REGISTER TODAY for FMA's LEGAL AND LEGISLATIVE ISSUES CONFERENCE
October 18 – 19, 2018 ■ Washington Marriott Georgetown Hotel ■ Washington, DC
Ask about the 2-for-1 or first-timer registration discount!

MARKET SOLUTIONS

Volume 27, Number 2 | Financial Markets Association | June 2018

In This Issue

2018 Legal and Legislative Issues Conference 20
2018 Securities Compliance Seminar 21
2019 Securities Compliance Seminar 23
Directory 9
Legislative/Regulatory Actions 2
New Members 2,4,5
Program Update 20
Sponsor Acknowledgement 22
Spotlight on Service Member 7
Watch For 13
Who's News 19

MARKET SOLUTIONS
Editor
Dorcas Pearce
Contributing Editors*
Marc-Alain Galeazzi
Barbara R. Mendelson

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* is provided as a 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.

©2018, Financial Markets Association

With the Department of Labor (DOL) Fiduciary Rule Now Gone, States May Be Providing the Answers to the Question of Who is a Fiduciary

By Thomas Grygiel, CAMS
ACA Compliance Group

On June 9, 2017, aspects of the DOL Fiduciary Rule, most notably the "Impartial Conduct Standards," went into effect. (Compliance with the entire rule was not required until July 1, 2019.) Then, on March 15, 2018, the U.S. Fifth Circuit Court of Appeals vacated the DOL's Fiduciary Rule in a 2-1 decision. In response, on April 18, 2018, the SEC proposed that broker-dealers be subjected to a fiduciary standard under "Regulation Best Interest."

The DOL had until June 13th, 2018 to appeal the Fifth Circuit decision. On June 21, 2018, the Fifth Circuit officially vacated the DOL Fiduciary Rule.

Meanwhile, Nevada passed a fiduciary law, and New York and New Jersey have proposed their own fiduciary regulations. In February, Maryland introduced a bill that would apply fiduciary status to brokers as it applies to investment advisers. To top it off, Massachusetts recently filed an enforcement action against a broker-dealer, citing the firm for not adhering to the DOL Fiduciary Rule's "Impartial Conduct Standards". In its enforcement action, the state found violations of the standards even though the firm had Fiduciary Rule compliance policies and procedures in place.

The DOL had stated it would not enforce the existing rule as long as firms attempt to comply. As a result, many firms have put together compliance policies and procedures but, since the DOL turned a blind eye to noncompliance, these firms did not make Fiduciary Rule adherence a priority. It is this "non-enforcement" policy that has led various states to take the determination of who is a fiduciary into their own hands.

With all this going on, what should firms do? As Massachusetts has demonstrated, noncompliance can have consequences. In its enforcement case, the state is pursuing a fine, disgorgement of profits, censure, and a cease-and-desist order requiring a full review of the broker-dealer's supervisory policies. The state has argued as the requirements to adhere to the fiduciary rule were in the Firm's procedures, they are required to adhere to these policies and procedures. Anyone who thinks their firm is immune to this because it is not based in Massachusetts should think again. The broker-dealer in the enforcement case is registered with the state, but its headquarters is a thousand miles away.

So, back to the original question: What should firms do? Again, Massachusetts has provided some guidance: adhere to Fiduciary

(Continued on Page 3)

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 with regard to banking regulators and related Congressional actions, FinCEN, the CTFC, the SEC, and the Bureau of Consumer Financial Protection (fka CFPB).

Banking Regulators

Agencies Propose Amendment to, and Seek Comment on, Regulations Implementing the Volcker Rule

On May 30, 2018, the Board of Governors of the Federal Reserve System ("Federal Reserve") issued a proposal (the "Proposed Rule") to amend the rules implementing Section 13 of the Bank Holding Company Act of 1956 (the "Volcker Rule"). Shortly thereafter, the other four federal agencies responsible for implementing the Volcker Rule (together with the Federal Reserve, the "Agencies") followed suit.

The Volcker Rule generally prohibits banking entities from engaging in proprietary trading and from investing in, sponsoring, or having certain relationships with covered funds. In general, the Proposed Rule would provide regulatory relief to banking entities subject to the Volcker Rule by tailoring its application, simplifying certain standards and requirements, and reducing compliance burden.

Specifically, the Proposed Rule would segment banking entities based on their level of trading assets and liabilities. Banking entities with higher levels of trading assets and liabilities would be subject to more stringent requirements. To effect this tailored approach, the Proposed Rule would establish the three categories of banking entities: (1) banking entities with significant trading assets and liabilities; (2) banking entities with moderate trading assets and liabilities; and (3) banking entities with limited trading assets and liabilities.

Under the Proposed Rule, banking entities with limited trading assets and liabilities would be presumed to be compliant with the Volcker Rule and would not have an obligation to demonstrate compliance on an ongoing basis. However, the applicable Agency may require a banking entity with limited trading assets and liabilities to comply with any requirements applicable to banking entities with moderate or significant trading assets and liabilities.

The tailored approach is most relevant for application of the compliance program requirements. However, the Proposed Rule's tailored approach also has implications for the exemptions from the prohibition on proprietary trading for underwriting, market making, and hedging.

The Proposed Rule would also amend the definition of a "trading account." Under the current rules, proprietary trading is defined as "engaging as principal for the trading account of the banking entity in any purchase or sale of one or more financial instruments." A banking entity is deemed to be trading for its own trading account if: (i) the trade is for a certain purpose (the "Purpose Test"); (ii) the banking entity is subject to the U.S. market risk capital rules and the account is used to trade financial instruments that are both market risk capital rule covered positions and trading positions or hedges of other market risk capital rule covered positions (the "Market Risk Capital Rule Test"); or (iii) the trade is by a securities dealer or other specified entity (the "Status Test"). In addition, a trade is presumed (subject to rebuttal) to be for the trading account if the banking entity holds the financial instrument (or the risk of the trade) for fewer than 60 days.

Banking entities have found it difficult to analyze the purpose of trades under the Purpose Test.

(Continued on Page 4)

FMA Welcomes New Members!

Vicky Ayers	Bank of America
Sharonda Brooks	Wells Fargo Securities
Anthony Conte	PricewaterhouseCoopers LLP
Coré Cotton	Wells Fargo
Trisha Cram	Wiand Guerra King, P.A.
Todd Eaton	Bank of America Merchant Services

DOL Fiduciary Rule…

Continued from Page 1

Rule policies and procedures as written in your procedures. As a reminder, the DOL rule requires representatives working with retirement plans and individual retirement accounts to act as fiduciaries and to adhere to the "Impartial Conduct Standards" if they give advice under the "Best Interest Contract Exemption." The "Impartial Conduct Standards" comprise the following:

- The representative and firm must act in the best interest of the customer.
- The representative and firm can receive no more than reasonable compensation.
- The representative and firm can give no misleading statements.

In the Massachusetts case, the state cited the subject firm for not following its policies and procedures. Specifically, Massachusetts asserts that the broker-dealer conducted sales contests that awarded over $285,000 in cash and prizes to advisers. The state also asserts that the firm's sales incentives caused its advisers to act in a manner other than in its customers' best interests when giving advice on accounts covered by the DOL Fiduciary Rule.

In light of the DOL Fiduciary Rule appearing to go away earlier this year, the SEC has jumped into the mix. Regulation Best Interest has only been proposed and is in the comment period. Based on this, the rule most likely would not be in effect until late 2019 or sometime in 2020.

Since the DOL Fiduciary Rule effectively died in June, 2018, there will be a gap on fiduciary status for the brokerage industry for at least one to two years until Regulation Best Interest is finalized. In this space, the states as noted above could take the fiduciary issue into their own hands even more so than now.

> *"…many firms have put together compliance policies and procedures but, since the DOL turned a blind eye to noncompliance, these firms did not make Fiduciary Rule adherence a priority."*

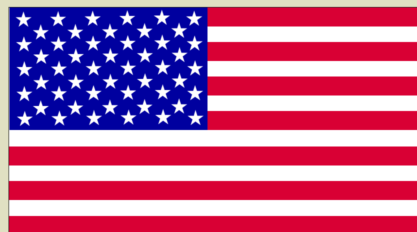
During this uncertain time, it is important for firms to assess where they stand regarding adherence to current rules and laws. If they have developed Fiduciary Rule compliance policies and procedures, they should review them and then test to ensure they are being followed. If they have not developed a Fiduciary Rule adherence program, or have done so but not implemented it, they should, at minimum, make sure they have such policies and procedures in place and adhere to them. Firms also need to be aware of what the requirements are in the various states they operate in.

Although Regulation Best Interest in only a proposal and still in the comment period, there are many similarities with the DOL Fiduciary Rule. The SEC did not specifically define what Best Interest means, however as Firm's have been using the Impartial Conduct Standards as the guide for Best Interest, this represents a good place to start for Firm's to continue their transition to a Best Interest standard under the SEC proposal.

As we have seen in other areas of government and law, states will act when they believe the federal government is not doing enough. It is important for firms to understand this, keep abreast of what the states they operate in are doing regarding fiduciary standards, and be prepared to adhere to and, if necessary, defend their current practices. ■

Thomas Grygiel is a Principal Consultant at the ACA Compliance Group. He can be reached at tgrygiel@acacompliancegroup.com or 347/525-5075.

Happy 4th of July!



Legislative/Regulatory Actions

Continued from Page 2

The Proposed Rule would eliminate the Purpose Test and the rebuttable presumption and add a new prong to the definition of trading account that is based on accounting standards. Specifically, under the new "Accounting Test," an account that is used to effect trades will be for the banking entity's trading account if the trade is "with respect to a financial instrument that is recorded at fair value on a recurring basis under applicable accounting standards." This would include financial instruments such as derivatives, trading securities, and available-for-sale securities.

If a banking entity is not deemed to be engaged in proprietary trading under the Market Risk Capital Rule Test or the Status Test, the Proposed Rule would also add a presumption that a trading desk is in compliance with the prohibition on proprietary trading if the sum of the absolute values of the daily net gain and loss of a trading desk's portfolio for the preceding 90 days is $25 million or less. A banking entity may calculate "the net gain or loss on the trading desk's portfolio of financial instruments each business day, reflecting realized and unrealized gains and losses since the previous business day, based on the banking entity's fair value for such financial instruments." This presumption may be rebutted by the applicable Agency if it has determined that the banking entity's activities violate the prohibitions on proprietary trading.

Under the statute, the Volcker Rule permits certain underwriting and market-making activity to the extent such activities are designed not to exceed the reasonably expected near term demands ("RENT-D") of clients, customers, or counterparties. The Proposed Rule would create a presumption of compliance with the RENT-D requirements for both the underwriting and market-making exemptions. To satisfy the presumption, banking entities would be required to establish internal risk limits for each trading desk designed not to exceed the RENT-D of clients, customers, or counterparties, based on the nature and amount of the trading desk's underwriting or market-making activities, as applicable.

The Proposed Rule would also add an additional exclusion for erroneous trades and expand the exclusion for liquidity management plans from the definition of proprietary trading; amend the exemptions for covered fund activities and trading that occurs solely outside the United States; and expand the Market Risk Capital Rule Test to cover foreign banking organizations, among other things.

The Proposed Rule did not implement the statutory changes to the Volcker Rule enacted with the passage of S. 2155. The Agencies stated that they plan to address these statutory amendments in a separate rulemaking. While the separate rulemaking process is pending, the Agencies will enforce the Volcker Rule in a manner consistent with S. 2155.

For more information about the proposed changes to the regulations implementing the Volcker Rule, see our client alert at: *https://media2.mofo.com/documents/180619-volcker-rule.pdf*.

Financial Regulatory Reform Legislation Enacted into Law

On May 24, 2018, the President signed S. 2155, the "Economic Growth, Regulatory Relief, and Consumer Protection Act." The bill passed Congress on a bipartisan basis. The new law provides modest regulatory relief to regional and community banks.

Perhaps the most significant aspect of the new law is the relaxation of thresholds for the application of certain regulatory requirements. Under the new law, institutions with total consolidated assets of less than $250 billion may no longer be subject to some of the more onerous requirements imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), as discussed below.

The following is a summary of some of the principal components of the new law.

(Continued on Page 5)

FMA Welcomes *More* New Members!

Mitch Fileto	Renaissance Regulatory Services
Gary Galarpe	Nathan Hale Capital LLC
Judith Gross	JG Advisory Services LLC
Casey Jennings	Seward & Kissel LLP
Ken Kerr	Moore & Van Allen, PLLC
Terra McCann	Nationwide Financial

Legislative/Regulatory Actions

Continued from Page 4

Enhanced Prudential Standards. Section 165 of the Dodd-Frank Act imposed various enhanced prudential standards (EPS) on bank holding companies with $50 billion or more in total consolidated assets, including, among other things, resolution planning requirements, short term debt limits, and contingent capital requirements. Under the new law, the Board of Governors of the Federal Reserve System ("Federal Reserve") will be required to apply certain EPS only to bank holding companies with $250 billion in total consolidated assets, and to any bank holding companies, regardless of asset size, that have been identified as global systemically important bank holding companies. In addition, if the Federal Reserve makes a determination that application of such EPS is appropriate to prevent or mitigate risks to the financial stability of the United States or to promote the safety and soundness of the institution, the Federal Reserve will also be authorized (though not required) to apply such EPS to bank holding companies with total consolidated assets of $100 billion or more.

Stress Testing. The new law modifies the Dodd-Frank Act stress testing requirements. First, the threshold for bank holding companies to become subject to an annual supervisory stress test conducted by the Federal Reserve was raised to $250 billion, and such stress tests will only be conducted under two scenarios (baseline and severely adverse) rather than the previous three (baseline, adverse, and severely adverse). Bank holding companies with total consolidated assets of $100 billion or more, but less than $250 billion, will be subject to supervisory stress tests conducted by the Federal Reserve on a periodic basis. Second, the new law will set the threshold for requiring financial companies and bank holding companies to conduct company-run stress tests at $250 billion, and will only require such company-run stress tests to be conducted on a periodic basis (rather than semi-annually or annually, as applicable). Finally, such company-run stress tests will need to be conducted only under two scenarios (baseline and severely adverse) rather than the previous three (baseline, adverse, and severely adverse).

Small Bank Holding Companies. Under the Federal Reserve's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement ("Policy Statement"), certain small bank holding companies and savings and loan holding companies are permitted to operate with higher levels of debt than are generally permitted for larger institutions. The new law raises the threshold of the applicability of the Policy Statement, from bank holding companies and savings and loan holding companies with consolidated assets of less than $1 billion, to such institutions that have consolidated assets of less than $3 billion.

Volcker Rule. The new law makes two changes to Section 13 of the BHC Act (i.e., the "Volcker Rule"). First, the new law exempts from the Volcker Rule insured depository institutions that (i) have $10 billion or less in total consolidated assets; and (ii) have total trading assets and trading liabilities that are less than 5% of total consolidated assets. Second, the new law will amend the asset management exemption to permit certain banking entities to continue to rely on the exemption while retaining the same name as the hedge fund or private equity fund (subject to certain conditions).

Mortgage Lending. Several provisions are included in the new law which would provide regulatory relief for certain aspects of mortgage lending centered on smaller banks and credit unions. For example, the new law will provide a safe harbor from ability-to-repay (ATR) requirements for residential mortgage loans to consumers that are originated and retained in portfolio by an insured depository institution

(Continued on Page 6)

FMA Welcomes *More* New Members!

Paul Murdock	MCG Consulting Services
Leo Rodriguez Goyco	Wells Fargo Securities
Matthew Rossi	BB&T
Katie Satterthwaite	FTB Advisors, Inc.
Ann Sweeney	Merrill Edge
Kristina Whittaker	Moore & Van Allen, PLLC
Mark Wszolek	SEC
Michael Zuckerman	Michael B. Zuckerman, P.C.

Legislative/Regulatory Actions

Continued from Page 5

or insured credit union that has, together with its affiliates, less than $10 billion in total consolidated assets. Also, consumers stand to benefit from the restatement of the Protecting Tenants in Foreclosure Act.

For more information about the new law, please see our client alert at *https://media2.mofo.com/documents/180522-financial-regulatory-reform.pdf.*

Amendment to the Capital Treatment of ADC Loans Enacted

S. 2155, "Economic Growth, Regulatory Relief, and Consumer Protection Act," also includes provisions that clarify the treatment of acquisition, development, and construction (ADC) loans characterized as high volatility commercial real estate (HVCRE) exposures under the U.S. Basel III capital rules.

Under the "standardized approach" for risk weighting bank assets, the existing capital rules require ADC loans that are deemed to be "HVCRE exposures" to be risk weighted at 150% rather than the 100% risk weighting accorded to other commercial loans. The existing HVCRE exposure definition is a "credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property" unless one of the enumerated exemptions applies. S. 2155 requires that HVCRE exposures meet a new, narrower definition of "HVCRE ADC loans" to trigger a heightened risk weight.

Specifically, S. 2155 defines an "HVCRE ADC loan" as a real estate secured credit (before application of various exemptions) that: (1) primarily finances, has financed, or has refinanced the acquisition, development, or construction of real property; (2) has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and (3) is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facilities.

S. 2155 also makes two important clarifications/changes to existing interpretations of the "contributed capital exemption." The "contributed capital exemption" is available for commercial real estate projects (1) that meet applicable maximum LTV ratios; (2) for which the borrower has contributed capital of at least 15% of the real estate's "as completed" value; and (3) for which the capital contributed to, or internally generated by, the project is contractually required to remain in the project through the life of the project.

First, existing regulatory interpretations of the HVCRE exposure definition do not allow a developer to count appreciation in the value of real property when calculating compliance with the 15% contributed capital requirement. Under S. 2155, for purposes of the "contributed capital exemption" to the HVCRE ADC loan definition, the value of any real property contributed to an ADC project is equal to the appraised value of the property at the time of contribution. Second, under S. 2155, the amount of contributed capital required to remain in the project is only the 15% minimum requirement. As a result, there is no restriction on distributing capital contributed in excess of the 15% requirement. By contrast, under existing interpretations of the current HVCRE exposure definition, excess contributions must remain in the project.

In another change to the existing capital rules, an HVCRE ADC loan would be eligible for reclassification as a non-HVCRE ADC loan upon: (i) the substantial completion of development or construction of the real property being financed by the credit facility; and (ii) the generation of cash flow by the real property sufficient to support debt service and expenses of the real property in accordance with the bank's applicable underwriting criteria for permanent financings. Under the existing capital rules, an HVCRE exposure remains as such until the credit facility is converted to permanent financing. The requirement that a credit facility be "converted" to permanent financing has raised concern that banks may need to formally restructure HVCRE exposure loans to qualify for such conversion. However, no such restructuring is suggested by S. 2155's text.

Further, S. 2155 creates two specific exemptions for permanent financing that are not linked to any reclassification of an existing HVCRE ADC loan. The exemptions apply to financing either for: (i) the acquisition or refinance of existing income-producing property secured by a mortgage on the property; or (ii) improvements to existing income-producing improved real property secured by a mortgage on the property. In both cases, the exemption applies if the cash flow generated by the real property is sufficient

(Continued on Page 7)

Legislative/Regulatory Actions

Continued from Page 6

to support the debt service and expenses of the real property in accordance with the bank's applicable loan underwriting criteria for permanent financings.

Finally, the HVCRE exposure definition under the current capital rules has been construed as applying to ADC loans that meet the definition of an HVCRE exposure, regardless of the date of origination. However, S. 2155 characterizes as HVCRE ADC loans only those loans originated on or after January 1, 2015. In other words, under S. 2155, loans made prior to January 1, 2015 are not subject to the higher risk weight.

For our client alert regarding the changes to the capital rules for ADC lending under S. 2155, see: *https://media2.mofo.com/documents/180523-hvcre-clarification.pdf*.

FINCEN

Covered Financial Institutions Must Now Comply with the FinCEN's CDD/Beneficial Ownership Requirements

May 11, 2018 marked the much-anticipated applicability date for the Financial Crimes Enforcement Network's (FinCEN) new "Customer Due Diligence Requirements for Financial Institutions" (the "CDD Rule"). The CDD Rule requires covered financial institutions, such as U.S. banks and U.S. branches and agencies of foreign banks, brokers or dealers in securities, mutual funds, and future commission merchants and introducing brokers in commodities, to establish ongoing risk-based customer due diligence procedures as part of their AML compliance programs. Such covered institutions must develop and update customer risk profiles and customer information, and conduct

(Continued on Page 8)

Spotlight on Service Member

JG Advisory Services LLC
New York, NY
917/929-0081
judy@jgadvisory.com

JG Advisory Services LLC is a consulting firm to investment advisers focused on regulatory compliance and related marketing, operational and IT matters. Recognizing that managers have different needs, the firm is known for its personalized, high-quality services, providing bespoke analyses and recommendations to each client.

Broadly speaking, JG Advisory Services provides consulting services in the following areas:

- **Compliance consulting:**
  - registration with the SEC and CFTC/NFA
  - drafting compliance manual
  - monthly compliance calendar meetings
  - quarterly portfolio review meetings for compliance testing
  - annual compliance review
- **Training of personnel on compliance issues**
- **Due diligence protocols and marketing material development**
- **Use of compliance technology products**
  - Electronic communication review services
  - Personal account review services
  - Advise on selection of appropriate product
- **Mock audits and exam preparation**

Founded in 2005 by Judith Gross, the Firm has become a leading provider of compliance consulting services in the Northeast. Since its inception, the Firm has worked with dozens of registered investment advisers to hedge funds, private equity funds, fund-of-funds, and family offices. Clients range from very small start-ups to major financial institutions, each receiving customized advice and support either on an ongoing or project basis.

Legislative/Regulatory Actions

Continued from Page 7

ongoing AML monitoring. The CDD Rule also requires such covered financial institutions to adopt written procedures to identify and verify the beneficial owners of their legal entity customers. FinCEN has published two sets of FAQs concerning the CDD Rule, on July 19, 2016, and April 3, 2018, and these publications provide specific information and guidance for covered financial institutions regarding implementation of and compliance with the CDD Rule. There have been a number of additional recent developments related to the CDD Rule.

In connection with the applicability date, FinCEN published a press release reminding covered financial institutions that the CDD Rule "clarifies and strengthens customer due diligence requirements" and "adds a new requirement … to identify and verify the identity" of beneficial owners. The agency also issued two administrative rulings: one on May 11, 2018 to provide exceptive relief to covered financial institutions with respect to the application of beneficial ownership requirements to premium finance lending products that allow for cash refunds; and a second on May 16, 2018, to provide a limited, 90-day exceptive relief from the beneficial ownership requirements with respect to certain financial services and products that rollover or renew automatically and were established prior to the CDD Rule's applicability date.

Also on May 11, 2018, the Federal Financial Institutions Examination Council (FFIEC), an interagency body comprising federal and state regulators, released two sections of its Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual ("FFIEC Manual"): (i) "Customer Due Diligence – Overview and Examination Procedures" ("CDD Section") and (ii) "Beneficial Ownership Requirements for Legal Entity Customers – Overview and Examination Procedures" ("Beneficial Ownership Section"). Whereas the Beneficial Ownership Section is new, the CDD Section is an update to the FFIEC Manual. These sections of the FFIEC Manual provide guidance on a number of other issues relating to the CDD Rule, although they appear to generally reflect existing regulatory expectations as well as past guidance issued by FinCEN.

For example, the CDD Section reiterates FinCEN's previous comments, published in connection with the final CDD Rule, with respect to the requirement to update customer information. The CDD Section states that "[t]he requirement to update customer information is event-driven and occurs as a result of normal monitoring," and also that "[t]he ongoing monitoring element does not impose a categorical requirement" that banks "must update customer information on a continuous or periodic basis." The CDD Section also provides that if the "customer information is material and relevant to assessing the risk of a customer relationship," then banks "should reassess the customer risk profile/rating and follow established bank policies, procedures, and processes for maintaining or changing the customer risk profile/rating." Similarly, the Beneficial Ownership Section echoes previous guidance released by FinCEN (in its April 2018 FAQs), noting that, with respect to how the CDD Rule applies to existing accounts, "banks are not required to conduct retroactive reviews to obtain beneficial ownership information on legal entity customers that were existing customers as of May 11, 2018."

For additional information, including links to the various publications from FinCEN and the FFIEC, please see our client alert at: *https://media2.mofo.com/documents/180516-customer-due-diligence.pdf.*

CFTC

CFTC Proposes to Maintain Swap Dealer De Minimis Threshold at $8 Billion

On June 4, 2018, the Commodity Futures Trading Commission (CFTC or "Commission") by a 2 to 1 vote proposed to amend its regulations to maintain the *de minimis* exception threshold from swap dealer registration at the aggregate gross notional amount ("AGNA") of $8 billion measured over the previous 12 months. Further, the CFTC is proposing to:

- Expand in several respects the insured depository institution exception for swaps in connection with originating loans with customers for purposes of counting towards the *de minimis* threshold calculation;
- Exclude financial hedges (in addition to the already existing exclusion for physical hedges) from the *de minimis* threshold count;
- Codify staff no-action relief that would exclude swaps conducted under multilateral portfolio execution exercises; and

(Continued on Page 9)

Legislative/Regulatory Actions

Continued from Page 8

- Provide that the Commission may determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps, and delegate to the Director of the CFTC's Division of Swap Dealer and Intermediary Oversight the authority to make such determinations.

In addition, the CFTC is requesting comment with respect to, among other things:

- Adding a minimum dealing counterparty count threshold and a minimum dealing transaction count threshold to the $8 billion AGNA threshold;
- Excepting exchange-traded and/or cleared swaps from consideration when calculating AGNA for purposes of the *de minimis* threshold; and
- Excepting swaps that are categorized as non-deliverable foreign exchange forwards and other foreign exchange derivatives from consideration when calculating AGNA for purposes of the *de minimis* threshold.

For more information on this subject please see our client alert at: *https://media2.mofo.com/documents/180620-cftc-de-minimus-threshold.pdf.*

CFTC Chairman Issues White Paper Outlining Agenda for Changes to Swaps Regulation

On April 26, 2018, J. Christopher Giancarlo, Chairman of CFTC, and Bruce Tuckman, the CFTC's Chief Economist, issued a white paper outlining changes to swaps regulation that the Chairman intends to pursue during his remaining term in office. The white paper expressly states that it represents the personal views of the authors only and does not reflect the views of the Commission and, while it sets out recommendations for rule changes, it does not propose any rules for notice and comment.

The paper drew criticism from one of the CFTC Commissioners, Rostin Behnam, who noted that "adding another white paper just pushes back the timeline for getting to actual deliverables [e.g., proposed rules] . . . and takes a lot of staff time when budgets are tight." Commissioner Behnam's concerns over timelines for "actual deliverables" seem especially appropriate given the Chairman's recent statement that he would not seek reappointment when his term ends in April 2019, and his stated reluctance to move ahead on certain rulemakings without all five CFTC Commissioners in place (only three of five Commissioners are now seated). Nonetheless, because the Chairman sets the agenda for the Commission and directs the staff, the white paper carries weight inasmuch as it reflects his priorities for the remaining months of his term.

The white paper provides an overview of the regulatory topics that the Chairman may ask the Commission to consider as part of his "Reg Reform 2.0" initiative, likening the changes to a software upgrade. These topics fall into five areas:

1. Swaps Central Counterparties;
2. Swaps Reporting Rules;
3. Swaps Execution Rules;
4. Swap Dealer Capital; and
5. End User Exemption from Uncleared Swaps Margin Requirements.

(Continued on Page 10)

Directory

FMA will begin work on the **2018 Membership Directory** later this summer. 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.

Be on the lookout! Members will be emailed late July/early August and have 72 hours to correct their information on file and/or provide missing data. Be sure to submit your information right away so that your directory will be as accurate as possible.

Legislative/Regulatory Actions

Continued from Page 9

The paper contains both specific ideas that may be embodied in proposed rules, such as the swap execution facility rules that recently were announced would be forthcoming as soon as this July, and more general assessments of the CFTC's implementation of Dodd-Frank swaps reform where the authors identify further work or analysis that may need to be done without specific recommendations for action. It is the second white paper authored by Chairman Giancarlo since he joined the CFTC, the first having been issued when he was a Commissioner in 2015.

For more information please see our client alert at: *https://www.mofo.com/resources/publications/180523-cftc-swaps-regulation.pdf.*

SEC

SEC Proposes a New Standard of Care for Broker-Dealers: Regulation Best Interest

On April 18, 2018, the Securities and Exchange Commission (SEC) proposed a new rule under the Securities Exchange Act of 1934 establishing a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation of any securities transaction or investment strategy involving securities to retail customers.

The proposed standard of conduct ("Regulation Best Interest") would establish a higher standard of care and disclosure obligations for broker-dealers when making recommendations to retail customers—a "best interest obligation"—but would not create an explicit fiduciary duty. Specifically, broker-dealers would be required to act in the "best interest" of retail clients and would be prohibited from placing their interests ahead of clients.

Regulation Best Interest would provide that the best interest obligation shall be satisfied if the broker-dealer or natural person who is an associated person of a broker or dealer:

- Prior to or at the time of the recommendation, reasonably discloses to the retail customer in writing the material facts relating to the scope and terms of the relationship with the retail customer and all material conflicts that are associated with the recommendation;
- Exercises reasonable diligence, care, skill, and prudence to:
  (i) understand the potential risks and rewards associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers;
  (ii) have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks and rewards associated with the recommendation; and
  (iii) have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile.
- Establishes, maintains, and enforces written policies and procedures reasonably designed to identify and at a minimum disclose, or eliminate, all material conflicts of interest that are associated with such recommendations; and
- Establishes, maintains, and enforces written policies and procedures reasonably designed to identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with such recommendations.

It is the SEC's preliminary view that the best interest obligation would reduce the potential harm to retail customers from recommendations provided in circumstances where conflicts of interest, including those arising from financial incentives, exist while preserving investors' access to advice and choice with regard to advice relationships and compensation methods, and is workable for the transaction-based relationship offered by broker-dealers.

Critics of the proposal have argued that Regulation Best Interest would preserve the status quo for broker-dealers and would fail to meaningfully increase the protection of retail investors. Specifically, the failure to define "best interest" and the failure to prohibit certain conflicts of interest, in particular financial interests when recommending transactions to retail customers, have drawn particular criticism.

(Continued on Page 11)

Legislative/Regulatory Actions

Continued from Page 10

Although the proposal may undergo revisions, the essential terms of the Regulation Best Interest are likely to remain a "best interest" standard coupled with a more rigorous regime for management and disclosure of conflicts of interest.

For our client alert on the Proposed Rule, see: *https://www.mofo.com/resources/publications/180424-sec-regulation-best-interest.html.*

SEC Proposes Simplified Relationship Summary for Broker-Dealers and Investment Advisers to Use with Retail Investors

On April 18, 2018, the SEC proposed a new disclosure document to be used by registered broker-dealers, registered investment advisers, and dual registrants. The new client relationship summary ("Form CRS") is part of the package of proposed rules and forms relating to broker-dealers' and investment advisers' standards of conduct and it complements the SEC's proposal of a new standard of conduct for registered broker-dealers when dealing with retail investors and its interpretive guidance regarding the investment adviser standard of care.

Under the proposed rule, registered investment advisers and registered broker-dealers would provide a brief relationship summary to retail investors to inform them about the relationships and services the firm offers, the standard of conduct and the fees and costs associated with those services, specified conflicts of interest, and whether the firm and its financial professionals currently have reportable legal or disciplinary events. Form CRS would be a part of the SEC's filing and recordkeeping requirements.

Form CRS would not replace existing disclosures provided to clients or potential clients, or filings made with the SEC. In addition, Form CRS would be supplemented by disclosures, made on a periodic basis or at the point-of-sale, as might be required to ensure that retail investors are fully informed of material conflicts of interest and other relevant information.

Form CRS would provide basic disclosures to retail investors at the account opening stage, including:

- A firm's relationships and the services it offers;
- The standard of conduct to which it is subject;
- Fees and costs associated with its services;
- Conflicts of interest related to such services; and
- Whether the firm and its financial professionals currently have reportable legal or disciplinary events.

Form CRS would include only eight sections covering prescribed information in a stylized format:

- A title and an introduction that briefly explains the type of accounts and services the firm offers;
- Information about the relationships between the firm and retail investors and the account services provided by the firm to its retail clients, including, as applicable: brokerage services, advisory services, and services provided by affiliates of the firm;
- A prescribed description of the legal standard of conduct applicable to the firm's relationship with retail investors;
- A summary of specified fees, services, standards of conduct, and incentives applicable to stand-alone broker-dealers and investment advisers;
- A summary of conflicts of interest related to financial incentives for recommending or selling proprietary products or products offered by third parties, from revenue-sharing arrangements, or from principal trading opportunities;
- Disclosure directing investors to where they can find additional information about the firm's disciplinary events, services, fees, and conflicts of interest; and
- A list of required questions that retail investors might want to ask their financial professionals.

It is the SEC's view that Form CRS will help retail investors understand the services that a particular firm offers, and those services differ based on whether the firm is a registered broker-dealer, registered investment adviser, or both.

For more information on Form CRS please visit our client alert at *https://www.mofo.com/resources/publications/180502-sec-relationship-summary.html*.

Bureau of Consumer Financial Protection Update

Trump Administration Announces Nomination of New Bureau Director

On June 16, 2018, the Trump Administration announced that President Trump would nominate

(Continued on Page 12)

Legislative/Regulatory Actions

Continued from Page 11

Kathy Kraninger to be the next director of the Bureau of Consumer Financial Protection ("Bureau"). Ms. Kraninger's nomination must be confirmed by the Senate. Ms. Kraninger currently serves as an official at the Office of Management and Budget ("OMB"), the agency that Bureau Acting Director Mick Mulvaney also leads. Under the Federal Vacancies Act, Acting Director Mulvaney's interim term would have expired near the end of June 2018 if a nomination had not been made. However, with the nomination of Ms. Kraninger, Acting Director Mulvaney can continue to serve in his current capacity perhaps until Ms. Kraninger's nomination is acted on by the Senate.

Bureau Enters into $1 Billion Joint Settlement Agreement with Wells Fargo

On April 20, 2018, in coordination with the Office of the Comptroller of the Currency (OCC), the Bureau announced that it had entered into a settlement agreement with Wells Fargo relating to force-placed car insurance and mortgage interest rate-lock practices. The Bureau alleged that the bank violated the prohibition against engaging in unfair practices by (1) acquiring duplicative car insurance or failing to remove duplicative insurance when the bank's service provider incorrectly found that the borrower did not have insurance as required by the terms of the car loan agreement; and (2) charging borrowers for a mortgage interest rate lock when the bank's policies stated that the bank should have absorbed the fee when the bank's actions caused a delay in processing the mortgage loan application. The Bureau's unfairness allegation on the mortgage interest rate-lock issue was based on an alleged failure by the bank to follow its own internal policies and procedures. The agencies ordered a combined $1 billion civil money penalty.

Bureau Continues Its Bottom Up Operations Review

The Bureau continued issuing Requests for Information ("RFI") seeking public input on the operations of the Bureau, including the Bureau's rulemaking authority and rule-writing apparatus. The eighth RFI requested public input on final rulemakings that the Bureau adopted pursuant to its authority under the Dodd-Frank Act. Examples of rules the Bureau solicited feedback on were rules regarding prepaid accounts, remittance transfers, mortgage servicing, mortgage origination, and integrated mortgage disclosures. The adopted rules RFI sought to address the failure of consumer financial regulations to keep pace with the evolution of consumer financial products and services.

The ninth RFI from the Bureau sought information on the regulations that the Bureau "inherited" under the Dodd-Frank Act. The Dodd-Frank Act consolidated rulemaking authority for consumer financial protection laws into the Bureau. Following the Dodd-Frank Act, the Bureau republished and assumed responsibility for the regulations that had been issued by other federal agencies before the passage of the Dodd-Frank Act, thereby "inheriting" the regulations. The inherited regulations RFI requested input on the substance of the inherited regulations and how rules should or should not be changed, including to identify and address "outdated, unnecessary, or unduly burdensome regulations."

The Bureau's tenth RFI focused on the effectiveness and accessibility of the Bureau's guidance materials and activities. Specifically, the Bureau sought public input on "whether it would be appropriate to make changes to the formats, processes, and delivery methods for providing this guidance," as well as the "disclaimers used on certain forms of guidance." The Bureau also sought comment on the Bureau's Regulatory Inquiries Function, regulatory implementation and compliance aids, guidance materials related to enforcement and supervision priorities and expectations, and suggestions for new forms of written guidance.

The Bureau also issued RFIs seeking public input on the Bureau's consumer education programs and the handling of consumer complaints and inquiries.

For our client alert on the Bureau's adopted regulations RFI, please visit: *https://media2.mofo.com/documents/180323-cfpb.pdf.*

For our client alert on the Bureau's inherited regulations RFI, please visit: *https://media2.mofo.com/documents/180326-cfpb-rfi-inherited-regulations.pdf*.

For our client alert on the Bureau's guidance and implementation support RFI, please visit: *https://media2.mofo.com/documents/180330-cfpb-guidance.pdf.*

Rebranding the Bureau

On March 30, 2018, the Acting Director Mulvaney unveiled the Bureau's new seal and described the symbolism of the seal. The seal is intended to

(Continued on Page 13)

Legislative/Regulatory Actions

Continued from Page 12

symbolize the Bureau's three pillars, to serve, lead, and innovate, and has symbols representing justice, financial security, and transparency. Bureau leadership also has recently made a concerted effort to use the Bureau's formal name under the Dodd-Frank Act, the "Bureau of Consumer Financial Protection," in public statements, including in Congressional testimony. These largely symbolic steps are consistent with Acting Director Mulvaney's stated intent to operate the Bureau consistent with its founding statute. ■

**Meghan E. Dwyer, Julian E. Hammar, Jeremy R. Mandell, Mark R. Sobin, and William Nyasha Zichawo contributed to this column.*

Watch For

CFTC

CFTC Press Release 7737-18 (June 4, 2018) – The CFTC voted on the following rules at an Open Commission meeting: The Commission approved the Indemnification Final Rule (Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters). And, the Commission approved the Volcker Proposed Rule (Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds); and the De Minimis Exception Proposed Rule (Amendments to Swap Dealer Registration De Minimis Exception).

CFTC Press Release 7731-18 (May 21, 2018) – The CFTC's Division of Market Oversight and Division of Clearing and Risk issued a joint staff advisory that gives exchanges and clearinghouses registered with the CFTC guidance for listing virtual currency derivative products. The advisory provides guidance on certain enhancements when listing a derivative contract based on virtual currency and clarifies the CFTC staffs' priorities and expectations in its review of new virtual currency derivatives to be listed on a designated contract market or swap execution facility, or to be cleared by a derivatives clearing organization. Highlighted in the advisory are certain key areas that require particular attention in the context of listing a new virtual currency derivatives contract. They are: Enhanced market surveillance; Close coordination with CFTC staff; Large trader reporting; Outreach to member and market participants; and Derivatives Clearing Organization risk management and governance.

CFTC Press Release 7729-18 (May 17, 2018) – The CFTC has approved a proposed rule to reduce regulatory burdens for U.S. market participants in order to promote economic growth and job creation, by bringing certain CFTC requirements in line with other U.S. regulators and is seeking public comments on the proposal. The proposed rule amends the CFTC's margin requirements for uncleared swaps for swap dealers and major swap participants. The comment period ends 60 days after the proposal's publication in the Federal Register.

CFTC Press Release 7725-18 (May 16, 2018) – The CFTC's Division of Swap Dealer and Intermediary Oversight granted relief to non-US counterparties who enter into swaps with International Financial Institutions, such as development banks. In the no-action letter, DSIO announced it would not recommend that the Commission take action if non-U.S. persons do not include swaps with IFIs when determining whether such non-U.S. persons meet or exceed agency-prescribed registration thresholds. The relief granted is consistent with the Commission's prior treatment of IFIs for purposes of foreign futures and options transactions, the swap dealer definition, and mandatory clearing.

FDIC

FDIC Press Release (June 1, 2018) – The OCC and FDIC issued a final rule to shorten the standard settlement cycle for securities purchased or sold by OCC-supervised and FDIC-supervised institutions. The final rule will require banks to settle most securities transactions within the number of business days in the standard settlement cycle followed by registered broker dealers in the United States unless otherwise agreed to by the parties at the time of the transaction. In doing so, the rule aligns the settlement cycle requirements of the OCC, FDIC, and FRB. On September 5, 2017, the securities industry in the United States transitioned from a standard securities settlement cycle of three business days after the date of the contract, commonly known as T+3, to a two-business-day standard, or T+2. The OCC and FDIC understand that, consistent with the industry's transition to T+2, OCC Bulletin 2017-22, and FDIC Financial Institution Letter 32-2017, banks are already complying with a two-business-day settlement standard.

(Continued on Page 14)

Watch For *(Continued from page 13)*

Federal Reserve Board

Federal Reserve Press Release (June 5, 2018) – Five federal financial regulatory agencies (FRB, CFTC, FDIC, OCC and SEC) announced that they are jointly asking for public comment on a proposal that would simplify and tailor compliance requirements relating to the "Volcker rule." By statute, the Volcker rule generally restricts banking entities from engaging in prohibited proprietary trading and from owning or controlling hedge funds or private equity funds. The proposed changes are intended to streamline the rule by eliminating or modifying requirements that are not necessary to effectively implement the statute, while maintaining the core principles of the Volcker rule as well as the safety and soundness of banking entities. Comments will be accepted for 60 days after the proposal's publication in the *Federal Register*.

Federal Reserve Press Release (April 11, 2018) – The FRB and OCC proposed a rule that would further tailor leverage ratio requirements to the business activities and risk profiles of the largest domestic firms. Currently, firms that are required to comply with the "enhanced supplementary leverage ratio" are subject to a fixed leverage standard, regardless of their systemic footprint. The proposal would instead tie the standard to the risk-based capital surcharge of the firm, which is based on the firm's individual characteristics. The resulting leverage standard would be more closely tailored to each firm. Comments on the rule will be accepted for 30 days after publication in the *Federal Register.*

Federal Reserve Press Release (April 10, 2018) – The FRB asked for comment on a proposal that would simplify its capital rules for large banks while preserving strong capital levels that would maintain their ability to lend to households and businesses under stressful conditions. The proposal would introduce a "stress capital buffer," or SCB, which would in part integrate the forward-looking stress test results with the Board's non-stress capital requirements. The result would produce capital requirements for large banking organization that are firm-specific and risk-sensitive. Comments on the proposal will be accepted for 60 days.

FinCEN

May 11, 2018 – FinCEN reminds financial institutions and their customers that the final rule, "Customer Due Diligence Requirements for Financial Institutions" becomes effective May 11, 2018. FinCEN issued the CDD Rule, which amends Bank Secrecy Act regulations, to improve financial transparency and prevent criminals and terrorists from misusing companies to disguise their illicit activities and launder their ill-gotten gains. The CDD rule clarifies and strengthens customer due diligence requirements for U.S. banks, mutual funds brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities and adds a new requirement for these covered financial institutions to identify and verify the identity the natural persons (known as beneficial owners) of legal entity customers who own, control, and profit from companies when those companies open accounts. With respect to the new requirement to obtain beneficial ownership information, financial institutions will have to identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls the legal entity.

FINRA

FINRA Information Notice (May 18, 2018) – FINRA is making enhancements to its disclosure review process that will permit firms to rely on FINRA's verification process for purposes of compliance with the requirement to conduct a search of public records relating to bankruptcies, judgments and liens. Specifically, beginning on July 9, 2018, FINRA will conduct a public records search within 15 calendar days from the date of an applicant's Form U4 (Uniform Application for Securities Industry Registration or Transfer) and provide member firms any information resulting from such a search if such information is different from what was reported in the applicant's Form U4. These enhancements are likely to: (1) reduce the costs to firms associated with conducting these public records checks, which often involve finding and hiring a vendor; (2) result in more timely reporting of disclosure information to the benefit of regulators, investors and firms; and (3) result in a significant reduction of late disclosure fees related to judgments and liens.

FINRA Regulatory Notice 18-19 (May 3, 2018) – FINRA has filed for immediate effectiveness amendments to FINRA Rule 3310 (Anti-Money Laundering Compliance Program) to reflect FinCEN's adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (CDD

(Continued on Page 15)

Watch For *(Continued from page 14)*

Rule). The implementation date is May 11, 2018. This implementation date aligns with the compliance date for FinCEN's CDD Rule.

FINRA Regulatory Notice 18-18 (May 3, 2018) – In June 2016, the SEC approved FINRA's rule change amending FINRA Rule 4210 to establish margin requirements for Covered Agency Transactions. FINRA is extending to March 25, 2019 the effective date of the requirements pursuant to the rule change that otherwise would have become effective on June 25, 2018.

FINRA Regulatory Notice 18-16 (April 30, 2018) – FINRA requests comment on proposed rule amendments that would impose additional restrictions on member firms that employ brokers with a history of significant past misconduct. These brokers, while relatively small in number, may present heightened risk of harm to investors, and any misconduct by them also may undermine confidence in the securities markets as a whole. The rule proposals would strengthen the existing controls, some of which are highlighted below, FINRA has applied to such brokers to further promote investor protection and market integrity. The comment period expires June 29, 2018. In addition, FINRA is focusing attention on high-risk brokers by publishing Regulatory Notice 18-15 to reiterate the existing obligation of member firms to adopt and implement tailored heightened supervisory procedures under Rule 3110 (Supervision) for high-risk brokers; and revising FINRA's qualification examination waiver guidelines and related procedures to more broadly consider past misconduct when considering examination waiver requests.

FINRA Regulatory Notice 18-14 (April 24, 2018) – FINRA is conducting a retrospective review of Rule 3110 (Supervision), governing annual compliance meetings to assess its effectiveness and efficiency. This Notice outlines the general retrospective rule review process and seeks responses to several questions related to firms' experiences with this specific rule. The comment period expires June 25, 2018.

FINRA Regulatory Notice 18-13 (April 20, 2018) – FINRA seeks comment on proposed rule amendments that would revise the quantitative suitability obligation under FINRA Rule 2111 (Suitability) to more effectively address instances of excessive trading in customers' accounts. The proposed rule amendments would remove the element of control that currently must be proved to demonstrate a violation, but would not change the obligations to prove that the transactions were recommended and that the level of trading was excessive and unsuitable in light of the customer's investment profile. The comment period expires June 19, 2018.

FINRA Regulatory Notice 18-11 (March 28, 2018) – FINRA advises firms to exercise caution in recommending and entering unpriced customer orders at and around the opening on the first day of trading of a direct listing of a security. FINRA is concerned that, without the use of a limit price, customers may receive executions at prices that are not in line with their expectations and ultimate investment decision. FINRA encourages firms to consider the appropriateness of using and recommending (and discussing with customers the benefits of using) priced, limit orders at and around the opening on the first day of trading of a direct listing.

FINRA Regulatory Notice 18-10 (March 23, 2018) – FINRA is conducting a retrospective review of the rule governing carrying agreements to assess its effectiveness and efficiency. This Notice outlines the general retrospective rule review process and seeks responses to several questions related to firms' experiences with this specific rule. The comment period has been extended from May 23, 2018 to June 22, 2018.

MSRB

June 30, 2018 – New Form G-45 Submission Requirements for 529 Plans/ABLE Programs. Amended requirements for data reporting take effect for underwriters of programs established to implement the ABLE Act of 2014 and to underwriters of 529 savings plans. Under amended Form G-45, the MSRB will collect data about the transactional fees primarily assessed by ABLE programs and about any variance in the account maintenance fee due to the residency of the account owner.

MSRB Press Release (June 27, 2018) – The MSRB sought input from municipal advisors and other market participants about draft guidance to support understanding of the application of new advertising standards to the use of municipal advisory client lists and case studies. MSRB Rule G-40, on advertising by municipal advisors, becomes effective February 7, 2019. Comments should be submitted no later than July 27, 2018

MSRB Notice 2018-13 (June 25, 2018) – The MSRB revised the content outline and selection

(Continued on Page 16)

Watch For *(Continued from page 15)*

specifications for the Municipal Securities Representative Qualification Examination (Series 52 exam) to remove general securities knowledge content as part of the MSRB's modifications to its professional qualification examination program. The implementation date for the revised Series 52 exam content outline and selection specifications will be October 1, 2018. Candidates who open an exam enrollment window prior to October 1, 2018 will be enrolling to take the current Series 52 exam, whereas candidates who open an exam enrollment window on or after October 1, 2018 will be enrolling to take the revised Series 52 exam as well as the SIE exam. Additionally, the MSRB made technical revisions and updates to the content outlines for its Municipal Advisor Representative Qualification Examination (Series 50 exam), Municipal Fund Securities Limited Principal Qualification Examination (Series 51 exam) and Municipal Securities Principal Qualification Examination (Series 53 exam), which will be implemented on July 25, 2018.

MSRB Notice 2018-12 (June 20, 2018) – The MSRB published answers to frequently asked questions and related scenarios regarding MSRB Rule G-42, on duties of non-solicitor municipal advisors, and the making of recommendations and resulting obligations. The MSRB tailored the **FAQs Regarding MSRB Rule G-42 and Making Recommendations** to be responsive to input received so that the FAQs serve as a compliance resource to enhance municipal advisors' understanding and application of Rule G-42.

June 11, 2018 – The MSRB has filed a rule change with the SEC to harmonize certain MSRB professional qualification requirements under MSRB Rule G-3 with FINRA's rules and the development of the Securities Industry Essentials (SIE) Examination. The amendments to MSRB Rule G-3 were filed for immediate effectiveness with an implementation date of October 1, 2018. The amendments to G-3 reflect the MSRB's intended plan to revise the Municipal Securities Representative Qualification Examination (Series 52) into a specialized knowledge examination and recognize the SIE Examination as a prerequisite for the Series 52 examination. The MSRB will continue to recognize, in their revised forms as specialized knowledge examinations, the General Securities Representative Qualification Examination (Series 7) for qualification as a municipal securities sales limited representative and the Investment Company/Variable Contracts Products Representative Examination (Series 6) for qualification as an investment company/variable contracts limited representative. Additionally, the amendments to Rule G-3 will, among other things, allow brokers, dealers, and municipal securities dealers to make and maintain MSRB qualifications for any person associated with a dealer; permit qualified associated persons to leave a dealer to work for a financial services industry affiliate of a dealer and, if certain conditions are met, return to association with a dealer without having to requalify by examination; and permit MSRB qualifications to toll for a qualified individual associated with a dealer or municipal advisor who volunteers for or is called into active United States military service.

June 7, 20198 – The MSRB reminds municipal securities dealers that amendments to MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements, become effective on June 14, 2018. The amendments reflect the MSRB's long-standing interpretation that municipal securities dealers acting as placement agents in private placements of municipal securities, including direct purchase transactions, must obtain a CUSIP number. Additionally, the amendments extend to all municipal advisors the requirement that a municipal advisor obtain a CUSIP number when advising on a competitive transaction in municipal securities. Amended Rule G-34 incorporates an exception from the requirement to obtain CUSIP numbers when the dealer (or municipal advisor in a competitive sale) reasonably believes the purchaser's present intent is to hold the municipal securities to maturity or earlier redemption or mandatory tender. To rely on the exception, the bond purchaser may be a bank, control affiliate of a bank or consortium of these entities, or a municipal entity that meets certain other criteria under the rule.

MSRB Press Release (June 5, 2018) – The MSRB is seeking comment on existing interpretive guidance that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. Comments should be submitted no later than August 6, 2018.

MSRB Notice 2018-09 (May 16, 2018) – The MSRB is requesting comment on draft MSRB Rule G-36, on discretionary transactions in customer accounts, and related draft amendments. Draft

(Continued on Page 17)

Watch For *(Continued from page 16)*

Rule G-36 would re-establish a standalone rule to govern discretionary transactions by brokers, dealers and municipal securities dealers and their associated persons in customer accounts by consolidating and explicitly articulating existing requirements for such transactions. Additionally, draft Rule G-36 would establish limited, new requirements for discretionary transactions in customer accounts effected by individuals other than dealers and their associated persons. Comments should be submitted no later than July 16, 2018.

May 10, 2018 – *Federal Register* Notice of Approval for Proposed Rule Change Consisting of Amendments to Rule G-21, on Advertising, Proposed New Rule G-40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G-42, on Duties of Non-Solicitor Municipal Advisors (hyperlink).

MSRB Press Release (May 7, 2018) – The MSRB received approval from the SEC to establish a new advertising rule for municipal advisors and to enhance the MSRB's existing advertising rule for municipal securities dealers. To assist municipal advisors in complying with MSRB Rule G-40, the MSRB will provide guidance in advance of the effective date of February 7, 2019.

April 30, 2018 – MSRB Response to Comments during SEC Comment period for Proposed Rule Change Consisting of Amendments to Rule G-21, on Advertising, Proposed New Rule G-40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G-42, on Duties of Non-Solicitor Municipal Advisors (hyperlink).

MSRB Notice 2018-07 (April 12, 2018) – The MSRB is publishing this notice regarding transactions in the municipal securities of distressed municipalities, reminding brokers, dealers and municipal securities dealers (collectively, "dealers") of some of the investor protection rules applicable to dealers effecting customer transactions in such securities.

MSRB Notice 2018-06 (April 4, 2018) – The MSRB made available new and updated investor education resources on new mark-up disclosure requirements. Brokers, dealers and municipal securities dealers, particularly retail broker networks, that work with individual investors may find the documents helpful as they adapt to the new disclosure standard. The new confirmation disclosure requirements are scheduled to take effect May 14, 2018.

March 29, 2018 – The MSRB published a compliance resource for municipal advisors on outsourcing of compliance functions. Generally under MSRB Rule G-44, a municipal advisor has flexibility in establishing a reasonably designed supervisory system by allowing compliance tasks, including the role of CCO, to be outsourced. However, while a municipal advisor may outsource compliance functions, the municipal advisor retains ultimate responsibility for the firm's compliance obligations.

MSRB Notice 2018-05 (March 19, 2018) – The MSRB provides new and updated FAQs on confirmation disclosure and prevailing market price. New MSRB confirmation disclosure requirements and related guidance are scheduled to go into effect on May 14, 2018. Specifically, amendments to Rule G-15, on confirmation, clearance and other matters will require brokers, dealers and municipal securities dealers to disclose additional information, including their mark-ups and mark-downs to retail customers on certain principal transactions. In addition, amendments to Rule G-30, on prices and commissions, will provide guidance on prevailing market price for the purpose of determining mark-ups and mark-downs and other Rule G-30 determinations.

OCC

OCC Bulletin 2018-13 (May 16, 2018) – On May 14, 2018, the OCC, FRB and FDIC published a notice of proposed rulemaking to implement the Financial Accounting Standards Board's Accounting Standards Update 2016-13, "Financial Instruments—Credit Losses," in their rules. The proposed revisions would conform definitions in the agencies' capital and non-capital rules to the current expected credit losses standard and provide an optional transition framework for banks that experience a decrease in capital as a result of adopting the CECL standard.

OCC Bulletin 2018-8 (April 11, 2018) – The FFIEC, on behalf of its members, has issued a joint statement that discusses considerations for financial institutions contemplating the purchase of cyber insurance as a component of their risk management programs. Although FFIEC members do not require financial institutions to maintain cyber insurance, the evolving cyber insurance market and the shifting cyber threat landscape may prompt institutions to consider whether cyber insurance would be an effective part of their overall risk management programs. For further information on overall insurance management expectations, institutions can refer to the "Corporate and Risk Governance" booklet of the Comptroller's Handbook, in the section titled "Ensure an Appropriate Insurance Program."

(Continued on Page 18)

Watch For *(Continued from page 17)*

SEC

SEC Press Release 2018-103 (June 5, 2018) – The SEC voted to improve the experience of investors who invest in mutual funds, ETFs and other investment funds. In three related releases, the Commission provided a new, optional "notice and access" method for delivering fund shareholder reports, invited investors and others to share their views on improving fund disclosure and sought feedback on the fees that intermediaries charge for delivering fund reports. These actions are part of a long-term project, led by the Division of Investment Management, to explore modernization of the design, delivery and content of fund disclosures for the benefit of investors. In the first of three releases, the Commission adopted new rule 30e-3. The rule creates an optional "notice and access" method for delivering shareholder reports. Under the rule, a fund may deliver its shareholder reports by making them publicly accessible on a website, free of charge, and sending investors a paper notice of each report's availability by mail. Investors who prefer to receive the full reports in paper may—at any time—choose that option free of charge. Funds may rely on the new rule beginning no earlier than January 1, 2021. The Commission is also seeking public comment on additional ways to modernize fund information. Investors, academics, literacy and design experts, market observers, and fund advisers and boards of directors are invited to visit ***www.sec.gov/tell-us*** to provide feedback on how to improve the experience of fund investors. This input will help inform the Commission on how to modernize the design, delivery and content of fund information, including how to make better use of 21st century technology to provide more interactive and personalized disclosure. Finally, the Commission is seeking comment on the framework for certain processing fees that broker-dealers and other intermediaries charge funds for delivering fund shareholder reports and other materials to investors. The Commission requests that commenters provide feedback on the requests by October 31, 2018.

SEC Press Release 2018-92 (May 23, 2018) – The SEC proposed Fair Act Rules and amendments that would promote research on mutual funds, exchange-traded funds, registered closed-end funds, business development companies, and similar covered investment funds. The proposal would reduce obstacles to providing research on investment funds by harmonizing the treatment of such research with research on other public entities. If adopted, the proposal would generally establish a safe harbor for a broker or dealer to publish or distribute research reports on investment funds under certain conditions. This proposed safe harbor is similar to a regulatory safe harbor that currently exists for research reports about other public entities. The public comment period will remain open for 30 days following publication of the proposing release in the *Federal Register.*

SEC Press Release 2018-68 (April 18, 2018) – The SEC voted to propose a package of rulemakings and interpretations designed to enhance the quality and transparency of investors' relationships with investment advisers and broker-dealers while preserving access to a variety of types of advice relationships and investment products. Under proposed Regulation Best Interest, a broker-dealer would be required to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer. Regulation Best Interest is designed to make it clear that a broker-dealer may not put its financial interests ahead of the interests of a retail customer in making recommendations. In addition, the Commission proposed an interpretation to reaffirm and, in some cases, clarify the Commission's views of the fiduciary duty that investment advisers owe to their clients. By highlighting principles relevant to the fiduciary duty, investment advisers and their clients would have greater clarity about advisers' legal obligations. Next, the Commission proposed to help address investor confusion about the nature of their relationships with investment professionals through a new short-form disclosure document — a customer or client relationship summary. Form CRS would provide retail investors with simple, easy-to-understand information about the nature of their relationship with their investment professional, and would supplement other more detailed disclosures. For advisers, additional information can be found in Form ADV. For broker-dealers, disclosures of the material facts relating to the scope and terms of the relationship would be required under Regulation Best Interest. Finally, the Commission proposed to restrict certain broker-dealers and their financial professionals from using the terms "adviser" or "advisor" as part of their name or title with retail investors. Investment advisers and broker-dealers would also need to disclose their registration status with the Commission in certain retail investor communications. Taken as a whole, the proposed rules and interpretations would enhance investor protection by applying consistent principles

(Continued on Page 19)

Watch For

(Continued from page 18)

to investment advisers and broker-dealers: provide clear disclosures, exercise due care, and address conflicts of interest. The specific obligations of investment advisers and broker-dealers would be, however, tailored to the differences in the types of advice relationships that they offer. The public comment period will remain open for 90 days following publication of the documents in the *Federal Register.*

Available Publications

MSRB Press Release (June 19, 2018) – The MSRB published a report examining trends in customer trading activity of municipal securities dealers. The **Dealer Participation and Concentration in Municipal Securities Trading** report shows that despite sharp declines in dealer inventories of municipal securities and the number of dealers, municipal securities trading activity on behalf of investors has remained relatively stable over the past several years, with robust dealer participation and less concentration among top dealers.

OCC News Release 2018-52 (May 24, 2018) – The OCC reported credit, operational, compliance, and interest rate risks are key themes for the federal banking system in its *Semiannual Risk Perspective for Spring 2018.* The report covers risks facing national banks and federal savings associations based on data as of March 31, 2018 and presents data in five main areas: the operating environment, bank performance, special topics in emerging risk, trends in key risks, and supervisory actions. It focuses on issues that pose threats to those financial institutions regulated by the OCC and is intended as a resource to the industry, examiners, and the public.

CFTC Press Release 7719-18 (April 26, 2018) – The CFTC Chairman released a white paper, **Swaps Regulation Version 2.0: An Assessment of the Current Implementation of Reform and Proposals for Next Steps**, co-authored with CFTC Chief Economist Bruce Tuckman. The white paper utilizes a range of academic research, market activity and the agency's regulatory experience with implementing current swaps reform, to assess the agency's implementation of swaps reform, determine its strengths and deficiencies and recommend improvements to the current swaps market reform framework. The paper takes a comprehensive look at five key areas: **Swaps Central Counterparties (CCPs); Swaps Reporting Rules; Swaps Execution Rules; Swap Dealer Capital; and End User Exception.**

OCC Bulletin 2018-9 (April 26, 2018) – The OCC issued the "Recovery Planning" booklet of the **Comptroller's Handbook**. This new booklet, part of the "Safety and Soundness" category of the **Comptroller's Handbook**, explains the purpose of effective recovery planning pursuant to 12 CFR 30, appendix E, "OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches." The guidelines only apply to covered banks and have phased-in compliance periods culminating in July 2018.

Who's News

Susan Axelrod has joined Merrill Lynch Wealth Management as Chief Supervisory Officer. Previously, Susan was EVP of Regulatory Operations at FINRA.

Joseph Bielawa has joined M&T Bank as Chief Regulatory Counsel. Previously, Joe was Director, Senior Regulatory Counsel at Natixis.

Roger Blissett has joined MUFG Bank as Head of Government Affairs. Previously, Roger was Managing Director at RBC Capital Markets.

Jametriss Roulhac Boone has joined RIA in a Box as Director of Compliance. Previously, Jametriss was an AVP at Deutsche Bank.

Julie A. Erhardt has been named the SEC's Acting Chief Risk Officer, to serve while the agency completes its search to fill this new position.

Raquel Fox will succeed Paul Leder as the Director of the SEC's Office of International Affairs. Ms. Fox will formally assume the position in July 2018.

Bari Havlik has been named EVP for Member Supervision at FINRA. Previously, she was a SVP and CCO at The Charles Schwab Corporation. Bari replaced Susan Axelrod who left FINRA after 28 years of service.

(Continued on Page 23)

Program Update

2018 Legal and Legislative Issues Conference

Registrations are now being accepted for FMA's 27th Legal & Legislative Conference set to take place **October 18–19** at the **Washington Marriott Georgetown Hotel** (new location, recently renovated!) here in Washington, DC. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance officers/risk managers, internal auditors and regulators. The day and a half program provides participants with an opportunity to share information on current legal and regulatory developments as well as network with peers. **Be sure to ask for the 2-for-1 or first-timers registration discount!**

The program planning committee is currently developing an agenda focusing on current areas of regulatory and Congressional/agency scrutiny and activity. Members include: **Dr. Sharon Brown-Hruska** (*NERA Economic Consulting);* **Edward Cahillane** *(Citizens Bank);* **Linda Filardi** *(Capital One Bank);* **Daniel Kearney, Jr.** *(WilmerHale);* **Barbara Mendelson** *(Morrison & Foerster LLP)* and **Robert Pargac** *(Promontory, an IBM Company)*.

The working agenda currently features these panels:

- **General Counsels: FRB, OCC, FDIC, FINRA, CFTC, SEC, MSRB & NFA**
- **Reexamining Dodd-Frank**
- **Cryptocurrency / Blockchain / Fintech**
- **Derivatives**
- **Cybersecurity**
- **Recent Banking and Securities Enforcement Actions and Litigation**
- **Privacy Law—Impact on Financial Institution Operations**
- **SEC Division Reports: Enforcement, Corporation Finance, Investment Management, Trading and Markets & OCIE**

If you would like to volunteer to speak on any of these topics…or suggest other noted leaders in these fields as panelists…please contact Dorcas Pearce right away and she will advise the program planning committee of your interest/input.

The complete e-brochure will be distributed mid- to late July and will also be available on FMA's website – *www.fmaweb.org.*

CLE and CPE accreditation…as well as first timer and 2-for-1 (BOGO) team discounts…will be available, so be sure to budget for (and plan to attend) the 2018 Legal & Legislative Issues Conference.

Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 if you have questions and/or wish to register. Online registration is now open.

Thanks to everyone who took the time to respond to FMA's May 10 **survey** asking for their most critical topical suggestions as well as speaker recommendations and volunteers.

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

(Continued on page 21)

Program Update *(continued from page 20)*

2018 Securities Compliance Seminar

FMA's 27th Securities Compliance Seminar took place **April 18 – 20** at the Sheraton Charlotte Hotel in Charlotte, North Carolina. This annual program was a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators.

Congratulations to the planning committee for developing varied agenda topics and securing noted industry leaders and regulators as speakers. Members included: **Michelle Dávila** *(Franklin Templeton Investments)*; **Charis Jones** *(LPL Financial)*; **Ann Robinson** *(RegEd)* and **Rich Saltz** *(Wells Fargo)*.

The agenda featured these sessions and confirmed speakers:

Pre-Seminar Interactive Workshop

- Joy Aldridge ■ Compliance Counsel LLC
- Gene Gunderson ■ Synovus Securities, Inc.
- Wesley Moore ■ Quarule, Inc.
- Deanna Rankin ■ Frost Bank

Key 2018 Legislative and Regulatory Initiatives

- Thomas Grygiel ■ ACA Compliance Group
- Oliver Ireland ■ Morrison & Foerster LLP
- Edward O'Keefe ■ Moore & Van Allen PLLC

BCP, Data Security and Cybersecurity: Avoiding Pitfalls and Mitigating Risk

- Tom Embrogno ■ IronGate Global Solutions
- Diane Novak ■ HomeStreet Bank
- Steve Stone ■ Wells Fargo
- Matthew White ■ Baker Donelson

Internal Audit Hot Topics and Emerging Risks

- Paul Bassler ■ Regions Financial Corporation
- Shellie Creson ■ Fifth Third Bank
- James Connors ■ Wells Fargo
- Daniel New ■ EY

BSA/AML/OFAC Compliance – Developments and Enforcement Trends

- Barbara Alonso ■ Credit Agricole Indosuez, Miami Agency
- Katrina Carroll ■ LPL Financial
- Rachel Dondarski ■ OFAC
- Daniel Tannebaum ■ PricewaterhouseCoopers LLP

First-timer, team, regulatory/government/SRO and 2-for-1 (NC/SC local attendees only) registration discounts were available.

Emerging Technology: Digital Advice

- Philip Martin ■ Charles Schwab & Co.
- Wesley Moore ■ Quarule, Inc.
- Jared Shaw ■ EY

Fiduciary Standard Rulemaking

- Brad Busscher ■ Incapital LLC
- Evan Rosser ■ Oyster Consulting, LLC
- Leith Thompson ■ The PNC Financial Services Group, Inc.

Regulatory Forum—Banking

- James Gallagher ■ OCC
- Howard Kirkham ■ FRB-Chicago
- Michael Orange ■ FDIC

SEC / OCIE Enforcement Hot Topics for Advisors

- Asher Ailey ■ Research Affiliates, LLC
- Andrew "Buddy" Donohue ■ Shearman & Sterling LLP
- Brian Rubin ■ Eversheds Sutherland (US) LLP

Conflicts of Interest

- Louis Dempsey ■ Renaissance Regulatory Services, Inc.
- John Ivan ■ Capital Forensics, Inc.
- Terra McCann ■ Nationwide Financial
- Ann Robinson ■ RegEd

Bank Products and Bank Networking Arrangements

- Paul Clark ■ Seward & Kissel LLP
- Jeffrey Holik ■ Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
- Greg Olson ■ Cetera Financial Group

CCO Liability: Minimizing Your Exposure Without Compromising Your Effectiveness

- Karen Aavik ■ KeyBank
- Mark Carberry ■ J.P. Morgan
- Dionne Fajardo ■ Wiand Guerra King P.A.
- Daniel Nathan ■ Orrick, Herrington & Sutcliffe LLP

(Continued on page 22)

Program Update *(continued from page 21)*

Regulatory Forum—Securities
- Cynthia Friedlander ■ FINRA
- Kevin Harrington ■ NC Division of Securities
- Donald Litteau ■ FINRA
- Saliha Olgun ■ MSRB
- Mark Wszolek ■ SEC

Senior Investor Protections
- Joseph Brady ■ NASAA
- Gary Klein ■ Fifth Third Bank
- Miriam Lefkowitz ■ Summit Financial Resources, Inc. / Summit Equities, Inc.

Peer Groups

Peer group discussions (lead by facilitators) took place Thursday afternoon. Participants met in small groups to discuss topics more in-depth. The discussions included:

Compliance Hot Topics/Emerging Issues
- B.J. Thomas ■ Bank of the West

Internal Audit Hot Topics
- Paul Bassler ■ Regions Financial
- Shellie Creson ■ Fifth Third Bank

Ask the Regulators
- Cynthia Friedlander ■ FINRA
- Don Litteau ■ FINRA
- Michael Orange ■ FDIC
- Howard Kirkham ■ FRB-Chicago
- Saliha Olgun ■ MSRB

Informal networking group dinners took place Wednesday and Thursday evenings. They provided a great opportunity for attendees to unwind and compare notes on sessions/speakers from earlier in the day. Dinner "captains" Sondra & Mike Bane and Brian Edwards did a fantastic job organizing and hosting these events…thanks for a job very well done!

CLE / CPE

CLE & CPE accreditation (among others) was available. If you need CLE/CPE accreditation and have not yet received your **CPE** certificate or **CLE** approval notification (and/or certificate), please contact Dorcas Pearce right away at *dp-fma@starpower.net* or 202/544-6327.

Pre-Seminar Workshop
Is Your Firm Scandal-Proof?

Joy Aldridge (Compliance Counsel LLC); **Gene Gunderson** (Synovus Securities); **Deanna Rankin** (Frost Bank); and **Wesley Moore** (Quarule, Inc.) led an optional **interactive** pre-seminar workshop, "**Is Your Firm Scandal-Proof?**", on Wednesday, April 18 from 8:30–10:45 am. This popular workshop focused on the intersection where Risk Management, Compliance, Audit and Legal meet. And, the discussion leaders offered suggestions on what a firm can do to better scandal-proof itself.

Thanks to everyone who participated and contributed to the success of this annual spring program… committee members, speakers, attendees and sponsors.

FMA gratefully acknowledges these sponsors of FMA's 2018 Securities Compliance Seminar

MORRISON | FOERSTER

RRS
Manage Through Change

Moore&VanAllen

W|G|K
WIAND GUERRA KING

(Continued on page 23)

Program Update *(continued from page 22)*

2019 Securities Compliance Seminar

Save these dates – May 1-3, 2019!

FMA's **2019 Securities Compliance Seminar** will take place at the **Marriott Pompano Beach Hotel in Fort Lauderdale, Florida** next spring. This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators.

The Planning Committee will begin work in the fall on program development. Contact Dorcas Pearce (*dp-fma@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. Please note…speakers receive a complimentary registration and are encouraged to attend as much of the seminar as possible.

FMA needs your input! A survey will be emailed late September/early October asking for hot topic/best practice ideas and speaker recommendations…you may even choose to volunteer! **Please email your thoughts to Dorcas Pearce within 72 hours of receipt.**

CPE / CLE accreditation (among others) will be available, so be sure to budget for, and plan to attend, the 28th annual Securities Compliance Seminar next spring.

Who's News *(continued from page 19)*

Dan Hugunine has joined the Corporate & Tax Department at Sirote & Permutt, PC in Birmingham, AL. Previously, Dan was a Partner in the Financial Industries Section at Balch & Bingham LLP.

Mary Keegan has been promoted to Senior Compliance Consultant at Hardin Compliance Consulting LLC.

Marianne Kelly, formerly VP/Corporate Trust Compliance Officer at UMB Bank, retired in April after 35 years in the financial services industry. Congratulations and best of luck, Marianne!

Robert LaPorte has started a new position as Senior Vice President, Global Compliance - C&IS Transfer Agency & Custodial Services at Northern Trust Corporation.

Tim Leary has been promoted to Managing Counsel at Wells Fargo.

Rochelle McAllister has joined Kirkland & Ellis LLP as an Investment Funds Associate. Previously, Rochelle was an Associate at Baker & McKenzie.

Ryan Richardson has joined Stripe as Financial Partnerships Counsel in New York. Previously, Ryan was an Associate in the financial services group at Morrison & Foerster LLP in Washington, DC, and New York.

Wesley Ringo has joined Capital Forensics, Inc. as Senior Advisor - Regulatory, Compliance and Legal. Previously, Wes was Chief Compliance Officer at Hilliard Lyons based in Louisville, KY.

Melissa Ruth has joined Natixis as Director, Regulatory Affairs Advocacy Specialist. Previously, Melissa was an Associate at Cleary Gottlieb Steen & Hamilton LLP.

Ignacio Sandoval has been promoted to Partner-Elect/Investment Management Practice Group at Morgan, Lewis & Bockius LLP.

Douglas Scheidt, an Associate Director and the Chief Counsel in the SEC's Division of Investment Management, will retire from the SEC at the end of September after 32 years of public service.

Lanny Schwartz has joined the MSRB as its Chief Regulatory Officer, a newly created role where he will oversee day-to-day rulemaking activities and regulatory policy development. Previously, Lanny was a Partner for more than a decade at Davis Polk & Wardwell LLP.

David Shore has joined Citizens Bank as SVP/CCO, Wealth Management. Previously, David supported the Fidelity institutional business, FIAM.

Andrew Smith has joined the FTC as the Director of the Bureau of Consumer Protection.

Matthew Vitek has joined FINRA as Director, International. Previously Matt was VP/Legal at FS Investments.

Matthew White has been promoted to Shareholder at Baker Donelson.