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House Financial Services Committee Votes To Repeal And Replace Dodd-Frank

J.C. Boggs

On September 13th, the House Financial Services Committee approved the Financial CHOICE Act of 2016 to repeal and replace key parts of the 2010 Dodd-Frank law by a largely partisan vote of 30 to 26. Democrats declined to offer any amendments, and Chairman Jeb Hensarling (R-TX) ordered a vote on the bill, [H.R. 5983](#), not long after that became clear. [More »](#)

SEC Enforcement Against Private Equity Firms

Alec Koch, Carmen Lawrence, Robert K. Hurr, William G. Roche, Matthew R. Stewart, and Matthew B. Hanson

The Securities and Exchange Commission ("SEC") announced two settled enforcement actions against private equity fund advisers last month involving certain fee practices and potential conflicts of interest. Consistent with its approach in other enforcement actions against private equity firms, the SEC did not brand the fee practices and potential conflicts themselves as fraudulent. Instead, the SEC's orders framed the violations as disclosure failures. [More »](#)

FSOC's Annual Report Focuses On Cyber Threats And FinTech

Steven T. Snyder

In June 2016, the Financial Stability Oversight Council ("FSOC" or the "Council") released its Annual Report. The Council discussed the continued "pressing concern" of cyber threats and vulnerabilities and also focused on emerging innovation in FinTech and the risks imposed by new technologies. FinTech innovation is occurring with new financial products, delivery mechanisms, and business practices such as marketplace lending and distributed ledger position. The Council noted that these can lower transaction costs and improve efficiency, but also acknowledges the attendant risks. The risks include credit risk associated

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OCC Wants Lenders To Tighten Up Standards For Commercial Real Estate Loans

The SEC's Customer Protection Rule Initiative And Whistleblower Protection Efforts - What Broker Dealers Need To Know

[Contacts](#)

with the use of untested underwriting models and embedded risks that are difficult to foresee. [More »](#)

CFPB's Proposed Ban On Class Action Waivers Draws Widespread Criticism

David L. Balseer, Phyllis B. Sumner, Zachary A. McEntyre, and Brandon R. Keel

In May 2016, the Consumer Financial Protection Bureau (“CFPB”) took another step in its effort to ban class action waivers in certain pre-dispute arbitration agreements for consumer financial products and services, formally publishing the proposed rule that it had indicated last fall was forthcoming. In addition to banning class action waivers, the proposed rule would mandate new disclosures in pre-dispute arbitration agreements and would require providers of covered products or services to submit documentation to the CFPB relating to arbitration proceedings. The CFPB estimates that, if the proposed rule is finalized in its current form, it would result in an additional 6,042 class action lawsuits every five years, causing thousands of covered providers to incur billions of dollars defending the increased litigation. [More »](#)

OCC Wants Lenders To Tighten Up Standards For Commercial Real Estate Loans

Sheryl Kass and Sarah Borders

According to its Semiannual Risk Perspective for Spring 2016 (the “Semiannual Risk Report”), the National Risk Committee of the Office of the Comptroller of the Currency (“OCC”) has escalated its oversight of commercial real estate risk from “ordinary” monitoring to “additional emphasis.” The escalation of oversight is a response to the recent rapid growth of the real estate lending market fueled by a low interest rate environment, combined with the easing of underwriting standards due to increased competitive pressure within such lending market. Based on the 2015 financial data of those national banks and federal savings associations supervised by the OCC, the Semiannual Risk Report warns of trends in the commercial real estate market similar to those that appeared in 2007 prior to the recession. The OCC wants to avoid a repeat of the market's bottom falling out as it did in 2007 and is taking steps now to force conservatism in CRE lending. [More »](#)

The SEC's Customer Protection Rule Initiative And Whistleblower Protection Efforts - What Broker Dealers Need To Know

Alec Koch, Peter Isajiw, Carmen Lawrence

On June 23, 2016, the Securities and Exchange Commission (the “SEC” or the “Commission”) instituted a settled enforcement action against Merrill Lynch, Pierce, Fenner & Smith Inc. and Merrill Lynch Professional Clearing Corp. (collectively, “Merrill”), in which Merrill agreed to pay \$415 million in penalties, disgorgement, and prejudgment interest and admit liability for violating Section 15(c)(3) of the Securities Exchange Act of 1934 and Rule 15c3-3 thereunder (the “Customer

Protection Rule”), Exchange Act Rule 21F-17 (the “Whistleblower Rule”), as well as other provisions. [More »](#)

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