



# The Washington Report

**Americas FS Regulatory Center of Excellence**

The week ended May 26, 2017

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# 1. Safety and soundness

## 1.1 FSB releases report on governance frameworks to address misconduct risks and outlines further work

The Financial Stability Board published a report on May 23, 2017 entitled *Stocktake of Efforts to Strengthen the Governance Frameworks to Mitigate Misconduct Risks*, which describes learnings from a survey of international bodies, national authorities, industry associations, and major firms on the corporate governance frameworks they use to address misconduct risks. The report also outlines findings from a literature review and selected case study analyses on the root causes of misconduct in the financial services industry.

The report responds in part to the first of three elements that comprise the FSB's workplan to mitigate misconduct risks. The three elements include: (1) examining whether reforms to incentives, such as governance and compensation structures, are having sufficient effect on reducing misconduct; (2) improving global standards of conduct in the fixed income, commodities and currency markets; and (3) reforming major financial benchmarks. Based on the survey results, the FSB has identified three areas for further work with regard to governance frameworks:

- *Rolling bad apples*: This refers to employees who are dismissed due to misconduct at one firm (or leave under suspicion of misconduct) and obtain work at another firm. The FSB intends to determine the scale of this activity and to explore the current and potential uses of governance frameworks to improve the effectiveness of employee screening and due diligence.
- *Responsibility mapping*: The FSB will examine the ways in which responsibility mapping could be used to mitigate misconduct risk through the legal and regulatory requirements applicable to those individuals.
- *Culture*: Given the impact of a firm's culture on its governance framework, the FSB will explore how governance mechanisms, such as escalation processes, training and non-financial incentives may help mitigate misconduct risks.

A final report on the work is expected to be released by March 2018.

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

## 1.2 Basel Committee secretary general provides update on regulatory equivalence and the global regulatory system

In an address before the International Financial Services Forum on May 25, 2017, Mr. William Coen, Secretary General of the Basel Committee on Banking Supervision (Basel Committee), provided his perspective on the importance of global minimum standards predominantly for large banks with cross-border operations and provided an overview of the Basel Committee's finalization of the Basel III post-crisis reforms.

Mr. Coen suggested that minimum standards serve to level the international playing field and to promote global stability. In 2012, the Basel Committee launched a Regulatory Consistency Assessment Programme (RCAP) to document the significance of deviations from the Basel framework and to provide a scale for assessing a jurisdiction's regulatory compliance with the global standard.

Mr. Coen also provided an update on the main Basel Committee policy and supervisory issues. He stated that the Basel Committee has publicly consulted on its proposals and completed the following work:

- *Standardized Approach*: This approach for credit risk has been enhanced to increase its granularity
- *Internal Ratings-Based (IRB)*: Safeguards have been added for banks for estimating regulatory capital internally
- *Operational risk*: The Advanced Measurement Approach, which was the option for a bank to use its internal models, has been eliminated and replaced with a simpler standardized method
- *G-SIB leverage ratio surcharge*: Non-risk-based leverage ratio surcharge for global systemically important banks has been adopted to align the leverage ratio with the risk-based ratios
- *Output floor*: The Basel Committee has reviewed and consulted on output floor designs and chosen an aggregate output floor.

Mr. Coen stated that he believed the revisions will greatly enhance the global regulatory framework. He noted that the calibration of the output floor is a pending reform and "the final piece of the jigsaw."

[\[Coen Remarks\]](#)

# 2. Enterprise and consumer compliance

## 2.1 CFPB invites public comment on ATR/QM rule

In a blog post dated May 25, 2017, the Consumer Financial Protection Bureau (CFPB or the Bureau) outlined its plan to assess the effectiveness of its Ability-to-Repay/Qualified Mortgage (ATR/QM) Rule under the Truth in Lending Act (Regulation Z). The CFPB invites consumers, consumer advocates, mortgage loan creditors, industry representatives, and other interested parties to comment on the CFPB's assessment plan, suggest sources of data, offer other recommendations, and provide additional information. The comments are due 60 days after the request for comment is published in the Federal Register.

[\[Blog\]](#) [\[Request for Information on the ATR/QM Rule\]](#)

## 2.2 Department of Education amends phase II of the federal student loan servicing solicitation

On May 19, 2017, the Department of Education (DoE) amended Phase II of the federal student loan servicing solicitation. The amendment seeks to simplify loan servicing platforms and enhance customer support. Notably, the changes permit the DoE to utilize a single student loan servicer – currently nine companies are engaged in this capacity.

The amended solicitation incorporates recommendations of the federal agencies to protect borrowers and clarifies the DoE's expectations for the student loan servicer. A list of all requirements is provided in the solicitation.

Separately, U.S. Secretary of Education Betsy DeVos published an opinion piece in the *Wall Street Journal* on May 24, 2017. She offered her perspective on the benefits to consumers to be gained by the amended solicitation, including a "single consistent brand" to be provided through a single servicer, and a requirement to establish standardized procedures for handling customer calls. She added that no changes have been made to repayment plans.

[\[DoE Press Statement\]](#) [\[Fact Sheet\]](#)

## 2.3 Provisions to repeal the Durbin Amendment to be removed from the CHOICE Act

On May 24, 2017, several news sources reported that Jeb Hensarling, Chairman of the House Committee on Financial Services, has agreed to remove a provision of the Financial CHOICE Act of 2017 (H.R. 10) that would have repealed the Durbin Amendment to the Dodd-Frank Wall Street Reform and

Consumer Protection Act (Section 1075). The Durbin Amendment puts a cap on interchange fees in debit card transactions for banks with \$10 billion or more in assets. Although supportive of the repeal provision, Chairman Hensarling agreed to remove the repeal language from the legislation after significant opposition threatened successful passage of the legislation by the full House of Representatives.

## 2.4 Enforcement Actions

The Federal Trade Commission (FTC) and the Federal Reserve Board (Federal Reserve) announced the following enforcement actions in the past week:

- The FTC charged the operators of a student loan debt relief and credit repair scheme with defrauding consumers out of millions of dollars by falsely promising to reduce or eliminate their student loan debt and offering them non-existent credit repair services. The operators told the student loan borrowers that they would be enrolled in a loan forgiveness program and that their monthly payments would be applied to their loans. However, they were neither enrolled in any loan forgiveness / payment reduction programs nor were their monthly payments applied to their student loan debt. A federal court temporarily halted the operation. The agency seeks to permanently stop the alleged illegal practices and obtain refunds for affected consumers, including rescission or reformation of contracts, restitution, refund of monies paid, and disgorgement.
- Together with the State of Florida, the FTC filed a complaint against three individuals and their eleven companies for allegedly violating the FTC Act and the Telemarketing Sales Rule in conjunction with a debt relief operation that received hundreds or thousands of dollars a month from customers by falsely promising to pay, settle, or obtain dismissals of their debts and improve their credit. As a result of the defendants false promises, many of the customers found their debts unpaid, their accounts in default, and their credit scores severely damaged. A federal court has temporarily halted the debt relief operation.
- The Federal Reserve entered into an Order of Assessment of Civil Money Penalty upon the consent of a state member bank to address the agency's findings that the bank engaged in a pattern or practice of violations of the National Flood Insurance Act. The order requires the bank to pay a civil money penalty of \$1,501,000.

# 3. Capital markets and investment management

## 3.1 No further delay to effective date of the Fiduciary Rule though Department of Labor will seek public comment for revisions

U.S. Secretary of Labor Alexander Acosta published an opinion piece in the *Wall Street Journal* on May 24, 2017, in which he states that the Department of Labor will seek public comment on possible revisions to the entirety of the agency's Fiduciary Rule but will not seek to further delay the initial implementation date of the rule, which is currently set for June 9, 2017. Secretary Acosta said there was "no principled legal basis" to delay implementation but left open the possibility that the rule could be repealed in the future.

## 3.2 CFTC amends whistleblower rules to strengthen anti-retaliation protections and award review process

On May 22, 2017, the Commodity Futures Trading Commission (CFTC) approved amendments to its whistleblower rules that are intended to strengthen anti-retaliation protections for whistleblowers and improve the CFTC Whistleblower Award Program. The amendments prohibit employers from impeding whistleblowers from communicating with the CFTC staff about a possible violation and allow the CFTC to pursue action against an employer for retaliation against a whistleblower. The new amendments also: establish a claims review process to consider and issue a Preliminary Determination as to whether an award claim should be granted or denied; make changes to key areas, such as whistleblower eligibility requirements; and clarify that a whistleblower may receive an award in a Covered Action, a Related Action, or both.

[\[Press Statement\]](#) [\[Fact Sheet\]](#) [\[Final Rule\]](#)

## 3.3 BIS releases global code of conduct for foreign exchange

On May 25, 2017, the Bank for International Settlements (BIS) announced that the Foreign Exchange Working Group (FXWG),

comprised of 21 central banks working together under the auspices of the BIS Markets Committee, and a Market Participants Group consisting of currency market participants in 16 jurisdictions jointly released a code of conduct for the global wholesale foreign exchange (FX) market. The code consists of a common set of guidelines for good practices, or "responsible participation," in the FX market. These guidelines are built around six leading principles: ethics, governance, execution, information sharing, risk management, and confirmation and settlement processes.

The code applies to all FX market participants, including sell-side and buy-side entities, non-bank liquidity providers, operators of E-trading platforms, and other entities providing brokerage, execution, and settlement services. However, it is voluntary and intended to supplement local laws, rules, and regulation. The FXWG has separately released a Report on Adherence setting out a framework to promote awareness and incentivize adherence. The Code will be maintained by a new Global Foreign Exchange Committee, a global association of FX committees.

[\[BIS Press Statement\]](#) [\[Global Code\]](#)

## 3.4 Enforcement Actions

The Securities and Exchange Commission (SEC) announced the following enforcement action in the past week:

- The SEC charged four men for allegedly participating in an insider trading scheme involving tips of nonpublic information about government plans involving Medicare reimbursement rates. The individuals included a government employee, a consultant, and two investment advisory analysts who traded on the nonpublic information. Total profits in excess of \$3.9 million were gained from the illicit trades as well as management fees and performance-based compensation. The SEC is seeking disgorgement of ill-gotten gains, plus interest and penalties, and permanent injunctions.

# 4. Alternative Finance

## 4.1 FSB and CGFS publishes report on FinTech credit

On May 22, 2017, the Financial Stability Board (FSB) and the Bank for International Settlements' Committee on the Global Financial System (CGFS) jointly published a report entitled *FinTech Credit: Market structure, business models and financial stability implications*, which analyzes financial technology (FinTech) credit markets and discusses how they may affect the traditional banking sector. The main highlights are:

- FinTech credit activity varies significantly across and within countries due to different business models, including differences in types of credit and investors.
- FinTech credit markets have expanded rapidly but remain small relative to traditional credit markets.
- While digital processes could lower transaction costs for FinTech credit platforms and help to increase access to credit and investments for underserved segments of the population, these credit platforms could also face swings in investor confidence and higher financial risks.
- A bigger share of FinTech-enabled credit in the financial system could pose both financial stability benefits and risks in the future.
- The emergence of FinTech credit markets poses challenges for policymakers in monitoring and regulating such activity.

[\[FSB Press Statement\]](#) [\[FinTech Report\]](#)

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