



The Washington Report

Americas FS Regulatory Center of Excellence

The week ended May 5, 2017

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Contents

1. Safety and soundness	1
1.1 FDIC releases final handbook on deposit insurance for new banks	1
1.2 FSB publishes thematic peer review on corporate governance	1
1.3 OCC head steps down; Acting Comptroller appointed	1
1.4 House Financial Services Committee approves Financial CHOICE Act	1
2. Enterprise and consumer compliance	2
2.1 CFPB seeks comments on its plan for assessing the mortgage servicing rule	2
3. Capital markets and investment management	2
3.1 CFTC proposes rule amendments on CCO duties and annual reports for certain registrants	2
3.2 CFTC requests public input on simplifying rules	2
3.3 FINRA issues guidance on social media and business communications	2
3.4 Whistleblower award of more than half-million dollars for company insider	3
3.5 Jay Clayton sworn in as Chairman of SEC	3
3.6 Enforcement Actions	3
4. Insurance	3
4.1 NAIC testifies before Congress on the U.S.-EU Covered Agreement	3

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1. Safety and soundness

1.1 FDIC releases final handbook on deposit insurance for new banks

On May 1, 2017, the Federal Deposit Insurance Corporation (FDIC) issued a final handbook for new bank organizers applying for deposit insurance. The handbook provides information to organizers of de novo banks on pre-filing activities, the de novo application process, and pre-opening activities. The handbook does not establish new policy or guidance but does incorporate clarifications raised during de novo outreach meetings conducted by the FDIC, and advice shared by chief executive officers of de novo institutions.

[\[Press Statement\]](#) [\[Handbook\]](#) [\[Financial Institutional Letter\]](#)

1.2 FSB publishes thematic peer review on corporate governance

The Financial Stability Board (FSB) published a peer review on April 28, 2017 that looks at how FSB member jurisdictions have implemented the G20/Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance for publicly listed, regulated financial institutions. The review found that an unclear division of responsibility among financial regulators, overlapping requirements, gaps, or misaligned regulations can impact the effectiveness of a comprehensive corporate governance framework. The review also found that factors such as ownership and control structure, geographical presence, and stage of development could be considered in a member jurisdiction's corporate governance frameworks. The review provided recommendations in the areas of ensuring the basis for an effective corporate governance framework, disclosures and transparency, board responsibilities, shareholders rights, and the role of stakeholders in corporate governance.

[\[Press Statement\]](#)

1.3 OCC head steps down; Acting Comptroller appointed

Comptroller of the Currency Thomas J. Curry resigned on May 5, 2017, after his five-year term leading the Office of the Comptroller of the Currency (OCC) ended on April 9, 2017. U.S. Treasury Secretary Steven Mnuchin appointed Keith A. Noreika to serve as First Deputy Comptroller beginning May 5, 2017. He will also serve as Acting Comptroller of the Currency until a nominee is confirmed by the Senate. Mr. Noreika is a lawyer and law professor with extensive experience advising banks on banking regulation.

[\[OCC Press Statement\]](#) [\[U.S. Treasury Press Statement\]](#)

1.4 House Financial Services Committee approves Financial CHOICE Act

On May 4, 2017, the House Committee on Financial Services approved the Financial CHOICE Act of 2017 (H.R. 10) along party lines in a vote of 34-26. The bill now advances to the full House of Representatives for consideration. The bill is part of the Republican Party's longstanding efforts to repeal portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. It contains provisions that:

- Repeal the Volcker Rule;
- Repeal the Durbin Amendment limiting interchange fees;
- Repeal the Department of Labor Fiduciary Rule;
- Repeal the Orderly Liquidation Authority and replace it with a new chapter in the U.S. Bankruptcy Code;
- Eliminate the authority of the Financial Stability Oversight Council authority to designate nonbank systemically important financial institutions (SIFIs);
- Exempt qualifying banking organizations from the capital/liquidity/stress testing/resolution and recovery requirements, which requires at least 10 percent leverage ratio; and
- Significantly modify the structure and authorities of the Consumer Financial Protection Bureau (CFPB) including:
 - Subjecting the CFPB to the appropriations process;
 - Eliminating its supervisory/examination authority for banks and nonbanks;
 - Eliminating its UDAAP authority (unfair, deceptive, or abusive acts or practices);
 - Eliminating all authorities with regard to small dollar credit;
 - Limiting its powers to rulemaking and enforcement of the enumerated consumer protection laws though as drafted it would limit enforcement authorities to nonbanks; and
 - Prohibiting publication of the Consumer Complaints Database.

[\[Press Statement\]](#)

2. Enterprise and consumer compliance

2.1 CFPB seeks comments on its plan for assessing the mortgage servicing rule

In a May 4, 2017 blog post, the Consumer Financial Protection Bureau (CFPB or Bureau) announced that it intended to assess the effectiveness of the Real Estate Settlement Procedures Act (RESPA) mortgage servicing rule, as amended through January 2014. The assessment is being conducted as part of a Dodd-Frank Act requirement to review certain rules within five years of the effective date. The CFPB is seeking comment of its plan for the assessment, which was released in the blog post, as well as

suggestions on sources of data and information that might help with the assessment. A final report of the assessment is expected to be released by January 2019.

Among other things, the RESPA mortgage servicing rule requires servicers to provide disclosures to borrowers related to force-placed insurance, respond to errors asserted by borrowers in a timely manner, and follow certain procedures on loss mitigation applications and communications.

[\[Blog\]](#) [\[Request for Information\]](#)

3. Capital markets and investment management

3.1 CFTC proposes rule amendments on CCO duties and annual reports for certain registrants

The Commodity Futures Trading Commission (CFTC) has released a proposed rule that would amend provisions in Part 3 (Registration) of its regulations regarding chief compliance officers (CCOs) of swap dealers, major swap participants and futures commission merchants. In particular, the proposed amendments would:

- Add a definition of "senior officer";
- Clarify the duties of a CCO around establishing and administering policies and procedures, resolving conflicts of interest, and preparing the CCO Annual Report; and
- Modify the content and submission requirements of the CCO Annual Report.

The CFTC will accept comments on the proposed amendments through July 7, 2017.

[\[Press Statement\]](#) [\[Proposed Rule\]](#)

3.2 CFTC requests public input on simplifying rules

The Commodity Futures Trading Commission (CFTC) voted on May 3, 2017 to solicit public comments on simplifying and modernizing the CFTC's rules. In March 2017, the CFTC Acting Chairman J. Christopher Giancarlo announced an agency-wide

internal review of CFTC rules to identify areas that can be simplified so that compliance is less burdensome and costly. In line with this measure, the CFTC is asking for public input to identify the parts of the agency's regulations that could be reshaped and optimized, and how the regulatory framework can be applied more efficiently. Comments will be accepted through September 30, 2017. The CFTC stresses that the exercise is not about repealing or rewriting rules but rather applying existing rules in simpler ways.

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

3.3 FINRA issues guidance on social media and business communications

On April 25, 2017, the Financial Industry Regulatory Authority (FINRA) published guidance, including frequently asked questions (FAQs), regarding the use of social networking websites by member firms and their registered representatives. Through the guidance, FINRA intends to remind members that they must be able to retain all records of interactions between their registered representatives and investors related to the firm's business that occur on text messaging applications and chat services. FINRA's FAQs also address a member firm's responsibilities when it provides links to independent third-party content, including when a third party provides links to other third-party content. In its

guidance, FINRA indicates that a registered representative that "likes" an unsolicited favorable comment about him or her on social media adopts such testimonial; the testimonial then becomes subject to FINRA's communication rules, including its prohibition on the use of incomplete or misleading statements.

[\[Press Statement\]](#) [\[Regulatory Notice\]](#)

3.4 Whistleblower award of more than half-million dollars for company insider

On May 2, 2017, the Securities and Exchange Commission (SEC) announced an award of more than \$500,000 to a company insider for reporting information that prompted the SEC to investigate misconduct and levy an enforcement action. Whistleblowers may receive an award for providing original, timely, and credible information to the SEC that leads to an enforcement action. The SEC must protect the confidentiality of whistleblowers and does not disclose information that might directly or indirectly reveal a whistleblower's identity.

[\[Press Statement\]](#)

3.5 Jay Clayton sworn in as Chairman of SEC

On May 4, 2017, Jay Clayton was sworn in as the chairman of the Securities and Exchange Commission (SEC). President Trump nominated Clayton on January 20, 2017 to chair the SEC and the Senate confirmed him on May 2, 2017. Clayton was previously a partner in a law firm where his practice included advising companies on securities offerings, mergers and acquisitions, corporate governance, and regulatory and enforcement proceedings.

[\[Press Statement\]](#)

3.6 Enforcement Actions

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

- On May 4, 2017, the SEC announced that a firm and its CEO agreed to pay more than \$4 million to settle charges they misused investors' funds. The firm and the CEO allegedly used funds from new investors to repay existing investors. The SEC also asserted that the CEO took more than \$3.4 million of investor funds for personal use. The firm raised approximately \$12.5 million between November 2013 and November 2015 through the sale of unregistered notes intended to support its operations. The SEC ordered the firm to create a "Fair Fund" to return money collected in the settlement to harmed investors. The firm and the CEO agreed to pay disgorgement of approximately \$3.6 million, including interest, and a penalty of \$600,000. Without admitting or denying the allegations, the firm consented to permanent injunctions against further violations of Section 17(a)(2) and (3) and Section 5 of the Securities Act of 1933. The firm also consented to be enjoined from selling any promissory notes.
- On May 3, 2017, the CFTC filed a civil enforcement action against an individual and his company to address the CFTC's findings they defrauded 40 investors into investing in a \$13 million commodity pool trading scheme. The CFTC complaint charges the firm with commodity futures fraud and the individual with commodity pool fraud and failure to register as a commodity pool operator. The CFTC alleges that the defendant fraudulently solicited and accepted at least \$13 million from 40 individuals to trade futures contracts in a pooled fund between April 2014 and December 2016 and lost all of the funds either through trading futures contracts in his personal accounts or through misappropriation. The CFTC seeks full restitution to defrauded pool participants, disgorgement of ill-gotten gains, civil monetary penalties, permanent registration and trading bans, and a permanent injunction against future violations of federal commodities laws.

4. Insurance

4.1 NAIC testifies before Congress on the U.S.-EU Covered Agreement

On May 2, 2017, Julie Mix McPeak, the president-elect of the National Association of Insurance Commissioners (NAIC) and the Tennessee Insurance Commissioner, testified before the Senate Committee on Banking, Housing, and Urban Affairs on the Covered Agreement signed between the U.S. and the

European Union. She was one of five witnesses providing testimony before the full committee. .

In January 2017, the United States Trade Representative (USTR) and U.S. Treasury Department negotiated a covered agreement with the EU to address issues associated with certain U.S. insurers doing business in the EU. Ms. McPeak testified that ambiguity in the text of the current agreement makes it difficult to evaluate its benefits to the U.S. insurance

sector and makes it difficult to implement. She also criticized the agreement for reducing reinsurance collateral to gain EU market access. Ms. McPeak also restated the NAIC list of

provisions that it would like clarified before the agreement is implemented.

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

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