



# The Washington Report

**Americas FS Regulatory Center of Excellence**

The week ended August 19, 2016

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# 1. Safety and soundness

## 1.1 FSB publishes further guidance and progress report on resolution planning

On August 18, 2016, the Financial Stability Board (FSB) published two guidance papers on resolution planning to assist authorities and firms working on ending the “too-big-to-fail” policy regime.

- *Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank (G-SIB)* addresses the risk of banks having insufficient liquidity to maintain critical operations during a resolution; [[G-SIB Report](#)]
- *Guidance on Arrangements to Support Operational Continuity in Resolution* sets out arrangements to support the continuity of critical shared services, such as information technology infrastructure and software-related services that are necessary to maintain a firm’s critical functions in resolution. [[Guidance on Arrangements Report](#)]

The FSB also published *Resilience through resolvability – moving from policy design to implementation*, its fifth report to the G20 on its progress with resolution planning. The report sets out further actions needed to implement the FSB’s Key Attributes of Effective Resolution Regimes for Financial Institutions, which provides a policy framework for the resolution of systemically important financial institutions. The FSB’s priorities for the remainder of 2016 and 2017 are to:

- Develop further guidance on central counterparty (CCP) resolution, building on the recently published discussion paper *Essential Aspects of CCP Resolution Planning*, which identifies elements that are considered to be core to the development of effective resolution strategies and plans for CCPs;
- Finalize the remaining elements of the Total Loss-absorbing Capacity (TLAC) standard, including guidance

on the implementation of internal TLAC and final proposals on TLAC holdings and TLAC disclosures;

- Develop further guidance to support the resolution planning work of authorities and firms, including on ways in which access to financial market infrastructures can be maintained in resolution and on the operational execution of bail-in; and
- Develop a methodology to assess key attributes for insurers and monitor implementation of the guidance on *Developing Effective Resolution Strategies and Plans for Systemically Important Insurers*.

Finally, the FSB’s report also presents findings from the second round of the Resolvability Assessment Process (RAP) for global systemically important banks (G-SIBs) and the initial results from the first RAP for global systemically important insurers (G-SIIs). [[Report](#)]

## 1.2 Agencies seek comment on proposed Call Report for institutions with assets below \$1 billion

The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have proposed a new Consolidated Reports of Condition and Income (Call Report) for eligible small financial institutions (FFIEC 051). They estimate these reports will decrease by 40 percent the amount of data compared with the current (FFIEC 041) Call Report. Institutions with only domestic offices and total assets of less than \$1 billion would be eligible to submit the new report. The Call Report revisions are proposed to take effect on March 31, 2017. The agencies request comments by October 14, 2016. [[FDIC - FIL-55-2016](#)]

# 2. Enterprise and consumer compliance

## 2.1 CFPB looks at consumer complaints on hurdles in applying for lower student loan payments

On August 18, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) released a student loan ombudsman report, which revealed that servicing problems impede student loan borrower access to lower loan payments. Student loan borrowers

seeking income-driven repayment plans complained to the CFPB about prolonged processing delays and wrongful rejections by their student loan servicer that led to increased interest charges and lost eligibility for certain federal benefits and protections. The Bureau also published a “Fix It Form,” which provides a simplified application process for income-driven repayment plans

and seeks to facilitate more responsive and consistent servicing; improved transparency regarding criteria for approving applications; and improved access to loans. [\[Press Statement\]](#); [\[CFPB's Student Loan Ombudsman's Midyear Report\]](#); [\[Fix It Form\]](#)

## 2.2 2015 small business, small farm, and community development lending data now available

On August 18, 2016, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, which are members of the Federal Financial Institutions Examination Council (FFIEC), jointly released aggregate data on small business, small farm, and community development lending for 2015.

Key highlights of the report are:

- An aggregate of about 6.1 million small business loans totaling \$228 billion were reported in 2015.

- Overall, more than 52 percent of reported small business loans and 61 percent of small farm loans were extended to firms with revenues of \$1 million or less.
- Among the 751 institutions reporting for 2015, the vast majority (629 institutions) reported community development lending activity. As in previous years, lenders with assets that met or exceeded the mandatory reporting threshold (\$1.221 billion in 2015) extended the vast majority of reported community development loans.
- Overall, lenders reported a fourth year of steady growth in community development lending. More than \$87 billion in community development loans were extended in 2015, a 16 percent increase over 2014. [\[Press Statement\]](#); [\[Fact Sheet on 2015 Data\]](#)

# 3. Capital markets and investment management

## 3.1 CPMI, IOSCO, BCBS, and FSB advance regulatory agenda on central counterparty resolution issues

International policymakers took four related actions regarding central counterparties (CCPs) on August 16, 2016.

- The Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) published two reports regarding resilience and resolution issues.
- The Financial Stability Board published a third report seeking comments on new proposed international standards.
- All major standard setters in this area (CPMI, IOSCO, FSB, and the Basel Committee on Banking Supervision (BCBS) released a report identifying timelines for related policy deliverables between now and year-end 2017.

The first report, *Implementation monitoring of PFMI: Level 3 assessment - Report on the financial risk management and recovery practices of 10 derivatives CCPs*, tracks the implementation of the Principles for Financial Market Infrastructures (PFMI), which are key standards for financial risk management and recovery practices. The report assessed 10 CCPs in 9 jurisdictions, using data as of June 2015. It identified shortcomings in recovery planning and credit and liquidity risk

management and articulated expectations that the shortcomings would be remedied by year-end 2016. The report also identified a number of differences in implementation outcomes across CCPs that could materially affect resilience. [\[Implementation monitoring of PFMI\]](#)

The second report, *Resilience and recovery of Central Counterparties (CCPs): Further guidance on the PFMI - consultative report*, provides more granular guidance regarding how CCPs are expected to implement key parts of the PFMI. It provides particular guidance on CCP financial risk management, including: (i) governance and disclosure relating to the CCP's risk management framework; (ii) credit and liquidity stress testing; (iii) coverage of credit and liquidity resource requirements; (iv) margin; (v) a CCP's contribution of its own financial resources to losses; and (vi) recovery planning. [\[BIS\]](#); [\[Resilience and recovery\]](#)

The third report, issued by the FSB seeks comments on *Essential Aspects of CCP Resolution Planning* in three key areas:

- (i) criteria for regulatory action in the event that the recovery process for a failing CCP is not generating appropriate results;
- (ii) the possibility for an additional required resolution buffer for CCPs; and

- (iii) loss allocation standards between defaulting and non-defaulting CCP members.

Specific issues open for comment include: tools for returning to a matched book; application of the “No Creditor Worse Off” safeguard; treatment of the CCP’s equity in resolution; and cross-border cooperation. [[Essential Aspects of CCP Resolution Planning](#)];

Finally, the FSB published jointly with the Basel Committee on Banking Supervision, CPMI and IOSCO a progress report on the agencies’ work-plan to enhance the resilience, recovery planning and resolvability of CCPs. The report articulates specific timelines for additional policy actions regarding CCP resolution issues by:

- year-end 2016 (BCBS revisions to the leverage ratio);
- early 2017 (a joint analysis of cross-border interdependencies and macroprudential issues; FSB granular guidance on resolution issues);
- mid-2017 (resilience and recovery planning guidance; a draft framework for supervisory testing; and a final standard for CCP resolution in time for the July 2017 G20 summit);
- end-2017 (a joint report assessing central clearing incentives); and
- another CPMI/IOSCO targeted implementation review (timing not specified).

[[Progress Report on the CCP Work-plan](#)]

### 3.2 CPMI-IOSCO publishes second consultative report on Harmonization of the Unique Product Identifier (UPI)

On August 18, 2016, the Bank for International Settlements’ (BIS) Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) published for comment their second consultative report on *Harmonization of the Unique Product Identifier (UPI)*. The report proposes to create a harmonized global UPI to identify over-the-counter (OTC) derivatives products reported to trade repositories.

This consultative report forms a part of the Harmonization Group’s response to the 2014 request by the FSB for global guidance on the harmonization of data elements reported to trade repositories, including the Unique Transaction Identifier (UTI) and UPI. The group seeks comments by September 30, 2016. [[Press Statement](#)]; [[Report](#)]

### 3.3 IOSCO consults on good practices for the termination of investment funds

On August 18, 2016, the International Organization of Securities Commissions (IOSCO) published a consultation report on *Good Practices for the Termination of Investment Funds*. IOSCO is consulting on 15 best practices regarding the termination of

investment funds categorized under the following broad headings:

- Disclosure at time of investment;
- Decision to terminate;
- Decision to merge;
- During the termination process;
- Specific types of investment funds.

The consultation report is open for comments until October 17, 2016. [[Press Statement](#)] [[Report](#)]

### 3.4 Proposed rule change to extend effective date of SR-FINRA-2016-028

On August 19, 2016, the Financial Industry Regulatory Authority (FINRA) proposed to extend the effective date of proposed changes to SR-FINRA-2016-028 from August 22, 2016 until October 24, 2016. This rule covers operation of the Regulation NMS (National Market System) Plan to Address Extraordinary Market Volatility. Among other things, the proposed rule change would prohibit trading in NMS (National Market System) stocks during a trading pause. It also outlines the circumstances under which such trading can resume after a trading pause.

FINRA had filed the July proposed rule for immediate effectiveness, which would have made August 22, 2016 the operative date. A comment letter had expressed concern with the short deadline. Consequently, the proposed time extension seeks to provide members with additional time to make technological changes consistent with the rule. [[SR-FINRA-2016-034](#)]

### 3.5 CFTC releases Swap Dealer De Minimis Exception Final Staff Report

On August 15, 2016, the Commodity Futures Trading Commission’s (CFTC’s) Division of Swap Dealer and Intermediary Oversight issued the Swap Dealer De Minimis Exception Final Staff Report. This Final Staff Report supplements a preliminary report issued on November 18, 2015. The current de minimis threshold for swap dealer registration of \$8 billion is scheduled to decrease to \$3 billion in December 2017. The report used available swap data, provided analysis, and discussed various alternatives to the de minimis exception.

The report also identified the following issues for CFTC consideration:

- whether to set the de minimis threshold at the current \$8 billion, allow it to fall to \$3 billion in December 2017 as scheduled, or delay the reduction while the CFTC continues to improve data quality so that it can better determine the appropriate de minimis threshold level;

- whether to exclude from an entity's de minimis calculation swaps which are traded on a Swaps Execution Facility (SEF), a Designated Contract Market (DCM), and/or swaps which are centrally cleared; and
- whether to request further information to assess if the conditions granting an exemption from the definition of a swap dealer for insured depository institutions (IDI Exclusion, granted under the Dodd-Frank Act) are overly restrictive.

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

### 3.6 Enforcement actions

The Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC) and the Federal Reserve Board (Federal Reserve) issued the following enforcement actions in the past week:

- The SEC charged a hedge fund manager and his firm with fraud for paying terminally ill individuals for the use of their names on joint brokerage accounts so that the manager could purchase investments on behalf of his hedge fund and redeem them early by invoking a survivor's option. The SEC investigation further revealed that the hedge fund manager violated the custody rule by failing to place the hedge fund's cash and securities in an account under the fund's name or in an account containing only clients' funds and securities under the investment adviser's name as agent or trustee for the client. The fund manager and his firm violated sections of the Securities Act of 1933, Securities Exchange Act of 1934, SEC's Rule 10b-5 and Rule 206(4)-2, and sections of the Advisers Act. The case is scheduled for a public hearing.
- The SEC charged a former head trader in residential mortgage-backed securities (RMBS) at an investment bank with repeatedly defrauding and misleading customers, causing them to pay higher prices. The trader was barred from the securities industry and asked to pay \$200,000 in disgorgement, \$50,000 in prejudgment interest, and a penalty of \$150,000 to settle charges. Without admitting or denying the findings, the trader agreed to the entry of the order that he violated Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5.
- A health insurance provider agreed to pay a \$340,000 penalty for illegally entering into severance agreements that required outgoing employees to waive their ability to obtain monetary awards from the SEC's whistleblower program if they file a charge or complaint against the firm. The SEC placed a cease-and-desist

order on the company. The company also agreed to inform former employees who signed the severance agreements from Aug. 12, 2011 to Oct. 22, 2015 that the company does not prohibit former employees from seeking and obtaining a whistleblower award from the SEC under Section 21F of the Securities Exchange Act.

- The CFTC filed a civil complaint charging a global bank with failing to report swap data for multiple asset classes for five days; submitting incomplete and untimely swap data; failing to supervise employees responsible for swap data reporting; having an inadequate Business Continuity and Disaster Recovery Plan; and violating a prior CFTC Order. The civil complaint seeks the following remedies: (i) appointment by the bank of a monitor to ensure compliance with reporting obligations as well as to make recommendations regarding the bank's swap data reporting activities (including its policies, procedures, infrastructure, and systems); (ii) a civil monetary penalty of either \$140,000 per violation or triple the monetary gain of each violation (whichever is greater); and (iii) an order permanently enjoining the bank from violating the CFTC Order and CFTC regulations.
- The CFTC charged an online foreign exchange broker with undercapitalization, failing to report the undercapitalization violation in a timely manner, and guaranteeing against customer losses in contravention of CFTC regulations. The CFTC complaint alleged that the broker was required to maintain adjusted net capital of approximately \$25 million on January 15, 2016. However, the broker had a shortfall that day of at least \$200 million under its adjusted net capital requirement. The CFTC sought civil monetary penalties and a permanent injunction against future violations of federal commodities laws.
- Three Texas car dealers agreed to pay a penalty of \$85,000 to settle charges that they violated a Federal Trade Commission (FTC) Order barring them from deceptively advertising the cost of buying or leasing a car. The FTC charged the car dealers with violation of a 2014 order by concealing sale and lease terms that added significant costs or limited who could qualify for vehicles at advertised prices. The order prohibits the car dealers from misrepresenting the cost of purchase with financing, the cost of leasing, or any other material fact about price, sale, financing or leasing in any advertisement for the purchase, financing, or leasing of vehicles. It also prohibits misrepresentations that any customer is likely to receive financing or leasing, including particular finance or lease terms.

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