



The Washington Report

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1. Safety and soundness

1.1 FSB launches peer review of G20/OECD Principles of Corporate Governance

The Financial Stability Board (FSB) has launched a peer review on implementation of the Principles of Corporate Governance (Principles) issued by the G20 nations and the Organization for Economic Co-Operation and Development (OECD). The Principles form part of the FSB's key standards for sound financial systems and cover a range of issues across six chapters:

- Corporate governance frameworks;
- Rights and equitable treatment of shareholders and key ownership functions;
- Institutional investors, stock markets, and other intermediaries;
- The role of stakeholders in corporate governance;
- Disclosure and transparency; and
- Responsibilities of the board.

The peer review seeks to take stock of the progress made by FSB member jurisdictions in the application of the Principles to publicly listed, regulated financial institutions primarily with regard to governance frameworks, disclosure and transparency, and responsibilities of the board. It will also inform the work that is underway to revise the OECD's Assessment Methodology used by the World Bank as the basis for country assessments for its Corporate Governance Report of Standards and Codes initiative, as well as the governance-related aspects of the FSB's work on conduct in financial institutions.

The FSB is separately inviting feedback from financial institutions, industry and consumer associations, and other stakeholders on areas such as:

- The design of corporate governance frameworks, including legal and regulatory powers, to promote transparent and fair markets, and the efficient allocation of resources;
- How the corporate governance framework should protect and facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders;
- Ways in which the corporate governance framework can recognize the rights of stakeholders and encourage active co-operation between the financial institution and stakeholders in creating wealth, jobs, and the sustainability of financial firms;
- How the corporate governance framework can ensure that timely and accurate disclosure is made on all material matters regarding the financial institution, including its financial situation, performance, ownership, and governance; and
- How the corporate governance framework can ensure the strategic guidance of the financial institution, the effective monitoring of management by the board, and the board's accountability.

The review is open for feedback through September 9, 2016. A peer review report will be published in early 2017. [\[Press Statement\]](#) [\[FSB Summary\]](#) [\[Principles\]](#)

2. Insurance

2.1 IAIS releases issues paper on cyber risk to the insurance sector

On August 12, 2016, the International Association of Insurance Supervisors (IAIS) published an "Issues Paper on Cyber Risk to the Insurance Sector." The objective of the paper is to raise awareness for insurers and supervisors of the challenges presented by cyber risk, including current and contemplated

supervisory approaches for addressing this risk. The paper builds on a 2015 survey of IAIS Members on their approaches to cyber risk, provides background on current practices, identifies examples, and explores related regulatory and supervisory issues and challenges. [\[Press Statement\]](#) [\[Access to Issues Paper\]](#)

3. Capital markets and investment management

3.1 CFTC takes actions regarding customer funds, including exemptions for Federal Reserve Banks and interpretive and no-action letters regarding money market funds for DCOs and FCMs

On August 8, 2016, the Commodity Futures Trading Commission (CFTC) announced three separate measures to enhance the protection of customer funds.

- The CFTC approved an order exempting Federal Reserve Banks that provide customer accounts and other services to registered derivatives clearing organizations (DCOs) that have been designated as financial market utilities by the Financial Stability Oversight Council from liability under the Commodity Exchange Act (CEA).
- The CFTC's Division of Clearing and Risk issued an interpretive letter (CFTC Staff Letter No. 16-69) stating that, in the staff's view, it would be inconsistent with CFTC regulations for a DCO to accept or hold initial margin in money market funds (MMFs), or to invest funds belonging to the DCO, its clearing members, or clearing members' customers in MMFs that retain authority to impose redemption restrictions. Government MMFs that do not retain the authority to impose redemption restrictions would continue to be viewed as acceptable margin collateral and investments.
- The CFTC's Division of Swap Dealer and Intermediary Oversight (DSIO) issued a no-action letter (CFTC Staff Letter No. 16-68) recommending the CFTC not take an enforcement action against a futures commission merchant (FCM) that invests its funds held in segregated accounts in MMFs that retain the authority to impose redemption restrictions, provided such investments are limited to the amount of funds the FCM holds in excess of the firm's targeted residual interest. It also recommends a no-action position for FCMs that invest customer funds in a government MMF, as defined in Securities and Exchange Commission (SEC) Rule 2a-7, without regard to CFTC Regulation 1.25 concentration limits, provided that the government MMF has \$5 billion or more in assets and does not retain authority to impose redemption restrictions.

The staff letters address (a) the acceptance or holding of MMFs as margin collateral by DCOs in light of part 39 of the CFTC Regulations, and (b) the investment of customer funds in MMFs

according to CFTC Regulation 1.25. The letters address the impact of amendments adopted by the SEC to SEC Rule 2a-7, requiring prime MMFs, and authorizing government MMFs, to retain the authority to suspend participant redemptions and to impose liquidity fees under certain defined conditions. The amendments to SEC Rule 2a-7 take effect on October 14, 2016. [\[Press Statement\]](#) [\[Exemption Order\]](#) [\[CFTC Staff Letter 16-68\]](#); [\[CFTC Staff Letter 16-69\]](#)

3.2 SEC approves FINRA Rule 4554 requiring additional order and execution reporting for NMS stocks

On August 8, 2016, the Securities and Exchange Commission (SEC) approved the Financial Industry Regulatory Authority's (FINRA) Rule 4554 requiring Alternative Trading Systems (ATSs) to submit additional order information to FINRA. The current Order Audit Trail System (OATS) rules require ATSs to record and report order-related information to FINRA. To further enhance FINRA's ability to perform order-based surveillance — including layering, quote spoofing, and mid-point pricing manipulation surveillance — FINRA proposed Rule 4554 (Alternative Trading Systems – Recording and Reporting Requirements of Order and Execution Information for NMS Stocks), which requires ATSs to report additional ATS-specific data elements in existing OATS reports for orders in NMS stocks. Rule 4554 will become effective November 7, 2016. It sets forth four categories of additional reporting requirements:

- Data to be reported by all ATSs at the time of order receipt;
- Data to be reported by all ATSs at the time of order execution;
- Data to be reported by ATSs that display subscriber orders; and
- Data specific to ATSs that are registered as ADF Trading Centers. [\[FINRA Regulatory Notice 16-28\]](#)

3.3 Enforcement actions

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

- FINRA fined a financial firm for supervisory failures with respect to the dissemination of research and trading-related information to its employees, referred to as 'hoots' or

'squawks,' over internal speakers commonly known as 'squawk boxes.' FINRA found the firm repeatedly ignored red flags, including internal audit findings and multiple internal warnings from the firm's compliance department, regarding the potential for confidential information to be disseminated to its registered representatives through hoots or their communications with customers. The firm agreed to pay a monetary penalty of \$12.5 million as well as to provide a written certification that it has adopted and implemented supervisory systems and written procedures concerning hoots that are reasonably designed to ensure compliance with FINRA rules and federal securities laws.

- The SEC charged a corporate entity with violating a key whistleblower protection rule. The firm is said to have violated securities laws by entering into severance agreements that required outgoing employees to waive their rights to a monetary recovery in the event they file a charge or complaint against the firm with the SEC or other federal

agencies. The agreement compelled employees leaving the company to waive possible whistleblower awards or risk losing their severance payments and other post-employment benefits. The firm agreed to pay a penalty of \$265,000 to settle the charges.

- The CFTC announced a U.S. District Court granted the CFTC's motion for default judgment against a company and its controlling person (the Defendants) to address the CFTC's findings they engaged in illegal, off-exchange transactions in precious metals (including gold and silver) with retail customers on a leveraged, margined, or financed basis. The company was also charged with acting as a futures commission merchant without being registered with the CFTC as required charged. The Defendants were ordered to jointly and severally pay disgorgement totaling nearly \$2.5 million and a civil monetary penalty totaling nearly \$7.5 million.

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