



# The Washington Report

**Americas FS Regulatory Center of Excellence**

The week ended July 21, 2017

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# 1. Safety and soundness

## 1.1 FDIC revises supervisory appeals guidelines

On July 18, 2017, the Federal Deposit Insurance Corporation (FDIC) adopted revised Guidelines for Appeals of Material Supervisory Determinations that are intended to provide FDIC-supervised institutions with broader avenues of redress with respect to material supervisory determinations and enhance consistency with the appeals process of the other Federal banking agencies. The revisions to the Guidelines:

- Permit the appeal of the level of compliance with an existing formal enforcement action, the decision to initiate an informal enforcement action, and matters requiring board attention;
- Provide that a formal enforcement-related action or decision does not affect an appeal that is pending under the Guidelines;
- Make additional opportunities for appeal available under the Guidelines in certain circumstances;
- Provide for the publication of annual reports on Division Directors' decisions with respect to material supervisory determinations; and
- Make other limited technical and conforming amendments.

The Guidelines became effective upon release.

[\[Press Statement\]](#) [\[Guidelines\]](#)

## 1.2 Federal agencies to coordinate on Volcker foreign funds reviews

On July 21, 2017, five federal regulatory agencies including the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Securities and Exchange Commission, and the Commodity Futures Trading Commission, announced that they are coordinating their reviews of the treatment of certain foreign funds under section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly referred to as the Volcker Rule. While foreign investment funds organized and offered outside of the United States are excluded from the definition of "covered fund" under the rule and the agencies' implementing regulations (foreign excluded funds), a bank's governance arrangements with a foreign bank or a foreign bank's

investments in funds may result in certain foreign excluded funds becoming subject to the regulation. Together the five agencies are considering ways in which the implementing regulations may be amended to address any unintended consequences created by the rules, including the possibility of Congressional action. In addition, the Federal banking agencies (Federal Reserve Board, OCC and FDIC) released a statement indicating they would not take action under section 619 for qualifying foreign excluded funds, subject to certain conditions, for a period of one year (through July 21, 2018).

[\[Press Statement\]](#) [\[Statement Regarding Treatment of Foreign Funds\]](#)

## 1.3 Acting Comptroller provides remarks about innovation and a FinTech charter

Acting Comptroller of the Currency Keith A. Noreika gave an address at the Exchequer Club on July 19, 2017 in which he discussed responsible innovation and provided an update on the Office of the Comptroller of the Currency's (OCC) Office of Innovation and national bank charters for financial technology (FinTech) companies. He suggested there is a need for the federal banking system to be more inclusive, to accommodate new banks, and to adapt to the changing needs of the marketplace, customers, and communities. He believes that it is a good idea to grant national bank charters to FinTech companies that are engaged in the business of banking and to require them to meet the high standards for receiving a charter. He added that the business of banking has evolved and that care is needed to avoid defining banking too narrowly or in a stagnant way such that it prevents the system from evolving or taking proper and responsible advantage of advances in technology and commerce. The FinTech charter, he said, is "pro-growth" and "would help level the playing field in meaningful ways" where the status quo disadvantages banks.

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

# 2. Enterprise and consumer compliance

## 2.1 CFPB releases sprint 2017 regulatory agenda

The Consumer Financial Protection Bureau (CFPB or Bureau) has released its spring 2017 regulatory rulemaking agenda. The agenda outlines the CFPB's rulemaking actions across pre-rule, proposed rule, final rule, long-term, and completed stages. In addition to highlighting recent actions, such as the release of its final rule on arbitration, the CFPB notes that it is considering:

- Proposing rules in 2017 concerning debt collectors' communications practices and consumer disclosures;
- Proposing rules to define non-bank "larger participants" in the market for personal loans, including consumer installment loans and vehicle title loans;
- Initiating the first in a series of reviews of existing, individual regulations to identify opportunities to clarify ambiguities, address developments in the marketplace, or modernize or streamline provisions; and
- Modernizing the database of credit card agreements.

[\[Blog post\]](#)

## 2.2 Federal banking agencies propose raising real estate appraisal threshold to \$400,000

On July 19, 2017, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency jointly issued a notice of proposed rulemaking and request for comment that would raise the threshold for commercial real estate transactions requiring an appraisal from \$250,000 to \$400,000. For commercial real estate transactions at or below this proposed threshold, financial institutions would be required to obtain an evaluation of the real property collateral.

For purposes of the rule, "commercial real estate transactions" would be defined to include "any 'real estate-related financial transaction,' as defined in the Title XI appraisal regulations, excluding any loans secured by a 1-to-4 family residential property, but including loans that finance the construction of buildings with 1-to-4 dwelling units and that do not include permanent financing." The proposed definition would include loans that are: i) for construction, land development, and other land loans; ii) secured by farmland; iii) secured by residential properties with five or more units; or iv) secured by nonfarm nonresidential properties. However, loans that provide both initial construction funding and permanent financing and are reported as construction, land development, and other land loans during the construction phase would be excluded from the definition.

Comments on the proposal will be accepted for a period of 60 days following publication in the Federal Register. If adopted, the agencies are proposing the final rule would become effective upon publication.

[\[Federal Reserve Press Statement\]](#) [\[Notice\]](#)

## 2.3 Acting FTC Chair announces reforms for agency civil investigative demands

On July 17, 2017, Federal Trade Commission (FTC) Acting Chair Maureen K. Ohlhausen announced internal process reforms in the agency's Bureau of Consumer Protection that are intended to streamline information requests and improve transparency in investigations. The reforms are part of the agency's new internal Working Groups on Agency Reform and Efficiency to improve processes and focus resources on the public good. The process reforms include plain language descriptions of the Civil Investigative Demands (CID) process; business education materials for small businesses; more detailed descriptions of the scope and purpose of investigations; limited time periods for investigations; reduced length and complexity of CID instructions for electronically stored data; and increased response times for CIDs.

[\[Press Statement\]](#)

## 2.4 FTC announces "Stick with Security" initiative for data security protection

The Federal Trade Commission (FTC) announced the launch of its "Stick with Security" initiative on July 21, 2017, which will include a series of ten weekly blog posts on protecting and securing consumer data. The initiative is intended to reinforce guidance from the FTC's earlier "Start with Security" publication that presents ten best practices and lessons learned from closed FTC data security investigations.

[\[Press Statement\]](#) [\[Blog post\]](#)

## 2.5 Enforcement Actions

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

- The FTC charged a debt collection operation for violating the FTC Act and the Fair Debt Collection Practices Act by posing as lawyers and collecting on fake debts. Among other violations, the debt collectors falsely threatened to sue consumers or have them arrested if they did not pay. The FTC also alleges that the defendants illegally disclosed purported debts to third parties, failed to send consumers

required written notices with the debt amount and the creditor's name, and failed to give them an opportunity to

dispute the debt. At the FTC's request, a federal court temporarily halted the operation and froze its assets.

## 3. Capital markets and investment management

### 3.1 Enforcement Actions

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

- The CFTC settled charges against an individual and his three companies (Respondents) for misappropriating commodity pool funds, fraudulent misrepresentations, commingling pool funds, and acting as an unregistered commodity pool operator. The CFTC found the individual solicited more than \$375,000 from pool participants and misappropriated more than \$244,000 from the pools for personal and non-trading expenses. The Respondents agreed to the issuance of the order without admitting or denying the charges. It requires restitution of more than \$290,000 and a \$200,000 civil monetary penalty, and imposes a permanent ban from registering with the CFTC.
- At the CFTC's request, a Federal court has granted a Statutory Restraining Order freezing the assets of two individuals and an affiliated company, as well as prohibiting them from destroying their books and records, and granting the CFTC immediate access to those records, in conjunction with a CFTC complaint alleging they solicited and accepted more than \$16 million in connection with illegal binary options contracts and misappropriated the funds. The complaint also charged the two individuals and the company with acting as Futures Commission Merchants (FCM) and Commodity Trading Advisors (CTA) without registering with the CFTC. The CFTC is seeking seeks restitution to defrauded customers, disgorgement of ill-gotten gains, civil monetary penalties, permanent registration and trading bans, and permanent injunctions from future violations of the Commodity Exchange Act and CFTC Regulations.
- The Federal Reserve announced a fine of \$246 million against a foreign bank and certain of its U.S. subsidiaries for lacking adequate governance, risk management, compliance, and audit policies and procedures for safe and sound practices in the foreign exchange (FX) markets. The agency found the entity failed to detect and address its traders' use of electronic chatrooms to communicate with competitors about their trading positions. The order also requires the entity to improve its FX trading oversight and controls

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