S. Department of Labor (DOL) to its fiduciary rule to report customer complaint information as well as the information relating to required documents filed under Rule 4530;
- Changes to the Rule 4530 Filing Application Form and the Rule 4530 Product and Problem Codes to facilitate compliance with the requirements of MSRB Rule G-8 (Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors);
- Amendment to Problem Code 56 – Proxy/Prospectus to clarify or extend the customer application to municipal securities and municipal advisory activities;
- Addition of new Problem Code 15 – Municipal Advisor Conflict of Interest, which relates to a conflict of interest arising in a municipal advisory role, including a breach of fiduciary duty, a duty of care or a duty of loyalty.

Firms may begin using Problem Code 69 on June 9, 2017 (the effective date of the DOL Fiduciary Rule) and the problem

codes related to municipal securities and municipal advisory activities on October 1, 2017. FINRA is also making technical and stylistic changes to the Product and Problem Codes as well as modifying the Rule 4530 system to limit the period during which firms can amend their submissions.

[\[FINRA Press Statement\]](#) [\[Regulatory Notice 17-21\]](#)

### 3.3 Enforcement Actions

The Financial Industry Regulatory Authority (FINRA) and the Commodity Futures Trading Commission (CFTC) announced the following enforcement actions in the past week:

- FINRA barred a registered representative of a global bank for executing \$190 million in bond trades that were subject to trading restrictions due to regulatory, anti-money laundering, and reputational risks, and for

concealing the trading activity from the bank. The representative used several nominee accounts in the names of other financial institutions and directed the trades through those accounts. The representative consented to FINRA's findings without admitting or denying the charges.

- The CFTC issued an order filing and settling charges against a former trader for spoofing and attempting to manipulate the gold and silver futures markets. The trader admitted his act of manipulation and spoofing activity and acknowledged that his conduct violated the Commodity Exchange Act (CEA) and CFTC Regulations. The CFTC Order permanently bans him from trading commodity interests and from engaging in other commodity-interest related activities.

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