



The Washington Report

Americas FS Regulatory Center of Excellence

The week ended September 23, 2016

kpmg.com



Contents

1. Safety and soundness	1
1.1 Treasury announces Financial Stability Oversight Council meeting 1	
1.2 BIS releases papers on macroprudential policy	1
2. Enterprise and consumer compliance	1
2.1 CFPB Director Cordray speech before the National Association of Federal Credit Unions	1
2.2 Enforcement action	2
3. Capital markets and investment management	2
3.1 Federal Reserve Board proposes rule to further limit physical commodity trading activities by financial holding companies	2
3.2 Enforcement actions	3
4. Alternative finance	4
4.1 House passes resolution to adopt a national policy for financial technology	4

1. Safety and soundness

1.1 Treasury announces Financial Stability Oversight Council meeting

On September 22, 2016, Jacob J. Lew, Secretary of the U.S. Department of the Treasury convened a meeting of the Financial Stability Oversight Council (FSOC or Council) to:

- Discuss the FSOC's ongoing assessment of potential risks to U.S. financial stability from asset management products and activities;
- Provide an update on the progress made by the FSOC's hedge fund working group since the FSOC's previous meeting;
- Consider the Office of Financial Research's proposal to establish a permanent collection of bilateral repurchase agreement data to address previously identified data gaps;
- Receive an update from the Office of the Comptroller of the Currency on the most recent review of the Shared National Credit Program, which assessed credit risk and trends, and risk management practices associated with the largest and most complex credits;
- Receive an update from the Federal Reserve Board, Commodity Futures Trading Commission, Securities and Exchange Commission, and Federal Deposit Insurance Corporation on recent developments with respect to

standards pertaining to the resiliency, recovery, and resolution of central counterparties; and

- Vote on and approve the FSOC's budget for fiscal year 2017.

Also on September 22, the House Committee on Financial Services conducted an oversight hearing to discuss the FSOC's 2016 Annual Report, which was previously released in June 2016. [\[Press Statement\]](#) [\[Committee Hearing\]](#)

1.2 BIS releases papers on macroprudential policy

On September 23, 2016, the Bank for International Settlements (BIS) released BIS Papers No 86 containing seventeen individual papers presented at a conference on "Macroprudential policy: effectiveness and implementation challenges." The conference was conducted jointly by the BIS, the International Monetary Fund, and the Central Bank of the Republic of Turkey. Collectively, the papers analyze:

- The interaction of macroprudential policy with other policies, such as monetary policy and microprudential regulation;
- External shocks and cross-border spillover effects from macroprudential policy tools;
- The effectiveness of certain macroprudential tools; and
- Various case studies of individual country experiences.

[\[Press Statement\]](#)

2. Enterprise and consumer compliance

2.1 CFPB Director Cordray speech before the National Association of Federal Credit Unions

On September 21, 2016, Richard Cordray, Director of the Consumer Financial Protection Bureau (CFPB or Bureau), delivered a speech to the National Association of Federal Credit Unions. Director Cordray indicated that a Credit Union Advisory Council has been established to facilitate direct engagement with the CFPB and provide the CFPB with information and perspectives on consumer financial markets

Director Cordray also outlined the status of the Bureau's efforts to enhance consumer protection for certain consumer products, including:

- Prepaid accounts: The CFPB is preparing a final rule that would extend to prepaid accounts the same kinds of protections given checking accounts. These protections include error correction rights, dispute resolution rights, and access to account information. The CFPB is also considering how consumers are charged overdraft fees and the transparency of fees on prepaid accounts.
- Small-dollar loans: The CFPB has issued a proposed rule covering payday loans, vehicle title loans, and certain installment loans. The proposed rule would require lenders

to take steps to ensure consumers can afford to repay their loans; it would also restrict lenders from attempting to collect payments from consumers' bank accounts in ways that generate excessive fees.

- **Debt collection market:** The CFPB is considering a proposed rule that would prevent abusive debt collection practices. It would apply to the third-party debt collectors covered by the Fair Debt Collection Practices Act. The proposed rule would not apply to first-party debt collectors, which will be subject to a separate rule-making process.
- **Checking accounts:** The CFPB continues to encourage financial institutions to offer lower-risk consumer checking accounts. Director Cordray also reminded financial institutions of their obligation to provide accurate information and data to credit reporting agencies. [[Richard Cordray Speech](#)]

2.2 Enforcement action

The Consumer Financial Protection Bureau (CFPB or Bureau) and the Federal Trade Commission (FTC) announced the following enforcement actions in the past week:

- The CFPB filed five individual administrative lawsuits seeking civil monetary penalties and administrative orders requiring five separate auto title lending companies to correct their practices. The CFPB alleges the companies each failed to disclose annual percentage rates (APRs) alongside periodic interest rates in online advertisements of the auto title loans they offered, as required by the Truth in Lending Act.
 - The CFPB filed a complaint in federal court against a credit repair company. The CFPB alleges the company violated the unfair, deceptive, or abusive acts or practices provisions of the Consumer Financial Protection Act as well as the Telemarketing Sales Rule by: requesting and collecting fees before certain conditions were met; failing adequately to disclose monthly fees; failing to disclose the limitations of a "money-back guarantee;" and misrepresenting the benefit of the credit repair services. The complaint seeks monetary relief, injunctive relief, and civil money penalties.
- The FTC announced it had obtained a stipulated final order settling charges against a senior executive of a debt collection company. The FTC took the action against the company and two of its senior executives alleging they threatened debtors in violation of the Fair Debt Collection Practices Act. The FTC previously reached a settlement with the company and one of the executives in which they were banned from the debt collection business and prohibited from misrepresenting material facts about any good or service. Under the stipulated order, the second executive is subject to the same prohibitions and is required to pay a civil penalty of \$496,000 that will be partially suspended upon payment of \$10,000. The enforcement action is part of the FTC's Operation Collection Protection, an ongoing federal-state-local initiative to halt debt collectors from using deceptive and abusive collection practices.
 - The FTC obtained a summary judgment against five defendants engaged in a mortgage loan modification and debt relief business. The FTC alleges the defendants violated the FTC Act and the Mortgage Assistance Relief Services (MARS) Rule by making false claims regarding their ability to lower borrowers' mortgage payments and interest rates as well as their ability to prevent foreclosure, and by charging advance fees. Under the final orders, the defendants are banned from selling debt relief products or services, and prohibited from making material misrepresentations about any financial or other products or services. The order also imposes a judgment of more than \$1.7 million. The action is part of a federal-state law enforcement effort called "Operation Mis-Modification."

3. Capital markets and investment management

3.1 Federal Reserve Board proposes rule to further limit physical commodity trading activities by financial holding companies

The Federal Reserve Board issued a proposed rule on September 23, 2016, that would adopt strengthened prudential requirements

and additional limitations on physical commodity trading activities conducted by financial holding companies (FHCs). In particular, the proposed rule would:

- Require firms to hold additional capital in connection with activities involving commodities for which existing laws

would impose liability if the commodity were released into the environment;

- Tighten the quantitative limit on the amount of physical commodity trading activity FHCs may conduct;
- Rescind Federal Reserve Board orders authorizing FHCs to engage in energy tolling and energy management activities;
- Remove copper from the list of precious metals that all bank holding companies (BHCs) are permitted to own and store; and
- Establish new public reporting requirements on the nature and extent of firms' physical commodity holdings and activities.

Energy tolling involves paying a power plant owner fixed period payments. These payments cover fixed costs in exchange for the right to all or part of the plant's power output. Energy management activities involve providing transactions and advisory services to power plant owners. Both have been previously approved by the Federal Reserve Board as complementary activities related to physical commodities. The Federal Reserve Board now believes that energy tolling and energy management services do not directly support or directly relate to engaging in otherwise BHC-permissible commodity derivatives activities or other financial activities. The proposed rule would rescind the order authorizing these activities. It would also provide a transition period for firms currently authorized to conduct them.

Comments on the proposed rule will be accepted through December 22, 2016. [\[Press Statement\]](#) [\[Proposed Rule\]](#)

3.2 Enforcement actions

The Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Financial Industry Regulatory Authority (FINRA) issued the following enforcement actions in the past week:

- The SEC charged a hedge fund manager and his firm with insider trading on the basis of material nonpublic information learned in confidence from a corporate executive. The SEC alleges the fund manager used his status as one of the company's largest shareholders to gain access to confidential details about a planned asset sale from the executive. The SEC also alleges that the hedge fund manager failed to report information about holdings and transactions in securities of other publicly-traded companies that he beneficially owned, and violated federal securities laws more than 40 times in this regard. To settle charges, the SEC is seeking disgorgement of ill-gotten gains plus interest and penalties. It also seeks permanent injunctions against the fund manager and his firm, as well as an officer-and-director bar against the fund manager.

- The SEC announced that it had reached agreements with a public accounting firm to settle charges that, in separate incidences, two of the firm's former partners violated auditor independence rules by engaging in close personal relationships with client personnel. A third former partner who knew of, but did not report, the independence issues to the firm's independence group was also subject to the enforcement action. Without admitting or denying the SEC's findings, the firm agreed to pay a total of \$9.3 million to settle charges. In addition, each of the former audit partners was subject to monetary penalties and suspended from appearing and practicing before the SEC as an accountant, including not participating in the financial reporting or audits of public companies. They will be permitted to reapply for reinstatement after three years.
- The CFTC charged a foreign bank and its investment banking subsidiary with executing unlawful foreign exchange trades. The CFTC alleges the institutions executed fictitious and noncompetitive block trades of certain currency futures contracts. These trades were entered into between the institutions at beneficial prices that were more favorable than the market rate, in order to hedge the bank's cross-currency risk. Further, these block trades were fictitious sales, which caused non-bona-fide prices to be reported or recorded by the exchange. The CFTC Order requires the institutions jointly to pay a civil monetary penalty of \$5 million to settle charges. The Order also requires them to cease and desist from further violations, to strengthen their policies and procedures designed to detect, deter, and correct any potential fictitious or noncompetitive trading, and to conduct training addressing the ethics, compliance, and legal requirements with respect to fictitious or noncompetitive trading.
- The CFTC charged a commodity pool operator and its owner (the respondents) with engaging in acts that defrauded commodity pool participants, and failing to submit annual reports to the pool participants and the National Futures Association (NFA) as required by a CFTC registered Commodity Pool Operator. The respondents were also found to have made unauthorized withdrawals from the pool for their personal expenses. The CFTC ordered the respondents jointly to pay a civil monetary penalty and restitution of more than \$389,000 to settle charges. The Order also imposed permanent registration bans on the respondents and required them to cease and desist from further violations of the Commodity Exchange Act and CFTC regulations.
- The CFTC charged a company and its President with engaging in illegal, off-exchange precious metals transactions with its retail customers on a leveraged basis in violation of the Commodity Exchange Act (CEA). Under the Dodd-Frank Wall Street Reform and Consumer Protection

Act, leveraged transactions are illegal off-exchange transactions unless they result in actual delivery of metals within 28 days. No such delivery occurred in this case. Further, the company was charged with acting as a Futures Commission Merchant without being registered as such with the CFTC. In ongoing litigation, the CFTC seeks disgorgement of ill-gotten gains, civil monetary penalties, restitution, permanent registration and trading bans, as well as a permanent injunction from future violations of the CEA.

- The CFTC issued an Order filing and simultaneously settling charges against a registered Futures Commission Merchant (FCM) for failing to supervise diligently the handling of certain commodity interest accounts, for deficient risk management and credit risk practices, and for knowingly making inaccurate statements to the CFTC through the submission of required risk manuals and the Annual Chief Compliance Officer's Report. The CFTC also charged the FCM's Chief Executive Officer with supervision failures and its former Chief Risk Officer with failing to supervise the FCM's risk management program. The three are required jointly and severally to pay a civil monetary penalty of \$1.5 million. The FCM also is required to improve the implementation of its policies, procedures, and oversight practices, including strengthened procedures related to its Risk Management Program and Risk Department to prevent and detect violations of the CEA and CFTC regulations.
- The CFTC filed a civil enforcement action against an individual and his firm charging them with solicitation fraud in connection with off-exchange foreign currency transactions, and failure to register as a commodity trading advisor (CTA). The defendants allegedly solicited customers to open and deposit funds into the defendants' accounts with a brokerage services firm that provided an online forex trading platform, and to sign a limited power of attorney form that designated the defendants as the customers' agent and attorney for the purpose of buying and selling margined forex transactions for the customers' accounts. To induce customer participation, the defendants made false claims

about their performance track record and experience. Further, the defendants acted as a CTA without registering as such with the CFTC. In ongoing litigation, the CFTC separately seeks disgorgement of ill-gotten gains, restitution, civil monetary penalties, trading and registration bans, and a permanent injunction prohibiting the defendant from committing future violations of federal commodities laws.

- The CFTC issued an Order filing and simultaneously settling charges against a foreign bank for failing to create, maintain, and promptly produce required confirmations for a significant number of Exchange for Related Position (EFRP) trades in violation of CFTC Regulations. The bank, which is a provisionally registered swap dealer with the CFTC, was charged with recordkeeping violations and required to pay a civil monetary penalty of \$500,000. The Order reflects the bank's cooperation during the CFTC's investigation as well as the remedial action the bank undertook relating to its internal controls and policies for documenting and reporting confirmations for EFRPs.
- A FINRA hearing panel sanctioned a financial services firm, fined the firm \$229,000, and suspended the firm from engaging in self-offerings for two years in order to settle charges the firm engaged in misconduct, including the fraudulent sales of equity interests in the firm and in promissory notes. The firm allegedly supervised inadequately the capital raising activity and failed to provide customers with written disclosures of compensation from the sale of securities and the use of proceeds from the equity offerings. The hearing panel barred the individual serving as both the firm's Chief Executive Officer (CEO) and Chief Compliance Officer (CCO) from the securities industry for fraud and suspended a registered representative for two years for fraud. The firm, the CEO/CCO, and the registered representative were each ordered to offer rescission to defrauded customers.

4. Alternative finance

4.1 House passes resolution to adopt a national policy for financial technology

The House of Representatives passed House Resolution 835 by a vote of 385 to 4 on September 12, 2016. The Resolution expresses "the sense of the House of Representatives that the United States should adopt a national policy for technology to promote consumers' access to financial tools and online

commerce." In particular, the Resolution states the United States should:

- Develop a national policy to encourage the development of tools for consumers to learn and protect their assets in a way that maximizes the promise customized, connected devices hold to empower consumers, foster future economic growth, and create new commerce and markets;

- Prioritize accelerating the development of alternative technologies that support transparency, security, and authentication in a way that recognizes their benefits, allows for future innovation, and responsibly protects consumers' personal information;
- Recognize that technology experts can play an important role in the future development of consumer-facing technology applications for manufacturing, automobiles, telecommunications, tourism, health care, energy, and general commerce; and
- Support further innovation and economic growth and ensure cybersecurity and the protection of consumer privacy. [\[H.Res. 835\]](#)

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

Barbara C. Matthews, Managing Director, Americas FS Regulatory Center of Excellence

bcmatthews@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.

© 2016 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