



The Washington Report

Americas FS Regulatory Center of Excellence

The week ended September 29, 2017

kpmg.com



Contents

1. Safety and soundness	1
1.1 FSOC rescinds designation of AIG	1
1.2 Agencies propose simplifications to capital rules	1
1.3 OCC releases operating plan for 2018	1
1.4 Acting Comptroller of the Currency discusses online lending	1
1.5 FDIC adopts rule on qualified financial contracts	2
1.6 Federal Reserve and FDIC extend resolution plan filing deadline for large domestic banks and foreign banks with limited U.S. operations	2
2. Enterprise and consumer compliance	2
2.1 House passes flood insurance reform bill	2
2.2 Enforcement action	2
3. Capital markets and investment management	2
3.1 SEC chairman testifies before Senate banking committee on cybersecurity issues	2
3.2 SEC announces new cyber enforcement initiatives to protect retail investors	3
3.3 SEC files for immediate effectiveness of delay to FINRA Rule 4210	3
3.4 SEC provides regulatory relief and assistance to hurricane victims	3
3.5 CFTC's Director of the Division of Enforcement discusses self-reporting and cooperation	3
3.6 CFTC approves delegated authority provisions for DCMs	4
3.7 CFTC Director of the Division of Clearing and Risk appointed	4
3.8 Enforcement actions	4

1. Safety and soundness

1.1 FSOC rescinds designation of AIG

The Financial Stability Oversight Council (FSOC) announced on September 29, 2017, that it has voted to rescind its designation of American International Group, Inc. (AIG) as a systemically important financial institution (SIFI), which subjected the company to oversight by the Federal Reserve Board and compliance with enhanced prudential standards. The FSOC voted 6-3 to rescind AIG's designation as part of an annual review.

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

1.2 Agencies propose simplifications to capital rules

On September 27, 2017, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation jointly released a proposed rule that would simplify several requirements in the agencies' regulatory capital rule.

One proposed change would replace the existing high volatility commercial real estate exposures (HVCRE) exposure category as applied in the standardized approach with a newly defined exposure category called high volatility acquisition, development, or construction (HVADC) exposure. Proposed clarifications to the scope of exposures captured by the new HVADC exposures definition are expected to result in an expanded number of covered loans, and, as such, the agencies are proposing to lower the risk-weighting in this category from 150 percent to 130 percent.

The proposed rule would not revise the current treatment of HVCRE exposures for purposes of calculating capital requirements under the advanced approaches. However, advanced approaches banking organizations would use the proposed HVADC exposure category for purposes of calculating their capital requirements under the standardized approach.

Other proposed changes would apply solely to non-advanced approaches banking organizations. In particular, the proposed rule would simplify the regulatory capital treatment for mortgage servicing assets, certain deferred tax assets arising from temporary differences, investments in the capital instruments of unconsolidated financial institutions, and minority interest.

Comments on this proposal will be accepted for 60 days after publication in the Federal Register.

[\[OCC\]](#) [\[FDIC\]](#) [\[Federal Reserve\]](#) [\[Notice of Proposed Rulemaking\]](#)

1.3 OCC releases operating plan for 2018

On September 28, 2017, the Office of the Comptroller of the Currency's (OCC) Committee on Bank Supervision (CBS)

released its bank supervision operating plan for fiscal year 2018, which outlines the supervisory priorities for the National Risk Committee, Large Bank Supervision, Midsize and Community Bank Supervision, Compliance and Community Affairs, the Office of the Chief National Bank Examiner, and the supervision of technology service providers. The priority objectives for these CBS operating units include:

- Cybersecurity and operational resiliency;
- Commercial and retail credit loan underwriting, concentration risk management, and allowance for loan and lease losses;
- Business model sustainability and viability and strategy changes;
- Bank Secrecy Act/anti-money laundering (BSA/AML) compliance management; and
- Change management to address new regulatory requirements.

[\[Press Statement\]](#) [\[Operating Plan\]](#)

1.4 Acting Comptroller of the Currency discusses online lending

Acting Comptroller of the Currency Keith A. Noreika addressed the 2017 Online Lending Policy Summit during which he discussed online lending and responsible innovation, including the opportunities and challenges facing online lenders.

Noreika shared that he sees the "the growth of online lending and marketplace lenders as the natural evolution of banking itself." He noted, however, that a "maturing industry comes with different sorts of issues than a brand new one," adding that there is uncertainty as to how "online lending companies and loans originated using new models will perform under stress." Noreika discussed how companies have adapted to changes in the market, including diversifying funding sources and changing business models.

He discussed the OCC's efforts to support innovation, stating that companies engaged in banking can seek a national bank charter under the agency's existing authority to charter full-service national banks, federal saving associations, and special purpose national banks. He stated that "chartering innovative de novo institutions through these existing authorities enhances the federal banking system, increases choice, promotes economic opportunity, and can improve services to consumers, businesses, and communities."

Finally, Acting Comptroller Noreika closed by acknowledging that fintech businesses and online lenders were “changing how financial services are delivered and, in some ways, raising the bar for what consumers of financial services should expect.”

[\[Remarks\]](#)

1.5 FDIC adopts rule on qualified financial contracts

On September 27, 2017, the Federal Deposit Insurance Corporation (FDIC) adopted a final rule that requires FDIC-supervised institutions to ensure that their qualified financial contracts (QFCs), which include derivatives, securities lending, and short-term funding transactions, are subject to temporary stays under U.S. resolution regimes. QFCs of FDIC-supervised institutions are also prohibited from allowing the exercise of default rights against, or imposing transfer restrictions on, the covered FDIC-supervised institution in the event of a bankruptcy of an affiliate of the covered FDIC-supervised institution. The final rule also amends the definitions of “qualifying master netting agreement” and related terms in the FDIC’s capital and liquidity rules to account for the final rule.

The FDIC’s rule is substantially similar to rules adopted by the Federal Reserve Board and expected to be adopted by the Office of the Comptroller of the Currency. The rule will become effective January 1, 2018.

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

1.6 Federal Reserve and FDIC extend resolution plan filing deadline for large domestic banks and foreign banks with limited U.S. operations

On September 28, 2017, the Federal Reserve Board and the Federal Deposit Insurance Corporation extended by one year the next resolution plan filing deadline for eight large domestic banks. The extension, to July 1, 2019, was granted to give the banks time to remediate any weaknesses identified in their July 2017 submissions. The agencies also granted a one-year extension, to December 31, 2018, for the next resolution plan submission deadline for 82 foreign banks with limited U.S. operations.

[\[Federal Reserve\]](#) [\[FDIC\]](#)

2. Enterprise and consumer compliance

2.1 House passes flood insurance reform bill

On September 28, 2017, the House of Representatives passed H.R. 1422, the Flood Insurance Market Parity and Modernization Act, which would promote private flood insurance markets. The bill, sponsored by representatives Dennis Ross (R-FL) and Kathy Castor (D-FL), passed on a vote of 264-155. The bill clarifies how non-government flood insurance policies can satisfy the federal flood insurance mandate for properties that are located in high-risk areas.

2.2 Enforcement action

The CFPB ordered a real estate settlement services provider to pay up to \$1.25 million in redress to consumers that were steered to a title insurer owned in part by several of the providers’ executives without receiving disclosures about the affiliation of the businesses. The consent order also required the company to disclose its interests when making referrals in future transactions.

3. Capital markets and investment management

3.1 SEC chairman testifies before Senate banking committee on cybersecurity issues

On September 26, 2017, Jay Clayton, Chairman of the Securities and Exchange Commission (SEC), testified before the Senate Committee on Banking, Housing and Urban Affairs at an SEC oversight hearing that focused on cybersecurity.

Chairman Clayton noted that the agency has a heightened focus on cybersecurity given the increased use of and dependence on data and electronic communications, the greater complexity of technologies in the financial marketplace, and the continually evolving threats from a variety of sources.

He discussed the 2016 breach of the SEC's EDGAR system and the ongoing internal review. He reiterated earlier statements that the intrusion involved the exploitation of a defect in the EDGAR system's software and that it did not expose personally identifiable information, jeopardize SEC operations, or result in systemic risk. He testified that the SEC Office of Information Technology believes that its efforts to remediate the defect were successful.

Clayton described the review as consisting of two components: the 2016 intrusion and an investigation into trading potentially related to the intrusion. He said the SEC is continuing to examine whether public companies are taking appropriate action to inform investors about cybersecurity and said the SEC will investigate companies that mislead investors in this area.

Clayton stated the SEC is working closely with other financial regulators to improve its ability to receive critical information related to cybersecurity, react to cyber threats, and harmonize regulatory approaches. In response to questions regarding data security and the SEC's implementation of its Consolidated Audit Trail (CAT) system, Clayton said that he didn't believe a "full time-out" on implementation of the system was needed but did acknowledge that the SEC should be looking at the data available and assessing whether they need certain data and whether the CAT could be phased-in.

[\[Hearing\]](#)

3.2 SEC announces new cyber enforcement initiatives to protect retail investors

On September 25, 2017, the Securities and Exchange Commission (SEC) announced the creation of a Cyber Unit as well as a Retail Strategy Task Force to address cyber-based threats and protect retail investors.

The Cyber Unit will focus the Enforcement Division's cyber-related expertise on cyber-related misconduct, including market manipulation schemes involving the spread of false information through electronic and social media; hacking; distributed ledger technology and initial coin offerings; misconduct perpetrated using the dark web; intrusions into retail brokerage accounts; and cyber threats to market infrastructure.

The Retail Strategy Task Force will develop initiatives to identify misconduct impacting retail investors. The task force will rely on the Enforcement Division's efforts against fraud targeting retail investors and leverage data analytics and technology to identify large-scale misconduct affecting retail investors.

[\[Press Statement\]](#)

3.3 SEC files for immediate effectiveness of delay to FINRA Rule 4210

On September 26, 2017, the Securities and Exchange Commission (SEC) filed a notice for immediate effectiveness of the Financial Industry Regulatory Authority's (FINRA) proposed rule change to delay implementation of certain amendments to FINRA Rule 4210 until June 25, 2018.

The SEC is also soliciting comment on the rule change and will accept submissions through October 23, 2017.

[\[Notice\]](#)

3.4 SEC provides regulatory relief and assistance to hurricane victims

On September 28, 2017, the Securities and Exchange Commission (SEC) issued an order providing regulatory relief to publicly traded companies, investment companies, accountants, transfer agents, municipal advisors and others affected by hurricanes Harvey, Irma, and Maria. The SEC order conditionally exempts affected persons from certain requirements of the federal securities laws for periods following the weather events. The SEC also adopted interim final temporary rules that extend the filing deadlines for specified Regulation Crowdfunding and Regulation A reports and forms.

[\[Press Statement\]](#) [\[Order\]](#) [\[Interim Rule\]](#)

3.5 CFTC's Director of the Division of Enforcement discusses self-reporting and cooperation

On September 25, 2017, James McDonald, Director of the CFTC's Division of Enforcement, addressed the NYU Program on Corporate Compliance & Enforcement during which he discussed the importance of self-reporting and cooperation as a law enforcement tool. He stated that the CFTC wants to promote self-reporting by recommending a significantly reduced penalty for companies and individuals that self-report.

To gain the benefits of self-reporting, the CFTC expects companies to voluntarily report wrongdoing, independent of any other legal obligation, before an imminent threat of disclosure or government investigation. Second, the company must fully cooperate throughout the investigation, including disclosing all facts relevant to the misconduct as the company becomes aware of them during its own investigation. Third, the company must timely and appropriately remediate to ensure the misconduct does not recur.

In return, the CFTC's Division of Enforcement commits to: clearly communicate with the company its expectations regarding self-reporting, cooperation, and remediation; work with the company on remediation, which will vary by case; and recommend a substantial reduction in penalties that otherwise would be applicable.

McDonald noted that these principles should not be interpreted as “giving a pass to companies or individuals” and that self-reporting and cooperation were related but distinct concepts. Self-reporting, he said, is not a “get out of jail free” card and the CFTC will investigate to confirm the scope of the wrongdoing.

[\[Speech\]](#)

3.6 CFTC approves delegated authority provisions for DCMs

On September 26, 2017, the Commodity Futures Trading Commission (CFTC) adopted final rules delegating authority to CFTC staff to notify each designated contract market (DCM) annually of whether it is a “covered DCM” as defined in CFTC Regulation 38.1051(h)(1). A covered DCM is a DCM with an annual trading volume of five percent or more of the combined annual trading volume of all DCMs. These DCMs are required to comply with enhanced requirements around the frequency of its cybersecurity testing and its use of independent contractors in the testing.

[\[Press Statement\]](#)

3.7 CFTC Director of the Division of Clearing and Risk appointed

On September 28, 2017, Commodity Futures Trading Commission (CFTC) Chairman J. Christopher Giancarlo appointed Brian A. Bussey as the Director of the agency’s Division of Clearing and Risk. Bussey, who is the current Associate Director for Derivatives Policy and Trading Practices in the Securities and Exchange Commission’s (SEC) Division of Trading and Markets, will join the CFTC on October 16. The Division of Clearing and Risk oversees derivatives clearing organizations and other market participants in the clearing process, including futures commission merchants, swap dealers, major swap participants, and large traders.

[\[Press Statement\]](#)

3.8 Enforcement actions

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

- The CFTC ordered two affiliated entities that are provisionally registered with the CFTC as swap dealers to pay a \$550,000 civil money penalty to address swap data reporting violations. The CFTC alleges the entities failed to report properly Legal Entity Identifier (LEI) information for swap transactions to a Swap Data Repository. The order also found that the bank failed to perform supervisory duties diligently by failing to enforce existing policies on LEI swap data reporting.
- The CFTC ordered a commodity pool operator (CPO) to pay a \$150,000 civil monetary penalty to settle charges that it failed to supervise its fund administrator’s operation of the commodity pool’s bank account containing pool participants’ funds. The failure in supervision allowed the fraudulent transfer of funds from the commodity pool’s bank account. The CFTC issued an order filing and simultaneously settling charges against a CFTC registered futures commission merchant for failing to diligently supervise the reconciliation of exchange and clearing fees with the amounts it ultimately charged customers for certain transactions on various exchanges. The CFTC alleged the company had no automated system in place to detect instances where it may have overcharged customers for exchange fees, resulting in overcharges to customers in excess of nearly \$3 million. The CFTC states the company has fully refunded almost all of the affected customers and has otherwise taken responsibility for the relevant remaining amounts. The order requires the company to pay a civil money penalty of \$500,000.
- The Federal Reserve fined a foreign bank and its U.S. subsidiary \$175 million for unsafe and unsound practices with regard to foreign exchange trading activities and, in particular, from deficiencies in the oversight of, and internal controls over, foreign exchange traders. The Federal Reserve found that the companies failed to detect and address traders’ misuse of confidential customer information as well as the use of electronic chatrooms to communicate trading positions to competitors.

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

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

kalbertazzi@kpmg.com

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

cgreathouse@kpmg.com

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

twhille@kpmg.com

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

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

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

Bank Regulatory Reporting

Brett Wright bawright@kpmg.com

Capital Markets Regulation

Stefan Cooper stefancooper@kpmg.com

Capital/Basel II and III

Paul Cardon pcardon@kpmg.com

Commodities and Futures Regulation

Dan McIsaac dmcisaac@kpmg.com

Consumer & Enterprise Compliance

Stacey Guardino sguardino@kpmg.com

Cross-Border Regulation & Foreign Banking Organizations

Paul Cardon pcardon@kpmg.com

Financial Crimes

Terry Pesce tpesce@kpmg.com

Insurance Regulation

Matthew McCorry memccorry@kpmg.com

Investment Management

Larry Godin lgodin@kpmg.com

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

Greg Matthews gmatthews1@kpmg.com

FS Regulatory Center of Excellence

Karen Staines kstaines@kpmg.com

kpmg.com/socialmedia



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