MARKET SOLUTIONS

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MARKET SOLUTIONS

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Market Solutions is a quarterly newsletter about the activities of the Financial Markets Association as well as legislative/regulatory developments of interest to FMA members. The opinions expressed in this publication are those of the authors, not necessarily those of the Association and are not meant to constitute legal advice. *Market Solutions* membership service of the **Financial Markets Association**, 333 2nd Street, NE - #104, Washington, DC 20002, ***dp-fma@starpower.net,*** 202/544-6327, ***www.fmaweb.org***. Please let us have your suggestions on topics you would like to see addressed in future issues.

What Does Blockchain Mean for Dispute Resolution?

By Nicole Moran, Ph.D.
Cornerstone Research

The word "blockchain" has gone from relative obscurity to everyday use over the last year and a half. Google searches have exploded tenfold from 2016 to the search peak in mid-December 2017. Some argue that the invention of the blockchain will change the world. Blockchain technology may or may not change the world the same way that electricity, paper, or the printing press did, but it will have an impact. The goal of this article is to examine how blockchain may impact dispute resolution, focusing on one of the most costly aspects: the collection and analysis of data and documents.

Antitrust and Competition: Disputes involving antitrust commonly involve collecting industry data from a myriad of different companies that keep their data with varying degrees of rigor. The blockchain could result in a single data collection point with information stored and recorded in a systematic and cohesive way. For example, if all grocery stores sourcing fresh produce used the same blockchain to track produce and prices from farmers through to consumers (even if for purposes of CDC detection of salmonella), collection of data for an antitrust investigation involving grocery stores would become much simpler.

Market Manipulation: Disputes involving market manipulation claims in over-the-counter (OTC) markets without a single centralized exchange (*e.g.*, FX options, physical crude oil transactions) often involve expensive and complex data collection and analyses. A centralized and distributed ledger for transactions could provide a more comprehensive, accurate repository of market transactions at a lower cost. Former CFTC Chairman J. Christopher Giancarlo has discussed the possibility of blockchain technology facilitating the OTC swap reporting regime, which would feed into the CFTC's market monitoring and enforcement efforts.

Disputes often involve econometric analysis to assess if market prices reflect the fundamental forces of supply and demand and if price changes are consistent with changes in liquidity and information. A blockchain-based data source could be a powerful tool to assess whether actual prices differ significantly from "but-for" prices (i.e., prices that would have prevailed absent the alleged wrong-doing). For example, if a series of trades are alleged to be manipulative, how

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Route to: ❑ Audit ❑ Compliance ❑ Legal ❑ Risk Management ❑ Back Office ❑ Training

Legislative/Regulatory Actions

This column was written by lawyers from Morrison & Foerster LLP to update selected key legislative and regulatory developments affecting financial services and capital markets activities. Because of the generality of this column, the information provided herein may not be applicable in all situations, and should not be acted upon without specific legal advice based on particular situations.

In this issue, we address selected developments from the federal banking regulators, the Financial Crimes Enforcement Network (FinCEN), the Office of Foreign Assets Control (OFAC), and the Consumer Financial Protection Buerau (CFPB).

FEDERAL BANKING REGULATORS

Federal Banking Agencies Release New NPR Expanding HVCRE Proposed Rule

On July 12, 2019, the federal banking agencies released a notice of proposed rulemaking ("July NPR") regarding the capital treatment of certain loans that finance land improvements but do not finance the construction of residential homes on the land. Such land development loans would be required to be risk-weighted at 150%, rather than the 100% risk-weighting generally accorded to other commercial loans. This is to distinguish such loans from loans that finance the construction of one- to four-family residential structures. The latter would continue to be risk-weighted at 100%.

By way of background, under the U.S. capital rules, acquisition, development, and construction (ADC) loans characterized as high-volatility commercial real estate (HVCRE) exposures are required to be risk-weighted at 150%, rather than the 100% risk-weighting generally accorded to other commercial loans. Section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, effective May 24, 2018, narrowed the types of ADC loans that may be subject to a heightened risk weight. In a notice of proposed rulemaking issued on September 28, 2018 ("September NPR"), the federal banking agencies proposed to revise their capital regulations to conform to the new law. The July NPR supplements the September NPR.

Both the new law and existing regulations provide an exclusion from the heightened capital treatment for credit facilities that finance the ADC of one- to four-family residential structures. After reviewing comments to the September NPR, the federal banking agencies determined that the regulatory capital treatment for lot development loans required further consideration and clarification. In this connection, the federal banking agencies proposed to prevent application of the one- to four-family exclusion to credit facilities for the financing solely of the development of land in preparation for construction of new residential structures. The proposal is based on a determination by the federal banking agencies that such loans carry greater risk.

To address this concern, the July NPR would revise the definition of an HVCRE exposure by adding the following clarification: "For purposes of this definition, credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion . . ."

The proposal aligns the one- to four-family exclusion with the instructions to the Call Report and FR Y-9C on line 1.a.(1) of Schedules RC-C and HC-C. Loans that finance both the development of land and the construction of one- to four-family residential structures would generally qualify for 100% risk-weighting. Similarly, loans that finance both the land acquisition and the construction of one- to four-family residential properties, regardless of the stage of construction on the property, also would generally qualify for 100% risk-weighting.

For a copy of the July NPR, please see: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190712a.htm. For our Client Alert discussing the July NPR: https://www.mofo.com/resources/publications/190715-federal-banking-agencies-new-hvcre.html.

Federal Reserve Proposes New Control Regulations

On July 22, 2019, five federal agencies (the "Agencies") published a final rule (the "Final Rule"), which conforms the regulations implementing the Volcker Rule to statutory modifications provided by the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Regulatory Relief Act"). The Final Rule does not change the manner in which the Volcker Rule is applied, since the relevant provisions of the Regulatory Relief Act were effective upon enactment. Consistent with the Regulatory Relief Act, the Final Rule amends the regulations in two respects:

- First, the Final Rule incorporates the Regulatory Relief Act's exclusion of certain community banks from coverage of the rule. Specifically, a community bank is not considered a "banking entity" if the community bank, and any company that controls the community bank, has both (i) total consolidated assets of $10 billion or less; and (ii) total trading assets and trading liabilities, on a consolidated basis, that are 5% or less of total consolidated assets.

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Blockchain…

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would their impact be calculated? A frequently used analytical technique is to model the evolution of the market price when the allegedly manipulative trades took place and assess what would have happened "but-for" the conduct. The additional information brought by a transparent blockchain-based data source would facilitate assessment of the impact of the alleged conduct, including whether it resulted in artificial prices.

Although a powerful data source, a blockchain may not be able to distinguish between price changes caused by new information about the physical market versus developments in the trading market. Any blockchain information may still require supplementation of information from other sources to conduct analysis of market manipulation.

Class Actions and Proxy Voting: Certification of the bulk of class actions requires a convincing argument that damages to potential class members can be calculated using a common methodology. In general, a class will not be certified if individualized inquiry is required to determine which class members were injured. For example, recent rulings against class certification in RMBS cases have found that determining the relevant ownership history of the relevant securities was impossible in some situations and required highly individualized inquiry. Distributed ledger blockchain technology that cleanly tracks ownership may alleviate the need for individualized inquiry in some instances.

Participants in the securities markets have been debating the role that blockchain may or may not play in the recordkeeping and "tracing" of shares. Under the current system, most shares are held in "street name," meaning that a depository, not the investor, is the owner of record. Investors are "beneficial owners," receiving the economic benefits of ownership by virtue of having a claim known as a "securities entitlement" against an intermediary, such as a broker or bank, who in turn holds an entitlement against the depository.[1] These entitlements are not claims to specific earmarked shares, and are not necessarily even backed by shares held by the intermediary. When shares change hands due to trade settlements, bookkeeping entries are made at the depository and on the intermediary's books, but there is no change in record ownership. This makes it difficult, if not impossible, to "trace" shares held in investor accounts backwards in time to determine whether the shares are "traceable" to a particular offering.

This has important implications for securities litigation, where legal standing for some categories of claims requires tracing. Moreover, if the intermediary lends out shares, the beneficial owner still holds a claim against the intermediary even though the intermediary no longer holds shares at the depository. As a result of stock lending and short selling, the number of shares held by beneficial owners generally exceeds the number of shares outstanding. This creates logistical challenges for the proxy voting process.[2]

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"Some argue that the invention of the blockchain will change the world."

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In principle, these issues may be addressed if the existing system were replaced with an alternative recordkeeping system that tracks ownership at the level of the beneficial owner, a move that might be facilitated by blockchain technology. An open question is whether such a fundamental change in the legal structure of ownership would be feasible, and the extent to which it might undermine the efficiencies associated with the current net settlement system.

Other proponents of blockchain have discussed how proxy voting complexities may be improved by using blockchain technology. Vice Chancellor J. Travis Laster of the Delaware Court of Chancery gave a speech titled "The Block Chain Plunger: Using Technology to Clean up Proxy Plumbing and Take Back the Vote," where he discussed various options to use blockchain technology in proxy voting.[3] A recent *Barron's* article titled "Three Proxy Votes that Went Bad" described other examples of potential concerns with proxy voting complexities. One of the examples included T. Rowe Price Group's unintentional vote for Michael Dell's bid to take his computer company private when T. Rowe Price Group was actually opposed to the private takeover.[4] Another example was Taser's 82 million proxy votes when the company only had 61 million shares outstanding, which resulted from rampant short selling and votes received from both lenders and borrowers of the stock. The final example involved a vote by Procter & Gamble (P&G) shareholders against an activist hedge fund Trian Fund Management and its CEO. P&G ultimately invited the CEO to the board because the vote counts were so close. However, millions of votes were apparently invalidated and not counted due to complications from using Internet systems, mismatched voter names, and other synchronization issues with ballot and proxy paperwork. Depending on the blockchain technology implemented, some of the complexities related to proxy voting may be alleviated because ownership could be recorded in one location and voting could be done on the blockchain.

Class Action Settlement: Many class actions are resolved by settlement where defendants agree to pay plaintiffs a lump sum. That payment needs to be distributed to all named and unnamed plaintiffs in the suit—often numbering in the thousands of plaintiffs. The process of identifying and contacting all plaintiffs and ultimately distributing the settlement amount can

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cost hundreds of thousands of dollars because entities use different data collection systems and the end investor is often difficult to identify. Just determining the addresses of the parties to notify is an expensive process. Blockchain technology may alleviate such costs by keeping an end-to-end record of all entities that would be considered plaintiffs in a class action.

Conclusion: Blockchain has the potential to change dispute resolution as much as electronic discovery did. Centralized and distributed ledgers of market and financial data may allow for more efficient collection and analyses of crucial data in a variety of disputes.■

[1] Russell A. Hakes, *UCC Article 8: Will the Indirect Holding of Securities Survive the Light of Day*, 35 LOY. L.A. L. REV. 661 (2002), http://digitalcommons.lmu.edu/llr/vol35/iss3/2.

[2] Sec. & Exch. Comm'n, *Concept Release on the U.S. Proxy System*, 17 CFR Parts 240, 270, 274, and 275, July 14, 2010, https://www.sec.gov/rules/concept/2010/34-62495.pdf.

[3] Vice Chancellor J. Travis Laster, *The Block Chain Plunger: Using Technology to Clean Up Proxy Plumbing and Take Back the Vote*, Keynote Speech, Council of Institutional Investors, Chicago (Sept. 29, 2016), https://www.cii.org/files/09_29_16_laster_remarks.pdf.

[4] Vito J. Racanelli, *"Three Proxy Votes That Went Bad*," BARRON'S, July 6, 2018, https://www.barrons.com/articles/three-proxy-votes-that-went-bad-1530924007.

This article was originally published by the ABA's Women Advocate newsletter in December 2018. For more information, contact Nicole Moran at nmoran@cornerstone.com.

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Directory

FMA will distribute the **2019 Membership Directory** next month. The Directory will include each member's full name, accreditation(s), title/department, mailing address (including floor/suite # or mail sort/code), phone number, cell number (if used for business), email and firm web site (if provided).

Supplementary sections will include a calendar of upcoming FMA events and a listing of various regulatory contacts.

Members were emailed on September 10 and given 72 hours to correct their information on file and/or provide missing data. A "last chance" email is going out in the next several days to non-responders with a 48-hour response request; otherwise, your information on file will be included in the directory. So, please respond ASAP by email (**dp-fma@starpower.net** – easiest!) or phone (202/544-6327). FMA wants your directory to be as accurate as possible...submit your information right away.

Who's News

Tracy Brock has been promoted to EVP, CCO at Bank of the West.

Brian Bussey, Director of the Division of Clearing and Risk at the CFTC, has retired after more than two decades of federal government service. Congrats and best wishes, Brian!

Tom Christel, formerly Compliance Officer at E*TRADE Financial Corporation, retired in August. Congrats, Tom!

Robert A. Cohen, Chief of the SEC's Division of Enforcement's Cyber Unit, has left the agency after 15 years of service. Mr. Cohen was the first Chief of the Cyber Unit, created in 2017.

Vanessa Countryman has been appointed Secretary of the SEC. She has served as Acting Secretary since March 2019.

Trevor Cross has been named Capital Markets Compliance Officer at Frost Bank.

James M. Daly, Associate Director at the SEC's Division of Corporation Finance, will retire at the end of this month after more than 38 years of service at the agency. Congrats and best of luck, Jim!

Carlo di Florio has joined ACA Compliance Group as Partner and Global Chief Services Officer. Previously, Carlo was Chief Risk & Strategy Officer and EVP, Shared Services at FINRA and prior to that, Director of OCIE at the SEC.

Doug Edwards has been named EVP and Interim General Counsel at Wells Fargo & Company.

Peter Foye has been promoted to Director, Financial Crimes Unit – AML and Sanctions at PricewaterhouseCoopers LLP (PwC).

Cameron Funkhouser, FINRA's EVP, Office of Fraud Detection and Market Intelligence, has announced his retirement after more than 35 years of service. Cam will remain in his position until the end of the year.

Daniel Gorfine, the CFTC's first Chief Innovation Officer and Director of LabCFTC, has departed the agency to return to the private sector.

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- Second, the Final Rule incorporates the Regulatory Relief Act's provisions alleviating the restrictions on banking entities using the same name as hedge funds and private equity funds. This restriction appears in two places in the Volcker Rule and its implementing regulations: (i) as one of the conditions to an exemption referred to as the "Asset Management Exemption"; and (ii) within the definition of the term "sponsor."

Under the Regulatory Relief Act and the Final Rule, a banking entity that serves as an investment advisor to a covered fund is permitted to use the same name as such fund and still rely on the Asset Management Exemption (assuming all other conditions are met) if the banking entity (i) is not an insured depository institution (IDI), does not control an IDI, and is not a foreign banking organization; and (ii) does not use the same name (or a variation thereof) as an IDI, a company that controls an IDI, or a foreign banking organization. In addition, as is the case under the existing regulations, the Regulatory Relief Act and the Final Rule do not permit a covered fund to use the term "bank" in its name, where the banking entity sponsoring, organizing, offering, or investing in the covered fund relies on the Asset Management Exemption.

Under the Volcker Rule, a banking entity was deemed to be a sponsor of a hedge fund or private equity fund if it used the same name as the fund (or a variation thereof) for corporate, marketing, promotional, or other purposes. The Regulatory Relief Act liberalized the naming restriction contained in the definition of the term "sponsor" to the same extent as the restriction was liberalized for the Asset Management Exemption. The Final Rule adopts the same approach in the regulations.

The Final Rule is available at: https://www.govinfo.gov/content/pkg/FR-2019-07-22/pdf/2019-15019.pdf. For more information on the Final Rule, please see our Client Alert: https://www.mofo.com/resources/publications/190724-agencies-conforming-volcker-rule-regulations.html.

OCC and FDIC Adopt Volcker Rule Amendments

On August 20, 2019, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) approved a final rule (the "2019 Final Rule") to amend the rules implementing Section 13 of the Bank Holding Company Act of 1956 (the "Volcker Rule"). It is expected that the other three federal agencies responsible for implementing the Volcker Rule (together with the OCC and FDIC, the "Agencies") will approve the 2019 Final Rule soon. The Agencies also announced that they plan to propose further amendments to certain fund-related provisions of the Volcker Rule in a separate rulemaking.

The 2019 Final Rule will be effective on January 1, 2020. However, banking entities will not be required to comply with the 2019 Final Rule until January 1, 2021 (the "Compliance Date"). Prior to the Compliance Date, banking entities may voluntarily comply, in whole or in part, with the 2019 Final Rule. The following is a brief summary of the most significant changes brought by the 2019 Final Rule:

- As in the proposed rule, the 2019 Final Rule segments banking entities based on their level of trading assets and liabilities into three categories (those with "significant trading assets and liabilities," "moderate trading assets and liabilities," and "limited trading assets and liabilities") and subjects banking entities with higher levels of trading assets and liabilities to more stringent requirements. Banking entities with the limited trading assets and liabilities are presumed to be compliant with the Volcker Rule and will not have an obligation to demonstrate compliance on an ongoing basis (unless compliance with requirements applicable to other banking entities is required by an applicable Agency). In an important change from the proposed rule, the 2019 Final Rule raises the threshold for determining whether a banking entity has significant trading assets and liabilities to trading assets and liabilities equal to or greater than $20 billion.
- The 2019 Final Rule abandons the "Accounting Test," included in the proposed rule, for determining whether a trade is for a trading account and is therefore considered proprietary trading. Instead, the 2019 Final Rule retains the original "Purpose Test" with two important changes: (1) the "Purpose Test" will not

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FMA Welcomes New Members

Christine Ayako	**Dechert LLP**
Karen Alerte	**CenterState Bank**
Timothy Blank	**Dechert LLP**
Hilary Bonaccorsi	**Dechert LLP**
Carolyn Campbell	**Emerging Capital Partners**
Katrina Carroll	**LPL Financial**
Daniel Chaudoin	**WilmerHale**

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apply to a banking entity that is subject to the "Market Risk Capital Rule Test" (or elects to be subject to it); and (2) the 2019 Final Rule eliminates the presumption that a trade is (subject to rebuttal) for the trading account if the banking entity holds the financial instrument (or the risk of the trade) for fewer than 60 days and substitutes in its place a new (rebuttable) presumption that financial instruments held for 60 days or more (during which substantially all of the risk is not transferred) do not meet the "Purpose Test,"

- The 2019 Final Rule expands the exclusions from the definition of proprietary trading to include trading of foreign exchange forwards, foreign exchange swaps, and physically settled cross-currency swaps pursuant to a liquidity management plan; erroneous trades; matched swaps; hedges of mortgage servicing rights or assets; and trades of financial instruments that are not trading assets or liabilities.
- The underwriting and market making exceptions to the prohibition on proprietary trading require that such activities are designed not to exceed the reasonably expected near-term demands of clients, customers, or counterparties. Consistent with the proposed rule, but with some important modifications, the 2019 Final Rule adopts a presumption of compliance with this condition as long as certain conditions are met.
- Additional amendments to the Volcker Rule were adopted which apply exclusively to foreign banking entities (*see below*).

For a copy of the 2019 Final Rule, please see: https://www.fdic.gov/news/board/2019/2019-08-20-notice-dis-a-fr.pdf. For more information on the 2019 Final Rule, please see our Client Alert: https://www.mofo.com/resources/publications/190826-amendments-volcker-rule-regulations.html.

Volcker Rule Amendments Hold Significant Implications for Foreign Banking Entities

Further, a number of provisions in the 2019 Final Rule are of particular relevance to foreign banking entities. The following is a brief summary of those changes:

- As in the proposed rule, the 2019 Final Rule segments banking entities based on their level of trading assets and liabilities into three categories (those with "significant trading assets and liabilities," "moderate trading assets and liabilities," and "limited trading assets and liabilities") and subjects banking entities with higher levels of trading assets and liabilities to more stringent requirements. Banking entities with the limited trading assets and liabilities are presumed to be compliant with the Volcker Rule and will not have an obligation to demonstrate compliance on an ongoing basis (unless compliance with requirements applicable to other banking entities is required by an applicable Agency). For a foreign banking organization (FBO), trading assets and liabilities are the trading assets and liabilities (excluding U.S. government and government agency securities) of the combined U.S. operations of the top-tier FBO (including all subsidiaries, affiliates, branches, and agencies of the FBO operating, located, or organized in the United States). Thus, this tailoring methodology will have the effect of placing many FBOs, except those with a large U.S. presence, into the limited trading assets and liabilities category.
- With respect to the exemption from the proprietary trading restrictions for trading by a foreign banking entity outside the United States (the so-called "TOTUS exemption"), under the 2019 Final Rule, it is no longer required that trades not be conducted with or through a U.S. entity. In addition, to rely on the TOTUS exemption, employees of the foreign banking entity or its affiliate that arrange, negotiate, or execute the trade no longer must be outside the United States. Instead, under the 2019 Final Rule, only the employees involved in the decision to make the trade may not be located in the United States. The 2019 Final Rule also eliminates the requirement that no financing for the purchase, sale, or investment be provided by any branch or affiliate of the foreign banking entity located in the United States.
- Under the Volcker Rule, certain covered fund activity involving a foreign banking entity is permissible if it meets the requirements of the exemption for covered fund activity that occurs solely outside the United States (the so-called "SOTUS covered fund exemption"). The 2019 Final Rule eliminates one of the requirements, i.e., that no financing for the ownership or sponsorship of the covered fund be provided by a branch or affiliate of the foreign banking entity located or organized under the laws of the United States.
- The 2019 Final Rule also extended the no-action relief for certain foreign excluded funds that meet certain conditions until July 21, 2021. A foreign excluded fund is a fund (1) in which a foreign banking entity invests or that it sponsors; (2) that is organized under the laws of a foreign jurisdiction; (3) the ownership interests of which are offered and sold solely outside the United States; and (4) that is, or holds itself out as being, an entity or arrangement that raises money from

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investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments.

For a copy of the 2019 Final Rule, please see: https://www.fdic.gov/news/board/2019/2019-08-20-notice-dis-a-fr.pdf. For a more information on the 2019 Final Rule's implications for foreign banking entities, please see our Client Alert: https://www.mofo.com/resources/publications/190904-volcker-rule-foreign-banking-entities.html.

BSA/AML

Improving Transparency of Risk-Focused BSA/AML Supervision

The Federal Reserve, the FDIC, the OCC, the NCUA, and FinCEN (the "Agencies") issued on July 22, 2019, a joint statement clarifying their risk-based approach to the examination of banks' BSA/AML compliance programs. The statement does not establish new requirements; however, it confirms that the Agencies are utilizing a risk-focused approach to planning and performing BSA/AML examinations. In a related press release, FinCEN Director Kenneth A. Blanco emphasized that the Agencies "recognize that not all financial institutions share the same risk profile" but that the Agencies "are working to ensure that regulators are following a common process for assessing compliance."

The joint statement is available at https://www.fincen.gov/sites/default/files/2019-07/Joint%20Statement%20on%20Risk-Focused%20Bank%20Secrecy%20Act-Anti-Money%20Laundering%20Supervision%20FINAL.pdf.

New FinCEN Division Targets Foreign Money Laundering Threats

FinCEN announced on August 28, 2019, the creation of a new division that will be responsible for implementing targeted investigation strategies based on FinCEN's implementation and enforcement authorities under the BSA to combat money laundering and counter the financing of terrorism (AML/CFT) and related crimes in the United States and abroad. The new division is called Global Investigations Division (or GID) and will work more closely with foreign counterparts to coordinate actions against AML/CFT-related threats. The GID will be led by Matthew Stilitz, a former Principal Deputy Chief in the Department of Justice's Criminal Division.

The FinCEN announcement is available at https://www.fincen.gov/news/news-releases/new-fincen-division-focuses-identifying-primary-foreign-money-laundering-threats.

ECONOMIC SANCTIONS

OFAC Issues "CBW Act Directive"

On August 3, 2019, OFAC issued the "CBW Act Directive," which (1) opposes loans and other assistance to Russia by international financial institutions like the World Bank, (2) prohibits U.S. banks from participating in the primary market for non-ruble-denominated bonds issued by the Russian sovereign and lending non-ruble denominated funds to the Russian sovereign, and (3) prohibits any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the directive's prohibitions, as well as any conspiracy formed to violate any of these prohibitions.

These prohibitions pertain exclusively to bonds and loans denominated in currencies other than rubles, and furthermore, the bond-related restriction applies only to the primary market, which leaves U.S. banks free to deal in secondary trading.

For an overview of the CBW Directive, please visit our client alert at https://www.mofo.com/resources/publications/190806-sanctions-on-russia.html.

OFAC Amends the Cuban Assets Control Regulations

On September 4, 2019, OFAC amended the Cuban Assets Control Regulations (CACR) to further implement portions of the president's foreign policy toward Cuba. OFAC stated that the purpose of the amendment is to: (1) impose new requirements and limitations on remittances to Cuba; and (2) revise the so-called "U-turn" general license to eliminate the authorization for banking institutions subject to U.S. jurisdiction to process certain kinds of financial transactions involving Cuba.

These amendments mark yet another step by the Trump Administration to further isolate the Cuban regime. Previously, on June 5, 2019, OFAC restricted certain travel to Cuba by removing an authorization for group "people-to-people" educational travel. The Treasury changes announced on September 4, 2019 will take effect on October 9, 30 days from the date the regulations were published in the *Federal Register*.

OFAC issued several FAQs to explain what it did and why at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faqs_new.pdf.

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President Issues Executive Order "Modernizing Sanctions to Combat Terrorism"

On September 10, 2019, the president issued a new executive order expanding both the Department of State's and the Treasury's authorities to target terrorists and their supporters, including by authorizing correspondent account or payable-through account sanctions on any foreign financial institution that knowingly conducts or facilitates, after the date of the new executive order, any significant transaction for or on behalf of any Specially Designated Global Terrorist. The order and accompanying Treasury action also added a number of individuals to OFAC's Specially Designated Nationals List.

Specifically, the new order (1) gives the Treasury and the State Department expanded authority to target terrorist leaders and those who participate in terrorist training, as well as allowing secondary sanctions against foreign financial institutions that knowingly aid those sanctioned as terrorists and (2) rescinds the Middle East Peace Executive Order 12947, issued by President Bill Clinton in 1995, rolling those anti-terrorism authorities under the new Executive Order to allow for a single, unified counterterrorism sanctions program.

In its first use of these authorities, OFAC sanctioned entities related to 11 terrorist organizations, including al-Qaida, Hamas, the Islamic State militant group, and Iran's Quds Forces, and the State Department designated a Syria-based al-Qaida affiliate group.

CFPB UPDATE

<u>*Regulatory Developments*</u>

CFPB Announces Comment Period Extension on HMDA Reconsideration, Reopens Comment Period for NPRM on HMDA's Lender Coverage Thresholds

On June 27, 2019, the CFPB announced an extension of the deadline for public comments on its advance notice of proposed rulemaking (ANPR) relating to the CFPB's 2015 Rule addressing the Home Mortgage Disclosure Act (HMDA). The ANPR requests comment on whether the CFPB should *revise* the data points lenders must report and the types of transactions covered. The deadline for comments has been extended to October 15, 2019. In addition, on July 31, 2019, the Bureau announced the reopening of the comment period on its May 2, 2019 Notice of Proposed Rulemaking to implement changes to HMDA's lender coverage thresholds, as required under the Economic Growth, Regulatory Relief, and Consumer Protection Act. The deadline for comments in this proceeding also has been extended to October 15, 2019. In both instances, the Bureau indicated that it took the action to provide the public an opportunity to consider the agency's overview of 2018 loan-level HMDA data in drafting comments.

For our client alert on the public comment extension on HMDA reconsideration, please visit: https://www.mofo.com/resources/publications/190702-public-comment-extension.html.

CFPB and FRB Publish Final Rule Amending Regulation CC

On July 3, 2019, the CFPB and the Federal Reserve Board jointly published a final rule implementing the statutory requirement to adjust for inflation the amount of funds depository institutions must make available to their customers under Regulation CC. Under the Expedited Funds Availability Act (EFAA), as amended by the Dodd-Frank Act, the funds-availability dollar amounts must be adjusted every five years for inflation. The adjusted funds-availability amounts have an effective date of July 1, 2020. In addition, the final rule implements amendments made by the Economic Growth, Regulatory Relief, and Consumer Protection Act extending the EFAA's coverage to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. The extension of geographic coverage took effect on September 3, 2019.

Bureau Issues Updated Advisory on Reporting Suspected Financial Exploitation of Older Adults

On July 17, 2019, the CFPB issued an updated advisory urging financial institutions to report suspected financial exploitation of older adults to the appropriate law enforcement authorities and to file suspicious activity reports with the federal government. The updated advisory contains voluntary best practices to assist financial institutions in this regard. It discusses the Senior Safe Act, which took effect in June 2018 and limits a financial institution's liability for disclosing suspected elder financial exploitation to covered federal agencies if the financial institution has trained its employees on identifying elder financial exploitation. The advisory also summarizes state requirements for mandatory reporting of suspected elder financial exploitation.

CFPB Releases Report on Third-Party Debt Collection

On July 18, 2019, the CFPB released a report on third-party debt collection, which found that more than 25% consumers with a credit report have at least one debt in collection by a third-party debt collector. The report is based on a nationwide sample of approximately 5 million credit reports and covers the years 2004 to 2018. The CFPB also found that more than 75% of the debts in collection by a third-party debt collector were for non-financial debt, including medical debt (58%) and telecommunication and utilities debt (20%). The report notes trends in furnishing third-party debt collection information,

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such as a finding that there was a much greater concentration of furnishing of tradelines by third-party debt buyers than by non-debt buyers.

CFPB Issues ANPR on Qualified Mortgage Rule

On July 25, 2019, the CFPB issued an ANPR on the definition of a "qualified mortgage" under its Regulation Z ability-to-repay/qualified mortgage rule. The current rule specifies several types of qualified mortgages, including a class consisting of loans eligible for sale to, or guarantee by, Fannie Mae or Freddie Mac; this category covers the majority of home purchase loans. The ANPR notes that the Bureau plans to eliminate this class of qualified mortgages as scheduled in January 2021 or following a short extension, and is considering whether to revise the definition of "qualified mortgage" in light of this expiration. The potential policy impact of eliminating this class of qualified mortgages could be significant. According to the ANPR, nearly one million mortgage loans made in 2018 would not have met the general qualified mortgage test if this class of qualified mortgages have been eliminated. The ANPR states that the FHA and private mortgage market may step in to fill the void, but it is unclear how or whether that result would bear out in practice.

For our client alert on the ANPR, please visit: https://www.mofo.com/resources/publications/190730-qualified-mortgage-rule.html.

CFPB Provides Update on No-Action Letter Policy

In an August 6, 2019 blog post, the CFPB shared analysis of the outcomes of the 2017 No-Action Letter (NAL) the agency issued to a company that uses alternative data and machine learning in credit underwriting and pricing decisions. As a condition of the NAL, the company is required to analyze risks and assess the impact of the alternative data and machine learning used and report information to the CFPB. According to the CFPB, the alternative data model significantly expanded access to credit compared to the traditional model and did not show any fair lending disparities. The CFPB encouraged lenders to continue to develop innovative ways of expanding access to credit while maintaining effective legal compliance.

CFPB Releases Report on Consumer Credit Card Market

On August 27, 2019, the CFPB released its fourth biennial report on the state of the consumer credit card market, as required by the Credit Card Accountability Responsibility and Disclosure Act. The report found that credit cards make up the largest U.S. consumer lending market by number of users and that spending by consumers with credit cards has more than doubled since 2015 with only a modest increase in outstanding balances. In addition, the report found that consumer rewards have a dominant presence in the market, with strong consumer rewards often representing the primary reason consumers chose to use a credit card. The CFPB report also outlines the evolution of the credit card market and the impact of new technologies such as machine learning and artificial intelligence on access to credit and financial well-being.

Bureau Issues Innovation Policies and New No-Action Letter

On September 10, 2019, the CFPB issued three final policies aimed at promoting innovation and facilitating compliance by innovative entities. The new Bureau policies includes an updated No-Action Letter Policy (NAL Policy), an updated Trial Disclosure Program Policy (TDP Policy), and new Compliance Assistance Sandbox Policy (CAS). The updated NAL Policy features a streamlined review process and is aimed at offering regulatory certainty to companies offering innovative products and services to consumers. The TDP Policy and CAS Policy will, respectively, allow companies to conduct in-market testing of alternative disclosures and offer innovative companies safe harbor from regulatory liability for specific conduct. At the same time, the Bureau announced the issuance of the first NAL under the updated NAL Policy to the Department of Housing and Urban Development (HUD) on behalf of a number of housing counseling agencies (HCAs) that participate in HUD's housing counseling program. The new NAL is intended to facilitate the HCAs entering into fee-for-service arrangements with lenders for pre-purchase housing counseling services without risk of supervisory action under the Real Estate Settlement Procedures Act.

Enforcement Actions

CFPB Settles with Debt-Settlement Services Provider

On July 9, 2019, the CFPB settled its lawsuit against the nation's largest debt-settlement services provider for alleged violations of the Telemarketing Sales Rule (TSR) and the Consumer Financial Protection Act (CFPA). Specifically, the CFPB alleged that the company violated the TSR by charging advance fees and failing to inform consumers of their rights to funds they had deposited with the company. In addition, the CFPB alleged violations of the CFPA, saying the company had engaged in deceptive and abusive acts or practices in connection with its debt-settlement services. The CFPB alleged that the company deceived consumers about its ability to negotiate with all of a consumer's creditors and about the fees and charges for the company's services. The complaint also alleged that the company abusively directed consumers to

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negotiate directly with their own creditors and to conceal from creditors their enrollment in the debt-settlement program. The settlement requires the company to pay $20 million in restitution and a $5 million civil money penalty.

CFPB, FTC, and State AGs Settle with Large Credit Reporting Agency on Security Breach

On July 22, 2019, the CFPB, the Federal Trade Commission, and attorneys general from 48 states, the District of Columbia, and Puerto Rico announced a settlement with one of the nation's largest credit reporting agencies (CRA) in connection with a 2017 security breach. In its complaint and proposed stipulated judgment, the Bureau alleged the CRA engaged in unfair and deceptive practices in relation to the CRA's data security practices. Specifically, the CFPB alleged that the CRA failed to provide reasonable security for sensitive personal information relating to consumers and deceived consumers regarding the strength of its data security program. As part of the coordinated investigation, the CRA would pay up to $700 million in relief and penalties, including $425 million in monetary relief to consumers and a $100 million civil money penalty as part of the Bureau's settlement.

CFPB and New York Attorney General Settle with Debt Collection Group

On July 25, 2019, the CFPB and the Attorney General of New York announced proposed settlements with a debt collection group that they alleged had violated the CFPA, the Fair Debt Collection Practices Act (FDCPA), and New York state consumer protection laws. The debt collection group allegedly inflated consumer debts it had purchased and used illegal strategies to extract as much money as possible from the underlying debtors, while also misrepresenting to consumers the amount they owed or were required to pay. Under the terms of the proposed settlements, the members of the debt collection group would be banned from the debt collection industry and would pay $60 million, including $40 million in consumer redress and a total civil money penalty of $20 million to the CFPB and the state of New York.

CFPB Settles Predatory Lending Suit with Defunct For-Profit College

In August 2019, the CFPB entered into a settlement with a now-defunct for-profit college for its role in allegedly predatory private lending programs. In June 2019, the CFPB entered into a separate settlement with the company that served as the lending arm for the for-profit college. Between the two settlements, the college will pay $60 million and the lending company will forgive all $168 million in student loans that it owns. The CFPB alleged numerous unfair and abusive acts or practices against the companies in connection with the for-profit college's predatory practices when marketing and offering of student loans, including high-pressure sales tactics and taking unreasonable advantage of student's inability to protect their interests when selecting student loans.

CFPB and Arkansas AG Settle with Brokers of High-Interest Credit Offers

On August 14, 2019, the CFPB and the Arkansas Attorney General filed a proposed settlement in federal district court with a number of companies acting as brokers of high-interest credit offers to veterans and other consumers. The companies allegedly misrepresented the enforceability and validity of contracts they facilitated involving veterans' pension plans, misrepresented high-interest credit offers as sale of payments, and failed to inform consumers of the applicable interest rates for such offers. Under the proposed settlement, the companies would be permanently banned from the industry and would pay $2.7 million in consumer redress, a civil money penalty to the Bureau, and $75,000 to the Arkansas Attorney General's Consumer Education and Enforcement Fund.

Bureau Settles with Remittance Transfer Service Provider

On August 27, 2019, the Bureau announced a settlement with a remittance transfer services provider, the agency's first enforcement action taken under the Remittance Transfer Rule (RTR). The company is alleged to have violated the RTR by consistently omitting the proper consumer protection disclosures and failing to maintain the required policies and procedures for each transfer it initiated. In addition, the Bureau alleged that the company violated the CFPA by incorrectly representing to consumers its liability for errors made by its third-party payment agents. The settlement requires the company to pay a $500,000 civil money penalty and take steps to improve its compliance management system.

Bureau Settles with Debt Collector

On August 28, 2019, the Bureau announced a settlement with a consumer debt collector, which the Bureau alleged to have violated the FDCPA by threatening lawsuits against consumers without intending to take such action, falsely representing that employees were attorneys to consumers, threatening wage garnishment and liens against debtors without the intention of carrying out such actions, and misinforming consumers that nonpayment would adversely affect their credit reports despite the fact the company did not report debts to CRAs. The

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consent order requires the company to pay $36,800 in consumer restitution and a $200,000 civil money penalty, and mandates that the company record calls with consumers going forward.

CFPB Files Complaint Against Foreclosure Relief Services Company

On September 6, 2019, the CFPB filed a complaint in federal court against the operators of a foreclosure relief services company. The Bureau's complaint alleges that the companies engaged in deceptive and abusive acts and practices in their marketing and sale of financial advisory and mortgage assistance relief to consumers. The company also is alleged to have misrepresented its mortgage relief services and its ability to obtain loan modifications and foreclosure relief for consumers, in part by making false claims about the experience and qualifications of its employees. Lastly, the company is alleged to have violated Regulation O by charging consumers before services were rendered. A proposed order as to one defendant would impose a $493,000 civil money penalty and would bar the defendant from the industry. ■

Michael V. Dobson, Stephen Kam, Jeremy R. Mandell, and Mark R. Sobin contributed to this column.

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Who's News

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Chad Hendrix has been promoted to SVP, Commercial Banking Control Initiatives Leader at Wells Fargo.

Sharon Cohen Levin has joined Sullivan & Cromwell LLP as a Partner. Previously, Sharon was a Partner at WilmerHale.

Matthew McDonald has been promoted to Head of Business Risk, North America at T. Rowe Price.

Meredith MacVicar has joined the SEC as an Attorney in the Office of Chief Counsel within the Division of Trading and Markets. Previously, Meredith was Principal Counsel, Litigation & Policy at FINRA where she handled non-enforcement litigation and provided policy advice and interpretation of FINRA's rules and federal securities laws.

Phil Martin has joined Raymond James as VP, CCO Investment Advisory. Previously, Phil was a Managing Director at Charles Schwab.

Zeke Martinez has been promoted to VP of Internal Audit at Frost Bank.

Jeremy Newell has joined Covington & Burling LLP as a Partner. Previously, Jeremy was EVP, General Counsel & COO at the Bank Policy Institute.

Jan Owen has joined Manatt, Phelps & Phillips, LLP as a Senior Advisor. Previously, Jan was a Commissioner in the State of California's Department of Business Oversight.

Ursula Pfeil has been promoted to Director of Regulatory Reform and Chief Managing Counsel at PNC.

Effective October 1, **Mike Post** will join Bank of America Merrill Lynch as Director and Associate General Counsel, advising the Global Wealth and Investment Management Group. Previously, Mike was General Counsel at the MSRB.

Emily Westerberg Russell has been named Chief Counsel of the SEC's Division of Trading and Markets.

Susan Schroeder, EVP of Enforcement, plans to leave FINRA later this year, after leading the department since 2017. **Jessica Hopper**, Deputy Head of Enforcement, has been named the Acting Head of Enforcement while FINRA undertakes a search for a new head.

Rick Sherley has joined GQG Partners LLC as Associate General Counsel.

Daniel Tannebaum has joined Oliver Wyman as a Partner in their New York office. He'll be the Head of their Anti-Financial Crimes Practice in the Americas and the firm's Global Head of Sanctions. Previously Dan was a Principal in PwC's Financial Crimes Unit and their Global Sanctions Leader.

Richard Ward has joined ABN AMRO Securities (USA) LLC as Executive Director, Chief Compliance Officer. Previously, he was CCO and Head of Operational Risk at Exotix Capital.

Jeremiah Williams has been named a Partner at Ropes & Gray LLP.

Amir Zaidi has joined TP ICAP as Global Head of Compliance. Previously, Amir was Director, Division of Market Oversight at the CFTC.

Watch For

CFTC

CFTC Press Release 8011-19 (September 13, 2019) – The CFTC's Market Risk Advisory Committee approved plain English disclosures for new derivatives referencing the London Interbank Offered Rate and other IBORS at its September 9, 2019 public meeting. This standard set of disclosures, prepared by the MRAC's Interest Rate Benchmark Reform Subcommittee, is intended as a helpful example of "plain English" disclosures that market participants could use, as they deem appropriate, with all clients and counterparties with whom they continue to transact derivatives referencing LIBOR and other IBORs.

CFTC Press Release 8010-19 (September 13, 2019) – The CFTC announced that it is extending to November 18 the comment period for the proposal for an alternative compliance framework for derivatives clearing organizations organized outside of the United States that do not pose substantial risk to the U.S. financial system. Under the proposal, these DCOs would be able to register with the CFTC yet comply with the core principles applicable to DCOs in the Commodity Exchange Act through compliance with their home country regulatory regime, subject to certain conditions and limitations. The proposal would also allow persons located outside of the United States to accept funds from U.S. persons to margin swaps cleared at an exempt DCO, without registering as futures commission merchants. Notice of the extensions will be published in the *Federal Register*.

CFTC Press Release 7989-19 (August 1, 2019) – The CFTC's Division of Market Oversight announced that it has issued a no-action letter extending, until August 12, 2022, the relief provided in CFTC Letter 17-37, which would have expired on August 12, 2019. This no-action letter continues to provide relief to market participants from certain position aggregation requirements in CFTC Regulation 150.4. This extension will also give DMO additional time to continue to, among other things, consider long-term solutions that might require a notice and comment rulemaking.

CFTC Press Release 7982-19 (July 22, 2019) – The CFTC's Division of Swap Dealer and Intermediary Oversight, in conjunction with the Financial Crimes Enforcement Network, issued interpretive guidance to introducing brokers in commodities that do not "introduce" customers to a futures commission merchant that carries their customers' accounts. The guidance clarifies the customer identification program and beneficial ownership requirements applicable to such IBs under the Bank Secrecy Act. The particular IBs covered by the guidance do not introduce their customers' accounts to FCMs. The IBs do not receive or have access to the customer identification and financial information obtained by FCMs or the monthly account information issued by FCMs. The guidance clarifies that these IBs are not required to perform CIP measures or comply with BO requirements.

CFTC Press Release 7981-19 (July 22, 2019) – The CFTC announced that it is extending until October 28, 2019 the comment period for the proposed rulemaking to amend certain CFTC regulations related to swap data reporting. The proposed amendments would, among other things, update requirements for swap data repositories to verify swap data with reporting counterparties, update requirements to correct swap data errors and omissions, and update and clarify certain SDR operational and governance requirements. The original comment period for the proposed rulemaking was to expire on July 29, 2019. Notice of the extension will be published in the *Federal Register*.

CFTC Press Release 7964-19 (July 10, 2019) – The CFTC's Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk issued a joint DSIO staff advisory interpretation and DCR time limited no-action relief letter related to the treatment of separate accounts by futures commission merchants. This advisory and no-action relief letter address CFTC Regulation 1.56 and its prohibition on limited recourse and FCM margining practices for customers with more than one futures account. The no-action relief would permit DCOs to allow FCMs to treat separate accounts for the same beneficial owner separately for margin purposes, including the withdrawal of excess margin, provided that specified risk management conditions were met.

CFTC Press Release 7960-19 (July 9, 2019) – The CFTC's Division of Swap Dealer and Intermediary Oversight issued a Staff Advisory noting that CFTC's uncleared swap margin rules do not require documentation governing the posting, collection and custody of initial margin until the initial margin threshold amount exceeds $50 million. The Advisory is issued in further-

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FMA Welcomes *More* New Members

Sarah Curran	**Promontory Financial Group, an IBM Company**
Jennifer Docherty	**Sandler O'Neill & Partners, L.P.**
Kacy Donlon	**Wiand Guerra King P.A.**
Mike Dorsey	**MCG Consulting**
Heather Epstein	**Barclays**
Phillip Garber	**Dechert LLP**
Susan Grafton	**Dechert LLP**

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ance of the March 2019 statement by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions concerning initial margin implementation. The Advisory also clarifies that while no specific initial margin documentation is required prior to reaching the $50 million threshold, DSIO expects that CFTC-regulated swap dealers will have appropriate risk management systems in place to calculate and monitor initial margin amounts and will act diligently as the amounts approach the $50 million threshold to ensure compliance with the documentation requirements**.**

CFTC Press Release 7958-19 (July 8, 2019) – The CFTC's Division of Swap Dealer and Intermediary Oversight issued a report that presents data and analysis regarding the swap dealer *de minimis* exception, with a specific focus regarding on-venue and cleared swaps.

CFTC Press Release 7957-19 (July 3, 2019) – The CFTC issued, "There's Nothing to Like about Scammers on Social Media," a Customer Protection Advisory that warns customers to beware of and avoid unregistered brokers and advisers, as well as fake testimonials and so-called trading experts on social media platforms. This advisory provides overall social media safety tips investors should keep in mind when they are browsing social media for investment opportunities.

CFTC Press Release 7951-19 (June 28, 2019) – The CFTC announced that it is extending to September 13 the comment period for the proposed rulemaking to amend certain regulations that apply to derivatives clearing organizations under Part 39 of the CFTC's regulations. The proposed amendments would, among other things, address certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing staff relief and guidance. The original comment period for the proposed rulemaking was to expire on July 15. Notice of the extension will be published in the *Federal Register* shortly.

CFTC Press Release 7950-19 (June 27, 2019) – The CFTC's Division of Swap Dealer and Intermediary Oversight announced that it will provide no-action relief to registered floor traders from compliance with certain conditions in a CFTC regulation related to the "swap dealer" definition. Under paragraph (6)(iv) of the swap dealer definition in CFTC regulation 1.3, a registered floor trader does not need to consider cleared swaps executed on or subject to the rules of a designated contract market or swap execution facility (DCM and SEF Cleared Swaps) when determining whether it is a swap dealer, provided certain conditions are satisfied. The no-action relief provided would permit a registered floor trader to exclude DCM and SEF Cleared Swaps from the determination of whether it is a swap dealer, notwithstanding the registered floor trader: (1) entering into swaps other than DCM and SEF Cleared Swaps; (2) directly or through an affiliated person, negotiating the terms of swaps other than DCM and SEF Cleared Swaps; or (3) not submitting periodic risk reports as required by CFTC regulation 23.600(c)(2). This no-action relief is conditioned upon the registered floor trader complying with CFTC regulations 23.201, 23.202, 23.203, and 23.600 (other than 23.600(c)(2)) with respect to each of its swaps (including swaps that are not DCM and SEF Cleared Swaps) as if it were a swap dealer.

CFTC Press Release 7944-19 (June 25, 2019) – The CFTC announced that it has unanimously approved a proposed rule to amend Part 30 of CFTC regulations that governs the offer and sale of foreign futures and options to customers located in the U.S. The proposed amendments would codify the CFTC's authority to terminate exemptive relief issued to foreign firms. The proposed amendments would codify the process by which the CFTC may terminate exemptive relief issued under § 30.10(a). The CFTC is seeking comments on the proposal. The comment period will end 30 days after the proposal is published in the *Federal Register*.

FDIC

FDIC Press Release (July 30, 2019) – The FDIC published its *2019 Risk Review*. This issue of *Risk Review* provides a summary of conditions in the U.S. economy, financial markets, and banking industry. It also presents key risks to banks in two broad categories: credit risk and market risk. The credit risk areas discussed are agriculture, commercial real estate, energy, housing, leveraged lending and corporate debt, and nonbank lending. The market risk areas discussed are interest rate risk

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FMA Welcomes *More* New Members

Michael Greenman	**U.S. Bank**
Colleen Hespeler	**Dechert**
Jennifer Juergens	**Cornerstone Research**
Brian Knestout	**Goldman Sachs**
Lauren Leipold	**PwC**
Chris Lombardy	**Duff & Phelps, LLC**
Jennifer Marietta-Westberg	**Cornerstone Research**

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and deposit competition, and liquidity. The FDIC intends to publish its next *Risk Review* in the spring of 2020.

FDIC Press Release (July 17, 2019) – The FRB, FDIC and OCC announced that they will not take action related to restrictions under the Volcker Rule for certain foreign funds for an additional two years. The three federal banking regulatory agencies have consulted with the staffs of the SEC and CFTC regarding this matter. The Volcker Rule generally restricts banking entities from engaging in proprietary trading and from owning, sponsoring, or having certain relationships with hedge funds or private equity funds, known as "covered funds." Certain foreign funds that are organized and offered outside of the United States are excluded from the definition of covered fund under the agencies' implementing regulations. However, these foreign funds could become subject to restrictions under the Volcker Rule because of governance arrangements with or investment by foreign banking entities. The three federal bank regulatory agencies had announced in previous years that they would provide similar treatment to these funds.

FDIC Press Release (June 27, 2019) – The FDIC announced its intentions to centralize the supervision and resolution activities for the largest banks and complex financial institutions in a new division to be named the Division of Complex Institution Supervision and Resolution. Rick Delfin, who is currently the Director of the FDIC's Office of Complex Financial Institutions, will head CISR. John Conneely, the FDIC's Regional Director for Chicago, will serve as the division's Acting Senior Deputy Director to assist with the transition. The new division will be operational on July 21.

Federal Reserve Board

Federal Reserve Press Release (August 5, 2019) – The Federal Reserve Board announced that the Federal Reserve Banks will develop a new round-the-clock real-time payment and settlement service, called the FedNow℠ Service, to support faster payments in the United States. The Board is now requesting comment on how the new service might be designed to most effectively support the full set of payment system stakeholders and the functioning of the broader U.S. payment system. The Board anticipates the FedNow Service will be available in 2023 or 2024. In addition, the Board is announcing its intention to explore the expansion of Fedwire Funds Service and National Settlement Service hours, up to 24x7x365, to facilitate liquidity management in private-sector real-time gross settlement services for faster payments and to support a wide range of payment activities, beyond those related to faster payments. The Board's *Federal Register* notice and a list of frequently asked questions are attached. Comments are requested within 90 days of publication in the *Federal Register*, which is expected shortly.

Federal Reserve Press Release (July 22, 2019) – As a result of a working group established by the U.S. Department of the Treasury's Office of Terrorism and Financial Intelligence, the federal bank regulatory agencies and the U.S. Department of the Treasury's Financial Crimes Enforcement Network issued a joint statement as part of continuing efforts to improve transparency into their risk-focused approach to Bank Secrecy Act/anti-money laundering supervision. The statement outlines common practices for assessing a bank's money laundering/terrorist financing risk profile, assisting examiners in scoping and planning the examination and initially evaluating the adequacy of the BSA/AML compliance program. Using this approach, the agencies generally are able to allocate more resources to higher-risk areas and fewer resources to lower-risk areas when conducting BSA/AML examinations. The statement does not establish new requirements, and also notes that having a risk-based compliance program enables a bank to allocate compliance resources commensurate with its risk. The joint statement is the third statement resulting from the working group.

Federal Reserve Press Release (July 9, 2019) – The federal bank regulatory agencies issued a final rule that reduces regulatory burden by simplifying several requirements in the agencies' regulatory capital rules. The simplifications in the final rule only apply to banking organizations that do not use the "advanced approaches" capital framework, which are generally firms with less than $250 billion in total consolidated assets and less than $10 billion in total foreign exposure. The final rule is intended to simplify and clarify a number of the more complex aspects of the agencies' existing regulatory capital rules. Specifically, it simplifies the capital treatment for mortgage servicing assets, certain deferred tax assets, investments in the capital instruments of unconsolidated financial institutions, and minority interest. The final rule also would allow bank holding companies and savings and loan holding companies to redeem common stock without prior approval unless otherwise required. Proposed revisions to the definition of high-volatility commercial real estate exposure, which were made in the notice of proposed rulemaking, are being addressed in a separate rulemaking. The final rule will be effective as of April 1, 2020, for the amendments to simplify capital rules, and as of October 1, 2019 for revisions to the pre-approval requirements for the redemption of common stock and other technical amendments.

Federal Reserve Press Release (July 9, 2019) – The Federal Reserve System released a white paper examining the effects of synthetic identity payments fraud, a fast-growing but little-understood problem that affects individuals, financial institutions, government agencies, and private industry. Visit FedPaymentsImprovement.org to learn more and to read the Federal Reserve's white paper, *Synthetic Identity Fraud in the U.S. Payment System* (PDF).

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FINRA

FINRA Regulatory Notice 19-31 (September 19, 2019) – This Notice responds to questions that FINRA has received from members about how they can comply with FINRA rules when communicating with customers—particularly when using websites, email and other electronic media—while ensuring fair and balanced presentations.

FINRA Regulatory Notice 19-30 (September 19, 2019) – Effective June 1, 2020, members must report transactions in U.S. Treasury Securities executed to hedge a primary market transaction with an appropriate identifier. Members will have additional time to report such transactions—until the next business day during TRACE system hours. The rule text is available in the online FINRA Manual.

FINRA Regulatory Notice 19-29 (September 13, 2019) – The SEC approved amendments to expand published data relating to OTC equity trading volume. Beginning on November 4, 2019, data will be available in accordance with the amendments on FINRA's website.

FINRA Regulatory Notice 19-28 (August 16, 2019) – FINRA is issuing this *Notice* to remind member firms of their supervisory obligations under FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) if they hold or transact in customer accounts owned by municipal entities or obligated persons (municipal clients), as defined in Section 15B of the Securities Exchange Act of 1934, and participate in investment-related activities with municipal clients, such as recommending or selling non-municipal securities products to such municipal clients. Under these circumstances, member firms are obligated to determine if such activities require registration as a municipal advisor.

FINRA Regulatory Notice 19-27 (August 9, 2019) – FINRA is conducting a retrospective review to assess the effectiveness and efficiency of its rules and administrative processes that help protect senior investors from financial exploitation. FINRA is interested in whether additional tools, guidance or changes to FINRA rules or administrative processes are appropriate to further address suspected financial exploitation and other circumstances of financial vulnerability for senior investors. This Notice outlines the general retrospective rule review process, summarizes the rules and administrative processes that most directly apply to financial exploitation of senior investors, and seeks responses to a number of questions related to addressing financial exploitation. Comments must be received by October 8, 2019.

FINRA Regulatory Notice 19-26 (August 7, 2019) – This Notice reminds members of the SEC's adoption of a best interest standard of conduct for broker-dealers and a relationship summary (Form CRS) delivery obligation, and provides an SEC email address where members may submit questions about the new requirements. The SEC encourages firms to actively engage with SEC staff as early as possible as questions arise when planning for implementation. Firms may send their questions by email to IABDQuestions@sec.gov. FINRA also will assist members in their implementation of the best interest standard in various ways. On June 5, 2019, the SEC adopted Regulation Best Interest (Reg BI) under the Securities Exchange Act of 1934. Reg BI establishes a "best interest" standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities, including recommendations of types of accounts. The SEC also adopted new rules and forms to require broker-dealers and investment advisers to provide a brief relationship summary (Form CRS) to retail investors. In addition, the SEC adopted interpretations concerning investment advisers' standard of conduct under the Investment Advisers Act of 1940, and the "solely incidental" prong of the broker-dealer exclusion from the Advisers Act. The Advisers Act releases were effective on July 12, 2019. Firms must comply with Reg BI and Form CRS by June 30, 2020.

FINRA Regulatory Notice 19-25 (July 26, 2019) – FINRA requests comment on a proposal to expand TRACE reporting requirements to collect information on trades in foreign sovereign debt securities that are U.S. dollar-denominated. Issuance activity in these debt securities has accelerated in

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FMA Welcomes *More* New Members

Nicole Moran	**Cornerstone Research**
David Moskowitz	**Wells Fargo**
Kimberly Prior	**Shutts & Bowen LLP**
Peter Rahaghi	**Shutts & Bowen LLP**
Eric Richardson	**Vorys, Sater, Seymour and Pease LLP**
Randy Sabett	**Cooley LLP**
Michael Sherman	**Dechert LLP**
Eulonda Skyles	**BakerHostetler LLP**
John Smith	**Morrison & Foerster LLP**

Watch For

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recent years and FINRA believes the proposal would provide important regulatory information on an increasingly active segment of the market. Under the proposal, trades in U.S. dollar-denominated foreign sovereign debt securities would be subject to same-day reporting and would not be disseminated publicly. Comments must be received by September 24, 2019.

FINRA Trade Reporting Notice (July 19, 2019) – FINRA is issuing this Notice to remind members of their obligation to have systems or processes in place to determine whether a transaction in a TRACE-Eligible Security has occurred and is, therefore, reportable, even if it was not included on the TRACE security master list at the time of the transaction. In those circumstances, members should contact Market Operations to add the TRACE-Eligible Security to the security master list and report the transaction to TRACE.

FINRA Trade Reporting Notice (July 16, 2019) – FINRA is issuing this Notice to remind firms of their obligations when submitting step-outs to FINRA. While step-out submissions are voluntary and not required by rule, if firms elect to use a FINRA equity trade reporting facility to step out of a previously reported trade, they must comply with applicable trade reporting requirements. FINRA encourages firms to review their trading practices and policies and procedures, including written supervisory procedures, to ensure that their step-out submissions comply with applicable trade reporting requirements and guidance.

FINRA Regulatory Notice 19-23 (July 11, 2019) – FINRA is issuing this Notice to restate and supplement prior guidance regarding the circumstances under which a firm or individual may influence the outcome of an investigation by demonstrating extraordinary cooperation. This Notice incorporates FINRA's prior guidance and provides clarification and additional information about how FINRA assesses whether a potential respondent's cooperation is "extraordinary" and distinct from the level of cooperation expected of all member firms and their associated persons.

FINRA Regulatory Notice 19-22 (July 9, 2019) – FINRA requests comment on a proposal to expand the alternative trading system volume data that it publishes on its website to include information on transactions in corporate bonds and agency debt securities that occur within an ATS and are reported to FINRA's Trade Reporting and Compliance Engine. Comments must be received by September 7, 2019.

FINRA Regulatory Notice 19-21 (July 1, 2019) – Pursuant to FINRA Rule 4210(f)(8)(A), FINRA is establishing higher strategy-based margin requirements for exchange-traded notes and options on ETNs in light of the complex nature of these products. In addition, FINRA is clarifying that ETNs and options on ETNs are not eligible for portfolio margining under FINRA Rule 4210(g). If these measures would result in undue hardship to a firm or its customers, the firm may submit a written request to FINRA for additional time to comply with this Notice.

MSRB

MSRB Notice 2019-16 (September 11, 2019) – The MSRB filed a proposed rule change with the SEC to modify the fee charged under MSRB Rule A-11, on assessments for municipal advisor professionals. The amendments to Rule A-11 increase the annual municipal advisor professional fee to $1,000 from $500 over a two-year phase-in period. MSRB fiscal year 2020 (October 1, 2019 to September 30, 2020) will be year one of the phase-in period, and the annual municipal advisor professional fee will be increased to $750 for that fiscal year. The modified annual municipal advisor professional fee will be fully phased-in during MSRB fiscal year 2021 (October 1, 2020 to September 30, 2021), and municipal advisors will be assessed $1,000 for that fiscal year and each year thereafter. The proposed rule change is immediately effective, although the first payment at the amended rates is not due until April 30, 2020.

August 21, 2019 – As municipal advisor principals prepare to review advertisements for compliance with new regulations taking effect this week, the MSRB is providing a compliance resource that compiles previously provided answers to frequently asked questions and a checklist of considerations for assessing the firm's supervisory controls. New MSRB Rule G-40, on advertising by municipal advisors, becomes effective on Friday, August 23, 2019.

August 16, 2019 – The MSRB reminds regulated entities that amendments to MSRB Rule G-21, on advertising by brokers, dealers and municipal securities dealers, and new MSRB Rule G-40, on advertising by municipal advisors, become effective on August 23, 2019.

MSRB Press Release (July 23, 2019) – The MSRB is seeking to amend regulatory guidance on fair dealing to improve issuer protections and streamline disclosures by underwriters. Under the proposed amendments, only the sole underwriter or syndicate manager in a municipal securities underwriting is required to make certain general disclosures to the issuer regarding the arm's-length commercial nature of the underwriting relationship. The proposed amendments also require the sole underwriter or syndicate manager to deliver a new disclosure that highlights the fiduciary obligation of a municipal advisor, an important distinction between an underwriter and municipal advisor. Additionally, the amendments allow an alternative method for underwriters to seek acknowledgment from an issuer to confirm that the issuer

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has received a disclosure. The MSRB has requested flexibility in establishing the effective date of the revised interpretive notice, which the MSRB will announce within 90 days following approval by the SEC.

MSRB Press Release (July 19, 2019) – Market structure experts at the MSRB shared their analysis on the impact on municipal bond market trading activities from recently effective MSRB rules requiring dealers to disclose their compensation for certain retail customer transactions in municipal bonds, commonly known in the industry as mark-up and mark-down disclosure. In the year since the disclosure requirement took effect, there has been no discernible market impact attributable to the new disclosure requirement based on metrics analyzed by the MSRB. Requirements to disclose dealer compensation for certain retail transactions went into effect on May 14, 2018, through amendments to MSRB Rule G-15 and Rule G-30. The amendments aimed to expand investors' access to information about the cost of buying or selling a municipal security. The report, *Mark-up Disclosure and Trading in the Municipal Bond Market*, also builds on a previous MSRB analysis conducted in 2018, *Transaction Costs for Customer Trades in the Municipal Bond Market: What is Driving the Decline?*

MSRB Press Release (June 25, 2019) – The MSRB announced that the SEC has approved amendments to MSRB rules related to primary offerings of municipal securities for brokers, dealers and municipal securities dealers. The changes to MSRB Rule G-11, on primary offering practices, and MSRB Rule G-32, on disclosures in connection with primary offerings, are the result of a nearly two-year review and revision effort by the MSRB to ensure that its primary offering practice rules function as intended and are consistent with current market practices. The compliance date for amendments to Rules G-11 and G-32 will be January 13, 2020. With respect to the amendments to Form G-32, the MSRB will publish one or more notices within 180 days of June 25, 2019 that will specify the compliance date(s) for those changes. The MSRB will make both amended Form G-32 as well as the updated EMMA Dataport Manual for Primary Market Submissions and the Specifications for Primary Market Submissions Service document available to underwriters in advance of relevant compliance date(s) to aid them in completing the amended form.

OCC

OCC News Release 2019-94 (August 20, 2019) – Comptroller of the Currency Joseph Otting signed a final rule amending the "Volcker Rule" to tailor and simplify the rule while maintaining protections core to the safety and soundness of the federal banking system. The rule implements Section 13 of the Bank Holding Company Act of 1956 BHC Act. The BHC Act assigns authority for implementing the prohibitions and restrictions of section 13 to the OCC, CFTC, FDIC, FRB and SEC. The final rule will be published in the *Federal Register* following consideration and approval of all of the participating agencies.

OCC News Release 2019-91 (August 15, 2019) – The OCC released an update to the Bank Accounting Advisory Series. The BAAS covers a variety of topics and promotes consistent application of accounting standards among national banks and federal savings associations. This edition of the BAAS reflects accounting standards issued by the Financial Accounting Standards Board on such topics as hedging and credit losses. Additionally, this edition includes recent answers to frequently asked questions from the industry and examiners.

OCC News Release 2019-84 (July 31, 2019) – The OCC announced realignment of approximately 150 staff members to create two new units, consolidating bank supervision support, risk analysis, and oversight of national trust banks and significant service providers. The first unit, *Supervision System and Analytical Support*, to be headed by Bob Phelps, will pull together supervisory information system teams, data management, business intelligence, risk analysis, and supervision risk management staff from other OCC supervisory and policy units. The second unit, *Systemic Risk Identification Support and Specialty Supervision*, will bring together lead experts from Large Bank Supervision and Midsize Bank Supervision as well as teams responsible for the supervision of trust companies from the Northeastern District National Trust Banks team and significant service providers from Bank Supervision Policy. The vast majority of employees who will make up the new units will be reassigned from other OCC divisions. A limited number of new positions will be advertised later this year. These changes take effect October 1, 2019.

OCC Bulletin 2019-37 (July 24, 2019) – The OCC is issuing this bulletin to inform national banks, federal savings associations, and federal branches and agencies of sound fraud risk management principles. This bulletin supplements other OCC and interagency issuances on corporate and risk governance.

OCC Bulletin 2019-34 (July 22, 2019) – The OCC, FRB and FDIC published a final rule in the *Federal Register* that simplifies certain aspects of the capital rule. The majority of the simplifications apply solely to banking organizations that are not subject to the advanced approaches capital rule (the advanced approaches capital rule generally applies to banks that are part of banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total consolidated foreign financial exposure).

OCC Bulletin 2019-32 (July 22, 2019) – On July 22, 2019, the OCC, FRB, CFTC, FDIC and SEC published a final rule implementing amendments to section 13 of the Bank Holding

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Company Act, commonly known as the Volcker rule. The amendments are contained in sections 203 and 204 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The final rule: excludes from the definition of "banking entity" certain firms that have total consolidated assets equal to $10 billion or less and total trading assets and liabilities equal to 5 percent or less of total consolidated assets; and permits, under certain circumstances, a hedge fund or private equity fund to share the same name or a variation of the same name with an investment adviser that is not an insured depository institution, company that controls an insured depository institution, or bank holding company.

OCC Bulletin 2019-30 (June 26, 2019) – On June 21, 2019, the OCC, FRB and FDIC published a final rule to implement section 205 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The rule expands the eligibility to file the FFIEC 051 report of condition, which is the most streamlined version of the call report. This bulletin rescinds OCC Bulletin 2018-42, "Expanding Eligibility to File the FFIEC 051 Call Report – Notice of Proposed Rulemaking." The final rule applies to all national banks and federal savings associations (collectively, banks) with total assets of less than $5 billion that do not engage in certain complex or international activities. The final rule: permits banks with total assets of less than $5 billion that do not engage in certain complex or international activities to file the streamlined FFIEC 051 call report beginning in the third quarter (September 30, 2019, call report); and further reduces items reported in the first and third quarters in the FFIEC 051.

OCC Bulletin 2019-29 (June 21, 2019) – The OCC is moving to electronic fingerprinting to facilitate background checks performed in connection with applications and notices submitted to the OCC, including applications for charters, notices of acquisition of control, and notices to replace board members or senior management in certain institutions. The OCC will begin using the new process in July 2019. The OCC also issued revisions to the "Background Investigations" booklet and the "Changes in Directors and Senior Executive Officers" booklet of the *Comptroller's Licensing Manual*, to incorporate updated procedures and requirements for electronic fingerprinting.

SEC

SEC Press Release 2019-182 (September 19, 2019) – The SEC announced that it took a significant step toward establishing the regulatory regime for security-based swap dealers by adopting a package of rules and rule amendments under Title VII of the Dodd-Frank Act. These actions establish recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants and amend the record-keeping and reporting requirements for broker-dealers. Under these rules, these companies will be required to create and retain fundamental business records to document and track their operations. The rules will become effective 60 days after publication in the *Federal Register*. The compliance date for the rule amendments and new rules is 18 months after the effective date of any final rules addressing the cross-border application of certain security-based swap requirements.

SEC Press Release 2019-179 (September 17, 2019) – The SEC has proposed rules to update the statistical disclosures that bank and savings and loan registrants provide to investors, and eliminate disclosures that overlap with Commission rules, U.S. GAAP or IFRS. The proposed rules would replace Industry Guide 3, Statistical Disclosure by Bank Holding Companies, with updated disclosure in a new subpart of Regulation S-K. The proposal will have a 60-day public comment period following its publication in the *Federal Register*.

SEC Press Release 2019-173 (September 9, 2019) – The SEC voted to propose amendments to the national market system plan governing the Consolidated Audit Trail (the "CAT NMS Plan"). The proposed amendments to the CAT NMS Plan would require self-regulatory organizations that are participants to the CAT NMS Plan to file with the Commission and publish a complete implementation plan for the Consolidated Audit Trail and quarterly progress reports, each of which must be approved by the Operating Committee established by the CAT NMS Plan and submitted to the CEO, President, or equivalently situated senior officer at each Participant. In addition, the proposed amendments would include financial accountability provisions that establish target deadlines for four implementation milestones and reduce the amount of fee recovery available to the Participants if those target deadlines are missed. The amendments are designed to decrease the likelihood of additional delays to CAT implementation by increasing operational transparency and attaching financial accountability to the Participants' regulatory obligation to implement the CAT in an efficient and expeditious manner. The public comment period will remain open for 45 days following publication of the proposing release in the *Federal Register*.

SEC Press Release 2019-158 (August 21, 2019) – The SEC provided guidance to assist investment advisers in fulfilling their proxy voting responsibilities. The guidance discusses, among other matters, the ability of investment advisers to establish a variety of different voting arrangements with their clients and matters they should consider when they use the services of a proxy advisory firm. In addition, the Commission issued an interpretation that proxy voting advice provided by proxy advisory firms generally constitutes a "solicitation" under the federal proxy rules and provided related guidance about the application of the proxy antifraud rule to proxy voting advice. Both of these actions explain the Commission's view of various

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non-exclusive methods entities can use to comply with existing laws or regulations or how such laws and regulations apply. The guidance and interpretation will be effective upon publication in the *Federal Register*.

SEC Press Release 2019-148 (August 8, 2019) – The SEC announced that it has voted to propose rule amendments to modernize the description of business, legal proceedings, and risk factor disclosures that registrants are required to make pursuant to Regulation S-K. The proposed amendments are intended to update the rules to improve disclosures for investors and to simplify compliance efforts for registrants. The proposal will have a 60-day public comment period following its publication in the *Federal Register*.

SEC Press Release 2019-145 (August 7, 2019) – The SEC announced that it has voted to adopt rule amendments codifying an existing exemption for credit rating agencies registered with the Commission as nationally recognized statistical rating organizations. Rule 17g-5(a)(3) under the Securities Exchange Act provides for the ability of information necessary to determine a structured finance product's credit rating to NRSROs that were not hired by the issuer, sponsor, or underwriter of the structured finance product. Prior to the compliance date for Rule 17g-5(a)(3), the Commission granted a temporary conditional exemption to the rule for certain structured finance products issued by non-U.S. persons and offered and sold outside the United States. The Commission subsequently extended this exemption. The amendments adopted by the Commission codify the existing exemption to Rule 17g-5(a)(3) and clarify the exemption's conditions. The amendments also clarify the conditions applicable to similar exemptions in Exchange Act Rules 17g-7(a) and 15Ga-2 so that the approach among these exemptions remains consistent. Rule 17g-7(a) requires an NRSRO to disclose certain information when it publishes a rating action. Rule 15Ga-2 requires an issuer or underwriter to disclose the findings and conclusions of any third-party due diligence report it obtains with respect to an asset-backed security that is to be rated by an NRSRO. The amendments will become effective 30 days after publication of the adopting release in the *Federal Register*.

SEC Press Release 2019-129 (July 12, 2019) – The SEC announced that SEC staff have published a statement that encourages market participants to proactively manage their transition away from LIBOR and outlines several potential areas that may warrant increased attention during that time. It is expected that parties reporting information used to set LIBOR will stop doing so after 2021. The staff statement encourages market participants to identify existing contracts that extend past 2021 to determine their exposure to LIBOR and to consider whether contracts entered into in the future should reference an alternative rate to LIBOR or include effective fallback language. The statement also contains specific guidance for how registrants might respond to risks associated with the discontinuation of LIBOR.

SEC Press Release 2019-120 (July 3, 2019) – The SEC announced that it has proposed to align the minimum margin required on security futures with other similar financial products. The proposal—which, if the CFTC votes in favor of, would be a joint CFTC-SEC proposal—would set the minimum margin requirement for security futures at 15 percent of the current market value of each security future. The SEC and the CFTC have joint rulemaking authority regarding margin requirements for security futures. The public comment period will remain open for 30 days following publication in the *Federal Register*.

SEC Press Release 2019-105 (June 21, 2019) – Under Title VII of the Dodd-Frank Act, the SEC adopted capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants and amended the capital and segregation requirements for broker-dealers. These and other rules previously adopted by the Commission are designed to enhance the risk mitigation practices of firms that stand at the center of our security-based swap market, thereby protecting their counterparties and reducing risk to the market as a whole. The rules will become effective 60 days after publication in the *Federal Register*. The compliance date for the rule amendments and new rules is 18 months after the later of: (1) the effective date of the final rules establishing recordkeeping and reporting requirements for SBSDs and MSBSPs; or (2) the effective date of the final rules addressing the cross-border application of certain security-based swap requirements.

Available Publication

OCC Bulletin 2019-38 (July 25, 2019) – The OCC issued a fully revised "Corporate and Risk Governance" booklet of the *Comptroller's Handbook*. In addition, the OCC is issuing an updated "Internal and External Audits" booklet of the *Comptroller's Handbook* with changes that are more limited in scope.

Program Update

2019 Legal and Legislative Issues Conference

Registrations are still being accepted for FMA's 28th Legal and Legislative Issues Conference taking place **October 24-25** at The Madison Hotel here in Washington, DC. This annual program …just a day and a half away from the office…is a high-level forum for banking/securities/regulatory attorneys as well as senior compliance officers/risk managers, internal auditors, consultants and regulators. Participants are provided with a unique opportunity to share information on current legal and regulatory developments as well as network with peers and regulators in an intimate environment. And, **attendees are eligible for CLE and CPE accreditation**.

The Program Planning Committee has devised a timely agenda including noted industry leaders and senior regulatory officials. Members include: **Joseph Bielawa** *(M&T Bank)*; **Jay Gould** *(Winston & Strawn LLP)*; **Daniel Kearney, Jr**. *(WilmerHale)*; **Gary Klein** *(Fifth Third Bank)*; **Cece Baute Mavico** *(LPL Financial)*; **Barbara Mendelson** *(Morrison & Foerster LLP)*; **Joseph Vitale** *(Schulte Roth & Zabel LLP)*; and **Charles Yi** *(Arnold & Porter Kaye Scholer LLP)*.

The agenda, focusing on current areas of regulatory and Congressional activity/scrutiny, includes these sessions and confirmed speakers:

Banking General Counsels

- **Jonathan Gould** — **OCC**
- **Nicholas Podsiadly** — **FDIC**
- **Laurie Schaffer** — **FRB**

Legislative Update

- **Senior Staff of the U.S. House of Representatives and the U.S. Senate to be Announced**

Revisiting Dodd-Frank Enhanced Prudential Standards–Federal Reserve and Other Agency Tailoring Proposals

- **Henry Barkhausen** — **OCC**
- **Gregory Lyons** — **Debevoise & Plimpton LLP**
- **Benjamin McDonough** — **FRB**

Data Privacy and Security in Today's Financial World

- **Jessica Dipre** — **Fifth Third Bank**
- **Eric Richardson** — **Vorys, Sater, Seymour and Pease LLP**
- **Randy Sabett** — **Cooley LLP**
- **Eulonda Skyles** — **BakerHostetler LLP**

2-for-1, first-timer and team registration discounts are available.

Fintech

- **Christopher Allen** — **Arnold & Porter Kaye Scholer LLP**
- **Christopher Ledoux** — **FDIC**
- **Nicole Moran, Ph.D.** — **Cornerstone Research**

Regulatory Inspections and Enforcement Actions

- **Carolyn Campbell** — **Emerging Capital Partners**
- **Sarah Curran** — **Promontory Financial Group, an IBM Company**
- **Chris Lombardy** — **Duff & Phelps, LLC**
- **Michael Wheatley** — **Lincoln Financial Group**

Defining "Control" Under the BHCA and HOLA

- **Jennifer Docherty** — **Sandler O'Neill + Partners, L.P.**
- **Greg Frischmann** — **FRB**
- **Brian Knestout** — **Goldman Sachs**

Securities General Counsels

- **Daniel Davis** — **CFTC**
- **Marie-Louise Huth** — **SEC**
- **Anne Joves** — **NFA**
- **Gail Marshall** — **MSRB**
- **Joseph Savage** — **FINRA**

SEC Division Reports

- **Melissa Hodgman** — **Enforcement**
- **John Polise** — **OCIE**
- **Michael Seaman** — **Corporation Finance**
- **Sarah ten Siethoff** — **Investment Management** *(Invited)*
- **Mark Wolfe** — **Trading and Markets**

Economic Sanctions Perspectives & AML Developments

- **Katrina Carroll** — **LPL Financial**
- **Heather Epstein** — **Barclays**
- **Michael Greenman** — **U.S. Bank**
- **John Smith** — **Morrison & Foerster LLP**

To view the complete program, go to www.fmaweb.org and click on the pdf. Online registration is also available.

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Program Update
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Please alert your colleagues to this annual fall conference (someone may need CLE by year end). And, contact Dorcas Pearce (**dp-fma@starpower.net** or 202/544-6327) if you have questions or wish to register.

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FMA's room block at The Madison expires October 2. If there's a chance you might need overnight accommodation, please contact the hotel by phone (rather than the out-of-date weblink) before that date to book a room at FMA's group rate. After October 2, the hotel has advised me rates will increase significantly (in the $500's) and they may even sell out over our dates. If the hotel is sold out, FMA has a few rooms in reserve that will be given out on a first-come, first-served basis. Contact Dorcas Pearce right away if you need assistance.

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FMA gratefully acknowledges these sponsors of FMA's 2019 Legal and Legislative Issues Conference

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Winston & Strawn LLP

Cornerstone Research

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CLE / CPE

CLE and CPE accreditation will be available. **Good news**…several states have approved the program for **11.0** CLE hours (in 60-minute states; **13.0** hours in 50-minute states) and additional approvals are pending. Contact Dorcas Pearce to request accreditation and/or if you have questions.

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2020 Securities Compliance Seminar

Save these dates – April 28-May 1, 2020!

FMA's **2020 Securities Compliance Seminar** is tentatively set to take place **April 28 – May 1** in historic Old Town Alexandria, Virginia (metropolitan Washington, DC) next spring. This annual program is a three-day educational and networking experience for compliance professionals, internal auditors, risk managers, attorneys, regulators and consultants.

The Planning Committee will soon begin work on program development. Contact Dorcas Pearce (*dpfma@starpower.net* or 202/544-6327) to volunteer…as a committee member, a general session panelist, workshop facilitator or peer discussion leader…or to share topical and/or speaker suggestions.

FMA needs your input! A survey will be emailed shortly to a sampling of past seminar attendees and friends of the firm asking for topical/best practice ideas and speaker suggestions… *you may even decide to volunteer!* **Please email your suggestions to Dorcas Pearce within 72 hours of receipt**. The Planning Committee will rely greatly on these responses when formulating the program...so please respond quickly and share your thoughts and ideas…even if you do not receive the survey. Help us make this the best conference ever.

CPE / CLE accreditation (among others) will be available, so be sure to budget for, and plan to attend, the 29th annual Securities Compliance Seminar next spring. Contact Dorcas Pearce at **dp-fma@starpower.net** or 202/544-6327 with questions and/or to volunteer.

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ATTENTION SPONSORS! FMA is actively pursuing sponsorship opportunities regarding this seminar. Please contact FMA if your firm would like to support this event.