

# MARKET SOLUTIONS

Volume 29, Number 1

Financial Markets Association

March 2020

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## Financial Regulatory Agencies Issue Guidance and Call for Industry Preparedness Plans as the COVID-19 Outbreak Unfolds

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As the novel coronavirus, COVID-19—which the World Health Organization declared a global pandemic last week—continues to spread in the United States, causing widespread disruptions to nearly every industry, financial institutions are understandably focused on business continuity planning (“BCP”) and preparedness. In recent days, financial regulatory authorities have made clear that they expect that focus.

Below we summarize guidance from the Federal Financial Institutions Examination Council (“FFIEC”) and Financial Industry Regulatory Authority (“FINRA”) as well as a significant information request by the New York Department of Financial Services (“NYDFS”). We also describe common themes from the guidance and additional considerations for financial institutions.

## MARKET SOLUTIONS

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

## FFIEC Interagency Statement on Pandemic Planning

On March 6, 2020, the FFIEC, which includes as members each of the federal banking agencies, revised its Pandemic Planning guidance, detailing how banks should prepare for and respond to business continuity events caused by widespread outbreaks of infectious diseases.<sup>1</sup> First issued in 2007, and reissued in light of the COVID-19 epidemic, this guidance explains the agencies’ expectations but does not carry the force of law.

### Unique Features of Pandemics

The FFIEC explains that pandemics differ materially from other types of business continuity events that affect a discrete location or region, such as terrorist attacks or natural disasters, and call for a banking institution’s BCP to contemplate disruptions that could be wider in scope and longer in duration. In particular, substantial absenteeism among a bank’s workforce—as high as 40% during “peak weeks” of an outbreak—should be assumed.

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## Legislative/Regulatory Actions

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

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

### FEDERAL BANKING REGULATORS

*Agencies Publish Final Rules to Simplify and Tailor Application of Enhanced Prudential Standards and Resolution Plan Requirements*

On January 30, 2020, five federal agencies (the “Agencies”) proposed amendments to the rules implementing Section 13 of the Bank Holding Company Act of 1956 (the “Volcker Rule”) related to the prohibition on investing, sponsoring, and having certain relationships with “covered funds” (the “Proposed Funds Rule”). The Proposed Funds Rule comes on the heels of the conclusion of a separate rulemaking process dealing primarily with the Volcker Rule’s proprietary trading and compliance program requirements. Comments on the Proposed Funds Rule are due by April 1, 2020. A copy of the Proposed Funds Rule is available at

<https://www.federalreserve.gov/aboutthefed/boardmeetings/files/volcker-rule-fr-notice-20200130.pdf>.

At a high level, among other things, the Proposed Funds Rule would make the following changes to the Volcker Rule:

- **Qualifying Foreign Excluded Funds** – codify relief previously provided for so-called “qualifying foreign excluded funds,” which includes certain foreign funds with a limited U.S. nexus
- **Foreign Public Funds** – amend a number of conditions for reliance on this exclusion, including: the requirement that ownership interests must be sold in the fund’s home jurisdiction, the requirement that ownership interests be “predominantly” sold outside the United States, the restriction on selling ownership interests to directors or employees of the banking entity or fund, and the definition of “public offering”
- **Loan Securitizations** – codify an FAQ regarding servicing assets, and permit funds relying on this exclusion to hold non-loan assets that amount to 5% or less of the total assets of the fund

- **Small Business Investment Companies (SBICs)** – expand exclusion to include certain companies that surrender their license to operate as an SBIC
- **New Exclusions from Covered Fund definition** – add exclusions for the following types of funds: credit funds, venture capital funds, family wealth management vehicles, and customer facilitation vehicles
- **Super 23A Provisions** – alleviate restrictions on transactions between banking entities and covered funds that a banking entity advises, sponsors, or holds an interest in pursuant to certain exemptions
- **Ownership Interest** – revise definition to limit the extent that debt instruments could be considered an “ownership interest”
- **Parallel Funds** – permit a banking entity to make parallel investments with a covered fund without attribution to the banking entity as an interest in the covered fund if certain conditions are met
- **Attribution of Employee and Director Investments** – require banking entities to include in the aggregate fund investment limitation and capital deduction amounts paid by employees to obtain restricted profit interests only if the banking entity provided financing for the acquisition

Our client alert providing more detail regarding the Proposed Funds Rule is available at

<https://www.mofo.com/resources/insights/200211-volcker-rule-covered-fund-provisions.html>.

*Federal Reserve Publishes Final Rule on Control Regulations*

On March 2, 2020, the Board of Governors of the Federal Reserve System (the “Federal Reserve”) published a final rule (the “Final Rule”) in the *Federal Register* revising the regulations related to the determination of “control” of banks under the Bank Holding Company Act (the “BHC Act”) and of federal savings associations under the Home Owners’ Loan Act (HOLA). The concept of “control” is substantially the same under the BHC Act and HOLA, and the Final Rule generally takes the same approach with respect to control under both statutes.

Both statutes measure control by either (1) a first company’s ownership, control, or voting power of a second company; (2) a first company’s control of the election of the majority of a second company’s management; or (3) by a first company’s

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### Elements of an Effective Pandemic BCP Regarding Pandemic Planning

Pandemic-specific plans within a bank's BCP should, according to the FFIEC, include the following:

- a program to prevent significant operational disruptions, including monitoring potential outbreaks, educating employees and communicating with service providers and suppliers through all phases of an outbreak;
- a documented strategy to mitigate the effects of a pandemic event that contemplates: differing risks at each stage of outbreak; "triggering events" that will cause management to take identified actions; and plans for resuming regular operations;
- a comprehensive framework for maintaining critical business functions and operations despite large-scale employee absences; and
- a program for testing, overseeing, reviewing and updating pandemic planning protocols, including through engagement of the bank's Board of Directors and executive management.

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*"...substantial absenteeism among a bank's workforce—as high as 40% during the "peak weeks" of an outbreak—should be assumed.*  
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### A Risk-Focused and Flexible Approach

The FFIEC makes clear that there is no "one-size-fits-all" approach to pandemic planning, and that a bank's BCP should be both tailored to its size and profile and flexible and dynamic enough to account for pandemic-related disruptions that inevitably will vary depending on the nature of an outbreak.

## FINRA Regulatory Notice Guidance on Member Firm's Business Continuity Plans

On March 9, 2020, FINRA issued Regulatory Notice 20-08 (the "Notice") to member firms, updating pandemic preparedness guidance first issued in 2009 and providing specific types of regulatory relief in light of COVID-19.<sup>2</sup>

### Expectations for Pandemic Preparedness

Member firms are expected to review their BCPs required under Rule 4370 to ensure that they are adequately prepared for a pandemic event. BCPs are generally required to include:

- a supervisory system to ensure continued oversight of personnel working remotely;
- testing elements of the BCP prior to implementation to minimize potential disruptions, including testing remote working arrangements and remote offices to ensure personnel are able to connect to the essential firm systems and that residential internet access networks are sufficient; and
- a customer communication plan that allows firms to adequately communicate with clients, including placing notices on the firm's website, and ensures clients have continued access to their funds and securities.

Although the Notice gives firms additional flexibility in implementing temporary relocations under a BCP, the guidance emphasizes that the BCP should be reasonably designed to enable a member firm to satisfy its obligations to customers and to maintain reasonable supervision of associated persons who change work locations. Member firms should review whether the BCP is appropriately tailored to the specific operations of the institution and pandemic preparedness including:

- whether they are sufficiently flexible to address a wide range of possible effects of a pandemic, such as staff absenteeism;
- use of remote offices or telework arrangements;
- potential imitations on travel or transportation; and
- technology interruptions or slowdowns.

### Considerations Prior to Implementing the BCP

Prior to implementing the pandemic preparedness plan and activating the BCP, firms should conduct an analysis to determine whether the pandemic constitutes an emergency triggering the activation of the BCP and contact their FINRA Risk Monitoring Analyst to discuss implementation of the BCP and any expected, or actual, business disruptions. FINRA also suggests testing use of remote office or telework arrangements prior to triggering the BCP.

## Specific Relief from FINRA Office Registration and Reporting Requirements

- **Suspension of Form U4 and Form BR Requirements.** FINRA is temporarily suspending the requirement to maintain updated Form U4's for registered persons who are forced to temporarily relocate their place of employment as a result of COVID-19. Additionally, FINRA has

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suspended the requirement for a Form BR, giving firms and their personnel reasonable flexibility to relocate activities that normally would need to be conducted in registered branches to non-registered locations. The notice recognizes that member firms may need to temporarily postpone scheduled inspections of remote branch offices and that FINRA may need to reevaluate the annual inspection requirement for 2020.

- **Best Efforts Notice of Temporary Relocations.** If a member firm relocates to an unregistered temporary office, FINRA has advised its members to use best efforts to provide written notification to their FINRA Risk Monitoring Analyst as soon as possible.
- **Additional Time for Filing and Response Obligations.** In light of expected difficulties in fulfilling regulatory filing obligations and responding to regulatory inquiries or investigations, FINRA is urging member firms that may require additional time to complete their filing or investigatory response obligations to contact their assigned FINRA Risk Monitoring Analyst to request an extension.

### Common Themes in the Federal Guidance

Reading the FFIEC and FINRA guidance documents together, certain common themes emerge that are useful for institutions to consider as they develop and implement their pandemic plans:

- **Reducing Social Interactions and Encouraging Proper Hygiene.** Both the FFIEC and FINRA encourage institutions to implement policies and procedures that limit social interaction and discourage large gatherings of employees.<sup>3</sup> These policies should also include pandemic sick leave policies, special pandemic leave or specialized eating plans.<sup>4</sup> In addition, the firm should be educating employees on proper and preventative hygiene and providing hand sanitizer in common areas.<sup>5</sup>
- **Encouraging Remote Working and Telecommuting Arrangements.** A key step to reducing social interactions is to encourage employees to work remotely and to provide appropriate telecommuting arrangements.<sup>6</sup>
  - **Testing and Maintaining Proper Infrastructure.** Prior to implementing companywide telecommuting, institutions should conduct tests to ensure that the infrastructure can maintain and support widespread telecommuting.<sup>7</sup>
  - **Overseeing Cybersecurity Protections.** With increased remote working arrangements, the institution should ensure that the firm's cybersecurity measures are adequate and appropriate in accordance with applicable guidance<sup>8</sup> and that the firm remains vigilant against cyberattacks.<sup>9</sup>

- **Mitigating the Risk to Third-Party/Vendor Relationships.** When assessing pandemic-related risks, the FFIEC instructs institutions to identify third-party/vendor relationships that are critical to the institution's business operations and the risks that the pandemic poses to these relationships.<sup>10</sup> Relatedly, FINRA advises that institutions review service agreements to ensure they adequately address the potential impacts of a pandemic.<sup>11</sup> As an additional risk mitigation technique, the FFIEC encourages institutions to consider cooperative arrangements with other financial intuitions to mitigate the risk of disruption to essential operations and services.<sup>12</sup>
- **Communication with Authorities.** Both FINRA and the FFIEC advise that institutions coordinate their pandemic planning efforts with public health and other government authorities.<sup>13</sup> Institutions should notify local and state agencies when significant employee absenteeism is caused by a pandemic outbreak.<sup>14</sup>

### NYDFS Industry Letter Requiring Operational and Financial Preparedness Plans

On March 10, the NYDFS issued two separate but related Industry Letters to the CEO (or equivalent responsible executive) of all financial institutions within the agency's jurisdiction—including state-licensed banks, branches of foreign banking organizations, broker-dealers, money transmitters and insurance companies—requiring submission of COVID-19-focused (1) operational preparedness and (2) financial preparedness plans to the NYDFS within 30 days, no later than April 9, 2020.

#### Operational Preparedness Plan

NYDFS expects the operational preparedness plans to describe, at minimum:

- measures tailored to the institution's profile to reduce the risk of operational disruptions, including identifying the impact on customers, outside-party service providers and counterparts;
- a scalable strategy implemented consistently through each stage of an outbreak, including evaluating how quickly measures can be adopted and the durability of operations at each stage;
- policies and procedures to ensure continued operation of critical functions, including assessing and testing the institution's infrastructure to prevent or mitigate operational disruptions;

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- a plan to ensure continued communication with affected parties and the public to deliver important information and to establish question-and-answer forums; and
- oversight of the plan by a response team responsible for continuously reviewing and updating the plan.

### Financial Preparedness Plan

Similarly, the NYDFS expects the financial preparedness plans to include an assessment of:

- Credit risk ratings of customers, counterparties and business sectors impacted by COVID-19;
- Credit exposures to third-parties impacted by COVID-19 arising from financial transactions, including any credit modifications, extensions and restructurings;
- Adversely impacted credits that are, or potentially will be, nonperforming/delinquent, including stress testing and/or sensitivity analysis of loan portfolios and adequacy of loan loss reserves;
- Valuation of assets and investments impacted by COVID-19;
- Overall impact of COVID-19 on financial performance measures (earnings, profits, capital and liquidity); and
- Reasonable and prudent steps to assist institutions impacted by COVID-19.

### Board and Senior Management Involvement

Consistent with other pandemic guidance, and supervisory expectations generally, the NYDFS expects appropriate governance of these preparedness plans. Specifically, Boards of Directors are expected to assess the adequacy of the plans and to ensure senior management has sufficient resources to implement the plan. Senior management must also confirm readiness to implement the preparedness plans and effectively communicate their requirements throughout the institution. ■

<sup>1</sup> FFIEC, Interagency Statement of Pandemic Planning (Mar. 12, 2006); National Credit Union Administration, "Letter to Credit Union 06-CU-06 - Influenza Pandemic Preparedness" (Mar. 2006), available at <https://www.ncua.gov/files/letters-credit-unions/LCU2006-06.pdf>.

<sup>2</sup> See FINRA, Regulatory Notice 09-59, FINRA Provides Guidance on Pandemic Preparedness (Oct. 2009), available at <https://www.finra.org/sites/default/files/NoticeDocument/p120207.pdf> [hereinafter FINRA Regulatory Notice 09-59].

<sup>3</sup> See FFIEC, Interagency Statement on Pandemic Planning, p. 8, (Mar. 6, 2020), available at <https://www.ffiiec.gov/press/PDF/FFIEC%20Statement%20on%20Pandemic%20Planning.pdf> [hereinafter FFIEC Interagency Statement]; FINRA, Regulatory Notice 20-08, Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief, p. 3, (Mar. 9, 2020), available at <https://www.finra.org/rulesguidance/notices/20-08> [hereinafter FINRA Regulatory Notice 20-08].

<sup>4</sup> See FINRA Regulatory Notice 20-08, p.3.

<sup>5</sup> See FFIEC Interagency Statement, pp. 3, 8.

<sup>6</sup> See FINRA Regulatory Notice 20-08, p. 3.

<sup>7</sup> See FFIEC Interagency Statement, p. 8-9; FINRA Regulatory Notice 20-08, p. 3.

<sup>8</sup> For example, institutions subject to regulation by the New York State Department of Financial Services must ensure that their telecommuting and remote working arrangements comply with applicable state and federal regulations. See, e.g., 23 N.Y.C.R.R. § 500.12 (generally requiring multifactor authentication for any individual accessing a regulated institution's internal networks from an external network). For further discussion of cybersecurity considerations and requirements, please refer to the Debevoise Client Update, Federal Financial Regulators to Propose Enhanced Cyber Risk Management Standards (Oct. 25, 2016), available at <https://www.debevoise.com/insights/publications/2016/10/federal-financial-regulators-to-propose-enhanced>.

<sup>9</sup> For a discussion of cybersecurity considerations in light of COVID-19, please refer to the Debevoise Client Debrief, Debevoise Coronavirus Checklists—Cybersecurity (Mar. 11, 2020), available at <https://www.debevoise.com/insights/publications/2020/03/debevoise-alert-dfs-seeking-coronavirus-plans-and>.

<sup>10</sup> See FFIEC Interagency Statement, p. 7.

<sup>11</sup> See FINRA Regulatory Note 09-59.

<sup>12</sup> See FFIEC Interagency Statement, p. 7.

<sup>13</sup> See FFIEC Interagency Statement, p. 7; FINRA Regulatory Notice 09-59.

<sup>14</sup> See FFIEC Interagency Statement, p. 7.

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## Coronavirus Checklists— Cybersecurity

*By Luke Dembosky, Jeremy Feigelson, Avi Gesser,  
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As companies dust off their Business Continuity Plans to prepare for possible disruptions and remote working due to COVID-19, here are 10 cybersecurity considerations to add to the list of preparations:

- **Phishing**—Look out for coronavirus phishing scams. We have already seen fake CDC updates, IT alerts and software notices that attempt to obtain user credentials or install malware, so consider implementing coronavirus-specific phishing training or testing. It is also a good idea to redistribute any company policies that cover the use of personal computers, smartphones, tablets and WiFi networks for work and emphasize that (a) those policies still apply to those working from home, and (b) security protocols will not be relaxed absent a clear change in policy.

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## Coronavirus Checklists—Cybersecurity

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- **More Phishing**—Do not send legitimate emails to employees that look like phishing emails, so official COVID-19 updates to employees should have a consistent format and not include links or attachments, which will help employees properly identify phishing emails.
- **Remote Capacity**—Consider testing the company’s remote capacity by having many employees try to login remotely simultaneously, and consider adding or expanding use of secure, web-based video conferencing options.
- **Real Time Vulnerability Updates**—It will be important to keep on top of new vulnerabilities and scams by subscribing to various threat-sharing groups, including the CISA Alert service, FBI cyber alerts, IT-ISAC and industry threat-sharing groups.
- **Help for the Help Desk**—Anticipate the additional burden on the IT help desk and make sure those employees have the policies, training and tools they need to handle the increased number of requests for technical assistance from people working from home, including the ability to verify the identity of employees using measures like phone number authentication, challenge questions and two-factor authentication.
- **Anticipate Remote Work Problems**—Employees who experience difficulties using their home computers (for example, printing) will be tempted to use less secure means to accomplish work tasks, such as emailing confidential documents to their personal email accounts so that they can be easily printed at home. Companies should try to anticipate and solve for these problems ahead of time.
- **Essential Employees**—Determine how many people, if any, will be needed on-site to protect the network, including patching systems and conducting information security reviews of any new systems that need to be added in haste throughout this period, as well as those needed to conduct investigations and remediation if a cyber event were to occur. Consider backup personnel in case some of those people become unavailable.
- **Vendors**—Coordinate with the company’s key third-party data vendors to make sure that their cybersecurity contingency plans are adequate.
- **Update Contact Information**—Ensure that contact information is up to date for key employees, especially mobile numbers.
- **Protect Medical Information**—If employees become ill, there will be good reasons to want to share that information, but it

is also important to maintain the confidentiality of employees’ medical data as required by law, including the medical status and identities of diagnosed employees or family members of employees. ■

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### 2020 SEC Examination Priorities

<https://www.sec.gov/news/press-release/2020-4>

### 2020 FINRA Risk Monitoring and Examination Priorities

<https://www.finra.org/media-center/newsreleases/2020/finra-releases-2020-risk-monitoring-and-examination-priorities>

### 2020 OCC Bank Supervision Operating Plan

<https://www.occ.gov/news-issuances/news-releases/2019/nr-occ-2019-111.html>

### 2019 FINRA Report on FINRA Examination Findings

<https://www.finra.org/rules-guidance/guidance/reports/2019-report-exam-findings-and-observations>

## Legislative/Regulatory Actions

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power to exercise a “controlling influence” over a second company. The first two prongs create bright line tests, but the third requires a facts and circumstances analysis. The Final Rule is intended to improve transparency and predictability relating to control questions on this third prong.

In the Final Rule, the Federal Reserve updates and clarifies several indicia of control that may lead to a “controlling influence” determination, and makes changes to total equity, accounting, and divestiture presumptions, among others. The Final Rule includes changes from the proposed rule, released on April 23, 2019 (the “Proposed Rule”). For example, the Final Rule measures the materiality of a business relationship only by reference to the revenues or expenses of the second company to the extent derived from business relations with the first company. The Proposed Rule would have measured the business relationship from the perspectives of both companies. In the preamble to the Final Rule, the Federal Reserve also noted a change related to passivity commitments, which have been historically required of minority shareholders as a condition to obtaining approval for transactions that present control issues. Going forward, the Federal Reserve does not intend to obtain the standard-form passivity commitments in the ordinary course.

The Final Rule will be effective on April 1, 2020 and is available at <https://www.govinfo.gov/content/pkg/FR-2020-03-02/pdf/2020-03398.pdf>. For more information on the Final Rule, please see our Client Alert: <https://www.mofo.com/resources/insights/200219-federal-reserve-issues.html>.

### BSA / AML

#### *FinCEN Penalizes Individual Banker for Anti-Money Laundering Compliance Program Failures*

For only the second time, the Financial Crimes Enforcement Network (FinCEN) assessed a civil money penalty (CMP) against an individual for Bank Secrecy Act (BSA) violations based on alleged shortcomings of the anti-money laundering (AML) program that the individual was charged with overseeing.

The Assessment of a Civil Money Penalty (the “CMP Assessment”), which was brought against the former Chief Operational Risk Officer of a bank (the “Bank”), relates to alleged shortcomings of the bank’s compliance program. Specifically, in February 2018, regulators issued a CMP against the Bank for, among other things, failing to comply with its obligations to implement and maintain an effective AML compliance program, and to detect and report certain suspicious activity by filing Suspicious Activity Reports (SARs).

FinCEN alleged that the Chief Operational Risk Officer was, individually, responsible for these failures during his tenure with the Bank. The underlying basis for FinCEN’s pursuit of individual liability appears to be FinCEN’s belief that the Chief Operational Risk Officer was on notice of the alleged shortcomings of the Bank’s compliance program and failed to act appropriately to address them. Most significantly, the Bank’s automated transaction monitoring system purportedly “capped” the number of alerts generated for review. FinCEN also alleged that the Bank had inadequate compliance personnel, such that even a limited number of alerts could not be properly reviewed.

This enforcement action is a stark reminder to all industry participants that FinCEN takes BSA/AML enforcement seriously, and that the individuals who are responsible for BSA/AML compliance programs, even of large companies, can be held personally liable if the program is legally insufficient.

The CMP Assessment is available at: [https://www.fincen.gov/sites/default/files/enforcement\\_action/2020-03-04/Michael%20LaFontaine-Assessment-02.26.20\\_508.pdf](https://www.fincen.gov/sites/default/files/enforcement_action/2020-03-04/Michael%20LaFontaine-Assessment-02.26.20_508.pdf). For more information on the Assessment, please see our Client Alert: <https://www.mofo.com/resources/insights/200310-fincen-anti-money-laundering.html>.

## ECONOMIC SANCTIONS

#### *OFAC Reopens Humanitarian Trade with Iran*

On September 20, 2019, OFAC designated the Central Bank of Iran (CBI) as a Specially Designated Global Terrorist (SDGT) after Iran-supported Houthi rebels in Yemen fired missiles into Saudi Arabia targeting major oil facilities. Because of the CBI’s central role in the Iranian payment system, this designation had the effect subjecting all payments to or from Iran to OFAC’s terrorism authorities. The unforeseen side effect of this was that it prevented the sale of food and medicine to Iran – which OFAC generally licenses in its Iran sanctions program. However, on February 27, 2020, OFAC appears to have recognized this shortfall by issuing Counter Terrorism General License No. 8 (GL 8). GL 8 authorizes all transactions involving the CBI for the sale of food or medicine to Iran that would be authorized had the CBI not been designated as an SDGT. Thus, as it stands now, those wanting to sell food or medicine to Iran may do so under the same conditions available prior to the CBI’s designation.

For an overview of the Trump Administrations terrorism-related sanctions, please see our client alert at <https://www.mofo.com/resources/insights/190923-terrorism-sanctions-go-secondary.html>.

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### *OFAC Targets a Rosneft Subsidiary Under Venezuela Sanctions*

On February 18, 2020, OFAC designated Rosneft Trading S.A. – a Swiss subsidiary of the Russian oil and gas giant Rosneft – as a Specially Designated National (SDN) for operating in the Venezuelan oil sector. What makes this designation so interesting is that Rosneft and Rosneft Trading were already subject to sectoral sanctions under OFAC’s Ukraine/Russia sanctions program. OFAC’s designation of a Rosneft subsidiary for its activities in Venezuela shows that the U.S. government is willing to sanction parties of increasing prominence in the Russian corporate ecosystem if that is what it takes to persuade the Kremlin that propping up the Maduro regime will cost more than what it is worth. How far the Administration will go in making good on that implicit threat is, of course, anyone’s guess.

For our client alert discussing this action, please visit <https://www.mofo.com/resources/insights/200221-ofac-targets-rosneft-subsidiary.html>.

### *OFAC Takes Notable Action Against Lobbying Firm*

OFAC’s action against Park Strategies shows that banks and other financial institutions need to be wary of lobbying firms representing sanctioned clients unless the lobbying firms have a specific license from OFAC.

Park Strategies (Park) is a lobbying firm located in New York City. One of Park’s clients was Al-Barakaat, a large hawala (a form a payment processor common in Islamic countries) that OFAC designated under its counter terrorism program in November 2001. According to OFAC, Park provided lobbying services to Al-Barakaat subsequent to OFAC imposing sanctions on the entity and with knowledge that Al-Barakaat was subject to sanctions. Like most sanctions programs, the terrorism-related sanctions program contains a general license authorizing U.S. persons to provide certain legal services to SDNs (mostly to advise the SDN on legal compliance and represent them in court), but that authorization does not extend to lobbying activities. Park, ultimately, disclosed its activities on Al-Barakaat’s behalf to OFAC to receive a smaller fine, but the Park Strategies case should be viewed as a shot across the bow to both lobbying firms and their financial institutions that OFAC views lobbying and transactions related to lobbying (including processing payments for lobbying services) as requiring specific OFAC authorization separate and apart from any legal services general license that might be in place.

## CFPB UPDATE

### *CFPB Issues New No-Action Letter to Mortgage Lender*

On January 10, 2020, the CFPB issued a no-action letter (NAL) to a mortgage lender regarding the bank’s funding arrangements with housing counseling agencies certified by Department of Housing and Urban Development (HUD). Last year, the CFPB granted HUD’s request for a NAL template for applications by mortgage lenders that enter into funding arrangements with housing counseling agencies that participate in HUD’s Housing Counseling Program. Pursuant to that program, the mortgage lender operates a program by which it pays a fee to participating counseling agencies that provide homebuyer counseling services for consumers who complete the counseling program and apply for a mortgage loan with the lender. The NAL provides that the CFPB will not bring supervisory or enforcement action against the mortgage lender under its Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) authority or the Real Estate Settlement Procedures Act (RESPA). The NAL is available on the CFPB’s website: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-no-action-letter-to-facilitate-housing-counseling-services/>.

### *CFPB Publishes Report on Small Business Lending and the Great Recession*

On January 23, 2020, the CFPB published a “Data Point” report on Small Business Lending and the Great Recession. Using data from the Community Reinvestment Act and the U.S. Census, the CFPB tracked the evolution of small business lending over the course of the Great Recession and found that there was a substantial variation in small business lending in a majority of U.S. counties during the Great Recession.

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## FMA Welcomes New Members

<b>Sondra Bane</b>	<b>UMB Bank, n.a.</b>
<b>Jin Choi</b>	<b>Morgan Stanley</b>
<b>Bruce Gousie</b>	<b>Raymond James Financial</b>
<b>Stephanie Hanayik</b>	<b>PNC</b>
<b>Anna Harrington</b>	<b>WilmerHale</b>

## Legislative/Regulatory Actions

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Furthermore, the report found that small business lending growth was slow to recover in the aftermath of the recession, having barely recovered to half of its pre-recession levels by 2017. The “Data Point” report is available on the CFPB’s website:

[https://files.consumerfinance.gov/f/documents/cfpb\\_data-point\\_small-business-lending-great-recession.pdf](https://files.consumerfinance.gov/f/documents/cfpb_data-point_small-business-lending-great-recession.pdf).

### *CFPB Announces Additions to Executive Team*

On January 30, 2020, the CFPB announced a number of additions to its executive team. New members of the Bureau’s leadership include Susan M. Bernard as Assistant Director for Regulations in the Research, Markets, and Regulation Division; Donna Roy as Chief Information Officer; and Thomas G. Ward as Assistant Director of Enforcement in the Supervision, Enforcement, and Fair Lending Division. In addition, Director Kraninger tapped Leonard Chanin to serve as Acting Deputy Director of the Bureau in early March. The announcement and the new structure of the CFPB are available on the CFPB’s website: <https://www.consumerfinance.gov/about-us/newsroom/new-additions-to-cfpb-executive-team/> and <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/>.

### *CFPB and Department of Education Sign Memorandum of Understanding on Student Loans*

On February 3, 2020, the CFPB and Department of Education announced a new coordination agreement to share student borrower complaint information, complaint data analysis, recommendations, and analytical tools. Under the memorandum of understanding (MOU), the two agencies will meet quarterly to discuss observations on the nature of student borrower complaints, characteristics of student borrowers, and information on the resolution of borrower complaints. In addition, the MOU outlines clearer roles and responsibilities for each agency in the student borrower space and will allow for greater collaboration across the two agencies. The announcement is available on the CFPB’s website: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-us-department-education-sign-memorandum-understanding-better-serve-student-loan-borrowers/>.

### *CFPB Publishes Semi-Annual Report and Winter 2020 Supervisory Highlights*

In February 2020, the CFPB published its Semi-Annual Report to Congress for the period beginning April 1, 2019, and ending September 30, 2019, in advance of Director Kraninger’s testimony before the House Financial Services Committee and Senate Banking Committee. In its report, the CFPB highlighted problems faced by consumers in relation to credit scores and credit reporting and the consumer credit card market, listed significant rules and orders adopted by the CFPB, provided an

analysis of complaints received and collected, and provided an analysis of the CFPB’s efforts to fulfill its fair lending mission. Later that month, the CFPB published its Winter 2020 edition of Supervisory Highlights. The Supervisory Highlights focused on findings in the areas of debt collection, mortgage servicing, payday lending, and student loan servicing that were completed between April 2019 and August 2019. The Semi-Annual Report and the Supervisory Highlights are available on the CFPB’s website:

[https://files.consumerfinance.gov/f/documents/cfpb\\_semi-annual-report-to-congress\\_fall-2019.pdf](https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_fall-2019.pdf) and [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-21\\_2020-02.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-21_2020-02.pdf).

### *CFPB Hosts Symposium on Consumer Access to Financial Records and Section 1033 of the Dodd-Frank Act*

On February 26, 2020, the CFPB held a Symposium on Consumer Access to Financial Records and Section 1033 of the Dodd-Frank Act, intended to foster discussion on the current and future state of the market for services based on consumer-authorized use of financial data. The symposium featured three panels with representatives from banks, fintech companies, and NGOs. The panels discussed the current landscape of holders of consumer data and the benefits and risks of consumer-authorized data access, market developments in consumer-authorized data access, and the future state of the market, as well as considerations for policymakers on how to ensure consumer data is safeguarded while ensuring that consumers have continual access to their data. The agenda and the panelists’ written statements are available on the CFPB’s website: <https://www.consumerfinance.gov/about-us/events/archive-past-events/cfpb-symposium-consumer-access-financial-records/>.

### *Supreme Court Hears Oral Arguments on Constitutionality of the CFPB*

On March 3, 2020, the Supreme Court heard oral arguments in *Seila Law v. CFPB* to determine whether the single-director structure of the Bureau violates the Constitution’s separation of powers and whether, if the Bureau’s structure is unconstitutional, the statutory language outlining the establishment of the CFPB and the terms of its director are severable from the rest of the Dodd-Frank Act. The Court’s ruling is not expected until late-June.

### *CFPB Proposes Whistleblower Award Program, Implements Advisory Opinion Program, and Issues Amended Responsible Business Conduct Bulletin*

On March 6, 2020, the CFPB announced that it would be implementing an advisory opinion program, amending and reissuing its responsible business conduct bulletin, and

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## Legislative/Regulatory Actions

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proposing legislation that would authorize the Bureau to award whistleblowers who report violations of Federal consumer financial law. Aimed at preventing consumer harm, the efforts will give regulated entities a better understanding of their legal and regulatory obligations, provide credit to entities for demonstrating responsible conduct by self-assessing/self-reporting, and establish a whistleblower award program (similar to the Securities and Exchange Commission's program) with an emphasis on reporting wrongdoing in fair lending violations.

The announcement is available on the CFPB's website:

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-key-steps-prevent-consumer-harm-proposes-whistleblower-award-program/>.

### Regulatory Developments

#### *CFPB Publishes Policy Statement on Compliance Aids*

On January 27, 2020, the Bureau published in the *Federal Register* a policy statement on a new designation for certain guidance, known as Compliance Aids. The Bureau's publication explains the legal status and role of Compliance Aids and specifies that, unlike regulations and official interpretations, they are not rules, and are instead intended to accurately summarize and illustrate the underlying rules and statutes in a manner that is useful for compliance professionals. The CFPB policy statement took effect on February 1, 2020. The *Federal Register* publication is available at <https://www.govinfo.gov/content/pkg/FR-2020-01-27/pdf/2020-00648.pdf>.

#### *CFPB Publishes Statement of Policy on Application of "Abusiveness" Standard*

The CFPB published a Statement of Policy Regarding Prohibition on Abusive Acts or Practices to "convey and foster greater certainty" regarding how it will apply the "abusiveness" standard in exercising its broad UDAAP authority. The CFPB previously had declined to provide rules or guidance on the meaning of "abusive." In its statement, the CFPB announced that it will: (1) focus on citing or challenging conduct as abusive only when the harm to consumers outweighs the benefit; (2) seek to avoid "dual pleading" of abusiveness and unfairness or deception violations arising from the same facts; and (3) seek monetary relief for abusive acts or practices only when there has been a lack of a good faith effort to comply with the law. The *Federal Register* publication of the Statement of Policy is available at <https://www.govinfo.gov/content/pkg/FR-2020-02-06/pdf/2020-01661.pdf>.

#### *CFPB to Release Small-Business Data and Promulgate Proposed Small-Business Data Collection Regulations Under Terms of Court Settlement*

In late February, the CFPB settled a lawsuit brought by the California Reinvestment Coalition and other advocates alleging

that the CFPB failed to collect data on women-owned, minority-owned, and small businesses in violation of Section 1071 of the Dodd-Frank Act. Dodd-Frank requires the CFPB to collect and disclose data from financial institutions on loan applications from these businesses to support fair lending efforts and uncover discrimination patterns. The lawsuit alleged that the CFPB's slow implementation of Section 1071 has allowed lending discrimination to persist unchecked. Under the agreement, the CFPB must set forth proposed regulations for collecting this data by September 2020 and initiate consultation with small business advocates regarding the rulemaking process by October, before initiating formal rulemaking.

#### *CFPB Issues Supplemental NPRM on Time-Barred Debt Disclosures*

On February 21, 2020, the CFPB issued a Supplemental Notice of Proposed Rulemaking (NPRM) regarding the collection of time-barred debt. The CFPB's proposal would supplement its May 2019 NPRM implementing the Fair Debt Collection Practices Act by requiring debt collectors to make certain disclosures when collecting time-barred debts. The proposal would require debt collectors to disclose during initial contact via non-litigation means with a debtor that the debt is time-barred, and the supplemental NPRM provides proposed model language and forms for debt collectors' compliance with the disclosure requirements. Comments on the supplemental NPRM are due by May 4, 2020. The NPRM is available at <https://www.govinfo.gov/content/pkg/FR-2020-03-03/pdf/2020-03838.pdf>.

### Enforcement Actions

#### *CFPB Files Suit against Student Loan Debt-Relief Companies*

On January 9, 2020, the CFPB filed a complaint against a number of companies and individuals offering student loan debt-relief services to consumers. In its complaint, the CFPB alleged that the student loan debt-relief companies violated the Fair Credit Reporting Act by wrongfully obtaining consumer-report information on consumers with student loan debt and charging unlawful advance fees in their marketing and sale of student loan debt-relief products and services. The CFPB's complaint seeks an injunction against the defendants, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties.

#### *CFPB Files TILA/CARD Act Complaint against National Bank*

On January 30, 2020, the CFPB filed a complaint against a national bank for alleged violations of the Truth in Lending Act (TILA), including provisions contained in the Fair Credit

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## Legislative/Regulatory Actions

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Billing Act and the Credit Card Accountability Responsibility and Disclosure (CARD) Act. The CFPB alleged that the bank: (1) automatically denied consumers' billing error notices and claims of unauthorized use in instances where the customer did not complete an affidavit requested by the bank; (2) failed to refund all charges to consumers when it did resolve a billing error notice or claim of unauthorized use in consumers' favor; (3) failed to deliver written notices of acknowledgment and denial of billing error notices; and (4) failed to provide credit counseling referrals to consumers that called the toll-free number set up for that purpose. The bank indicated that the issue was discovered and resolved the alleged issues, by the bank, years ago.

### *Bureau Settles with Tribal Lending Entities*

On February 5, 2020, the CFPB announced a proposed settlement with a group of tribal lending entities to resolve a lawsuit originally filed in November 2017. The CFPB's lawsuit alleged that the tribal lenders had engaged in unfair, deceptive, and abusive acts and practices in violation of the Consumer Financial Protection Act (CFPA) offering online installment loans and online lines of credit that violated state laws governing interest rate caps and the licensing of lenders. In addition, the entities allegedly illegally debited money from consumers' bank accounts for debts that were void under state law, made deceptive demands in seeking to collect on those debts, and assisted other debt collectors in their collection on illegal loans. The CFPB's order prohibits the entities from lending or collecting on loans that violate the lending laws of 17 states and imposes a civil money penalty.

### *CFPB Files Suit against Brokers of High-Interest Credit Offers*

In coordination with the attorneys general of Arkansas and South Carolina, the CFPB filed suit in federal district court against an entity that assisted companies that brokered contract offers of high-interest credit to disabled veterans in violation of the CFPA. The CFPB alleged that the entity provided substantial assistance to deceptive and unfair acts or practices by conducting underwriting on the offers, managing approval or denial of consumers' applications, directing and administering the execution of the contracts, processing initial lump-sum payments and fees, and falsely threatening criminal prosecution for breach of the contracts. The CFPB's complaint seeks an injunction, consumer redress, and civil money penalties.

### *CFPB Files Suit against National Bank for Allegedly Opening Unauthorized Consumer Accounts*

On March 9, 2020, the CFPB filed a lawsuit in federal district court alleging that a national bank had previously opened consumer accounts without their permission or consent. The bank is alleged to have opened unauthorized deposit and credit card accounts in consumers' names, improperly transferred

funds to the unauthorized accounts, unwittingly enrolled consumers in online-banking services, and opened unauthorized lines of credit on consumers' accounts in violation of both TILA and the Truth in Savings Act. The CFPB alleged that the bank deployed a "cross-sell" strategy that incentivized employees to sell new products and at times conditioned continued employment on employees meeting cross-selling goals. Despite allegedly having knowledge of the conduct, the bank is alleged to have taken insufficient steps to stop the conduct and identify and remediate harmed consumers. The Bureau is seeking an injunction against the bank, consumer redress, and a civil money penalty. ■

*\*Michael V. Dobson, Malka Levitin, Jeremy R. Mandell, Kristofer G. Readling, and Mark R. Sobin contributed to this column.*

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## FMA Welcomes *More* New Members

<b>Jordan Rae Kelly</b>	<b>FTI Consulting</b>
<b>Monika Laird</b>	<b>Refinitiv</b>
<b>Ashley Lam</b>	<b>BNP Paribas</b>
<b>Jeremy Mandell</b>	<b>Morrison &amp; Foerster LLP</b>
<b>Carolyn Mendelson</b>	<b>Hardin Compliance Consulting</b>
<b>Edwige Paylim</b>	<b>Frost Bank</b>
<b>Jamie Priemer</b>	<b>UMB Bank, n.a.</b>
<b>Paul Pun</b>	<b>Compliance Consultant</b>
<b>Joseph Reece</b>	<b>Commerce Bank</b>
<b>Casey Sabnis</b>	<b>E*TRADE Financial</b>
<b>Paul Saltzman</b>	<b>Eagle Bancorp, Inc.</b>
<b>Susan Schroeder</b>	<b>WilmerHale</b>
<b>Sara Surrells</b>	<b>E*TRADE Financial</b>
<b>Carol Van Cleef</b>	<b>Bradley</b>

## Watch For

### CFTC

CFTC Press Release 8121-20 (February 20, 2020) – The CFTC unanimously approved two proposed rules to revise CFTC regulations for swap data reporting, dissemination, and public reporting requirements for market participants. These proposed rules have a 90-day comment period following approval by the Commission. The Commission also unanimously approved reopening the comment period of a proposed rule to amend certain agency regulations related to swap data repositories. All three measures are intended to improve data quality and streamline CFTC regulations. The comment period will be reopened for 90 days ending on May 20, 2020. This will allow market participants to comment on this proposed rule in conjunction with the two approved proposals.

CFTC Press Release 8112-20 (January 30, 2020) – The CFTC approved a proposed rule on position limits for derivatives and a proposed rule amending certain Swap Execution Facilities (SEF) requirements and real-time reporting requirements. The first proposed rule has a 90-day comment period following publication in the *Federal Register* and the second has a 60-day comment period.

CFTC Press Release 8111-20 (January 30, 2020) – Five federal financial regulatory agencies invited public comment on a proposal to modify regulations implementing the Volcker rule’s general prohibition on banking entities investing in or sponsoring hedge funds or private equity funds – known as “covered funds.” This proposal would modify the restrictions for banking entities investing in, sponsoring, or having certain relationships with covered funds. In particular, the joint agency proposal would improve and streamline the covered funds portion of the rule, address the treatment of certain foreign funds, and permit banking entities to offer financial services and engage in other permissible activities that do not raise concerns that the Volcker rule was intended to address. Comments will be accepted until April 1, 2020.

### FDIC

FDIC Press Release (March 6, 2020) – The FDIC and FRB invited public comment on proposed changes to the guidance for resolution plans submitted by large foreign banks, including plans that are due by July 1, 2021. The proposed guidance is largely similar to the guidance from March 2017, and includes certain updates based on the agencies' review of the firms' most recent resolution plans and changes to the resolution planning rules. The proposed guidance also seeks comment on objective, quantitative criteria to determine its applicability. As of the date of the proposal, the firms that meet the proposed criteria are the U.S. operations of Barclays, Credit Suisse, and Deutsche Bank. Comments on this proposal will be accepted for 60 days.

### Federal Reserve Board

Federal Reserve Press Release (March 4, 2020) – The FRB approved a rule to simplify its capital rules for large banks, preserving the strong capital requirements already in place. The rule is broadly similar to the proposal from April 2018, with a few changes in response to comments. By combining the Board's stress tests with the Board's non-stress capital requirements, large banks will now be subject to a single, forward-looking, and risk-sensitive capital framework. To reduce the incentive for firms to take on risk and further simplify the framework, the final rule does not include a stress leverage buffer as proposed. All banks would continue to be subject to ongoing, non-stress leverage requirements. The Board also released the instructions for the 2020 CCAR cycle which confirm that 34 banks will participate in this year's test. Results will be released by June 30.

Federal Reserve Press Release (February 6, 2020) – The Federal Reserve Board released the hypothetical scenarios for the 2020 stress test exercises, which ensure that large banks have adequate capital and processes so that they can continue lending to households and businesses, even during a severe recession. The Board's stress test framework consists of the CCAR and Dodd-Frank Act stress tests. Additionally, firms with substantial trading or processing operations will be required to incorporate a counterparty default scenario component. Banks are required to submit their capital plans and the results of their own stress tests to the Federal Reserve by April 6, 2020. The Board will announce the results of its supervisory stress tests by June 30, 2020.

Federal Reserve Press Release (January 30, 2020) – The Federal Reserve Board finalized a rule to simplify and increase the transparency of the Board's rules for determining control of a banking organization. The final rule is largely consistent with the proposal, establishing a comprehensive and public framework to determine when a company controls a bank or a bank controls a company. The key factors include the company's total voting and non-voting equity investment in the bank; director, officer, and employee overlaps between the company and the bank; and the scope of business relationships between the company and the bank. The rule will be effective on April 1.

### FINRA

FINRA Regulatory Notice 20-08 (March 9, 2020) – FINRA reminds member firms to consider pandemic-related business continuity planning, including whether their business continuity plans are sufficiently flexible to address a wide range of possible effects in the event of a pandemic in the United States.

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## Watch For

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Each member firm is also encouraged to review its BCP to consider pandemic preparedness and to review its emergency contacts to ensure that FINRA has a reliable means of contacting the firm. This *Notice* also provides pandemic-related guidance and regulatory relief to member firms from some requirements.

FINRA Regulatory Notice 20-07 (February 27, 2020) – This *Notice* addresses the characteristics of Uniform Transfers to Minors Act (UTMA) and Uniform Gifts to Minors Act (UGMA) accounts and the responsibilities of member firms to supervise UTMA/UGMA Accounts.

FINRA Regulatory Notice 20-06 (February 25, 2020) – FINRA is updating the text of the Securities Exchange Act SEA financial responsibility rules in the Interpretations of Financial and Operational Rules to reflect the effectiveness of a rule change that the SEC adopted. The SEC's rule change, amending paragraph (e)(1)(i)(A) of SEA Rule 17a-5, relates to a specified exemption with regard to the annual reporting requirement for a broker-dealer whose securities business has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer.

FINRA Information Notice (February 3, 2020) – Effective February 18, 2020, the Section 31 fee rate applicable to specified securities transactions on the exchanges and in the over-the-counter markets will increase from its current rate of \$20.70 per million dollars in transactions to a new rate of \$22.10 per million dollars in transactions.

FINRA Regulatory Notice 20-04 (January 30, 2020) – FINRA's CAB rules provide a simplified rulebook for broker-dealers that engage only in limited capital advisory, corporate restructuring and private placement activities. FINRA is requesting comment on proposed amendments to the CAB rules to make them more useful to CABs without reducing investor protection. The comment period expires March 30, 2020.

## MSRB

MSRB Notice 20-07 (March 9, 2020) – The MSRB is issuing this reminder to regulated entities regarding the supervision of municipal securities and municipal advisory activities and that of their associated persons. Specifically, Rule G-27 does not mandate that supervision be done in-person, recognizing that technology plays a prominent role in how dealers conduct their supervisory reviews and a reasonably designed supervisory system could incorporate remote supervision. Similarly, Rule G-44 does not mandate that supervision be done in-person, recognizing that technology plays a prominent role in how business is conducted, municipal advisors could establish a reasonably designed supervisory system that incorporates remote supervision.

MSRB Reminder – April 30, 2020: MSRB-regulated entities must submit information to the MSRB through Form G-37 on their municipal securities and advisory business and related political contributions to municipal entity officials, state and local political parties, and bond ballot campaigns.

MSRB Notice 20-05 (February 21, 2020) – The MSRB annually publishes a notice establishing the criteria for designating participants for its mandatory business continuity and disaster recovery testing consistent with Regulation Systems Compliance and Integrity (Regulation SCI), which was adopted by the SEC under the Securities Exchange Act of 1934. The MSRB will notify all Participants that are required to participate in such testing.

January 31, 2020 – The MSRB established a compliance date of November 30, 2020 for its amended and restated guidance regarding the fair dealing obligations underwriters owe to issuers of municipal securities under [MSRB Rule G-17](#), on conduct of municipal securities and municipal advisory activities. The SEC approved the Revised Interpretive Notice on November 6, 2019. The Revised Interpretive Notice incorporates various amendments to the MSRB's 2012 Interpretive Notice.

OCC Bulletin 2020-13 (March 6, 2020) – The OCC, along with other members of the FFIEC, issued updated guidance to remind financial institutions that their business continuity plans should address the threat of a pandemic outbreak and its potential impact on the delivery of critical financial services.

OCC Bulletin 2020-7 (February 18, 2020) – On January 24, 2020, the OCC, FRB and FDIC published a final rule to provide an updated framework for measuring the exposure amount of derivatives contracts. The final rule replaces the existing current exposure methodology (CEM) with the standardized approach for counterparty credit risk (SA-CCR) for banks subject to the advanced approaches, while permitting smaller banks to use CEM or SA-CCR. SA-CCR is a more risk-sensitive approach that better reflects industry practices including margining for derivative contracts. This bulletin rescinds OCC Bulletin 2018-45, "Capital: Notice of Proposed Rulemaking," which was issued on December 17, 2018.

## OCC

OCC News Release 2020-17 (February 6, 2020) – The OCC released economic and financial market scenarios for use in the upcoming stress tests for covered institutions. The supervisory scenarios include baseline and severely adverse scenarios, as described in the OCC's final rule that implements stress test requirements of the Dodd-Frank Act of 2010. The OCC's

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## Watch For

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stress test rule states that the OCC will provide scenarios to covered institutions by February 15 of each year. The 2020 scenario and background information can be found on the [OCC's stress test website](#). The final policy statement on the development and distribution of the scenarios was issued on October 28, 2013, in the *Federal Register*.

## SEC

SEC Press Release 2020-57 (March 11, 2020) – The SEC announced that it has adopted a new rule and related form and rule amendments to simplify and streamline disclosures for investors about variable annuities and variable life insurance contracts. The new rule permits variable annuity and variable life insurance contracts to use a summary prospectus to provide disclosures to investors. Variable annuities and variable life insurance contracts may begin using the modernized layered disclosure approach as early as July 1, 2020.

SEC Press Release 2020-55 (March 4, 2020) – The SEC announced that it has voted to propose a set of amendments that would harmonize, simplify, and improve the exempt offering framework which would provide a more rational framework, eliminate complexity and increase access to capital while preserving and enhancing important investor protections. The Commission also released a staff report on the impact of Regulation A on capital formation and investor protection. The public comment period for the proposed rule amendments will remain open for 60 days following publication of the release in the *Federal Register*.

SEC Press Release 2020-20 (January 27, 2020) – The SEC's Office of Compliance Inspections and Examinations issued [examination observations](#) related to cybersecurity and operational resiliency practices taken by market participants. The observations highlight certain approaches taken by market participants in the areas of governance and risk management, access rights and controls, data loss prevention, mobile security, incident response and resiliency, vendor management, and training and awareness. The observations highlight specific examples of cybersecurity and operational resiliency practices and controls that organizations have taken to potentially safeguard against threats and respond in the event of an incident.

## Available Publication

MSRB Press Release (March 3, 2020) – The MSRB published its annual [Fact Book](#) that highlights 2019 municipal market trends and statistics on trading and disclosures. The 2019 *Fact Book* includes monthly, quarterly and yearly aggregate market information from 2015 to 2019, and covers different types of municipal issues, trades and interest rate resets.

## Who's News

**Kimberly Bordner**, formerly an Audit & Risk Executive at Wells Fargo, recently serving as the interim Chief Auditor, has retired after 27 years at the firm. Congratulations and best of luck, Kim!

**Albert De Leon** has joined the Board of the National Jazz Museum of Harlem and also became a FINRA arbitrator.

**Antonia Chion**, an Associate Director of the SEC's Division of Enforcement in the Home Office, is retiring after 32 years at the agency. Congratulations and best of luck, Toni!

**Kevin Fein**, SVP/Senior Director, Compliance at Citizens Bank, has retired after 36 years in the financial services industry. Congratulations and best of luck, Kevin!

**Gary Goldsholle** has joined Long-Term Stock Exchange as Chief Regulatory Officer. Previously, Gary was a Partner at Steptoe & Johnson LLP.

**Stephen Lurie** has joined Dixon Hughes Goodman LLP as a Director where he will continue to focus on BSA/AML compliance. Previously, Stephen was an Executive Director at UBS and prior to that, a Director at PwC for 21 years.

**Saverio Mirarchi** is now an Independent Compliance Consultant, available for advisory engagements. Saverio was formerly at Protiviti, Inc.

**Kyle Moffatt**, Chief Accountant and Disclosure Program Director in the SEC's Division of Corporation Finance, will leave the agency this month after nearly 20 years of public service. Upon Mr. Moffatt's departure, **Lindsay McCord**, Deputy Chief Accountant in the Division of Corporation Finance, will become Acting Chief Accountant and **Patrick Gilmore**, Deputy Chief Accountant in the Division of Corporation Finance, will become Acting Disclosure Review Program Director.

**Mike Otero** has been promoted to EVP/Chief Risk Officer at Hancock Whitney Bank.

**Gregory Riviello**, formerly Director/Advertising Regulation at FINRA, has retired. Congratulations and best of luck, Gregg!

**Ann Robinson** has been promoted to Chief Compliance Officer at Farmers Insurance.

**Tom Selman**, EVP for Regulatory Policy and Legal Compliance Officer at FINRA, has retired after 24 years at the organization. Congratulations and best of luck, Tom!

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## Program Update

### 2020 Securities Compliance Seminar

**\*\*\* Postponed \*\*\***

**Due to health and safety concerns for everyone involved in FMA’s 2020 Securities Compliance Seminar, travel bans in our industry as well as prohibitions against in-person meetings, the planning committee made the decision last week to postpone the program from the April 29-May 1 dates.**

FMA remains very much committed to the program, an important and valuable annual educational event that has received much positive feedback as well as continued industry and regulatory support over the last 29 years.

**Alternative dates** are now being explored and will be announced in the coming weeks. Also, we plan to keep the program intact as much as possible, so I hope all speakers will try to accommodate our new schedule once it’s in place.

Thanks for your understanding in this difficult and trying situation. And, don’t hesitate to contact me with questions or concerns.

P.S. For out-of-towners, the Sheraton Suites has cancelled our room block which includes everyone’s individual reservations. If you have a reservation at another property, be sure to cancel it right away. And, check with your airlines about cancelling or rebooking your ticket. Most of the major airlines have come out with revised policies on change/cancellation fees in light of the coronavirus pandemic.

**Dorcas**  
202/544-6327, [dp-fma@starpower.net](mailto:dp-fma@starpower.net)



### 2020 Legal & Legislative Issues Conference

**Save the date – October 29, 2020**

FMA’s 29th **Legal and Legislative Issues Conference** will take place **October 29** at the Washington Marriott Georgetown (site of the 2018 program) 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 two-day event provides participants with a unique opportunity to share information on current legal and regulatory developments as well as network with peers in an intimate environment.

FMA is now assembling a Program Planning Committee to develop an agenda focusing on current areas of regulatory and Congressional scrutiny/activity. **If you would like to volunteer for the committee, participate as a speaker, or offer topical and/or speaker suggestions, contact Dorcas Pearce at [dp-fma@starpower.net](mailto:dp-fma@starpower.net) or 202/544-6327.**

**FMA requests your input!** An e-survey will be sent out in April to a sampling of past conference attendees and friends of the firm asking for topical and speaker suggestions. The Planning Committee will rely greatly on these responses when formulating the program...so please respond quickly and share your thoughts and ideas...even if you do not receive the survey. Help us make this the best conference ever.

**CLE and CPE accreditation...as well as 2-for-1, first timer, govt/regulatory/SRO and team discounts...will be available, so be sure to budget for (and plan to attend) the 2020 Legal & Legislative Issues Conference.** Contact Dorcas Pearce at [dp-fma@starpower.net](mailto:dp-fma@starpower.net) or 202/544-6327 with questions and/or to volunteer.

\*\*\*\*\*

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

## Who's News

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**Janet Varner**, Managing Director at Wells Fargo Clearing Services LLC, is retiring after 37 years in the financial services industry. Congratulations and best of luck, Janet!

**Donald Waack** has joined Morgan, Lewis & Bockius LLP as a Partner in the Financial Services practice. Previously, Don was a Partner at Mayer Brown.

**David Weinberger** is now President at International Assets Advisory. **Matt Lampman** has assumed the COO role at the firm.

**Eric Young** has launched Young Enterprises LLC, as Founder and CEO. Based in Connecticut, it re-engineers Compliance programs to enable regulatory health and business growth, through surgical consultations, thought leadership, and podcasts. Previously, Eric was CCO-Americas and CUSO/IHC at BNP Paribas.

**Anthony Zak** has been promoted to Regional Supervisory Officer at PNC.

## Welcome, Spring!



courtesy of washington.org