



The Washington Report

Americas FS Regulatory Center of Excellence

The week ended June 23, 2017

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1. Safety and soundness

1.1 FSB releases consultation on compensation tools to address misconduct

On June 20, 2017, the Financial Stability Board (FSB) published for comment draft supplementary guidance to the FSB's *Principles and Standards on Sound Compensation Practices*, which was published in 2009. The supplementary guidance is intended to provide firms and supervisors with a framework to consider how compensation practices and tools can be used to reduce misconduct risk and address misconduct incidents. Compensation tools can address misconduct risk by providing both incentives for good conduct and adjustment mechanisms that ensure appropriate accountability.

The recommendations address:

- Governance: the full range of responsibility, from senior management to the front line, for conduct issues arising from firm culture and commitment to ethical conduct;
- Non-financial metrics: integration of conduct-related non-financial considerations in performance assessment and compensation;
- Incentives: alignment of compensation incentives to the longer time frame of misconduct risk;
- Transparency: transparent, consistent, and fair compensation policies and procedures that establish clear expectations and accountability; and
- Supervisory expectations: supervisor responsibility in monitoring and assessing the effectiveness of firms' compensation policies and procedures in managing misconduct risk.

The FSB requests comments and responses to the consultation draft by August 30, 2017.

[\[Press Statement\]](#) [\[Consultative Document\]](#)

1.2 Range of practices in implementing the countercyclical capital buffer policy

The Basel Committee on Banking Supervision (BCBS) issued a paper on June 22, 2017 entitled *Range of practices in implementing the countercyclical capital buffer policy*, which examines how jurisdictions have designed their countercyclical capital buffer (CCyB) policies, frameworks, and practices. The BCBS introduced the CCyB policy as part of the Basel III reforms with the key objective of building a varying capital buffer that protects the banking sector from systemic risk associated with excess credit growth. The BCBS guidance detailed key requirements for CCyB policies but allowed members flexibility

to design frameworks that were responsive to their national circumstances. The newly released paper discusses how the CCyB policy frameworks implemented across BCBS member jurisdictions differ with respect to governance structures, rules versus guidance, number of indicators used to guide policy decisions, activating and releasing the buffer, communication strategies, and reciprocity practices.

[\[Press Statement\]](#) [\[Implementation Paper\]](#)

1.3 Federal Reserve Board releases supervisory bank stress test results

On June 22, 2017, the Federal Reserve Board (Federal Reserve) released the results of its annual supervisory stress tests for the largest bank holding companies (BHCs), which are generally those BHCs with \$50 billion or more in total consolidated assets. A total of thirty-four BHCs were tested in the 2017 exercise. The Federal Reserve's report provides details of the baseline, adverse, and severely adverse supervisory scenarios used during the 2017 stress-test; an overview of the analytical framework and methods used to generate the Federal Reserve's projections; and the results of the supervisory stress tests under adverse and severely adverse scenarios. The report concludes that these BHCs have capital levels strong enough to allow them to retain their lending ability during a severe recession.

[\[Press Statement\]](#) [\[Supervisory Stress Test Results\]](#)

1.4 OCC issues new Licensing Manual booklet on amendments

On June 19, 2017, the Office of the Comptroller of the Currency (OCC) issued a new booklet as part of the Comptroller's Licensing Manual. The new booklet addresses "Articles of Association, Charter, and Bylaw Amendments." It consolidates the OCC's policies and procedures regarding articles of association amendments for national banks, charter amendments for federal savings associations, and bylaw amendments for national banks and federal savings associations. In addition, it discusses the regulatory requirements for articles of association, charters, and bylaws; provides an overview of the filing process; includes certain content requirements; lists actions or steps a national bank or federal savings association should follow during the amendment process; and details informational resources and sample documents to refer to during the amendment process.

[\[OCC Bulletin\]](#) [\[OCC Amendments\]](#)

1.5 Agencies issue host state loan-to-deposit ratios

The Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency jointly issued the host state loan-to-deposit ratios used to determine compliance with section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Section 109 prohibits a bank from establishing or acquiring a branch outside of its home state primarily for the purpose of deposit production and also prohibits branches of banks controlled by

out-of-state bank holding companies from operating primarily for the purpose of deposit production. The loan-to-deposit ratio test compares an out-of-state bank's loan-to-deposit ratio in a host state to the average loan-to-deposit ratio in the host state.

[\[Press Statement\]](#) [\[Section 109 Host State Loan-to-Deposit Ratios\]](#)

2. Enterprise and consumer compliance

2.1 CFPB spotlights complaints about student loan servicers mishandling Public Service Loan Forgiveness

The Consumer Financial Protection Bureau (CFPB or the Bureau) issued a report on June 22, 2017 that highlights complaints from borrowers about student loan servicers mishandling the Public Service Loan Forgiveness (PSLF) program. The PSLF provides student loan borrowers in public service jobs with debt forgiveness after 10 years. Based on an analysis of complaints received between March 2016 and February 2017, the CFPB found that, with regard to the PSLF, consumers most commonly complained about: servicers delaying or denying access to loan forgiveness through wrong information about their loans; delays and errors in payment processing; and job certification problems.

The CFPB states that it has updated its supervisory examination guidelines to prioritize administration of loan forgiveness benefits. Compliance examinations will look at whether servicers tell eligible consumers how to participate in forgiveness programs, provide clear information about the programs, and accurately evaluate borrowers' eligibility and progress toward loan forgiveness.

Also on June 22, the Bureau published a blog post announcing its recently launched "Certify Your Service" campaign, which provides information about available programs and how to participate. The campaign updates tools for employers regarding the PSLF program and also highlights things to be considered by public service employees when aiming to participate in the PSLF program. In particular, public service employees should:

- Have the right type of loan: Only federal Direct Loans qualify for loan forgiveness under PSLF program.

- Enroll in the right payment plan: Income-driven repayment (IDR) plans are qualified repayment plans under PSLF while other repayment plans are not included.
- Certify your work: Submit an Employer Certification Form to track the progress and let the servicer know about the efforts toward PSLF.
- Stay current: Send an updated form each year and follow up with the services to keep track of your qualifying payments.

CFPB Director Richard Cordray also spoke at a PSLF event on June 22, 2017 and gave an update on the work undertaken by the CFPB to protect student loan borrowers.

[\[Press Statement\]](#) [\[Blog\]](#) [\[Speech\]](#) [\[Report\]](#)

2.2 Agencies release list of distressed or underserved nonmetropolitan middle-income geographies

On June 21, 2017, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (OCC) jointly released the list of distressed or underserved nonmetropolitan middle-income geographies for 2017. Revitalization or stabilization activities in these geographies are eligible to receive Community Reinvestment Act (CRA) consideration under the community development definition for 12 months after publication of the current list. The designation of a distressed or underserved nonmetropolitan middle-income geography reflects local economic conditions.

[\[OCC Press Statement\]](#) [\[List of Distressed or Underserved Geographies\]](#)

3. Capital markets and investment management

3.1 FINRA proposes change to Rule 7730 to make TRACE security activity report available

On June 19, 2017, the Financial Industry Regulatory Authority (FINRA) filed a proposed rule change with the Securities and Exchange Commission (SEC) that would amend FINRA Rule 7730 to make available a new Trade Reporting and Compliance Engine (TRACE) security activity report. The report would provide aggregated statistics by security for TRACE-Eligible Securities that are corporate or agency bonds. The effective date will be no later than 365 days following the SEC's approval of the rule change. On June 21, FINRA also proposed a rule change related to fee waivers under Rule 7730.

[\[Rule Filing 1\]](#) [\[Rule Filing 2\]](#) [\[SR-FINRA-2017-021\]](#) [\[SR-FINRA-2017-022\]](#)

3.2 FINRA proposes to adopt Rule 6898 Consolidated Audit Trail - Fee Dispute Resolution

On June 19, 2017, the Financial Industry Regulatory Authority (FINRA) proposed a rule change to FINRA Rule 6898 to establish procedures for resolving potential disputes related to Consolidated Audit Trail (CAT) fees charged to industry members. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following SEC approval with an effective date that is no later than 120 days following SEC approval.

[\[Rule Filing\]](#) [\[SR-FINRA-2017-020\]](#)

3.3 IOSCO issues report on order routing incentives

On June 19, 2017, the Board of the International Organization of Securities Commissions (IOSCO) published its final report on Order Routing Incentives, which provides an overview of the order routing incentives used by market regulators that may influence how intermediaries treat their clients. The report examines the regulatory conduct requirements for brokers or firms to manage conflicts of interest associated with routing orders and obtaining best execution. The report focusses on three primary incentives: monetary incentives; internalization and use of affiliated venues that may commercially benefit a broker; and goods and services bundled with broker execution. The

IOSCO concluded that no further work was required because existing regulation or imminent reforms adequately addressed the issue of conduct risks and order routing incentives.

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

3.4 Enforcement Actions

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

- The CFTC entered an order filing and settling charges against an investment firm and three of its employees for allegedly using straw purchases to manipulate the live cattle futures market during December 2012 and February 2013. This helped them in secretly controlling a majority of the market and portraying a false appearance of wide investor interest. The order requires the defendants to pay civil monetary penalties totaling \$5 million.
- The CFTC filed a civil enforcement action against a financial advisor and its owner for engaging in a fraudulent scheme to solicit more than \$400,000, misappropriating the funds for unauthorized personal or business expenses, and issuing false account statements in connection with a pooled investment in foreign currency derivatives trading. The complaint also charged the company with failing to register with the CFTC as a commodity pool operator (CPO) and engaging in activities prohibited for a CPO. The CFTC seeks restitution to defrauded pool participants, disgorgement of profits from violations of the Commodity Exchange Act and CFTC Regulations, civil monetary penalties, trading and registration bans, and a permanent injunction against future violations of federal commodities laws.

4. Cybersecurity

4.1 Senate Committee holds hearing on cybersecurity and regulation

The U.S. Senate Committee on Homeland Security & Governmental Affairs held a hearing on June 21, 2017 entitled "Cybersecurity Regulation Harmonization." Three witnesses, representing the financial services, technology, and healthcare industries, and one representative from state government, provided testimony on the balance between cybersecurity and the related regulatory burden.

The witness from the financial services industry discussed the growing duplication and overlap in cybersecurity regulations in the financial sector and argued that the lack of harmonization causes firms to expend substantial personnel and resources on similar agency expectations. He testified that regulators can achieve harmonization by following the National Institute of Science and Technology's (NIST) Cybersecurity Framework, which would foster collaboration with other critical infrastructure sectors. He stated that Congress should recommend that agencies pause any cybersecurity proposals, rulemakings, or other activities in progress in order to allow for effective collaboration.

The witness from the technology sector made several recommendations related to streamlining cybersecurity policies, including using public-private partnerships; harmonizing federal cybersecurity policies around risk management and international standards; designating one agency or combination of agencies to assess and coordinate federal agency cybersecurity practices; and allowing federal procurement processes to acquire cybersecurity products and services.

The witness from the healthcare industry proposed that organizations that comply with the Health Insurance Portability and Accountability Act (HIPAA) receive relief from federal cybersecurity regulations. And the state chief information officer testified about the challenges that states face in complying with duplicate or inconsistent federal cybersecurity regulations.

The hearing is the fifth hearing conducted by the Senate Committee on Homeland Security & Government Affairs on the cybersecurity threat. Earlier hearings have considered information sharing and the need for liability protections; data breaches at the Office of Personnel Management and Internal Revenue Services; and the breadth of the cybersecurity threat landscape, including criminal attacks, malicious attacks, industrial espionage, and cyber warfare.

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