MARKET SOLUTIONS

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In This Issue

MARKET SOLUTIONS

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

The LIBOR Transition: Time to Face the Music

By Adam Schneider, Oliver Wyman
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For over 50 years markets have used LIBOR as an efficient mechanism for pricing loans. LIBOR is almost ubiquitous with notional amounts over $200 trillion, and has been called "The World's Most Important Number." But soon no more: in 2017 the U.K. Financial Conduct Authority, its regulator, announced it would stop supporting the rate after 2021. Despite COVID-19, LIBOR is very likely to end in 2022.

This is a sea change. An array of positions must move off LIBOR and for that to happen products must be built using different reference rates. Lenders, borrowers, investors, and asset managers need to understand this change, and manage it and the resultant impacts.

Given this ubiquity, LIBOR transition programs require executing three large-scale programs.

- Managing LIBOR exposures. This requires inventorying LIBOR across loans, derivatives, supporting technology, valuation models…and then building the processes that support LIBOR discontinuation. This is a new, very difficult, build. Of course, exiting LIBOR earlier is recommended.

- Creating replacement products; which of course cannot use LIBOR. Market regulators have created Alternate Risk-Free Rates (ARRs) for this purpose. The U.S. preferred rate is SOFR, and the UK preferred rate is SONIA.

- Managing customers and counterparties who need to understand changes to exposures and impacts on forward choices.

The industry has formed groups such as the UK Sterling RFR Working Group and the US Alternative Reference Rates Committee to support this, in conjunction with ISDA, LSTA, and others. Enormous work has gone into planning. But it remains that transition will be daunting.

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

Legislative/Regulatory Actions

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

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

FEDERAL BANKING REGULATORS

FDIC Moves Ahead with Significant Developments Related to the Industrial Bank Charter

On March 17, 2020, the Federal Deposit Insurance Corporation (FDIC) announced two significant developments relating to industrial banks (also sometimes called industrial loan companies). First, in a notice of proposed rulemaking (NPR), the FDIC laid out the regulatory regime it expects to apply to companies not subject to consolidated supervision by the Board of Governors of the Federal Reserve System (Federal Reserve) that seek to control industrial banks. Second, the FDIC approved applications for deposit insurance submitted by Square, Inc. and Nelnet, Inc., paving the way for these companies to establish the first *de novo* industrial banks in over a decade.

These two developments, taken together, signal a path forward for the use of deposit-taking industrial bank charters by companies that cannot (or do not wish to) subject themselves to the activity restrictions of the Bank Holding Company Act of 1956, as amended (the "BHC Act").

The proposed rule would apply solely with respect to industrial banks that are controlled by "Covered Companies." The term "Covered Company" means any company that is not subject to consolidated supervision by the Federal Reserve and that controls an industrial bank (in each case after the effective date of the rule) as a result of: (1) a change in bank control; (2) a merger transaction; or (3) a *de novo* application.

The proposed rule would require Covered Companies to enter into a written agreement with the FDIC and its industrial bank subsidiary as a condition of the FDIC's non-objection or approval. Among other things, the agreement would require the Covered Company to submit certain information to the FDIC; consent to examination; limit board representation on its industrial bank subsidiary to 25%; and maintain certain capital and liquidity levels at the subsidiary industrial bank. In addition, the FDIC would reserve the authority to require, in its sole discretion, an individual who is a controlling shareholder of a Covered Company to enter into the agreement.

Under the proposed rule, the FDIC would have the authority to require a Covered Company and its industrial bank subsidiary to submit to the FDIC, and comply with, a "contingency plan." The contingency plan would set forth, "at a minimum, recovery actions to address significant financial or operational stress that could threaten the safe and sound operation of the industrial bank and one or more strategies for the orderly disposition of such industrial bank without the need for the appointment of a receiver or conservator."

Under the proposed rule, the FDIC would also impose additional restrictions on industrial banks that are subsidiaries of Covered Companies. Specifically, the proposed rule would require prior approval from the FDIC for such industrial banks to do any of the following (among other things): make a material change in its business plan; add or replace a member of the board of direc- tors (or its equivalent); add or replace a senior executive officer; employ a senior executive officer who is associated in any manner with an affiliate of the industrial bank; or enter into any contract for services material to the operations of the industrial bank with such Covered Company or any subsidiary thereof.

In the preamble to the NPR, the FDIC also indicates it may impose additional requirements on Covered Companies through conditional approvals of applications or non-objections to change in control notices. These conditions may be enforced pursuant to the FDIC's authority under the FDI Act.

While the FDIC has entertained a number applications from would-be shareholders in industrial banks in recent years, the absence of any approvals raised the question of whether the charter's use by FinTech firms was actually a viable option. The FDIC has now answered the question by approving applications from Square, Inc. and Nelnet, Inc. Though largely similar, in certain limited respects, the conditions accepted by Square, Inc. and Nelnet, Inc., in connection with their application approvals, are less restrictive than those that would be required under the NPR, as summarized above.

For further information on the recent developments on industrial banks from the FDIC, please see our Client Alert, available at https://www.mofo.com/resources/insights/200403-fdic-business-industrial-banks.html.

Government Action to Address Economic Impacts of COVID-19 Pandemic

Congress and the federal financial regulators have taken bold and unprecedented actions to respond to the economic fallout

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The LIBOR Transition

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First the scale is enormous. LIBOR interest rate swaps have a notional exposure over $200 trillion plus there are $10-12 trillion in loans. This is literally millions of loans and contracts.

Second, at transition assets using LIBOR fall back to new terms, a situation we dubbed "The World's Largest Corporate Action." Fallback language is often inaccessible, poorly worded and changes deal economics. While the industry has proposed fallbacks that minimize value transfer, these will not apply to legacy assets. Detailed work and analysis is required.

Third, there is no easy way to move from LIBOR to an ARR. LIBOR has a tenor (30 day, 90 day…) and includes a spread representing bank funding costs. For example, a mortgage based on 1-year LIBOR uses a 1-year term rate and includes the banking system's then current funding cost. The ARRs are risk-free; they do not have a term and do not capture any cost of funding. So, that same mortgage with an ARR must be designed and priced differently. This is true of all LIBOR products.

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"There are hundreds of LIBOR-based products and there will need to be a similar number of replacements."

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Finally: renegotiating contracts that "fallback" is clearly better than an unexpected change, but what is the replacement? What are the current economics of the LIBOR versus the fallback? Are "new" ARR products available? Many of these choices have yet to be developed.

As firms continue to prepare for transition we have identified a set of problems which need to be addressed, plus an opportunity.

1. Get ready for fallbacks – and to negotiate

Relying on fallbacks is risky since there will be value transfer between parties, likely contentious. Regulators have rightly labelled fallbacks a transition "seatbelt".

Reworking existing transactions is better, but challenging as only the issuer may know the fallback. There is a need to develop standard customer treatments, decision trees and playbooks. Note, there are many details that are product-specific.

This is a lot of work and as of this writing we are not aware of any institution that has all of its fallback terms in a database, let alone the ability to compare or calculate go-forward interest payments.

Recommendations:

- Proactively re-negotiate LIBOR contracts off the rate.
- Similarly it is imperative to stop issuing LIBOR products as soon as possible. In May 2020 the ARRC released "Best Practice" dates for when dollar LIBOR should no longer be used; meet them.
- Firms must understand what it takes to process fallbacks; and then build this out.
- Analytics will be key as all will rightfully ask "what's the impact?" Have an answer. At Oliver Wyman we have built a full analytic suite covering this issue.

2. Get ready to assess the impact of products based on risk-free rates

There are hundreds of LIBOR-based products and there will need to be a similar number of replacements. Many market participants have not built these or analyzed the economic impact of using ARRs for products. However as ARR products have different economics and risks, this needs intense focus.

There is ongoing discussion about ARR products and it is important to follow the market evolution. For example, the ARRC has proposed new adjustable mortgages using SOFR. The terms are different than the LIBOR loans they replace. Understanding situations like this and performance differences is critical. In addition, a full-bore effort is underway to define a new "lending rate" which may gain favor. Watch this space!

3. Get ready to communicate with customers and counterparties

At the essence, all LIBOR products are two-sided, e.g. party A lends an amount to party B at a price of LIBOR+xx. The terms are defined upfront and are shared in a contract.

The change from LIBOR to another rate – the fallback problem above – means you need an extraordinary effort to communicate. For any new LIBOR loan, all must understand that LIBOR is "going away". As of the date of this article, a 10 year LIBOR loan is really an 18 month LIBOR loan and an 8 ½ year "something else" loan. That understanding and disclosure must be done *before the loan is issued.* This is a core conduct / compliance / customer information issue.

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The LIBOR Transition

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Amazingly, the "other rate" (or formula) may not be known today, even for new issuances. For new loans firms must incorporate appropriate language immediately, considering recommendations from the ARRC and other bodies. For older loans firms must make extraordinary efforts to find the text that indicates what happens and then determine if a) it is acceptable, or b) whether and how it should be renegotiated. *Many historical fallbacks do not make economic sense.* This is an enormous education task; you will likely need guidance from legal and compliance teams to do this effectively.

And finally: if the fallback is unacceptable what will you move to? A fixed rate loan? Prime? An ARR product? These are enormous communications and fair treatment issues.

4. The opportunity: re-thinking pricing

LIBOR has been a great simplifying force in loan pricing; easy to understand, simple to use, effective to hedge. The transition to ARRs provides an opportunity; it allows the market many more choices and an ability to rethink the customer proposition.

This repricing allows firms to move to a more bespoke, relationship-oriented, custom pricing strategy where specific deals can be better molded to client requirements. Historical examples of re-pricing reveal a huge difference in outcomes between participants that plan and execute pricing changes effectively, and those that do not. Achieving this requires a combination of analytic tools, customer focus, keeping up on competitor offerings, and sound governance processes.

Recommendations:

- Start preparing a proposition and re-pricing strategy as products come to market.
- Build and understand analytic capabilities as markets evolve to support accurate evaluation of new products.
- Focus on working to proactively manage existing LIBOR positions into new products.

Conclusion

LIBOR transition is coming in early 2022. Time is of the essence if products based on the new rates are to be understood and the back book to be transitioned. There is little time and much to do.■

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Spotlight on Service Member

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caused by the COVID-19 pandemic and associated public health emergency. Below is a brief summary of some of the governmental actions having a direct impact on the financial services industry.

CARES Act

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), providing over $2 trillion in economic relief to individuals and businesses impacted by the public health and economic impacts of the COVID-19 pandemic. Below is a high-level summary of relevant provisions of the CARES Act:

- Section 1102 established the Paycheck Protection Program (PPP), which authorized $349 billion (subsequently increased to $659 billion) for small business loans. Under the PPP, certain small businesses may obtain low-interest loans to cover up to eight weeks of payroll and certain other costs. PPP loans may be fully forgiven if certain conditions are met.

- Section 4013 provides that financial institutions may temporarily suspend the requirements under U.S. generally accepted accounting principles for loan modifications related to COVID-19 that otherwise would constitute troubled debt restructuring, including impairment for accounting purposes. The covered period began on March 1, 2020 and ends on the earlier of December 31, 2020, or 60 days after the end of the COVID-19 emergency.

- Section 4021 amends the Fair Credit Reporting Act to require creditors to report certain accounts of consumers as "current" if the consumer complies with the terms of a COVID-19-related accommodation.

- Section 4008(a) authorizes the FDIC to temporarily guarantee deposits in non-interest-bearing transaction accounts held at insured depository institutions. Similarly, Section 4008(b) of the CARES Act authorizes the National Credit Union Administration (NCUA) to temporarily provide unlimited share insurance coverage for non-interest-bearing transaction accounts held at federally insured credit unions. In both cases, the authorities terminate on December 31, 2020.

- Section 4014 provides large lenders with optional temporary relief from compliance with the Current Expected Credit Losses (CECL) accounting standard promulgated by the Financial Accounting Standards Board in 2016. This section gives financial institutions that have already implemented the CECL standard until December 31, 2020, or the end of the COVID-19 emergency, whichever comes first, to revise how they calculate losses on bad loans.

- Under section 4022, borrowers may submit requests to their mortgage loan servicers for up to 180 days of forbearance (plus one 180-day renewal) on federally backed mortgage loans if these borrowers experience financial hardship because of the COVID-19 emergency. During the forbearance period, no interest, fees, or penalties will accrue, other than amounts that would apply if borrowers made regularly scheduled payments. Servicers will be required to grant forbearance even if the borrower is delinquent, and no borrower documentation will be required beyond an attestation of financial hardship.

- Under Section 4011, the Office of the Comptroller of the Currency (OCC) is authorized, among other things, to temporarily waive lending limits imposed on national banks for loans or extensions of credit to non-bank financial companies that are approved by the OCC. This authority will expire on the sooner of December 31, 2020 or the end of the COVID-19 emergency.

- Section 4012 directs the federal banking agencies to issue an interim final rule to temporarily reduce the Community Bank Leverage Ratio threshold to 8%, and to provide a reasonable grace period for community banks to satisfy the requirement if their leverage ratio falls below 8%. On April 23, 2020, the relevant agencies issued an interim final rule in accordance with this statutory requirement.

- Section 4008(a) authorizes the FDIC to establish a temporary program to guarantee the debt of federally insured banks and bank holding companies, including affiliates. The program, and any guarantee issued under the program, would be required to terminate by December 31, 2020.

Federal Reserve Lending Facilities

The Federal Reserve has taken unprecedented actions to support the economy during the crisis caused by the COVID-19 pandemic. Such actions involve the establishment of a variety of lending facilities to provide liquidity to the markets. These programs include:

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- The Main Street Lending Program, which is designed to facilitate loans to small- and medium-sized businesses.

- The Primary Dealer Credit Facility, which provides primary dealers of the Federal Reserve Bank of New York (FRBNY) with access to overnight and term funding with maturities of up to 90 days at the discount rate.

- The Commercial Paper Funding Facility, pursuant to which an SPV established by the FRBNY purchases three-month U.S.-dollar-denominated commercial paper issued by certain well-rated U.S. issuers of commercial paper, including municipal issuers.

- The Money Market Mutual Fund Liquidity Facility ("MMMFLF"), under which the Federal Reserve Bank of Boston lends to certain eligible borrowers and takes as collateral certain types of high-quality assets that the borrower purchases from money market mutual funds.

- The Term Asset-Backed Securities Loan Facility, under which an SPV established by the FRBNY provides loans secured by certain AAA-rated asset-backed securities (ABS).

- The Primary Market Corporate Credit Facility, under which an SPV established by the FRBNY will purchase (i) qualifying bonds as the sole investor in a bond issuance; and (ii) portions of syndicated loans or bonds at issuance.

- The Secondary Market Corporate Credit Facility, under which an SPV established by the FRBNY will purchase corporate bonds and corporate bond portfolios in the form of exchange-traded funds on the secondary market.

- The Paycheck Protection Program Liquidity Facility (PPPLF), which is designed to facilitate lending to small businesses under the PPP.

- The Municipal Liquidity Facility, under which an SPV established by the FRBNY will purchase up to $500 billion in Eligible Notes from certain states and municipalities (among other governmental entities).

Regulatory Flexibility

Since the start of the COVID-19 pandemic, financial industry regulators have provided various forms of regulatory relief to financial institutions and, through guidance documents, have encouraged lenders to work with their customers impacted by the pandemic by reducing fees, increasing credit limits, and expanding small-dollar lending, among other things. Regulators have also provided flexibility to financial institutions with regards to reporting and filing requirements and deadlines for remediation of supervisory findings.

The federal banking agencies have provided relief for banking organizations from certain capital requirements to facilitate lending to households and businesses and to reduce the capital costs associated with participation in Federal Reserve monetary policy programs. This relief includes the following:

- On March 17, 2020, the federal banking agencies released a statement to encourage banks to use the capital and liquidity buffers built up during the recent economic expansion to extend credit to households and businesses. The agencies also released an interim final rule that makes restrictions on distributions of capital in the form of dividends and discretionary bonus payments, which are triggered by reductions in capital ratios below the buffer requirement, more gradual.

- On March 19, 2020, the federal banking agencies responded to inquiries from the public by releasing FAQs addressing the use of capital and liquidity buffers for lending during the crisis, and how the Federal Reserve's rule regarding total loss-absorbing capacity (TLAC) would apply. On March 26, 2020, the Federal Reserve published an interim final rule making automatic limitations on capital distributions more gradual under TLAC rule. The intended impact of this interim final rule is to encourage institutions to use their TLAC buffers to provide credit to the economy.

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FMA Welcomes New Members

Trevor Cross	**Frost Bank**
Thomas Rosenkoetter	**BNP Paribas**
David Shore	**Citizens Bank**
Joy Soodik	**Clarfeld Financial Advisors**
Curtis Tao	**Citi**

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- On March 23, 2020 and April 9, 2020, the federal banking agencies published interim final rules that neutralize the regulatory capital effects of participating in the Federal Reserve's MMMFLF and the PPPLF, respectively. On May 5, 2020, the federal banking agencies announced an interim final rule to neutralize the effects of participation in these facilities on an institution's liquidity coverage ratio.

- On May 15, 2020, the federal banking agencies announced an interim final rule to allow depository institutions to elect to exclude U.S. Treasury securities and deposits held at Federal Reserve Banks from the calculation of total leverage exposure for purposes of the supplementary leverage ratio through March 31, 2021.

For more information and analysis regarding measures taken by Congress and the federal financial agencies to mitigate the impact of the COVID-19 pandemic, please see the Morrison & Foerster Financial Services Resources website, available at https://www.mofo.com/special-content/coronavirus/financial-services-coronavirus-resources.html.

Government Accountability Office Issues Recommendations to the FDIC and the Federal Reserve

On April 20, 2020, the Government Accountability Office (GAO) published its priority open recommendations to the FDIC. The recommendations include: (1) continuing discussions with other regulators and stakeholders regarding consumer risks related to account aggregation services; (2) providing specific direction to banks that partner with FinTech lenders on the appropriate use of alternative data in the underwriting process; and (3) conducting a joint retrospective review with other regulators on the full range of factors that may influence banks to de-risk, *i.e.*, limit service or end customer relationships to avoid regulatory concerns about facilitating money laundering.

On the same date, the GAO published priority open recommendations to the Federal Reserve, which included the three recommendations above. The report also included five recommendations on improving the Federal Reserve's risk management models for stress testing. In response to COVID-19, the GAO emphasized three open recommendations from 2011 on providing specific guidance to staff in exercising discretion in restricting or denying access to emergency programs and documenting related decisions.

The letter to the FDIC is available at https://www.gao.gov/assets/710/706386.pdf. The letter to the Federal Reserve is available at https://www.gao.gov/assets/710/706392.pdf.

OCC Releases Proposal to Update Rules on Activities and Operations of National Banks and Federal Savings Associations

On June 4, 2020, the OCC released a Notice of Proposed Rulemaking (NPR) to amend its rules regarding permissible activities and the operations of banks and federal savings associations. The proposed rule would incorporate certain OCC interpretations into regulations and eliminate certain outdated regulatory requirements, among other things. At the same time, the OCC released an Advanced Notice of Proposed Rulemaking (ANPR) seeking comment on how the OCC's rules apply with respect to digital banking activities, technology and innovation. Comments on the NPR and ANPR are due by August 3, 2020. For further information, please see the press release from the OCC, which includes links to the NPR and ANPR, available at https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-76.html.

BSA / AML

FFIEC BSA/AML Examination Manual Receives Long-Awaited Update

On April 15, 2020, the members of the Federal Financial Institutions Examination Council (collectively, the "Agencies") released updates to several sections of the Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual (the "Manual").

The Manual provides guidance to examiners on conducting effective BSA/AML and Office of Foreign Assets Control examinations, and the updates generally focus on providing greater transparency on how examiners are to assess the adequacy of a bank's BSA/AML compliance program. The updates address four key areas: (1) Risk-Focused BSA/AML Supervision; (2) BSA/AML Risk Assessment; (3) Assessing the BSA/AML Compliance Program; and (4) Developing Conclusions and Finalizing the Exam.

The updated Manual does not establish new requirements and largely reinforces the risk-based approach to BSA/AML supervision, which was emphasized in recent statements from regulators. Importantly, though, the revisions distinguish between mandatory requirements and supervisory expectations. The revisions also address regulatory changes since the last major update of the Manual in 2014. The updates reflect ongoing interagency efforts to evaluate and continually improve the effectiveness of the BSA/AML regulatory regime, and the Agencies intend to provide additional updates in the future.

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The Interagency Statement announcing the update is available at https://www.ffiec.gov/press/PDF/Interagency%20Statement.pdf. The updated portions of the Manual are available at https://www.ffiec.gov/press/PDF/FFIEC%20BSA-AML%20Exam%20Manual.pdf.

FinCEN COVID-19 Coverage

The Financial Crimes Enforcement Network (FinCEN) has issued five COVID-19-related releases. The earliest, issued on March 16, 2020, advised financial institutions affected by the pandemic and facing possible delays in filing Bank Secrecy Act (BSA) reports to contact FinCEN and their functional regulators as soon as possible. It also warned financial institutions to remain alert about malicious or fraudulent transactions that typically occur after disasters, such as imposter scams soliciting donations for false charities.

The second update, released on April 3, 2020, shared a direct contact mechanism for urgent COVID-19-related issues. It reiterated the importance of BSA compliance while encouraging the use of innovative approaches to meeting compliance obligations. FinCEN acknowledged the challenge of meeting certain BSA obligations in a timely manner, and suspended a recent ruling (FIN-2020-R001) on Currency Transaction Report filing obligations until further notice. FinCEN also addressed beneficial ownership information requirements as they relate to the Paycheck Protection Program, a topic expanded upon in a third issuance and FAQs published on April 13, 2020.

The fourth update, released on May 18, 2020, repeated information from previous updates. It also advised financial institutions on Suspicious Activity Report (SAR) filings. For example, financial institutions were instructed to omit COVID-19-related challenges from SAR narratives, unless tied to the suspicious activity. When receiving requests for additional SAR information, financial institutions were also advised to confirm the request was coming from a legitimate agency and not an imposter. FinCEN reiterated the importance of information-sharing and reporting criminal activity. Lastly, FinCEN announced the temporary expansion of its Rapid Response Program to assist in funds recovery. The fifth update, a FinCEN advisory, was also released on May 18, 2020, and warned about COVID-19-related medical scams.

FinCEN's COVID-19-related updates are available at https://www.fincen.gov/coronavirus.

ECONOMIC SANCTIONS

OFAC Issues Sweeping Maritime Guidance

On May 14, 2020, the U.S. Department of State, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), and the U.S. Coast Guard issued a joint advisory providing parties operating in or dealing with the maritime industry with information and recommendations to counter illicit shipping practices and sanctions evasion, with a focus on Iran, North Korea, and Syria. The advisory includes information on deceptive practices used to evade sanctions and general best practices for policies and procedures to counteract such schemes. The advisory comes at a time when the Trump administration is ramping up sanctions enforcement on shipping and related sectors to support its national security and foreign policy objectives. For example, last year, the Trump administration blacklisted units of the Chinese state-owned shipping company COSCO Group and dozens of tankers for allegedly shipping Iranian oil in violation of U.S. sanctions and, in January, OFAC issued an enforcement action against a U.S.-based ship management company for violations of the former sanctions on Burma. Financial institutions with shipping company clients may want to review their compliance programs to ensure they comply with the expectations laid out in OFAC's new maritime guidance.

For an overview of OFAC's new maritime guidance, please see our client alert at https://www.mofo.com/resources/insights/200521-us-government-issues-new-guidance.html.

OFAC Publishes Fact Sheet in Response to COVID-19

On April 9, 2020, OFAC published a fact sheet in response to the COVID-19 outbreak to consolidate guidance highlighting the most relevant exemptions, exceptions, and authorizations for humanitarian assistance and trade under OFAC's Iran, Venezuela, North Korea, Syria, Cuba, and Ukraine/Russia-related sanctions programs. The fact sheet gathers many of the general licenses and FAQs from the programs above into an organized format to allow those interested in exporting humanitarian items to sanctioned jurisdictions (or financial institutions reviewing such transactions) to more easily review their sanctions obligations.

For a discussion of some of the difficulties companies are having exporting humanitarian goods to Iran, please visit https://www.mofo.com/resources/insights/200331-us-sanctions-iran-coronavirus-problem.html.

OFAC Takes Action Against Animal Nutrition Company for Sales to Cuba

OFAC's recent action against BIOMIN America, Inc. ("BIOMIN") shows the importance of conducting pre-transaction reviews and seeking appropriate advice when contemplating dealing with sanctioned jurisdictions to ensure those dealings are authorized.

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BIOMIN is an animal nutrition company located in Kansas. Between July 2011 and September 2017, BIOMIN and its controlled foreign affiliates sold non-U.S. agricultural commodities to Cuba without OFAC authorization. BIOMIN incorrectly believed that U.S. sanctions only prohibited U.S. companies from selling goods to Cuba such that if the company structured its Cuba sales to be made through a foreign affiliate, they would comply with U.S. sanctions. OFAC noted that BIOMIN may have been able to avail itself of an OFAC general license provided BIOMIN's exports had been consistent with the Export Administration Regulations or to apply for an OFAC-specific license, but it failed to do so. As a result, BIOMIN's transactions with Cuba resulted in 44 violations of U.S. sanctions against Cuba and a $257,862 fine.

In concluding remarks on compliance considerations, OFAC stated that companies "can benefit from seeking appropriate advice and guidance when contemplating business involving U.S. sanctions programs rather than developing alternative methods through non-U.S. companies in order to avoid prohibitions on U.S. companies."

CFPB UDPATE

CFPB Joins Interagency Statements on Loan Modifications for Customers Affected by COVID-19

On March 22, 2020, the Consumer Financial Protection Bureau (CFPB or "Bureau"), along with the Federal Reserve, the FDIC, the NCUA, the OCC, and the State Banking Regulators (collectively, "the agencies"), issued an Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus ("Statement"). In the Statement, the agencies encouraged financial institutions to work with borrowers, and stated that they would not criticize financial institutions that work prudently with borrowers. The agencies also stated that they will not direct supervised institutions to automatically categorize all COVID-19-related loan modifications as troubled debt restructurings (TDRs). According to the Statement, short-term modifications made on a good-faith basis in response to COVID-19 to borrowers who were current (*i.e.*, less than 30 days past due on contractual payments) prior to any relief do not constitute TDRs. The agencies' examiners will exercise judgment in future reviews of loan modifications, including TDRs, and will not automatically adversely risk rate credits that are affected by COVID-19, including those considered TDRs. On April 7, 2020, the agencies issued a revised statement ("Revised Statement"), which sought to clarify the relationship between the agencies' prior Statement and section 4013 of the CARES Act. The Revised Statement provided that institutions generally are not required to categorize COVID-19-related modifications as TDRs, and the agencies will not direct supervised institutions to automatically categorize all COVID-19-related loan modifications as TDRs. The Revised Statement emphasized that the agencies continue to encourage financial institutions to work with borrowers and will not criticize institutions for doing so in a safe-and-sound manner. The Revised Statement affirmed that the agencies' examiners will exercise judgment in reviewing loan modifications.

The Statement and the Revised Statement are available at https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_payment-obligations-covid19.pdf and https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_loan-modifications-reporting-covid-19_2020-04.pdf, respectively.

CFPB Statements Provide Temporary Flexibility to Financial Institutions in Light of COVID-19

On March 26, 2020, the CFPB announced that it was taking steps to temporarily assist financial institutions in meeting customer needs as a result of COVID-19. The CFPB stated that it is postponing as of March 26, 2020, and until further notice, certain required industry data collections, including data collections regarding credit card accounts, prepaid accounts, and mortgages, to allow companies to focus on supporting consumers in need. In its policy statements, the Bureau addressed information submissions that are required by law, indicating that it does not intend to cite in an examination, or initiate an enforcement action against any entity for, failure to submit the information when required. The CFPB also announced that it would be postponing a survey of financial institutions that seeks information on the cost of compliance in connection with the pending rulemaking on Section 1071 to require financial institutions to collect and report data on lending to small businesses. The Bureau also acknowledged the impact of COVID-19 on the operations of many financial institutions and announced that it will work with affected financial institutions to schedule examinations and other supervisory activities to "minimize disruption and burden." The Bureau also stated that enforcement activities will take into account current staffing and related resource challenges confronting financial institutions and their counsel. The Bureau said that, in conducting examinations and other supervisory activities and determining whether to take enforcement action, it will consider the circumstances that entities may face as a result of COVID-19 and "will be sensitive to good-faith efforts demonstrably designed to assist consumers."

The CFPB's announcement is availabvle at https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/.

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CFPB Joins Interagency Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19

On March 26, 2020, the CFPB, along with the Federal Reserve, the FDIC, the NCUA, and the OCC (collectively, "the agencies"), issued a Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19 ("Statement"), which recognized the potential for COVID-19 to adversely affect the customers and operations of banks, savings associations, and credit unions, and encouraged such financial institutions to offer responsible small-dollar loans to consumers and small businesses. The agencies asserted that federally supervised financial institutions are well suited to meet the credit needs of consumers and small businesses affected by COVID-19 by making responsible small-dollar loans through a variety of permissible structures, including open-end lines of credit and closed-end installment loans. Such small-dollar loans would assist consumers and small businesses in meeting their needs for credit due to temporary cash-flow balances, unexpected expenses, or income shortfalls that are a product of the COVID-19 pandemic. The agencies also encouraged financial institutions to work with borrowers unable to repay loans as structured to design workout strategies that would enable the borrower to repay the principal without needing to re-borrow. Such loans must be consistent with safe and sound practices, provide fair treatment of consumers, and comply with applicable statues and regulations, including consumer protection laws.

The Statement is available at https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_small-dollar-lending-covid-19_2020-03.pdf.

CFPB Issues Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act

On April 1, 2020, the CFPB issued a Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act (FCRA) and Regulation V in Light of the CARES Act ("Statement"). The Statement highlighted furnishers' responsibilities under the CARES Act, but also stated that the CFPB would adopt a flexible supervisory and enforcement approach in relation to the FCRA and Regulation V in light of the COVID-19 pandemic, provided that furnishers and consumer reporting agencies made good-faith efforts to comply with their statutory and regulatory obligations. For example, the CFPB stated that it would assist furnishers in complying with the CARES Act amendments to the FCRA, which require furnishers to report as current certain credit obligations for which furnishers made payment accommodations to consumers affected by COVID-19. The CFPB stated its support for furnishers' voluntary efforts to provide payment relief and stated that it would not cite in examinations or take enforcement actions against those who furnish information to consumer reporting agencies that accurately reflects the payment relief measures the furnishers are employing.

The Statement is available at https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

CFPB Joins Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act

On April 3, 2020, the CFPB, along with the Federal Reserve, the FDIC, the NCUA, the OCC, and the State Banking Regulators (collectively, "the agencies"), issued a Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act ("Joint Statement"). Concurrently the CFPB issued Mortgage Servicing Rules FAQs related to the COVID-19 Emergency ("FAQs"). The Joint Statement indicated that the agencies did not intend to take supervisory or enforcement action against servicers for delays in providing the acknowledgment notice required under Regulation X within five days of receipt of an incomplete application, provided that, for a short-term payment forbearance program, the servicer sends the notice before the end of the forbearance program and that, for a short-term repayment plan, the servicer sends the notice before the end of the repayment period. Additionally, the CFPB indicated that it would not take supervisory or enforcement action against servicers for delays in complying with Regulation X's requirements for sending loss mitigation-related notices, for establishing live contact with delinquent borrowers, for sending written early intervention notices to delinquent borrowers, and for sending the annual escrow statement, provided that the servicers are making good faith efforts to comply with the timing requirements of Regulation X. The FAQs provide further information from the CFPB on Regulation X's requirements related to short-term loss mitigation options, early interventions, continuity of contacts, annual escrow statements, electronic communication with borrowers, payoff statements, and exemptions for small servicers.

The Joint Statement and the FAQs are available at https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf and https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf, respectively.

CFPB Issues Clarifying FAQs to Support Small Businesses Applying for PPP Loans

On May 6, 2020, the Bureau issued a compliance aid composed of FAQs on the Equal Credit Opportunity Act (ECOA) and

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implementing Regulation B for small businesses who have applied for a loan from their financial institution under the Small Business Administration's (SBA) Paycheck Protection Program (PPP). The Bureau's FAQs provide clarifications on the 30-day "completed application" notification requirements related to a creditor's decision regarding a loan application under the ECOA and Regulation B, specifying that a PPP application is only a "completed application" once the creditor has received a loan number from the SBA or a response about the availability of funds. This interpretation of the 30-day "completed application" notice requirement provides that time spent waiting for the SBA to provide the required information does not count towards the 30-day notice requirement, preventing applications from expiring while waiting on the SBA. The FAQs also clarify expectations regarding adverse actions notification requirements and specify that a creditor may not deny a loan application based solely on the absence of a loan number or a response about the availability of funds from the SBA.

The FAQs are available at https://files.consumerfinance.gov/f/documents/cfpb_ecoa-regulation-b_faqs-covid-19.pdf.

CFPB Issues Final Rule Amending Remittance Transfer Rule

On May 11, 2020, the CFPB issued a final rule amending the Remittance Transfer Rule. The final rule makes two significant amendments to the Remittance Transfer Rule. First, the final rule increases the Remittance Transfer Rule's "normal course of business" safe harbor threshold. Under the Remittance Transfer Rule, an entity is not a remittance transfer provider subject to the rule if it does not provide remittance transfers in the normal course of business. Previously, an entity was treated as not providing remittance transfers in the normal course of business if it provided 100 or fewer remittance transfers in the prior calendar year and provided 100 or fewer remittance transfers in the current calendar year. The final rule raises this threshold to 500 or fewer remittance transfers in the prior calendar year and 500 or fewer remittance transfers in the current calendar year. Second, the final rule creates two new permanent exceptions that permit insured institutions to disclose estimates, rather than exact amounts, of certain fees and exchange rates if certain conditions are met. The first exception permits as insured institution to estimate the exchange rate and other disclosures that depend on the exchange rate if the insured depository institution cannot determine the exact exchange rate for the remittance transfer at the time it must provide the applicable disclosure, the remittance transfer is sent from the sender's account with the insured depository institution, and in the prior calendar year the insured depository institution made 100 or fewer remittance transfers to the particular country for which the designated recipients of those transfers received funds in the particular country's local currency. The second exception permits insured institutions to estimate covered third-party fees and other disclosures that depend on covered third-party fees if the insured institution cannot determine the exact covered third-party fees required to be disclosed for the remittance transfer at the time the insured depository institution must provide applicable disclosures, the remittance transfer is sent from the sender's account with the insured institution, and either the insured institution made 500 or fewer remittance transfers to the designated recipient's institution in the prior calendar year or a United States federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees required to be disclosed for that remittance transfer.

The final rule is available at https://files.consumerfinance.gov/f/documents/cfpb_remittance-transfers_final-rule_2020-05.pdf.

CFPB Issues Guidance Concerning COVID-19-Related Regulatory Pain Points

On May 13, 2020, the CFPB issued three guidance documents highlighting existing regulatory flexibility and responsibilities for financial institutions when interacting with consumers in the context of the COVID-19 pandemic. First, the Bureau issued a statement ("Statement") notifying credit card issuers and other open-end creditors that the CFPB will provide supervision and enforcement flexibility during the pandemic with respect to the time frame for creditor completion of billing error investigations under Regulation Z. The Statement provides temporary relief to ensure that creditors are able to accurately resolve consumer billing error claims during the crisis, and specifies that the Bureau intends to consider the creditor's circumstances and does not intend to cite a violation or bring an enforcement action against a creditor that takes longer than the maximum time frame permitted by Regulation Z to investigate and resolve a billing error, as long as the creditor can demonstrate that it has made a good-faith effort to obtain the necessary information and make a determination as quickly as possible. Second, the Bureau issued FAQs on existing flexibility in Regulation E and Regulation DD for providers of checking, savings, or prepaid accounts. These FAQs remind financial institutions that, under both Regulation E and Regulation DD, providers can change account terms without advance notice to consumers where the change in terms is clearly favorable to the consumer. Finally, the Bureau issued FAQs on existing flexibility for open-end credit in Regulation Z. These FAQs remind creditors of existing flexibilities for open-end credit in Regulation Z, including with respect to the limitations on the requirement for advance notice of a change in terms under Regulation Z, and the fact that the advance notice requirements do not apply in specific circumstances, which may help consumers in need.

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The Statement is available at https://files.consumerfinance.gov/f/documents/cfpb_statement_regulation-z-error-resolution-covid-19_2020-05.pdf and the FAQs are available at https://files.consumerfinance.gov/f/documents/cfpb_faqs_payments-deposits-rules-covid-19_2020-05.pdf and https://files.consumerfinance.gov/f/documents/cfpb_faqs_open-end-rules-covid-19_2020-05.pdf, respectively.

CFPB Issues Two No-Action Letter Templates to Help Struggling Homeowners Seeking Mitigation Efforts and Consumers Seeking Small-Dollar Loans

On May 22, 2020, the CFPB issued two No-Action Letter (NAL) Templates designed to advance the CFPB's policy of promoting regulatory certainty and streamlining the review process by focusing on consumer benefits and risk of the applicant's product or service. Under the CFPB's NAL Policy, companies providing consumer financial products and services may secure NAL Templates that will serve as the foundation for their own NAL applications. The first NAL Template approved by the CFPB was requested by Brace Software, Inc. ("Brace"). Brace sought a NAL to enable mortgage servicers to use Brace's online platform to implement loss-mitigation efforts for borrowers. Mortgage servicers seeking to assist struggling borrowers to avoid foreclosure and engage in loss mitigation efforts are now able to apply for their own NAL using Brace's NAL Template. The second NAL Template approved by the CFPB would allow insured depository institutions to apply for a NAL covering small-dollar credit products.

The NAL are available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-helps-struggling-homeowners-seeking-mitigation-efforts-consumers-seeking-small-dollar-loans/.■

** Aki Bayz, Brian C. Fritzsche, Malka Levitin, Jeremy R. Mandell, Kristofer G. Readling, and Mark R. Sobin contributed to this column.*

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Who's News

Brandon Beall has been promoted to Senior Professional Staff at the U.S. Senate Banking Committee.

Stephanie Boryla has joined Arvest Bank as Senior Director of Enterprise Risk Management. Previously, Stephanie was SVP & CCO at UMB Financial Corporation.

Brian P. Brooks has been named Acting Comptroller of the Currency at the OCC. He replaces former Comptroller Joseph M. Otting who stepped down from office on May 29, 2020.

Chris Brown has joined The Cypress Group as a Principal. Previously, Chris was a Senior Professional Staff Member on the U.S. House of Representatives Committee on Financial Services.

Steve Brown has joined Compliance Risk Concepts as Director, Broker-Dealer Client Services. Previously, Steve was Director, Capital Markets Risk and Regulatory Practice at PwC.

Michael Burwick has joined Freeman Mathis & Gary, LLP as a Partner. Previously, Michael was a Partner at The Wagner Law Group.

Susan Collet has joined FINRA as Director, Government Affairs. Previously, Susan was Director of Government Relations at the MSRB.

Michael Dondarski has joined the Department of the Treasury/Financial Crimes Enforcement Network as Deputy Associate Director, Enforcement. Previously, Mike was Assistant Director for Enforcement at the Department of the Treasury/Office of Foreign Assets Control.

Dionne Fajardo has joined Element Pointe Advisors, LLC as CCO & General Counsel. Previously, Dionne was a Shareholder at Wiand Guerra King P.A.

Jim Foorman, formerly Senior General Counsel and Senior Managing Director at Guggenheim Partners, has retired. Congratulations and best of luck, Jim!

David Glockner has joined Exelon as Executive Vice President, Compliance and Audit. Previously, David was CCO at Citadel LLC.

Anna Harrington has joined Bank Policy Institute as SVP, Associate General Counsel. Previously, Anna was a Counsel at WilmerHale.

Jill Harrington has joined Centennial Bank as an Internal Auditor. Previously, Jill was an Internal Auditor at Arvest Bank.

Congratulations to **Jaqueline Hummel**, Partner and Managing Director, and **Cari Hopfensperger**, Senior Compliance Consultant, at Hardin Compliance Consulting. They have been recognized by *JD Supra* as among the top ten authors writing on compliance issues in 2019. They were selected from a pool of more than 2,200 writers in the compliance category. This is the second year in a row that Ms. Hummel has been recognized.

Matthew Janiga has joined BlueVine as Director of Product and Regulatory Legal. Previously, Matt was Banking and Financial Products Businesses Product Counsel at Stripe.

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COVID-19

June 10, 2020 – The MSRB provided answers to FAQs addressing COVID-19 pandemic-related regulatory relief and guidance for brokers, dealers, municipal securities dealers and municipal advisors in light of disruptions to normal business operations – http://www.msrb.org/News-and-Events/~/link.aspx?_id=D44A4970C61F4302A914CA7BF21A1F8D&_z=z. The MSRB also has a dedicated COVID-19 information page – http://www.msrb.org/News-and-Events/COVID-19-Information.aspx.

CFTC Press Release 8176-20 (June 10, 2020) – The CFTC extended through September 30, 2020, certain elements of the no-action relief issued in response to the COVID-19 pandemic that was set to expire on June 30, 2020. A full list of all coronavirus-related relief issued by the CFTC and its staff can be found on cftc.gov/coronavirus.

Federal Reserve Press Release (June 3, 2020) – The Federal Reserve Board announced an expansion in the number and type of entities eligible to directly use its Municipal Liquidity Facility. Under the new terms, all U.S. states will be able to have at least two cities or counties eligible to directly issue notes to the MLF regardless of population. Governors of each state will also be able to designate two issuers in their jurisdictions whose revenues are generally derived from operating government activities (such as public transit, airports, toll facilities, and utilities) to be eligible to directly use the facility.

FINRA Regulatory Notice 20-16 (May 28, 2020) – FINRA shared practices implemented by firms to transition to, and supervise in, a remote work environment during the COVID-19 pandemic. And, the latest regulatory developments relating to COVID-19 can be found on FINRA's COVID-19/Coronavirus Topic Page, as well as in recent *Notices* issued to address COVID-19-related fraud, cybersecurity threats and other emerging issues.

CFTC Press Release 8168-20 (May 28, 2020) – The CFTC unanimously approved an interim final rule to grant an extension (from September 1, 2020 until September 1, 2021) of the compliance schedule for initial margin requirements for uncleared swaps in response to operational challenges certain entities are facing due to the COVID-19 pandemic. The IFR will be effective when published in the *Federal Register* and comments on the IFR are due 60 days after the date of publication. The Commission also unanimously approved a proposed rule which provides an exemption from registration as a commodity pool operator for certain foreign persons. This proposal also includes other measures related to CPO requirements. This proposed rule also has a 60-day comment period following publication in the *Federal Register*.

MSRB Informational Notice (May 28, 2020) – The MSRB filed a proposed rule change with the SEC to temporarily waive market activity fees for municipal market transactions related to the Federal Reserve's Municipal Liquidity Facility. The MSRB is providing a temporary waiver of underwriting, transaction and technology assessments under its Rule A-13 for brokers, dealers and municipal securities dealers facilitating MLF transactions. The waiver is temporary and only applicable during the duration of time the MLF is purchasing municipal securities, which is currently scheduled to cease on December 31, 2020.

MSRB Notice 2020-10 (May 26, 2020) – This notice is intended to highlight available MSRB resources on its free EMMA website for municipal bond investors and to provide information on where to find COVID-19-related disclosures from issuers.

CFTC Press Release 8167-20 (May 22, 2020) – The CFTC issued a Customer Advisory informing the public about the unique risks associated with certain trading vehicles that use futures contracts or other commodity interests as they make investment decisions during the COVID-19 (coronavirus) pandemic.

FDIC Press Release (May 15, 2020) – The federal bank regulatory agencies (FRB, FDIC & OCC) announced temporary changes to their supplementary leverage ratio rule. The temporary modifications will provide flexibility to certain depository institutions to expand their balance sheets in order to provide credit to households and businesses in light of the challenges arising from the coronavirus response. The change will be effective once the rule is published in the *Federal Register* and will be in effect through March 31, 2021. Comments will be accepted for 45 days after publication in the *Federal Register*.

MSRB Press Release (May 12, 2020) – The MSRB enhanced the format of its weekly report aggregating disclosures submitted to its free EMMA system that reference COVID-19. The MSRB has leveraged cloud-computing to search the approximately 65,000 disclosures the EMMA system received from January 1, 2020 to May 10, 2020 to identify those that referenced COVID-19 or related keywords. The enhanced format of the MSRB's weekly disclosure summary permits users to sort by category, issuer name, state and posted date.

Federal Reserve Press Release (May 11, 2020) – The Federal Reserve Board published updates to the term sheet for the Municipal Liquidity Facility to provide pricing and other information. The MLF will offer up to $500 billion in lending to states and municipalities to help manage cash flow stresses caused by the coronavirus pandemic.

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FDIC Press Release (May 6, 2020) – Due to challenges arising from the COVID-19 pandemic, the FDIC and FRB announced two extensions to upcoming resolution plan deadlines. First, the agencies extended the submission date by 90 days, to September 29, 2020, for the resolution plans from Barclays, Credit Suisse, Deutsche Bank, and UBS. And second, the agencies extended the submission date by 90 days, to September 29, 2021, for the targeted resolution plans from the large foreign and domestic banks in Category II and Category III of the agencies' large bank regulatory framework. Targeted resolution plans for the eight global systemically important banking organizations will remain due by July 1, 2021.

FINRA Regulatory Notice 20-13 (May 5, 2020) – FINRA reminds firms to beware of fraud during the COVID-19 pandemic and also to review resources on FINRA's Cybersecurity Topic Page which provides information on how firms can strengthen their cybersecurity programs.

Federal Reserve Press Release (April 27, 2020) – The Federal Reserve Board announced an expansion of the scope and duration of the Municipal Liquidity Facility. The facility, which was announced on April 9 as part of an initiative to provide up to $2.3 trillion in loans to support U.S. households, businesses, and communities, will offer up to $500 billion in lending to states and municipalities to help manage cash flow stresses caused by the COVID-19 pandemic.

CFTC Press Release 8158-20 (April 24, 2020) – The CFTC's Division of Swap Dealer and Intermediary Oversight announced that, in response to the COVID-19 pandemic, it has issued additional targeted no-action relief to registrants listing new principals and to applicants for registration as associated persons from the requirement to submit a fingerprint card for any such principal or AP registration applicant. Subject to other conditions, DSIO will grant no-action relief with respect to a registrant listing new principals or an applicant for AP registration until July 23, 2020, or until the National Futures Association notifies the public that it has resumed processing fingerprints, whichever is earlier. In addition, principals and APs of registrants and applicants for registration relying upon this relief must submit fingerprints to NFA within 30 days of NFA's public announcement that it has resumed fingerprint processing.

CFTC Press Release 8156-20 (April 23, 2020) – The CFTC's Division of Swap Dealer and Intermediary Oversight announced that it has issued additional targeted no-action relief to futures commission merchants and introducing brokers in response to the COVID-19 pandemic. Subject to the conditions stated in the letter, the relief provided is as follows: DSIO has granted targeted no-action relief to permit eligible FCMs and IBs taking advantage of covered loans under the Paycheck Protection Program administered pursuant to the CARES Act to add back to capital certain amounts under covered loans that are forgivable in accordance with Regulation 1.17. In order to further align the targeted relief provided in the letter with that issued by FINRA, DSIO has also granted targeted no-action relief to IBs and FCMs who are permitted by FINRA to add-back for capital purposes accrued FINRA annual assessment fees.

April 20, 2020 – Due to COVID-19, the MSRB filed with the SEC a proposed rule change to provide dealers and municipal advisors additional time to comply with certain obligations for a temporary period of time and temporarily suspend late fees on payments owed to the MSRB. The MSRB has designated the proposed rule change as constituting a "noncontroversial" rule change which renders the proposal effective upon receipt of this filing by the Commission.

CFTC Press Release 8146-20 (April 10, 2020) – The CFTC announced that it has voted to extend certain currently-open comment periods in light of the COVID-19 pandemic. The extensions encompass rules proposed by the Division of Market Oversight for which current comment periods started in January and February of 2020. See the press release for specific rulemakings and extended comment periods.

MSRB Press Release (April 9, 2020) – The MSRB sought immediate authorization from the SEC to provide temporary regulatory relief to market participants affected by COVID-19 by extending certain MSRB compliance and testing deadlines. Additionally, the MSRB sought SEC approval to temporarily waive late fees for any registration, annual and market activity-based fees billed for the period of March 1, 2020 to July 31, 2020 under MSRB Rules A-11, A-12 and A-13. Previous regulatory action taken by the MSRB includes suspending price variance alerts for dealers, extending the comment deadline on request for comment on proposed governance enhancements and reminding regulated entities of application of supervisory requirements in light of COVID-19.

SEC Press Release 2020-84 (April 8, 2020) – The SEC announced that it is providing temporary, conditional exemptive relief for business development companies to enable them to make additional investments in small and medium-sized businesses, including those with operations affected by COVID-19. The relief will provide additional flexibility for BDCs to issue and sell senior securities in order to provide capital to such companies, and to participate in investments in these companies alongside certain private funds that are affiliated with the BDC. The relief is subject to investor protection conditions, including specific requirements for obtaining an independent evaluation of the issuances' terms and approval by a majority of a BDC's independent board members. For general questions or concerns related to impacts of COVID-19 on the operations or compliance of funds and advisers, please email IM-EmergencyRelief@sec.gov.

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OCC Bulletin 2020-34 (April 7, 2020) – On April 3, 2020, FinCEN issued an updated COVID-19 notice providing for certain regulatory relief under the risk-based approach to BSA compliance, including exempting from beneficial ownership requirements new loans extended to existing customers under the CARES Act Paycheck Protection Program. The FinCEN BSA Notice also suspends implementation until further notice of the February 6, 2020, ruling on Currency Transaction Report filing obligations when reporting transactions involving sole proprietorships and entities operating under a "doing business as" name. In addition, the FinCEN BSA Notice announces the creation of a COVID-19-specific contact mechanism, via a specific drop-down category, for financial institutions to communicate to FinCEN COVID-19-related concerns while adhering to their BSA obligations.

FDIC Press Release (April 3, 2020) – Due to COVID-19 challenges, the FDIC announced that it will extend the public comment period for its proposed rule to modernize its brokered deposit regulations by 60 days. Interested parties responding to FDIC's *Notice of Proposed Rulemaking on Brokered Deposit Restrictions Applicable to Less Than Well Capitalized Banks* may now submit comments through June 9, 2020.

CFTC Press Release 8143-20 (April 2, 2020) – Five federal financial regulatory agencies announced that they will consider comments submitted before May 1, 2020, on their proposal to modify the Volcker rule's general prohibition on banking entities investing in or sponsoring hedge funds or private equity funds—known as "covered funds." The agencies will continue to consider comments to provide interested persons more time to analyze the issues and prepare their comments in light of potential disruptions resulting from COVID-19. The proposal asked for comments to be submitted by April 1, 2020.

MSRB Press Release (April 2, 2020) – The MSRB began publishing a weekly summary of state and local disclosures to its EMMA website about the impact of COVID-19.

Federal Reserve Press Release (April 1, 2020) – To ease strains in the Treasury market resulting from COVID-19 and increase banking organizations' ability to provide credit to households and businesses, the Federal Reserve Board announced a temporary change to its supplementary leverage ratio rule. The change would exclude U.S. Treasury securities and deposits at Federal Reserve Banks from the calculation of the rule for holding companies, and will be in effect until March 31, 2021. The change will be effective immediately and the public comment period will be 45 days.

March 30, 2020 – The MSRB updated its daily analysis of trade activity to include trades of all types of variable rate securities, including, among others, variable rate demand obligations and auction rate securities. The MSRB is publishing this daily analysis of trade activity to assist market participants, policymakers and the general public with understanding the impact of COVID-19 on the liquidity of the municipal securities market.

OCC Bulletin 2020-27 (March 27, 2020) – The OCC, along with the FRB and FDIC, announced an interim final rule to delay the estimated impact on regulatory capital stemming from the implementation of Accounting Standards Update No. 2016-13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments" (CECL). The agencies are providing this relief to allow banking organizations to focus on supporting lending to creditworthy households and businesses in light of recent strains on the U.S. economy due to COVID-19, while also maintaining the quality of regulatory capital. This bulletin applies to all OCC-supervised banks that implement CECL before the end of 2020.

Federal Reserve Press Release (March 26, 2020) – Recognizing that small financial institutions may need additional time to submit certain regulatory reports in light of staffing priorities and disruptions caused by COVID-19, the Federal Reserve will not take action against a financial institution with $5 billion or less in total assets for submitting its March 31, 2020, Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) or Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y-11) after the official filing deadline, as long as the applicable report is submitted within 30 days of the official filing due date. Institutions are encouraged to contact their Reserve Bank in advance of the official filing deadline if they anticipate a delayed submission. Institutions anticipating difficulty submitting their reports within the 30 days following the official filing due date, or experiencing challenges in obtaining director attestations, should likewise contact their Reserve Bank. On March 25, the federal financial institution regulators and state regulators offered similar reporting relief to financial institutions affected by COVID-19 for their March 31, 2020 Reports of Condition and Income (Call Reports)

FINRA Information Notice (March 26, 2020) – As firms respond to COVID-19, FINRA reminds firms and their associated persons to take appropriate measures to address increased vulnerability to cybersecurity attacks and to protect customer and firm data on firm and home networks, as well as devices.

SEC Press Release 2020-74 (March 26, 2020) – The SEC announced that it is providing additional temporary regulatory relief to market participants in response to the effects of COVID-19. The announced actions involve (1) parties needing to gain access to make filings on the EDGAR system, (2) certain company filing obligations under Regulation A and Regulation Crowdfunding, and (3) a filing requirement for municipal advisors.

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MSRB Press Release (March 25, 2020) – The MSRB began publishing a daily analysis showing the impact of COVID-19 on municipal market trade activity.

OCC Bulletin 2020-24 (March 25, 2020) – The OCC, FRB and FDIC, under the auspices of the FFIEC issued a press release recognizing that financial institutions may need additional time to submit certain regulatory reports in light of COVID-19. The agencies will not take action against any institution for submitting in good faith its March 31, 2020, Consolidated Reports of Condition and Income (or call report) after the official filing deadline, as long as the report is submitted within 30 days after the official filing deadline. This grace period applies to submissions of all three versions of the call report (FFIEC 031, FFIEC 041, and FFIEC 051).

OCC Bulletin 2020-23 (March 25, 2020) – On March 19, 2020, the Cybersecurity and Infrastructure Security Agency issued a memorandum and initial guidance identifying several categories of workers who conduct a range of operations and services essential to continued critical infrastructure viability. Among the workers that CISA identified are those in the financial services sector. On March 24, 2020, the U.S. Treasury Secretary emphasized in a press release the importance of the financial services sector and reinforced the CISA guidance. This bulletin provides information for essential critical infrastructure workers during the COVID-19 emergency response.

SEC Press Release 2020-73 (March 25, 2020) – The SEC announced that it is extending the filing periods covered by its previously enacted conditional reporting relief for certain public company filing obligations under the federal securities laws, and that it is also extending regulatory relief previously provided to funds and investment advisers whose operations may be affected by COVID-19. In addition, the SEC's Division of Corporation Finance issued today its current views regarding disclosure considerations and other securities law matters related to COVID-19. The guidance encourages timely reporting while recognizing that it may be difficult to assess or predict with precision the broad effects of COVID-19 on industries or individual companies.

March 23, 2020 – Given the current market volatility due to COVID-19, the MSRB is temporarily suspending the transmission of the price variance alerts for trades reported to MSRB's Real-Time Transaction Reporting System effective immediately.

OCC Bulletin 2020-22 (March 23, 2020) – The OCC announced an interim final rule revising its short-term investment fund rule for OCC-supervised banks acting in a fiduciary capacity. The IFR allows the OCC to authorize banks to temporarily extend maturity limits of these funds if the

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

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agency determines that sudden disruptions in the financial markets negatively affect the ability of banks to operate in compliance with maturity limits required by the STIF rule. Simultaneously, the OCC also announced an order (Order) temporarily extending the maturity limits for STIFs affected by the market effects of COVID-19. The relief provided by the Order terminates on July 20, 2020, unless the OCC revises the Order before that date.

SEC Press Release 2020-70 (March 23, 2020) – The SEC announced temporary flexibility for registered funds affected by recent market events to borrow funds from certain affiliates and to enter into certain other lending arrangements. This relief is designed to provide funds with additional tools to manage their portfolios for the benefit of all shareholders as investors may seek to rebalance their investments due to COVID-19. This temporary relief will extend until the date specified in a public notice from the staff stating that the relief will terminate, which date will be at least two weeks from the date of the notice and no earlier than June 30, 2020. The Commission may provide additional relief as circumstances warrant.

OCC News Release 2020-38 (March 22, 2020) – The OCC announced an interim final rule to revise its short-term

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investment fund rule for national banks acting in a fiduciary capacity. The rule allows the OCC to authorize banks to temporarily extend maturity limits of these funds. The financial markets are in a period of significant stress negatively affecting the ability of banks to operate in compliance with maturity limits identified in the rule. The rule is effective immediately. The agency will accept comments for 45 days following publication in the *Federal Register*. Simultaneously to announcing the interim final rule, the OCC also announced an order extending the maturity limits for STIFs affected by the market effects of COVID-19. The OCC also determined that the relief provided by this administrative order terminates on July 20, 2020, unless the OCC revises this order to provide otherwise before that date.

OCC Bulletin 2020-17 (March 19, 2020) – On March 17, 2020, the agencies (OCC, FRB and FDIC) issued a statement encouraging banking organizations to use their capital and liquidity buffers as they respond to the challenges presented by the effects of COVID-19-related issues. The agencies issued questions and answers in response to public questions about the use of capital and liquidity buffers.

CFTC

CFTC Press Release 8173-20 (June 4, 2020) – The CFTC unanimously approved a final rule prohibiting persons from seeking to claim a Commodity Pool Operator registration exemption who have, or whose principals have, incurred any of the relevant statutory disqualifications listed in the Commodity Exchange Act. Specifically, the final rule will require any person filing a notice claiming such exemption to represent that, subject to limited exceptions, neither the claimant nor any of its principals has in their background a CEA section 8a(2) disqualification that would require disclosure, if the claimant sought registration with the CFTC. The final rule is effective 60 days after publication in the *Federal Register*.

CFTC Press Release 8165-20 (May 20, 2020) – The CFTC announced the Division of Enforcement has issued new guidance outlining factors the Division considers in recommending civil monetary penalties to the Commission to be imposed in CFTC enforcement actions. The guidance memorializes the existing practice within the Division and has been incorporated into the Division's Enforcement Manual. This is the first Division CMP guidance issued publicly since the Commission published its penalty guidelines in 1994. The staff guidance provides a three-pronged approach to evaluate the appropriate penalty to recommend to the Commission: (1) the "gravity of the violation;" (2) "mitigating and aggravating circumstances;" and (3) "other considerations."

CFTC Press Release 8147-20 (April 14, 2020) – The CFTC at its open meeting unanimously approved three proposed rules and two final rules. The approved proposed rules included amendments to Part 190 bankruptcy regulations; amendments to compliance requirements for commodity pool operators on Form CPO-PQR; and amendments to Part 50 clearing requirements for central banks, sovereigns, IFIs, bank holding companies and CDFIs. The first proposed rule has a 90-day comment period starting today; the second rule has a 60-day comment period starting today; and the third rule has a 60-day comment period following publication in the *Federal Register*. The two final rules were on amendments to Part 34 margin requirements for the European Stability Mechanism and an amendment to Part 160 Consumer Financial Information Privacy Regulation.

CFTC Press Release 8139-20 (March 24, 2020) – The CFTC announced the Commission voted unanimously to approve final interpretive guidance concerning retail commodity transactions involving certain digital assets. Specifically, the guidance clarifies the CFTC's views regarding the "actual delivery" exception to Section 2(c)(2)(D) of the Commodity Exchange Act in the context of digital assets that serve as a medium of exchange, colloquially known as "virtual currencies."

FDIC

FDIC Press Release (May 8, 2020) – Four federal financial regulatory agencies approved a policy statement on allowances for credit losses. The statement will promote consistency in the interpretation and application of the Financial Accounting Standards Board's credit losses accounting standard, which introduces the current expected credit losses (CECL) methodology. The FRB, FDIC, NCUA and OCC issued the interagency policy statement, which will be effective at the time of each institution's adoption of the credit losses accounting standard. The agencies also finalized interagency guidance on credit risk review systems. The guidance presents principles for establishing a system of independent, ongoing credit risk review in accordance with safety and soundness standards.

FDIC Press Release (May 5, 2020) – The federal bank regulatory agencies announced an interim final rule that modifies the agencies' Liquidity Coverage Ratio rule to support banking organizations' participation in the Federal Reserve's Money Market Mutual Fund Liquidity Facility and the Paycheck Protection Program Liquidity Facility. In particular, the interim final rule facilitates participation in these facilities by neutralizing the LCR impact associated with the non-recourse funding provided by these facilities. The rule does not otherwise alter the LCR or its calibration. The rule is effective immediately and comments will be accepted for 30 days after publication in the *Federal Register*.

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FDIC Press Release (April 27, 2020) – The FDIC and FRB announced that they will extend, by 30 days, the comment period for the agencies' proposed guidance for resolution plans submitted by certain large foreign banks. The extension will allow interested parties additional time to analyze the issues and to prepare comments through June 4, 2020. The proposed guidance, issued in March, would provide additional information on the agencies' expectations for the resolution plans of certain large foreign banks, which, under the proposal, would include the U.S. operations of Barclays, Credit Suisse, and Deutsche Bank. The proposal had asked for comments by May 5, 2020.

FDIC Press Release (March 19, 2020) – The federal bank regulatory agencies announced an interim final rule to ensure that financial institutions will be able to effectively use a liquidity facility recently launched by the Federal Reserve Board. The Board has launched the Money Market Mutual Fund Liquidity Facility, or MMLF to enhance the liquidity and functioning of money markets and to support the economy. The interim final rule modifies the agencies' capital rules so that financial institutions receive credit for the low risk of their MMLF activities, reflecting the fact that institutions would be taking no credit or market risk in association with such activities. The change only applies to activities with the MMLF. The rule is effective immediately and comments will be accepted for 45 days after publication in the *Federal Register*.

FDIC Press Release (March 17, 2020) – The federal bank regulatory agencies announced two actions, one a technical change, to support the U.S. economy and allow banks to continue lending to households and businesses. The technical change is an interim final rule that, if a bank's capital declines by a certain amount, phases in the agencies' automatic distribution restrictions gradually, as intended. Like the statement, the interim final rule facilitates the use of firms' capital buffers to promote lending activity to households and businesses.

Federal Reserve Board

Federal Reserve Press Release (May 1, 2020) – The Federal Reserve Board finalized a rule to extend by 18 months the initial compliance dates for certain parts of its single-counterparty credit limit rule. The extension, which is unchanged from the proposal, applies to the combined U.S. operations of foreign banks and provides additional time for foreign jurisdictions' implementation of the standard to become effective. Certain foreign jurisdictions remain in the process of finalizing their rules or standards. The extension allows additional time for foreign banks to comply with the Board's rule via certification with a similar home country rule or standard. All other parts of the Board's rule remain unchanged. Under the final rule, the largest foreign banks need to comply with the single-counterparty credit limit rule by July 1, 2021, whereas smaller foreign banks need to comply by January 1, 2022.

Federal Reserve Press Release (April 23, 2020) – The Federal Reserve Board announced temporary actions aimed at increasing the availability of intraday credit extended by Federal Reserve Banks on both a collateralized and uncollateralized basis. These temporary actions will be applied immediately and will remain in effect until September 30, 2020, unless the Board communicates otherwise prior to that date. A list of frequently asked questions will be released shortly.

Federal Reserve Press Release (March 31, 2020) – The Federal Reserve announced the establishment of a temporary repurchase agreement facility for foreign and international monetary authorities (FIMA Repo Facility) to help support the smooth functioning of financial markets, including the U.S. Treasury market, and thus maintain the supply of credit to U.S. households and businesses. The FIMA Repo Facility will allow FIMA account holders, which consist of central banks and other international monetary authorities with accounts at the Federal Reserve Bank of New York, to enter into repurchase agreements with the Federal Reserve. In these transactions, FIMA account holders temporarily exchange their U.S. Treasury securities held with the Federal Reserve for U.S. dollars, which can then be made available to institutions in their jurisdictions. The FIMA Repo Facility will be available beginning April 6 and will continue for at least 6 months.

Federal Reserve Press Release (March 27, 2020) – The federal bank regulatory agencies announced two actions to support the U.S. economy and allow banking organizations to continue lending to households and businesses. The “standardized approach for measuring counterparty credit risk” rule, also known as SA-CCR, was finalized by the agencies in November 2019, with an effective date of April 1. It reflects improvements made to the derivatives market since the 2007-2008 financial crisis, such as central clearing and margin requirements. To help improve current market liquidity and smooth disruptions, the agencies will permit banking organizations to early adopt SA-CCR for the reporting period ending March 31. Additionally, the agencies issued an interim final rule that allows banking organizations to mitigate the effects of the "current expected credit loss," or CECL, accounting standard in their regulatory capital. Banking organizations that are required under U.S. accounting standards to adopt CECL this year can mitigate the estimated cumulative regulatory capital effects for up to two years. This is in addition to the three-year transition period already in place. Alternatively, banking organizations can follow the capital transition rule issued by the banking agencies in February 2019. The changes will be effective immediately and the agencies will accept comments on the CECL interim final rule for 45 days.

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Federal Reserve Press Release (March 24, 2020) – The Federal Reserve Board announced a six-month delay in the planned implementation of policy changes to procedures governing the provision of intraday credit to U.S. branches and agencies of foreign banking organizations (FBOs). By delaying implementation until October 1, 2020, the Board will allow FBOs and the Federal Reserve Banks to focus on heightened priorities rather than establishing new arrangements for accessing intraday credit.

Federal Reserve Press Release (March 20, 2020) – The Federal Reserve Board expanded its program of support for the flow of credit to the economy by taking steps to enhance the liquidity and functioning of crucial state and municipal money markets. Through the Money Market Mutual Fund Liquidity Facility the Federal Reserve Bank of Boston will now be able to make loans available to eligible financial institutions secured by certain high-quality assets purchased from single state and other tax-exempt municipal money market mutual funds.

Federal Reserve Press Release (March 19, 2020) – The federal bank regulatory agencies today announced an interim final rule to ensure that financial institutions will be able to effectively use a liquidity facility recently launched by the Federal Reserve Board. The Board launched the Money Market Mutual Fund Liquidity Facility to enhance the liquidity and functioning of money markets and to support the economy. The interim final rule modifies the agencies' capital rules so that financial institutions receive credit for the low risk of their MMLF activities, reflecting the fact that institutions would be taking no credit or market risk in association with such activities. The change only applies to activities with the MMLF. The rule is effective immediately and comments will be accepted for 45 days after publication in the *Federal Register*.

Federal Reserve Press Release (March 18, 2020) – The Federal Reserve Board broadened its program of support for the flow of credit to households and businesses by taking steps to enhance the liquidity and functioning of crucial money markets. Through the establishment of a Money Market Mutual Fund Liquidity Facility, or MMLF, the Federal Reserve Bank of Boston will make loans available to eligible financial institutions secured by high-quality assets purchased by the financial institution from money market mutual funds. More detailed program terms and conditions and an operational calendar will be published soon.

FINRA

FINRA Regulatory Notice 20-17 (June 10, 2020) – FINRA added two new Rule 4530 Problem Codes related to SEC Regulation Best Interest and Form CRS, and made related amendments to the existing Rule 4530 Problem Code related to suitability. Starting on July 18, 2020, firms can use new Problem Code 16–Reg BI and new Problem Code 17–Form CRS, when applicable, to report customer complaint information and required documents filed under Rules 4530(f) and (g). In addition, FINRA is retiring Rule 4530 Problem Code 69–DOL Fiduciary Rule and making other non-substantive stylistic changes to the Problem Codes. The amended and new Rule 4530 Product and Problem Codes are available at https://www.finra.org/sites/default/files/2020-06/Attachment_A-4530_Product_Problem_Codes.pdf.

FINRA Regulatory Notice 20-15 (May 21, 2020) – FINRA amended its Membership Application Program rules to create further incentives for the timely payment of arbitration awards by preventing an individual from switching firms, or a firm from using asset transfers or similar transactions, to avoid payment of arbitration awards. The amendments will address situations where: (1) a FINRA member firm hires individuals with pending arbitration claims, where there are concerns about the payment of those claims should they go to award or result in a settlement, and the supervision of those individuals; and (2) a member firm with substantial arbitration claims seeks to avoid payment of the claims should they go to award or result in a settlement by shifting its assets, which are typically customer accounts, or its managers and owners, to another firm and closing down. These changes become effective on September 14, 2020.

FINRA Regulatory Notice 20-12 (May 4, 2020) – FINRA warns member firms of a widespread, ongoing phishing campaign that involves fraudulent emails purporting to be from FINRA officers, including Bill Wollman and Josh Drobnyk. These emails have a source domain name "@broker-finra.org" and request immediate attention to a (sometimes) attachment relating to your firm. In other cases, what appears to be an attached PDF file may direct the user to a website which prompts the user to enter their Microsoft Office or SharePoint password. FINRA recommends that **anyone who entered their password change it immediately and notify the appropriate individuals in their firm of the incident**. The domain of "broker-finra.org" is not connected to FINRA and firms should delete all emails originating from this domain name. In addition, FINRA has requested that the Internet domain registrar suspend services for "broker-finra.org".

FINRA Regulatory Notice 20-11 (April 9, 2020) – FINRA amended its Code of Arbitration Procedure for Customer Disputes to expand a customer's options to withdraw an arbitration claim if a member firm or an associated person becomes inactive. These amendments also allow customers to amend pleadings, postpone hearings, request default proceedings and receive a refund of filing fees in these situations. The amendments are effective for cases filed on or after June 29, 2020.

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FINRA News Release (April 8, 2020) – On April 7, 2020, the SEC's Office of Compliance Inspections and Examinations released Risk Alerts for Reg BI and Form CRS. These Risk Alerts set forth OCIE's expectations for firms' compliance with Reg BI and Form CRS and provide broker-dealers with information about the scope and content of OCIE's initial examinations following the compliance date of June 30, 2020. FINRA will take the same approach as set forth in the SEC Risk Alerts when FINRA examines broker-dealers and their associated persons for compliance with Reg BI and Form CRS. This initial approach will focus primarily on assessing whether firms have made a good faith effort to establish and implement policies and procedures reasonably designed to comply with Reg BI and Form CRS. However, FINRA will take action in the event FINRA observes indications of customer harm or conduct that would have violated current standards (*e.g.*, suitability). As with the SEC, FINRA recognizes that implementation will be an iterative process, and their focus will be on firms continuing good faith and reasonable efforts, including taking into account firm-specific effects from disruptions caused by COVID-19.

FINRA Regulatory Notice 20-10 (March 20, 2020) – FINRA has amended its Rule 5110 (Corporate Financing Rule - Underwriting Terms and Arrangements) to make substantive, organizational and terminology changes to the rule. The amendments to Rule 5110 modernize, simplify and clarify its provisions while maintaining important protections for market participants, including issuers and investors participating in public offerings. The implementation date for amended Rule 5110(a)(3)(A), (a)(4)(A)(ii) and (a)(4)(A)(iii) is March 20, 2020. The implementation date for all other provisions in amended Rule 5110 is September 16, 2020. FINRA's Corporate Financing Department will publish, prior to the September 16, 2020, implementation date, updated reference materials and other guidance on FINRA's website.

MSRB

May 1, 2020 – The MSRB filed with the SEC proposed amendments to align MSRB rules with the requirements of SEC Regulation Best Interest. The MSRB's proposal is designed to reduce complexity in financial regulation and facilitate compliance with Reg B-I. Reg B-I requires broker-dealers to act in the best interest of retail customers when making a recommendation of any securities transaction or investment strategy involving securities. Reg B-I was adopted by the SEC on June 5, 2019, and broker-dealers must comply with the regulation by June 30, 2020. The MSRB Board of Directors approved the proposed amendments to MSRB rules to be filed with the SEC, where they will be published for public comment and must be approved by the SEC before becoming effective. The proposed amendments would update MSRB Rule G-19 on suitability, Rules G-8 and G-9 on books and records, Rule G-20 on gifts and gratuities and Rule G-48 on transactions with sophisticated municipal market professionals. The proposed effective date is the compliance date for Reg B-I, June 30, 2020.

MSRB Notice 20-08 (March 23, 2020) – The MSRB extended the comment deadline on a request for comment on proposed governance enhancements (MSRB Notice 2020-02) by 30 days to April 29, 2020.

OCC

OCC Bulletin 2020-59 (June 4, 2020) – On June 3, 2020, the OCC issued an advance notice of proposed rulemaking inviting public comment on its regulations at 12 CFR 7, subpart E, and 12 CFR 155 on national bank and federal savings association (bank) digital activities. Public comment is being requested to help evaluate whether these regulations effectively promote economic growth and opportunity while ensuring that banks operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. The ANPR has a 60-day comment period, ending on August 3, 2020.

OCC Bulletin 2020-58 (June 4, 2020) – The OCC is proposing to update its regulations in 12 CFR 7, "Activities and Operations." This proposal would update or eliminate outdated regulatory requirements that no longer reflect the modern financial system, clarify and codify recent OCC interpretations, integrate certain regulations for national banks and federal savings associations, and make other technical and conforming changes. Comments on the proposal are due by August 3, 2020.

OCC News Release 2020-71 (May 29, 2020) – The OCC finalized a rule to clarify that when a national bank or savings association sells, assigns, or otherwise transfers a loan, interest permissible before the transfer continues to be permissible after the transfer. Recent developments, including a decision from the U.S. Court of Appeals for the Second Circuit (*Madden v. Midland Funding, LLC*), have created legal uncertainty regarding the effect of a transfer on a loan's permissible interest rate. This final rule addresses this legal uncertainty by clarifying and reaffirming the long-standing understanding that a bank may transfer a loan without affecting the permissible interest term. The rule applies to all national banks and state and federal savings associations and will take effect 60 days after publication in the *Federal Register*.

OCC Bulletin 2020-53 (May 20, 2020) – On January 27, 2020, the OCC, FRB and FDIC issued a final rule that excludes from the supplementary leverage ratio certain central bank deposits

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of banking organizations predominantly engaged in custody, safekeeping, and asset servicing activities consistent with section 402 of the EGRRCPA. Advanced approaches and Category III banking organizations are subject to the SLR requirement.

OCC Bulletin 2020-50 (May 8, 2020) – The OCC, FRB, FDIC, and NCUA issued the "Interagency Guidance on Credit Risk Review Systems," reflecting current credit risk review practices.

OCC Bulletin 2020-49 (May 8, 2020) – The OCC, FRB, FDIC, and NCUA issued the "Interagency Policy Statement on Allowances for Credit Losses."

OCC Bulletin 2020-48 (May 6, 2020) – The OCC, FRB and FDIC issued on May 5, 2020, an interim final rule to amend the liquidity coverage ratio rule to neutralize the impact of banks' using two of the liquidity facilities recently created by the Federal Reserve to stabilize the financial system. In addition, the interim final rule makes changes, effective immediately, to the Federal Reserve's current information collection. The interim final rule only applies to banks[1] for which the liquidity coverage rule applies. Comments on the interim final rule are due June 5, 2020.

OCC News Release 2020-59 (May 5, 2020) – The federal bank regulatory agencies today announced an interim final rule that modifies the agencies' Liquidity Coverage Ratio rule to support banking organizations' participation in the Federal Reserve's Money Market Mutual Fund Liquidity Facility and the Paycheck Protection Program Liquidity Facility. In particular, the interim final rule facilitates participation in these facilities by neutralizing the LCR impact associated with the non-recourse funding provided by these facilities. The rule does not otherwise alter the LCR or its calibration. The rule is effective immediately and comments will be accepted for 30 days after publication in the *Federal Register*.

OCC Bulletin 2020-47 (May 1, 2020) – The OCC and FRB issued a response to a public question about a capital implication under the market risk capital rule in light of current market conditions.

OCC Bulletin 2020-46 (April 30, 2020) – The OCC, along with the other FFIEC members, issued a joint statement addressing the use of cloud computing services in the financial services sector. Security breaches involving cloud computing services highlight the importance of bank management's understanding of the shared responsibilities between cloud service providers and bank clients. Consistent with the joint statement, the OCC expects banks to engage in effective risk management for safe and sound cloud computing. This statement does not contain new regulatory expectations.

OCC Bulletin 2020-42 (April 22, 2020) – The OCC, FRB and FDIC announced a final rule that makes technical changes in the interim final rule that the agencies announced on March 27, 2020. The interim final rule allows certain banks to delay the estimated impact on regulatory capital stemming from the implementation of Accounting Standards Update No. 2016-13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments". Comments on the interim final rule must be received no later than May 15, 2020.

OCC Bulletin 2020-39 (April 15, 2020) – The FFIEC revised the following sections of the *FFIEC Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual*: "Scoping and Planning"; "BSA/AML Risk Assessment"; "Assessing the BSA/AML Compliance Program"; and "Developing Conclusions and Finalizing the Exam."

OCC Bulletin 2020-37 (April 10, 2020) – The OCC, FRB and FDIC have published a set of supplemental instructions on the FFIEC website to assist financial institutions in completing the first-quarter Consolidated Reports of Condition and Income (call report). One of the updates in the Quarterly Call Report Supplemental Instructions for March 2020 provides an option for financial institutions to use electronic signatures in lieu of ink signatures to fulfill the call report attestation requirement. In addition, the Appendix of the Quarterly Call Report Supplemental Instructions was updated with information on certain sections of the CARES Act that was signed into law on March 27, 2020, that affect accounting and regulatory reporting.

OCC Bulletin 2020-30 (March 31, 2020) – On March 27, 2020, the OCC, FRB and FDIC issued an interim final rule that delays the estimated impact on regulatory capital stemming from the implementation of Accounting Standards Update No. 2016-13, "Financial Instruments—Credit Losses," Topic 326, "Measurement of Credit Losses on Financial Instruments" (commonly referred to as CECL) for a transition period of up to five years. Also on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. The CARES Act provides banking organizations with optional, temporary relief from complying with CECL. The joint statement clarifies the interaction between the CECL interim final rule and the CARES Act for purposes of regulatory capital requirements.

OCC Bulletin 2020-29 (March 30, 2020) – The OCC, FRB and FDIC published the "Joint Statement on Adjustment to the Calculation for Credit Concentration Ratios Used in the Supervisory Approach" on March 30, 2020. This joint statement is in response to changes in the type of capital information available after the implementation of the

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Community Bank Leverage Ratio rule. The joint statement provides a consistent approach for calculating credit concentrations for all banking organizations. The calculation in the joint statement is consistent with current OCC bank supervision processes.

OCC Bulletin 2020-28 (March 27, 2020) – The OCC, along with the FRB and FDIC, issued a notice to allow banking organizations to implement the final rule titled "Standardized Approach for Calculating the Exposure Amount of Derivative Contracts" (SA-CCR rule) for the first quarter of 2020, on a best efforts basis. The agencies are permitting banking organizations the flexibility to implement the SA-CCR rule, including the SA-CCR methodology and the other amendments described in the SA-CCR rule, one calendar quarter early and on a best efforts basis if any banking organizations choose to do so. The SA-CCR rule effective date remains April 1, 2020, and the mandatory compliance date remains January 1, 2022.

OCC News Release 2020-42 (March 27, 2020) – The federal bank regulatory agencies announced two actions to support the U.S. economy and allow banking organizations to continue lending to households and businesses: allowing early adoption of a new methodology on how certain banking organizations are required to measure counterparty credit risk derivatives contracts; and providing an optional extension of the regulatory capital transition for the new credit loss accounting standard. The changes will be effective immediately and the agencies will accept comments on the CECL interim final rule for 45 days.

OCC Bulletin 2020-18 (March 19, 2020) – The OCC, along with the FRB and FDIC, announced an interim final rule to ensure that financial institutions will be able to effectively use a liquidity facility launched on Wednesday, March 18, 2020, by the Federal Reserve. The Federal Reserve launched the Money Market Mutual Fund Liquidity Facility to enhance the liquidity and functioning of money markets and to support the economy.

OCC News Release 2020-36 (March 19, 2020) – To support the flow of credit to households and businesses, the federal bank regulatory agencies today announced an interim final rule to ensure that financial institutions will be able to effectively use a liquidity facility recently launched by the Federal Reserve Board. The Board launched the Money Market Mutual Fund Liquidity Facility yesterday to enhance the liquidity and functioning of money markets and to support the economy. The interim final rule modifies the agencies' capital rules so that financial institutions receive credit for the low risk of their MMLF activities, reflecting the fact that institutions would be taking no credit or market risk in association with such activities. The change only applies to activities with the MMLF. The rule is effective immediately and comments will be accepted for 45 days after publication in the *Federal Register*.

OCC News Release 2020-32 (March 16, 2020) – The federal bank regulatory agencies released a statement encouraging banks to use the Federal Reserve's "discount window" so that they can continue supporting households and businesses.

SEC

SEC Press Release 2020-114 (May 15, 2020) – The SEC voted to adopt amendments to the national market system plan governing the consolidated audit trail to bring additional transparency, governance, oversight, and financial accountability to its implementation. The amendments to the CAT NMS Plan require FINRA and the exchanges, the self-regulatory organizations that are participants to the CAT NMS Plan, to publish and file with the Commission a complete implementation plan for the Consolidated Audit Trail and quarterly progress reports. Each of the reports must be approved by the Operating Committee established by the CAT NMS Plan and submitted to the CEO, President, or an equivalently situated senior officer at each Participant. In addition, the amendments include financial accountability provisions that establish target deadlines for four critical implementation milestones and reduce the amount of fee recovery available to the Participants if those target deadlines are missed. The amendments will become effective 30 days after publication of the adopting release in the *Federal Register*.

SEC Press Release 2020-103 (May 6, 2020) – The SEC issued an order directing the equity exchanges and FINRA to submit a new National Market System plan with a modernized governance structure for the production of public consolidated equity market data and the dissemination of trade and quote data from trading venues. Under the order, the participants must submit a new NMS plan that will be published for public notice and comment before the Commission takes action. Until the Commission approves a new NMS plan, the current NMS plans will continue to govern. The Commission also approved amendments to the existing NMS plans, submitted by the participants and modified by the Commission, designed to address conflicts of interest and the protection of confidential information.

SEC Press Release 2020-93 (April 21, 2020) – The SEC announced that it has voted to propose a new rule that would establish a modernized framework for fund valuation practices. The rule is designed to clarify how fund boards can satisfy their valuation obligations in light of market developments, including an increase in the variety of asset classes held by funds and an increase in both the volume and type of data used in valuation determinations. The proposal will be published on the Commission's website and in the *Federal Register*. The comment period for the proposal will be open until July 21, 2020.

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SEC Press Release 2020-92 (April 20, 2020) – The SEC announced it has voted to issue two exemptive orders in order to move Consolidated Audit Trail implementation forward: (1) establishing a phased CAT reporting timeline for broker-dealers, and (2) permitting introducing brokers that meet certain requirements to follow the small broker-dealer reporting timeline. Select milestones for broker-dealer reporting to the CAT are: **June 22, 2020**: Initial equities reporting for large broker-dealers and small broker-dealers that currently report to FINRA's Order Audit Trail System (OATS); **July 20, 2020**: Initial options reporting for large broker-dealers; **Dec. 13, 2021**: Full equities and options reporting for large and small broker-dealers; and **July 11, 2022**: Full customer and account reporting for large and small broker-dealers.

SEC Press Release 2020-86 (April 9, 2020) – The SEC adopted amendments to its rules for securities clearing agencies to apply enhanced standards to all SEC-registered central counterparties and central securities depositories. The rule amendments build on rules adopted by the Commission in 2016 pursuant to the Dodd-Frank Act to establish enhanced standards for the operation and governance of securities clearing agencies deemed systemically important and those that are central counterparties for security-based swaps. The adopted rules will become effective 60 days after publication in the *Federal Register*.

SEC Press Release 2020-83 (April 8, 2020) – The SEC voted to adopt rule amendments to implement certain provisions of the Small Business Credit Availability Act and the EGRRCP Act relating to business development companies and other closed-end funds. The amendments are designed to streamline the registration, offering and investor communications processes for BDCs and registered closed-end funds and will provide important benefits to market participants and investors, including advancing capital formation and modernizing and streamlining disclosures. Most of the amendments will become effective on Aug. 1, 2020.

SEC Press Release 2020-82 (April 7, 2020) – The SEC's Office of Compliance Inspections and Examinations has issued two risk alerts: Examinations that Focus on Compliance with Regulation Best Interest and Examinations that Focus on Compliance with Form CRS. These risk alerts provide broker-dealers and investment advisers with advance information about the expected scope and content of the initial examinations for compliance with Regulation Best Interest and Form CRS. Regulation Best Interest and Form CRS are key components of a broader package of rules and interpretations, adopted contemporaneously on June 5, 2019, to enhance the quality and transparency of retail investors' relationships with broker-dealers and investment advisers. The compliance date for Regulation Best Interest and Form CRS is June 30, 2020.

SEC Press Release 2020-68 (March 22, 2020) – The SEC announced that it is providing conditional regulatory relief for registered transfer agents and certain other persons with regulatory obligations under the federal securities laws through May 30, 2020. Importantly, however, transfer agents at all times continue to be subject to the requirements of Exchange Act Rule 17Ad-12, which requires transfer agents to ensure that they adequately safeguard securities and funds in their possession or custody.

TREASURY

May 22, 2020 – The Department of the Treasury published a Notice and Request for Information soliciting comments on the "Development and Potential Issuance of Treasury Floating Rate Notes Indexed to the Secured Overnight Financing Rate. Comments are requested by July 6, 2020. https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-11160.pdf

Available Publications

OCC Bulletin 2020-56 (May 26, 2020) – The OCC issued the revised "Sampling Methodologies" booklet of the *Comptroller's Handbook*. This booklet is prepared for use by OCC examiners in connection with their examination and supervision of national banks, federal savings associations, and federal branches and agencies of foreign banking organizations. The revised booklet is effective for supervisory activities beginning on or after June 15, 2020. The revised "Sampling Methodologies" booklet replaces the booklet of the same title dated August 1998 and *Office of Thrift Supervision Examination Handbook* section 209, "Sampling." ■

OCC Bulletin 2020-26 (March 26, 2020) – The OCC issued the revised "Interest Rate Risk" booklet of the *Comptroller's Handbook*. The revised booklet incorporates and reflects applicable statutes and regulations, guidance, and examination procedures. The booklet includes information from interagency guidance and OCC issuances published since the previous publication of this booklet.

Program Update

2020 Legal and Legislative Issues Conference

Save the date – October 29, 2020

Registrations are now being accepted for FMA's 29th Legal & Legislative Conference set to take place **October 29** at the Washington Marriott Georgetown Hotel 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. This year's **one-day** program will provide participants with an opportunity to share information on current legal and regulatory developments as well as network with peers. **Be sure to ask about the 2-for-1, first-timers and government registration discounts!**

The program planning committee is currently developing an agenda focusing on current areas of regulatory and Congressional/agency scrutiny and activity. Members include: **Kevin Clarke** *(UBS)*; **Luke Dembosky** *(Debevoise & Plimpton LLP)*; **Anna Harrington** *(Bank Policy Institute)*; **Daniel Kearney** *(WilmerHale)*; **Barbara Mendelson** *(Morrison & Foerster LLP)*; and **Thomas Rosenkoetter** *(BNP Paribas)*.

The working agenda currently features these panels:

- ⟶ **Banking and Securities General Counsels**
- ⟶ **Legislative Update from Hill Staffers**
- ⟶ **Government Programs' Responses to the COVID-19 Crisis**
- ⟶ **Key Bank Regulatory Developments**
- ⟶ **Cybersecurity**
- ⟶ **COVID-19 Related Investigations and Litigation**
- ⟶ **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 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 featured on FMA's website – ***www.fmaweb.org***.

CLE accreditation will be available, so be sure to budget for (and plan to attend) the 2020 Legal & Legislative Issues Conference.

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

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

Thanks to everyone that responded to FMA's April 6 survey asking for critical topical suggestions, 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.

Courtesy of washington.org

2021 Securities Compliance Seminar

Save these dates – April 28-30, 2021

FMA's **2021 Securities Compliance Seminar** is tentatively set to take place **April 28 – 30** in historic Old Town Alexandria, Virginia (metropolitan Washington, DC) next spring. Postponed from 2020 due to COVID-19, this annual program is a three-day educational and networking experience for compliance professionals, internal auditors, risk managers, attorneys, regulators and consultants. An in-person event is planned, but virtual options are also being explored.

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

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Program Update

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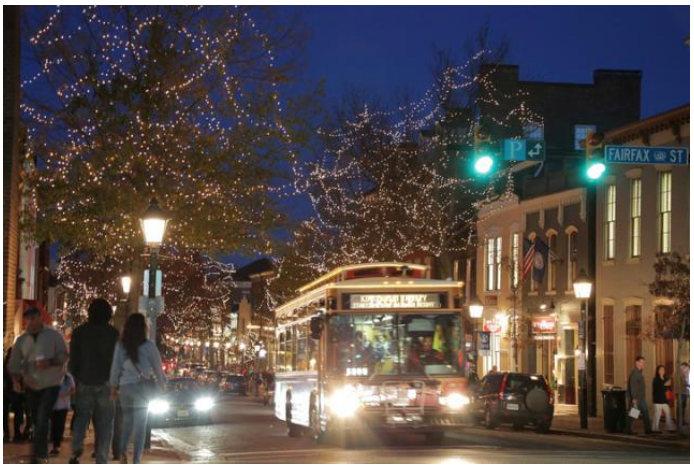

FMA needs your input! A survey will be emailed in the fall to a sampling of past seminar attendees and friends of the firm asking for topical/best practice ideas and speaker suggestions… *you may even decide to volunteer!* **Please email your suggestions to Dorcas Pearce within 72 hours of receipt**.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

CLE accreditation (among others) will be available, so be sure to budget for, and plan to attend, the 2021 Securities Compliance Seminar next spring. Contact Dorcas Pearce at **dp-fma@starpower.net** or 202/544-6327 with questions and/or to volunteer.

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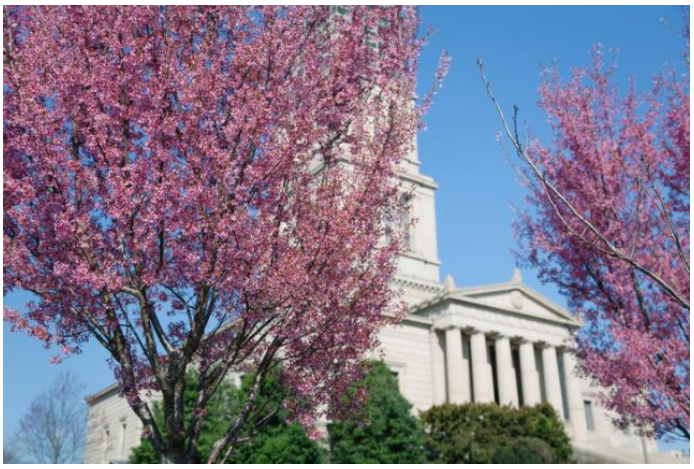
ATTENTION SPONSORS! FMA is actively pursuing sponsorship opportunities regarding this seminar. Please contact FMA if your firm would like to support this event.



FMA gratefully acknowledges these sponsors of FMA's 2021 Securities Compliance Seminar

Hardin Compliance Consulting LLC

Renaissance Regulatory Services, Inc.

Baker Donelson

Oliver Wyman

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Who's News

Continued from Page 12

Linda Lerner has joined Halloran Farkas + Kittila LLP as a Partner, launching their New York office. Her practice focuses on financial institution regulation, including digital assets and their custody.

Kyle Moffatt has joined PwC as a Partner. Previously, Kyle was Chief Accountant and Disclosure Program Director at the SEC.

Paul Murdock, Founder and Managing Director of MCG Consulting, has been named one of the Top 100 People in Finance by *The Top 100 Magazine*, the largest and most internationally recognized magazine in the industry highlighting the best of the best in their respective industries.

Kathleen Olesinski has joined Wells Fargo as a Project Specialist. Previously, Kathleen was a Compliance Officer at Allianz Investment Management.

Blake Paulson has been named the OCC's Chief National Bank Examiner. He has added the title to his current role as Senior Deputy Comptroller for Midsize and Community Bank Supervision. The former Chief National Bank Examiner, **Morris Morgan**, retired at the end of April after 35 years of service in bank supervision.

Victoria Pawelski has been promoted to Senior Counsel, Office of Supervision Policy at the Consumer Financial Protection Bureau.

Henry Ristuccia has been promoted to Senior Partner at Deloitte.

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Who's News

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Jonathan Robilotto has joined PwC as Director – Risk and Regulatory Practice Group at PwC. Previously, Jonathan was an Executive Director, Regulatory Relations at Morgan Stanley.

Greg Ruppert has been named Executive Vice President, National Cause and Financial Crimes Detection Programs at FINRA.

Frank Schiavulli has joined Talend Software as Principal Customer Success Manager, helping banks convert their data to business intelligence to help with data governance and compliance. Previously, Frank was Director of Client Services at SS&C Technologies.

Christine Ayako Schleppegrell has joined the U.S. Securities and Exchange Commission as Senior Counsel. Previously, Christine was an Associate in the Investment Management practice group at Dechert LLP.

Lanny Schwartz has joined the Board of Managers of Industrial and Commercial Bank of China Financial Services LLC. Previously, Lanny was Chief Regulatory Officer at the MSRB.

Leonard Steinmetz has joined Productivity Services Inc. as SME – Reg Tech, Risk and Compliance, and Data Analytics. Previously, Len was Director – FinTech at Grant Thornton LLP.

Kelsey Wiseman has been promoted to Director at The Cypress Group.

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Job Bank

Position Sought

Very experienced financial services attorney and compliance officer seeks a senior legal or compliance position in a financial services firm. I have a unique approach to developing compliance management programs, having served as outside counsel, general counsel, CCO, and in other roles at various types of financial institutions. I have also served as a municipal securities regulator.

Please contact Larry Sandor at larrysandor@me.com or 703/300-6192.

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ATTORNEY SURVEY

FMA very much hopes that the 2020 Legal and Legislative Issues Conference can be an in-person event. To that end, if you're a past conference attendee and/or are considering attending this fall's program, please complete the survey below and return to me at your earliest opportunity. Thank you.

1. Do you know what your firm's travel policy will be in October?

- □ **Conference travel will/should be okay then**
- □ **No conference travel until 2021**

Other / Comments: _____

2. Will you be willing to meet in person and/or travel/fly to an FMA event in October?

- □ **Yes** **Comments:** _____
- □ **Possibly (depends on second wave)** **Comments:** _____
- □ **No** **Comments:** _____

3. What platforms are approved to use for virtual programs/webinars?

_____

Additional comments: _____