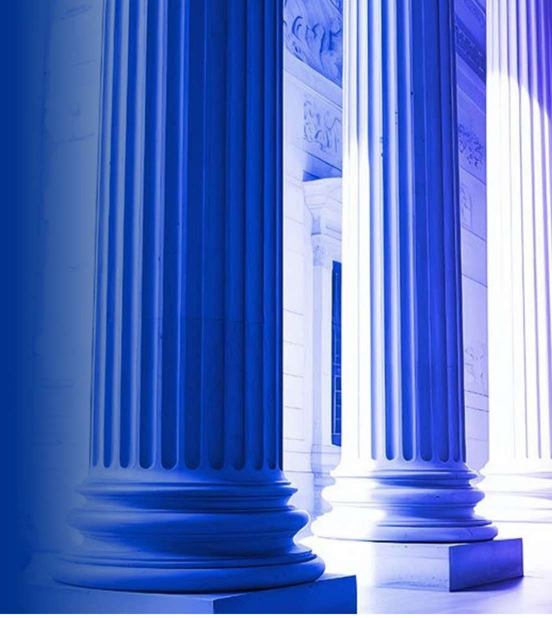
KPMG

# Regulatory Alert

Regulatory Insights



February 2024

## Regulatory Perimeter: Expanding Financial Service Coverage

***KPMG Insights:***

- ***Multi-agency Actions:*** *Acting independently and together through the FSOC, financial services regulators are "closing gaps" in regulatory coverage.*
- ***Existing Authority:*** *Regulators are using existing supervisory authorities to initiate and/or update rulemakings to address market shifts.*
- ***Stability/Systemic Risk Management:*** *Recognizes significant growth in the number and size of an array of financial service providers offering similar products and services and the increasing interconnectedness within the industry.*

---

To better identify, assess, and respond to potential risks across financial service markets, regulators are taking actions to "close gaps" in regulatory coverage as well as expand coverage within their supervisory authorities to address market changes. These actions are targeted toward an array of financial services providers (e.g., hedge funds, private equity funds, payment platforms/providers, fintechs), which have grown in both scale and volume spurred on by evolving technological and financial innovations.

Recent regulatory actions include:

### Securities and Exchange Commission

- The SEC has taken action to:
  - Adopt a final rule, jointly with the Commodity Futures Trading Commission (CFTC), to amend Form PF reporting requirements for certain investment advisers. These requirements were adopted to increase transparency of investment exposure, positions, and borrowing/financing arrangements, as well as aid FSOC in strengthening its oversight of systemic risks. (See KPMG Regulatory Alert here.)
  - Amend the definition of "dealer", expanding regulatory registration and supervisory coverage to persons, including traders and hedge funds, who engage in liquidity providing roles "as part of regular business." (See KPMG Regulatory Alert here.)

### Financial Crimes Enforcement Network

- FinCEN proposes to impose anti-money laundering/countering the financing of terrorism (AML/CFT) program and suspicious activity reporting requirements on certain investment advisers. In particular, FinCEN is seeking to "close the gap" in terms of regulatory coverage and further mitigate potentially illicit finance risks within the investment adviser industry. The proposed rule would apply to "investment advisers" that are Registered Investment Advisers (RIAs) and Exempt Reporting Advisers (ERAs), including investment advisers to private funds. (See KPMG Regulatory Alert here.)

## Consumer Financial Protection Bureau

- Acting under its authority to supervise and examine nonbank financial companies, the CFPB:
  - Issued a rule proposal that would define a market for "general-use digital consumer payment applications" and expand its supervisory authority to "large nonbank digital payment providers" – many of which are Big Tech. The proposal is intended to ensure nonbank covered providers' compliance with federal consumer financial laws (e.g., UDAAP, privacy provisions of GLBA, EFTA) as well as to promote fair competition between nonbanks and depository institutions (which also provide general-use digital consumer payment applications) and monitor emerging risks in the digital payment sector. (See KPMG Regulatory Alert here.)
  - Issued its first supervisory designation order in a contested matter. In particular, the CFPB designated a consumer finance company for supervision after determining the nonbank entity met the legal requirements for supervision (i.e., poses risks to consumers). The designation order provides transparency into how the CFPB assesses risks using consumer complaints and other factors. This action follows the CFPB's 2022 decision to utilize this authority as well as to make the determination public.

## Financial Stability Oversight Council

- The FSOC adopted:
  - An Analytic Framework, which outlines its approach to addressing potential risks to financial stability, independent of whether those risks arise from activities, firms, or otherwise. The FSOC will employ the framework across a range of financial entities (e.g., banks, asset managers, private funds, specialty finance companies), financial markets (e.g., debt, loans, equity securities), and market participants (e.g., payment, clearing and settlement activities) with the goal of identifying, assessing, and responding to "vulnerabilities" that may increase risks.
  - Updated interpretive guidance to be used in cases where the FSOC may recommend individual firms, including nonbank financial companies, be designated for supervision and enhanced prudential standards under the authority of the FRB. Certain payment, clearing and settlement activities and financial market utilities that the FSOC determines to be "systemically important" may also be designated for supervision. (See KPMG Regulatory Alert here.)

## Office of the Comptroller of the Currency

- In a recent speech, the Acting Comptroller of the Currency suggested that the line between banking and commerce is "blurring", potentially leading to financial instability. In particular, payments and private credit/equity were identified as areas that pose the greatest risk over the next decade, given the degree to which these providers have moved toward bank-like product and service offerings outside of bank supervision (e.g., "deposit-taking-like" wallets, loans). He added that "other areas, such as mortgage servicing and hedge funds, may warrant similar, or even more urgent, attention." Building on the FSOC's Analytic Framework, the OCC suggests adding a "trip wire" to trigger an assessment of a systemic risk and inform the need for an "FSOC response, ranging from interagency coordination and information sharing to initiating the process to consider a designation."

## Federal Reserve Board

- In its recent Financial Stability Report, the FRB highlights vulnerabilities to the financial system including the interconnected relationship between banks and nonbanks. "Under-regulated nonbanks" were listed in this report among the most cited potential risks to the financial system over the next 12 to 18 months (based on a survey of market participants conducted by the Federal Reserve Bank of New York). (See KPMG Regulatory Alert here.)

**For more information**, please contact Amy Matsuo.

## Contact the author:

**Amy Matsuo**
**Principal and National Leader**
Regulatory Insights
amatsuo@kpmg.com

kpmg.com/socialme