



# The Washington Report

**Americas FS Regulatory Center of Excellence**

The week ended August 4, 2017

---

[kpmg.com](http://kpmg.com)



# Contents

<b>1. Safety and soundness</b>	<b>1</b>
1.1 Agencies issue review of shared national credit portfolio	1
1.2 Federal Reserve invites comment on corporate governance and rating system proposals	1
1.3 OCC solicits comment on revising the Volcker Rule	1
1.4 OCC issues revised Comptroller's Licensing Manual booklet	2
1.5 FSI releases first two papers in policy implementation series	2
<b>2. Enterprise and consumer compliance</b>	<b>2</b>
2.1 CFPB issues Compliance Bulletin highlights concerns around pay-by-phone fees	2
2.2 FTC announces initiative to fight against illegal robocalls	2
2.3 OCC Acting Comptroller releases statement on CFPB's arbitration rule	3
2.4 CFPB releases Data Point report and disclosure form prototypes focusing on overdrafts	3
2.5 Enforcement action	3
<b>3. Capital markets and investment management</b>	<b>4</b>
3.1 FINRA reaches agreement with SIPC to streamline reporting submissions	4
3.2 U.S. Senate confirms new CFTC chairman and commissioners	4



# 1. Safety and soundness

## 1.1 Agencies issue review of shared national credit portfolio

On August 2, 2017, the Federal Reserve Board (Federal Reserve), the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency jointly published the results of their Shared National Credit (SNC) Program Review, which assesses credit risk and trends as well as risk management practices associated with the largest and most complex credits shared by multiple regulated financial institutions.

The 2017 SNC portfolio included 11,350 credit facilities to 6,902 borrowers and totaling \$4.3 trillion, up from \$4.1 trillion in 2016. Based on the results of examinations conducted in the third quarter of 2016 and the first quarter of 2017, the review found that risk in the portfolio of large syndicated bank loans declined slightly but remains elevated, in large part due to distressed borrowers in the oil and gas sector and other borrowers exhibiting excessive leverage. In addition:

- The share of non-pass commitments decreased from 10.3 percent to 9.7 percent of the SNC portfolio;
- Leveraged lending was the primary contributor to the overall special mention and classified rate representing 64.9 percent of the total in these categories;
- Leveraged loans in the respective agent banks' lowest-rated pass category totaled \$317 billion;
- Non-bank holdings of credits rated special mention and classified fell from 60.8 percent in 2016 to 56.1 percent in 2017; and
- Underwriting improvements have put non-pass loan originations at a de minimis level.

The next report will be published following the first quarter 2018 SNC examination.

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

## 1.2 Federal Reserve invites comment on corporate governance and rating system proposals

On August 3, 2017, the Federal Reserve Board (Federal Reserve) issued two proposals for comment: i) a corporate governance proposal that would clarify supervisory expectations for financial institution boards of directors (boards), and ii) a proposed rule that would establish a new rating system for the supervision of large financial institutions. Highlights of the proposals follow.

- Corporate governance: This proposal has three parts:

- i) New guidance, applicable to large domestic bank and savings and loan holding companies and nonbank financial companies supervised by the Federal Reserve, that identifies key attributes of effective boards,
  - ii) Clarification of existing guidance for all financial institutions stating that most supervisory findings should be communicated to a firm's senior management for corrective action rather than to its board, and
  - iii) Elimination or revision of supervisory expectations for boards contained in existing Supervision and Regulation Letters (SR Letters) to better align with the proposed supervisory framework.
- New rating system: This proposal would introduce a new rating system for the supervision of large financial institutions, defined to include bank holding companies with total consolidated assets of \$50 billion or more, non-insurance, non-commercial savings and loan holding companies with total consolidated assets of \$50 billion or more, and U.S. intermediate holding companies of foreign banking organizations. The system would assign component ratings in the areas of capital planning and positions, liquidity risk management and positions, and governance and controls, including compliance with laws and regulations. The effectiveness of the boards of these institutions would be evaluated under the governance and controls components using the key attributes identified in the corporate governance proposal.

Comments will be accepted for a period of 60 days following publication in the Federal Register.

[\[Press Statement\]](#) [\[Governance Proposal 1\]](#) [\[Rating Proposal 2\]](#)

## 1.3 OCC solicits comment on revising the Volcker Rule

On August 2, 2017, the Office of the Comptroller of the Currency (OCC) issued a request for information seeking public input to assist the OCC and other agencies with determining how to revise their final regulation implementing section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, commonly known as the Volcker Rule, in order "to better accomplish the purposes of the statute." Acting on its own behalf, the OCC seeks comment on ways the federal regulatory agencies could "apply and administer" the existing rule more effectively without revising the underlying statute. Comments are due to the OCC no later than September 21, 2017.

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

#### 1.4 OCC issues revised Comptroller's Licensing Manual booklet

The Office of the Comptroller of the Currency (OCC) issued Bulletin 2017-26 on August 3, 2017 to announce the release of a revised "Failure Acquisitions" booklet. The booklet is part of the Comptroller's Licensing Manual and replaces an earlier booklet issued in April 1998. The new booklet sets forth the OCC's policies and procedures for national banks and federal savings associations seeking to participate in the Federal Deposit Insurance Corporation's (FDIC) process for resolving a failing insured depository institution (IDI). The key highlights of the booklet includes an overview of OCC policy considerations and evaluative factors for reviewing a bank's interest in acquiring a failing IDI through the FDIC's failure resolution process; guidance for banks considering a bid on a failing IDI; requirements and procedures for completing the bid process; and references to informational resources.

[\[Bulletin\]](#) [\[Booklet\]](#)

#### 1.5 FSI releases first two papers in policy implementation series

On August 2, 2017, the Bank for International Settlements' Financial Stability Institute (FSI) launched a new publication series, *FSI Insights on policy implementation*, which is intended to contribute to international discussions on policy issues and implementation challenges faced by financial services authorities. FSI further intends the series to provide information and analysis

based on experiences in different jurisdictions regarding regulatory and supervisory issues. The first two papers released with the launch include:

- *Proportionality in banking regulation: a cross-country comparison*: This paper discusses how best to tailor regulatory requirements for different types of banks by comparing proportionality approaches in Brazil, the European Union, Hong Kong, Japan, Switzerland and the United States. The paper discusses the criteria and thresholds used to differentiate banks, the regulatory standards that are subject to a proportional implementation, and notes that implementation of the proportionality strategy should respect prudential objectives and consider the competitive environment.
- *Regulatory approaches to enhance banks' cyber-security frameworks*: This paper analyses the regulatory and supervisory frameworks for banks' cyber-risk in Hong Kong, Singapore, the UK and the United States. The paper notes that the supervisory approaches to assessing banks' cyber-risk vulnerability and resilience seem to be converging towards a "threat-informed" or "intelligence-led" framework. It also offers some high-level policy considerations for implementing or enhancing cyber-risk regulation and supervision for banks.

[\[Press Statement\]](#) [\[Paper 1\]](#) [\[Paper 2\]](#)

## 2. Enterprise and consumer compliance

#### 2.1 CFPB issues Compliance Bulletin highlights concerns around pay-by-phone fees

On July 31, 2017, the Consumer Financial Protection Bureau (CFPB or the Bureau) issued Compliance Bulletin 2017-01 addressing Phone Pay Fees. The bulletin is intended to provide guidance to financial institutions and their service providers regarding fee assessments for pay-by-phone fees (phone pay fees) and the potential risks for violations of the CFPB's prohibitions against unfair, deceptive, or abusive acts or practices (UDAAP) and the Fair Debt Collection Practices Act (FDCPA) when assessing these fees. The bulletin highlights relevant examples of conduct observed during supervisory examinations and enforcement investigations that may violate Federal consumer financial law, including:

- Misrepresenting the purpose and amount of pay-by-phone fees: This can result in consumers incurring charges for services they don't need.
- Failing to disclose fees upfront and in writing: Some companies depend on representatives to inform consumers

about significant price differences between available pay-by-phone options. This may lead consumers to use more expensive options.

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

#### 2.2 FTC announces initiative to fight against illegal robocalls

On August 1, 2017, the Federal Trade Commission (FTC) announced an initiative to aid call-blocking solutions against robocallers. Under the initiative, the FTC intends to report to telecommunications carriers and other industry partners on a daily basis the phone numbers of robocallers provided by consumers when reporting Do Not Call or robocall violations to the agency. The FTC notes that unwanted and illegal robocalls are the agency's number-one complaint category, with more than 1.9 million complaints filed in the first five months of 2017 alone.

[\[Press Statement\]](#)

### 2.3 OCC Acting Comptroller releases statement on CFPB's arbitration rule

On July 31, 2017, Keith Noreika, Acting Comptroller of the Currency, issued a statement regarding the Consumer Financial Protection Bureau's (CFPB) final rule on arbitration agreements. Mr. Noreika highlighted his concern that the rule may adversely affect the institutions within the federal banking system and their customers. He suggested the rule prevents banks from using an effective risk mitigation tool and may result in decreased availability of products and services, increased related costs, fewer options to remedy consumer concerns, and delayed resolution of consumer issues.

Based on the fact the OCC was just beginning its review of the data and analysis underlying the rule, Mr. Noreika stated that he would not be petitioning the Financial Stability Oversight Council (FSOC) to stay the effective date of the rule pursuant to provisions in section 1023 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. He also acknowledged that Congress was considering use of the Congressional Review Act to overturn the rule. (The House of Representatives passed a resolution of disapproval on July 25, 2017 that would revoke the rule. The resolution has now passed to the U.S. Senate, for a vote.)

[\[Press Statement\]](#)

### 2.4 CFPB releases Data Point report and disclosure form prototypes focusing on overdrafts

The Consumer Financial Protection Bureau's (CFPB or Bureau) Office of Research released a Data Point report on August 4, 2017, focusing on "frequent overdrafters," which they defined to include accounts with a total of more than 10 overdrafts and non-sufficient funds in a 12-month period. Key findings of the report include:

- Frequent overdrafters account for nine percent of all accounts at the study banks but paid 79 percent of all overdraft and NSF fees;
- Frequent overdrafters tend to be more credit constrained than non-overdrafters or infrequent overdrafters, and they generally have lower credit scores and are less likely to have a general purpose credit card;

- The dollar amount of monthly deposits into a checking account is not strongly correlated with the number of overdrafts or NSFs incurred;
- Opted-in consumers pay significantly more overdraft fees but incur only slightly more overdrafts than consumers who are not opted-in; and
- Frequent overdrafters use their debit cards six times more often than those who do not overdraft.

Coincident with the release of the Data Point report, the CFPB also released four new prototype model forms for Know Before You Owe overdraft disclosures. The CFPB developed the prototypes through interviews with consumers, and is in the process of testing them. The CFPB states the prototypes are aimed at making it easier for consumers to understand the cost of opting-in and to evaluate the associated risks and benefits of doing so. If adopted, the CFPB intends to make the new Know Before You Owe model overdraft forms available on its website for institutions to customize with their specific program information. The new forms would replace an existing model disclosure document. The CFPB is also separately considering new overdraft regulations but is still in the "pre-rule stage."

[\[Report\]](#) [\[Prototypes\]](#) [\[Press Statement\]](#) [\[Cordray comments\]](#)

### 2.5 Enforcement action

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

- The CFPB imposed a \$4.6 million penalty on a national bank for failing to comply with the Fair Credit Reporting Act by not having adequate policies in place regarding the accuracy of information it reported about consumers' checking account behavior, failing to disclose to consumers the results of their reporting disputes, and failing to disclose key aspects of their checking account application denials. In addition to the monetary penalty, the bank is required to implement necessary changes to its policies to prevent future legal violations.

# 3. Capital markets and investment management

## 3.1 FINRA reaches agreement with SIPC to streamline reporting submissions

On August 1, 2017, the Financial Industry Regulatory Authority (FINRA) and the Securities Investor Protection Corporation (SIPC) announced that they had entered into a services agreement to simplify filing processes for FINRA member firms. In particular, the agreement is intended to ease reporting burdens and compliance costs for member firms and reduce inconsistent or incomplete filing of annual audited financial statements and supplementary reports. Under the agreement, which will become effective September 1, 2017, the firms will file their annual reports once using FINRA's existing reporting portal.

[\[Press Statement\]](#)

## 3.2 U.S. Senate confirms new CFTC chairman and commissioners

On August 3, 2017, the U.S. Senate unanimously confirmed J. Christopher Giancarlo as Chairman for the U.S. Commodity Futures Trading Commission (CFTC). Mr. Giancarlo has been serving as the CFTC's Acting Chairman since January 2017. The Senate also confirmed Brian D. Quintenz and Rostin Behnam as Commissioners. Mr. Quintenz was previously the Founder, Managing Principal, and Chief Investment Officer at Saeculum Capital Management, LLC. Mr. Behnam was previously the Senior Counsel for the Senate Committee on Agricultural, Nutrition and Forestry.

[\[Press Statement\]](#)

# Contact us

**This is a publication of KPMG's Financial Services Regulatory Risk Practice and KPMG's Americas FS Regulatory Center of Excellence**

Amy Matsuo, Principal, National Leader, Financial Services Regulatory Risk Practice

[amatsuo@kpmg.com](mailto:amatsuo@kpmg.com)

Ken Albertazzi, Partner and National Lead, Financial Services Safety & Soundness

[kalbertazzi@kpmg.com](mailto:kalbertazzi@kpmg.com)

Kari Greathouse, Principal and National Lead, Enterprise and Consumer Compliance

[cgreathouse@kpmg.com](mailto:cgreathouse@kpmg.com)

Tracy Whille, Principal and National Lead, Capital Markets and Investment Management

[twhille@kpmg.com](mailto:twhille@kpmg.com)

Deborah P. Bailey, Managing Director, Americas FS Regulatory Center of Excellence Lead

[dpbailey@kpmg.com](mailto:dpbailey@kpmg.com)

**To subscribe to the Americas FS Regulatory Center of Excellence, please visit the following Web page:**

<http://info.kpmg.us/subscribe-to-kpmg-us-fs-coe.html>

**Subscription inquiries may be directed to the Americas FS Regulatory Center of Excellence:**

[regulationfs@kpmg.com](mailto:regulationfs@kpmg.com)

**Earlier editions of The Washington Report are available at:**

<https://home.kpmg.com/us/en/home/insights/2016/04/washington-reports.html>



## Additional Contacts

### Asset Management, Trust, and Fiduciary

Bill Canellis [wcanellis@kpmg.com](mailto:wcanellis@kpmg.com)

### Bank Regulatory Reporting

Brett Wright [bawright@kpmg.com](mailto:bawright@kpmg.com)

### Capital Markets Regulation

Stefan Cooper [stefancooper@kpmg.com](mailto:stefancooper@kpmg.com)

### Capital/Basel II and III

Paul Cardon [pcardon@kpmg.com](mailto:pcardon@kpmg.com)

### Commodities and Futures Regulation

Dan McIsaac [dmcisaac@kpmg.com](mailto:dmcisaac@kpmg.com)

### Consumer & Enterprise Compliance

Stacey Guardino [sguardino@kpmg.com](mailto:sguardino@kpmg.com)

### Cross-Border Regulation & Foreign Banking Organizations

Paul Cardon [pcardon@kpmg.com](mailto:pcardon@kpmg.com)

### Financial Crimes

Terry Pesce [tpesce@kpmg.com](mailto:tpesce@kpmg.com)

### Insurance Regulation

Matthew McCorry [memccorry@kpmg.com](mailto:memccorry@kpmg.com)

### Investment Management

Larry Godin [lgodin@kpmg.com](mailto:lgodin@kpmg.com)

### Safety & Soundness, Corporate Licensing & Governance, and ERM Regulation

Greg Matthews [gmatthews1@kpmg.com](mailto:gmatthews1@kpmg.com)

### FS Regulatory Center of Excellence

Karen Staines [kstaines@kpmg.com](mailto:kstaines@kpmg.com)

[kpmg.com/socialmedia](http://kpmg.com/socialmedia)



[kpmg.com/app](http://kpmg.com/app)



All information provided here is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the particular situation.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

© 2017 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 592774