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# Safety & Soundness

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## FDIC Approves Rule Raising Asset Threshold for Expanded Examination Cycle for Small Institutions and Branches and Agencies of Foreign Banks

The Board of the Federal Deposit Insurance Corporation (FDIC) approved the release of a joint agency interim final rule on January 21, 2016, that raises from \$500 million to \$1 billion the total asset threshold below which an institution that meets the agency's rules (or those of the Federal Reserve Board and the Office of the Comptroller of the Currency, as appropriate) may qualify for an 18-month, on-site examination cycle. Further, the rule allows institutions with total assets of \$200 million or more but less than \$1 billion, and U.S. branches and agencies of foreign banks with total assets of less than \$1 billion, that receive a composite CAMELS or ROCA rating of "1" or "2" and meet other qualifying criteria to qualify for the 18-month examination cycle. The rules will become effective 60 days after publication in the *Federal Register*. [\[Interim Final Rule\]](#)

## FDIC Revises Proposal to Amend Deposit Insurance Assessments for Small Institutions

On January 21, 2016, the Federal Deposit Insurance Corporation (FDIC) released a notice of proposed rulemaking that would amend the deposit insurance assessment system for insured depository institutions (IDIs) with less than \$10 billion in assets (small institutions) that have been insured for at least five years. The proposal revises a proposed rulemaking previously released in July 2015 and would:

- Use a brokered deposit ratio (that treats reciprocal deposits the same as under current regulations) as a measure in the financial ratios method for calculating assessment rates for established small banks instead of the previously proposed core deposit ratio;
- Remove the existing brokered deposit adjustment for established small banks; and
- Revise the previously proposed one-year asset growth measure.

Comments will be accepted for a period of 30 days following publication in the *Federal Register*. The FDIC states that it will update the assessment calculator on its Web site to allow IDIs to estimate their assessment rates under the revised proposal. [\[Press Statement\]](#) [\[Proposed Rule\]](#)

## Treasury Seeks Comment on Evolving Treasury Market Structure

The U.S. Department of the Treasury announced on January 19, 2016, that it is issuing a Request for Information (RFI) seeking stakeholder comments on the evolving structure of the U.S Treasury market. In particular, the Treasury requests comments on changes in Treasury market structure, the implications for market functioning, and risk management policies and practices. Treasury is also seeking comment on the most effective means of providing additional information about Treasury market activity to the official sector on a regular and ongoing basis. Comments will be accepted through March 22, 2016. [\[Press Statement\]](#) [\[RFI\]](#)

# Enterprise & Consumer Compliance

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## House Committee Issues Staff Report Related to CFPB Disparate Impact Actions

The House of Representatives' Committee on Financial Services released its second Republican Staff report on the proxy methodology employed by the Consumer Financial Protection Bureau (CFPB or Bureau) to evaluate disparate impact and discretionary pricing policies within the auto lending industry. The report focuses on one particular enforcement action completed by the CFPB in December 2013. The first Staff report was released in November 2015. The Financial Services Subcommittee on Oversight and Investigation expects to conduct a hearing on the CFPB's auto-lending supervision, enforcement and rulemaking in early February. [\[Press Statement\]](#) [\[Staff Report 2\]](#)

## Enforcement Actions

The Consumer Financial Protection Bureau (CFPB or Bureau) announced that it took action against a "buy-here pay-here" car dealer to address the CFPB's findings the dealer violated the *Truth-in-Lending Act* and the *Consumer Financial Protection Act* prohibitions against unfair, deceptive, or abusive acts or practices (UDAAP) by misrepresenting finance charges and annual percentage rates (APRs) in marketing materials. Under a consent order, the dealer is required to pay \$700,000 in restitution to harmed consumers and a civil penalty of \$100,000 to settle charges. In addition, the dealer must provide consumers with certain information about their financing offer, including the actual APR, price of the car, and all finance charges, as well as obtain a signed acknowledgment from the consumer that the required information was received before or at the time financing is offered.

# Capital Markets and Investment Management

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## FINRA Trade Reporting Notice Addresses OTC Trading and Reporting in the Event of Systems Issues

The Financial Industry Regulatory Authority (FINRA) issued a Trade Reporting Notice on January 20, 2016, which requires firms to establish and enforce written policies and procedures, including a pre-determined response addressing over-the-counter (OTC) trading and reporting, in the event of a systems issue preventing the firm from reporting OTC trades within the time frame prescribed under FINRA rules. A firm's procedures will be required to address its response to a FINRA facility systems issue, as well as any issue with its own or its vendor's systems. [\[Trade Reporting Notice\]](#)

## CFTC Grants Registration to 18 Swap Execution Facilities

The Commodity Futures Trading Commission (CFTC) issued Orders on January 22, 2016, granting registration to 18 swap execution facilities (SEFs), which were previously operating under temporary registration status. With registration, the SEFs will be required to demonstrate continued compliance with all applicable provisions of the *Commodity Exchange Act* and CFTC regulations. [\[Press Statement\]](#)

## CFTC Launches Whistleblower Web Site

On January 21, 2016, the Commodity Futures Trading Commission (CFTC) announced the launch of a new Web site linked to its Whistleblower Program. The Web site ([www.whistleblower.gov](http://www.whistleblower.gov)) is intended to:

- Educate the public about the CFTC's Whistleblower Program;
- Outline whistleblower rights and protections; and
- Guide users through the process to submit a whistleblower tip and to apply for a monetary award.

The CFTC's Whistleblower Program was created by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and provides monetary awards to persons who voluntarily report violations of the *Commodity Exchange Act*, if the information leads to successful CFTC enforcement action resulting in more than \$1 million in monetary sanctions. The CFTC has announced two whistleblower awards, one in September 2015 and one in May 2014. [\[Press Statement\]](#)

## Enforcement Actions

The Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) recently announced the following enforcement actions:

- An alternative fund manager agreed to settle SEC claims that the fund manager overcharged management fees and mislead investors about the valuation of certain assets. In particular, an SEC investigation found that management fees were calculated contrary to the method described in registration statements. The firm also allegedly deviated from the disclosed valuation methodology for some of its fund holdings. The fund manager agreed to pay a penalty of \$400,000 and to refund affected investors \$5.4 million in "excessive" management fees plus \$600,000 in prejudgment interest. It also agreed to be censured and to cease and desist from further violations, without admitting or denying the SEC's findings.
- A large mortgage loan servicer agreed to settle the SEC's charges that it misstated financial results by "using a flawed, undisclosed methodology to value complex mortgage assets." The SEC states the company inaccurately disclosed to investors that it independently valued mortgage assets at fair value under the U.S. Generally Accepted Accounting Principles (GAAP) when it actually used valuations performed by a related party to which it sold mortgage servicing rights. The company's audit committee failed to review the methodology used with the company's management or with its external auditor, and the SEC found the related party's valuation deviated from fair value measures. The servicer agreed to pay a \$2 million penalty without denying or admitting the SEC's charges.
- The CFTC filed a civil enforcement action charging an individual with acting as an unregistered commodity pool operator and engaging in prohibited pool operator activities, including failing to operate his commodity pool as a separate legal entity, accepting funds from pool participants in his own name, and combining pool participants' funds with his own. The individual allegedly solicited and received approximately \$2.7 million from individuals for the purpose of trading off-exchange foreign currency contracts. A temporary restraining order was entered into, prohibiting the individual from acting in any capacity requiring a registration with the CFTC, soliciting and accepting funds to trade in commodities, and freezing his assets pending any further order from the court. The CFTC is seeking restitution, disgorgement of ill-gotten gains, trading and registration bans, injunctions against further violations of the Commodity Exchange Act, and civil monetary penalties to settle charges.

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## 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-wide Compliance & Consumer

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

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

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

**Please direct subscription inquiries to the Americas FS Regulatory Center of Excellence:**

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

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

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## **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 Mclsaac

[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**

John Schneider

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

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

Greg Matthews

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

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