MARKET SOLUTIONS

Volume 29, Number 3 **Financial Markets Association** **September 2020**

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MARKET SOLUTIONS

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

FTC's Red Flag Rule: A Review of Enforcement Actions and Compliance Considerations for the Next Decade

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The U.S. Federal Trade Commission's ("FTC") Red Flags Rule was initially adopted in 2007 to prevent consumer identity theft by implementing standards for a broad range of financial institutions and creditors. In 2011, enforcement of the Red Flags Rule as to certain segments of the financial services industry, and related provisions intended to safeguard consumer records and data, was transferred to the U.S. Securities and Exchange Commission ("SEC"), which promulgated its own regulations, which have been also enforced by the Commodity Futures Trading Commission ("CFTC") and the Financial Industry Regulatory Authority ("FINRA"). As December 31, 2020 will mark the tenth anniversary of the enforceability of the Red Flags Rule by several federal authorities and FINRA, this article summarizes several key enforcement actions that have been taken by the FTC, the SEC, and FINRA over the past decade, in anticipation of continued enforcement activity in the coming decade. A list of compliance considerations is also included for the benefit of regulated companies, which may be subject to enforcement scrutiny by one or more of these federal or industry enforcement authorities.

History, Expansive Coverage, and Enforcement Authority

The FTC has served as the chief federal agency on both privacy policy and enforcement since the 1970s, commencing with its enforcement of the Fair Credit Reporting Act[1], which was one of the first federal laws addressing consumer privacy issues and it has continued in this role to the present time, as well as expanding its oversight of the related issue of data security. By the early 2000s, with the exponential growth of consumer activity on the internet[2], reflected in a commensurate increase in the use of electronic transactions[3], and coupled with a historically high availability of consumer credit[4], criminals and fraudsters rapidly adapted to the online and electronic payment terminal environment to access consumers' personal information, resulting in the rapid and exponential rise in identity theft[5]. To counter such developments, the U.S. Congress passed the Fair and Accurate Credit Transactions Act ("FACTA") in 2003, which required financial institutions and creditors to establish and implement a written identity theft protection program and adopt appropriate records disposal measures to prevent such criminal activity.[6]

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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" or "Bureau").

FEDERAL BANKING REGULATORS

Agencies Finalize Amendments to Volcker Rule Covered Fund Provisions

On June 25, 2020, five federal agencies finalized (the "Agencies") amendments to the rules implementing section 13 of the Bank Holding Company Act of 1956 (the "Volcker Rule") related to the prohibition on investing, sponsoring, and having certain relationships with "covered funds" (the "Final Funds Rule"). The Final Funds Rule is largely consistent with the Agencies' proposal of January 30, 2020, and is the final anticipated amendment in a series of recent changes to the Volcker Rule. The Final Funds Rule will take effect on October 1, 2020.

In general, the changes effected by the Final Funds Rule can be organized into five categories:

1. Codification of relief previously provided for so-called "qualifying foreign excluded funds";

2. Modifications to certain existing exclusions from the definition of a "covered fund";

3. Adoption of a number of additional exclusions to the definition of a "covered fund";

4. Amendments to the Volcker Rule's provisions related to transactions with "covered funds," i.e., the "Super 23A provisions"; and

5. Revisions related to the determination of a banking entity's "ownership interest" in a covered fund.

Our client alert providing more detail regarding the Final Funds Rule is available at: https://www.mofo.com/resources/insights/200630-agencies-finalize-volcker-rule-covered-fund.html.

Federal Reserve Board Finalizes Rules Affecting the Disclosure of Confidential Supervisory Information ("CSI") for Banks

On July 24, 2020, the Federal Reserve Board ("FRB") approved new rules governing the confidentiality and dissemination of confidential supervisory information (the "New CSI Rules"). In general, the New CSI Rules clarify the type of information subject to CSI restrictions (without material change to existing FRB practice) and liberalize the rule with respect to disclosures of CSI to a supervised institution's legal affiliates, counsel, auditors, and other service providers. Key aspects of the New CSI Rules include the following:

- Updated CSI Definition. The New CSI Rules provide an updated definition of CSI, which now includes "information that is or was created or obtained in furtherance of the [FRB's] supervisory, investigatory, or enforcement activities, including activities conducted by a Federal Reserve Bank ("Reserve Bank") under delegated authority, relating to any supervised financial institution." The New CSI Rules also provides a list of examples of information that would constitute CSI and clarifies an explicit exception for documents prepared by a supervised institution for its own business purposes. The revised definition of CSI is clarifying in nature and does not fundamentally alter the scope of information considered CSI.

- Rules for Disclosure Within the Supervised Institution. When necessary or appropriate for business purposes, supervised financial institutions in the possession of CSI may disclose CSI to their directors, officers, or employees and to the directors, officers, or employees of their affiliates.

- Procedures for Disclosure to Other U.S. Banking Regulators. Streamlined procedures are authorized for disclosure of CSI to other federal banking regulators and state financial supervisory agencies. Rather than requiring approval from the FRB's general counsel, such disclosures may be authorized by an institution's central point of contact at a Reserve Bank.

- Disclosure to Legal Counsel and Auditors. A supervised financial institution may disclose CSI to its legal counsel or auditors without prior approval when necessary or appropriate in connection with services provided to the institution. (Under previous rules, disclosure was only authorized on the premises of the institution without approval.) In addition, CSI may now be disclosed to service providers of the legal counsel or auditor if the service provider is under a

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Based on the purpose and authority of FACTA[7], in November 2007, the FTC adopted the Identity Theft Rules (the "Red Flags Rule"),[8] which requires financial institutions and creditors to implement and maintain programs to protect consumers via the monitoring of key "red flags" that could indicate identity theft. The Red Flags Rule, according to the FTC, is practically applied in order to address five categories that raise "red flags" of possible identity theft:

(1) Alerts, notifications, or warnings of suspicious activity from a consumer reporting agency;

(2) Presentation or use of suspicious documents;

(3) Suspicious identifying information, such as a suspicious address;

(4) Unusual use of – or suspicious activity relating to – a covered account; and

(5) Notices from customers, victims of identity theft, law enforcement authorities, or other businesses about possible identity theft in connection with covered accounts.

Arising out of legal challenges and requested clarification over the scope of the term "creditor," in December 2010, Congress enacted legislation that narrowed the definition of "creditors" covered by the Rule, to those businesses that, in the ordinary course of business, regularly:

(1) Obtain or use consumer reports in connection with a credit transaction;

(2) Furnish information to consumer reporting agencies in connection with a credit transaction; or

(3) Advance funds to or on behalf of a person, in certain cases.[9]

Although the FTC narrowed the definition of "creditor" to cover such entities as finance companies, automobile dealers, mortgage brokers, utility companies, telecommunications companies, or any other company that advances funds or routinely interacts with consumer credit agencies when performing a service and receiving payment once the work is complete, the definition nonetheless includes a very broad category of businesses that interact with consumers. The broad scope of the rules is also reflected in the coverage of consumer accounts that permit multiple payments or transactions, such as retail brokerage accounts, credit card accounts, margin accounts, checking or savings accounts, or any other accounts with a reasonably foreseeable risk to customers or the covered financial institution or creditor from identity theft.[10]

Shortly after the FTC's Red Flags Rule became enforceable in 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") transferred responsibility for rulemaking and enforcement of Identity Theft Red Flag Rules and guidelines to the SEC and Commodity Futures Trading Commission ("CFTC") for the firms they respectively regulate.[11] On April 19, 2013, the SEC and CFTC published their joint final Identity Theft Red Flags Rules and guidelines with a compliance date of November 20, 2013. Also referred to as Regulation S-ID, this rule requires broker-dealers and investment advisers that are registered, or required to be registered, with the SEC to develop and implement a written identity theft prevention program that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account.[13] A "covered account" includes an account that a broker-dealer or investment adviser offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions.[14] While the joint rules and guidelines did not contain new requirements beyond those already in the FTC Red Flags Rule and guidelines, and did not expand the scope of the Rules to include new categories of entities subject to coverage under the Rules, they did, however, contain examples and minor language changes designed to help guide entities within the SEC's enforcement authority in complying with the requirements. Coupled with the SEC's existing Safeguards Rule (also known as Regulation S-P), which requires every broker-dealer and investment adviser registered with the SEC to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information,[15] financial institutions and creditors subject to SEC or CFTC enforcement must therefore carefully assess, plan, and ensure compliance with both the Identity Theft Red Flags Rules and the related Safeguards Rule to avoid enforcement actions and penalties, several of which are summarized below.

Enforcement History

Within two years after the SEC Identity Theft Red Flags Rules and Safeguards Rules were promulgated, on May 15, 2015, FINRA fined a firm $225,000 for violating the SEC's Safeguards Rule by failing to have written supervisory procedures that were reasonably designed to protect confidential customer and proprietary information after an employee lost a laptop computer that contained unencrypted financial and personal information of customers.[16] At the time the unencrypted laptop was lost, the firm's written supervisory procedures provided for the adoption of Information Security Policy and Standards containing policies relative to data management, access controls, confidentiality and integrity,

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infrastructure, acceptable use, threat and vulnerability management and education and awareness. However, the firm's Information Security Policy and Standards did not require encryption of laptop hard drives, and only belatedly required laptop encryption.[17]

Later that same year, on September 15, 2015, the SEC settled an enforcement action with a firm for the amount of $75,000, for failing to establish adequate cybersecurity policies and procedures in advance of a breach that made the personally identifiable information (PII) of approximately 100,000 individuals, including thousands of the firm's clients, vulnerable to theft.[18] The firm's web server had been attacked in July 2013 by an unknown hacker who gained access and copy rights to the data on the server, rendering the PII of more than 100,000 individuals, including thousands of the firm's clients, vulnerable to theft. The SEC found that the firm failed to adopt written policies and procedures reasonably designed to safeguard customer information, in violation of the Safeguard Rule.[19] For example, the firm failed to conduct periodic risk assessments, implement a firewall, encrypt PII stored on its server, or maintain a response plan for cybersecurity incidents. Notably, there were no indications of financial harm to any customers as a result of the attack, and the firm provided notice of the breach and offered free identity monitoring to every affected individual; despite such mitigation measures, the SEC still imposed a monetary penalty as part of the settlement.

On June 8, 2016, the Safeguards Rule was again enforced by the SEC when it fined a firm $1million for failing to protect customer information, some of which was hacked and offered for sale online.[20] The firm used web "portals" for employees to access customer information; however, it did not have effective authorization modules to restrict access solely to employees with legitimate business needs, and did not audit or test the relevant authorization modules. The SEC found that as a result of these failures, from 2011 to 2014, a then-employee impermissibly accessed and transferred the data regarding approximately 730,000 accounts to his personal server, which was ultimately hacked by third parties.[21] Following the hack of the personal server, portions of the confidential data was posted on the internet, with offers to sell larger quantities.

In similar enforcement proceedings conducted by FINRA in 2016 as part of the financial services industry's self-regulatory efforts, FINRA fined 12 firms a total of $14.4 million for significant deficiencies relating to the preservation of broker-dealer and customer records in a format that prevents alteration[22]. FINRA found that for prolonged periods, the firms failed to maintain electronic records in "write once, read many," ("WORM") format, which prevents the alteration or destruction of records stored electronically.[23] FINRA found that each of the 12 firms had WORM deficiencies that affected millions, and in some cases, hundreds of millions, of records pivotal to the firms' brokerage businesses, spanning multiple systems and categories of records.

On September 26, 2018, the Securities and Exchange Commission (SEC) announced by Press Release that a broker-dealer and investment adviser had agreed to pay $1 million to settle charges related to its failures in cybersecurity policies and procedures surrounding a cyber intrusion that compromised personal information of thousands of customers.

The SEC charged the firm with violating the Safeguards Rule and the Identity Theft Red Flags Rule, and this episode marked the first SEC enforcement action charging violations of the Identity Theft Red Flags Rule, as well as the first imposition of a penalty against a regulated company.[24] In its Order, the SEC found that cyber intruders had managed to bypass the firm's cybersecurity protocol by impersonating firm contractors and calling the firm's technical support hotline, requesting that the passwords be reset, then using the reset passwords to access 5,600 firm customers' personal information. The key cyber-security protocol failure, according to the SEC, centered on the firm's "failure to terminate the intruders' access" and its failure "to apply its procedures to the systems used by its independent contractors."[26] As the SEC further explained, "[c]ustomers entrust both their money and their personal information to their brokers and investment advisers. [The Firm] failed in its obligations when its deficiencies made it vulnerable to cyber intruders accessing the confidential information of thousands of its customers."[27]

In 2019, the SEC's Office of Compliance Inspections and Examinations (OCIE) again highlighted their focus on these issues. On April 16, 2019, the OCIE published a Risk Alert highlighting the most common compliance issues under Regulation S-P, which governs privacy notices and safeguard procedures for investment advisers and broker-dealers.[28] The Risk Alert noted specific deficiencies with (1) privacy and opt-out notices and (2) implementing effective policies and procedures to safeguard customer information.[29] While prior risk alerts focused on general practices and requirements, the specificity of this most recent alert by the OCIE emphasizes the need for firms to review their privacy and security policies and procedures to assess compliance with Regulation S-P. In particular, the OCIE has stressed a clear requirement for firms to have written policies and procedures implementing specific safeguards for customer information with special focus on the following compliance areas:

(1) Privacy and Opt-Out Notices[30]

Under Regulation S-P, advisers and broker-dealers are required to provide three core notices to customers: (a) an Initial Privacy Notice describing its policies and procedures; (b) an Annual Privacy Notice describing policies and procedures during the continuation of the customer relationship, and (c) an Opt-Out Notice explaining to customers the right to opt-out of certain disclosures of non-public personal information to nonaffiliated third parties.

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In its Risk Alert, the OCIE noted situations where advisers and broker-dealers either did not provide the required privacy notices to customers or, when such notices were provided, the notices did not accurately reflect the policies and procedures of the company.[31] In addition to not providing the required privacy notices, the OCIE noted situations where companies failed to identify opt-out rights to customers within their privacy notices.

(2) Safeguard Policies and Procedures[32]

The OCIE also noted that firms failed to comply with the Safeguards Rule under Regulation S-P by not having written policies and procedures addressing the security and confidentiality of customer records and information. There were also occurrences where some firms had policies and procedures simply restating the Safeguards Rule, but failed to have specific policies and procedures addressing administrative, technical, and physical safeguards required under the rule.

The three most common problems noted by the OCIE under the Safeguards Rule were the failure to implement or reasonably design policies and procedures that (1) ensured the security and confidentiality of customer information; (2) protect against anticipated threats or hazards regarding the integrity of customer information; and (3) protect against unauthorized access to customer information which could result in substantial harm. The following are a few of the specific issues the OCIE noted:[33]

(a) Personal Devices: Policies and procedures did not address safeguards for customer information on personal devices. The OCIE observed firm employees who regularly stored customer information on personal laptops without policies and procedures addressing how these devices were to be safeguarded.

(b) Electronic Communications: Policies and procedures did not address the inclusion of personally identifiable information in electronic communications. This included the lack of procedures to prevent employees from sending unencrypted emails containing personally identifiable information.

(c) Training / Monitoring: Policies and procedures that failed to provide adequate training to employees on certain procedures including requiring customer information to be encrypted, password-protected, and transmitted using only firm-approved methods.

(d) Unsecure Networks: Policies and procedures which did not address or prohibit employees from sending customer information to unsecure locations.

(e) Outside Vendors: Firms failing to follow and monitor outside vendors for compliance with contractual agreements which required vendors to keep customer information confidential.

(f) Inventory of Customer Information: Failure of firms to identify a complete inventory of all systems where customer information was held, including the categories of customer information maintained and adopting policies and procedures to adequately safeguard such information.

(g) Incident Response Plans: Firms not adopting comprehensive incident response plans addressing specific role assignments for implementing such plans, actions required to address security incidents, and procedures for assessing system vulnerabilities.

(h) Former Employee Access: Allowing former employees to retain access rights to customer information after departure from company (i.e., failure to have proper termination procedures).

On January 6, 2020, Andrew Smith, Director of the FTC Bureau of Consumer Protection, issued a statement announcing a new approach to data security orders, consisting of three major changes to "improve data security practices and provide greater deterrence,"[34] and which also provides additional context for consideration in planning for Red Flags compliance going forward. The statement recognizes that past data security orders had consisted of standard language, typically requiring a company to implement a comprehensive information security program subject to a biennial outside assessment, and also acknowledged the fact that the 11th Circuit's 2018 LabMD decision had struck down an FTC data security order as unenforceably vague.[35] Based on this history, the FTC modified its data security orders in 2019,[36] with three types of modifications to such orders:

1. Specificity. While the orders continue to require implementation of a comprehensive and process-based data security program, they now require implementation of specific safeguards to address alleged deficiencies, such as yearly employee training, access controls, monitoring systems for data security incidents, patch management systems, and encryption.

2. Increased Third Party Assessor Accountability. Outside assessors are now required to review and rigorously assess the comprehensive data security program required by the orders, including such measures as requiring assessors to identify evidence to support their conclusions, including independent sampling, employee interviews, and document review. Third party assessors must also retain documents related to assessments, and cannot refuse to provide those documents to the FTC on the basis of certain privileges. Most significantly, the new data security orders now provide the FTC with the authority to approve and re-approve assessors every two years.

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3. Elevation of data security considerations to the C-Suite and Board level. The new data security orders will require companies to present their Board or similar governing body with the required written information security program and senior officers must now provide annual sworn certifications of compliance to the FTC. This approach follows compliance mechanisms applied by securities regulators and is intended to ensure improved year-round governance and controls regarding FTC data security orders, and is also consistent with the general trend of placing cybersecurity governance squarely at the board level.[37]

Months after issuing the above Statement, in May 2020, the FTC required an international payment processing company and its former executive to pay $40.2 million to settle charges of assisting fraudulent schemes and credit card laundering, for alleged violations of the FTC Act.[38] According to the FTC's complaint, the Company allegedly ignored repeated warnings from employees, banks, and others that one of its independent sales agents, who was later hired as an executive by the Company, was laundering, and the Company was assisting and facilitating in laundering, payments for companies that were breaking the law over a number of years.[39] While serving as an independent agent, the executive allegedly opened hundreds of merchant accounts for at least four scams, three of which were the subject of FTC enforcements actions, and one that was the subject of a U.S. Department of Justice criminal prosecution.[40] From 2012 to 2014, the executive was alleged to have opened accounts under false names, provided a bank with deceptive information to open the accounts, and ignored evidence that his clients were engaged in fraud. The FTC further alleged that the Company ignored numerous warnings about the executive's illicit activities, including a 2014 e-mail from the bank's executive vice president, which stated, "Why is [the Company] Data signing ISOs like [First Pay]? They are going to get [the Company] and [the Bank] in trouble with the FTC and CFPB due to consumer deceptive practices…"[41] Another warning sign had been a 2014 Visa investigation that had required the Company to repay $18.7 million in charges processed by the executive and which temporarily banned the Company from bringing on high-risk merchants.[42] Yet another warning sign was allegedly evident in 2015, when a forensic audit conducted as part of Visa's investigation indicated that the Company had "no controls" on how it managed high-risk merchants.[43]

The $40.2 million penalty to be paid in the settlements will be used to provide refunds to consumers harmed by these scams.[44] Similar to the content of the FTC's data security orders announced earlier in 2020, the settlement also required the Company to hire an independent assessor to supervise the company's compliance with the settlement's oversight program for the next three years.[45]

Action Steps

Because the SEC is now stressing not only in-place procedures, but also procedures that apply to the firms' very specific business models, firms must be careful to constantly review and update procedures. Likewise, firms must focus their attention on assessing compliance with the Red Flags Rule and ensure that they are protecting themselves from the various ways cyber thieves can snake their way to your customers' confidential information. Measures to help guide such assessments include the following:

__ Establish and implement the framework to be used and identify the principles to guide the development and implementation of, and updates to, the company's Identity Theft Prevention Program, as well as provide clear descriptions of the key roles in administering and in preparing the annual report on the program.

___ Ensure that the company's Identity Theft Prevention Program (including any Red Flags determined by the company to be relevant) is periodically reviewed and updated to reflect changes in risks to Covered Accounts that the company offers or maintains.

___ Confirm, track, and document means by which the Identity Theft Prevention Program will detect any Red Flags that have been incorporated in the program, including all prevention, detection, and mitigation activities.

___ Establish and implement response plans (and response teams) to appropriately and quickly address any Red Flags that are detected to prevent and mitigate Identity Theft.

___ Review past enforcement actions, orders, and published guidance documents by federal and industry-specific enforcement entities (including those listed above), and continually monitor ongoing and future enforcement actions to avoid.

It is critically important that companies pay attention to the enforcement actions discussed herein as demonstrative of what can happen when red flags are ignored. Companies would be prudent to evaluate their current policies and procedures in this area to ensure they are up to date, effective, and tailored to the company's specific business model. ■

Al Leiva is Of Counsel in Baker Donelson's South Florida office and represents clients in a broad range of industries on data security and privacy matters, including compliance, investigations, litigation, and administrative proceedings. Mr.

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Leiva also serves on the board of the South Florida Chapter of InfraGard, a leading public-private partnership between U.S. businesses and the Federal Bureau of Investigations (FBI) that focuses on critical infrastructure protection, and is also a member of the Infragard Cyber Finance Working Group, which focuses on best practices and emerging threats to the finance services sector.

Matt White is a shareholder in Baker Donelson's Memphis, TN office. He represents financial institutions, broker-dealers, investment advisors, and other companies in litigation, arbitration, regulatory and compliance matters, and in investigations and enforcement proceedings. Matt is also a Certified Information Privacy Professional (CIPP/US, CIPP/E) and a Certified Information Privacy Manager (CIPM), and regularly advises clients on a wide variety of cybersecurity and data privacy issues.

[1] *See* "40 Years of Experience with the Fair Credit Reporting Act," July 2011, FTC, accessible at https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf

[2] *See* "Online Shopping," Pew Internet and American Life Project, February 13, 2008, accessible at https://www.pewresearch.org/internet/2008/02/13/part-1-trends-in-online-shopping/

[3] *See* "U.S. Households' Access to and Use of Electronic Banking, 1989-2007," Federal Reserve Board Bulletin, Volume 95, 2009, accessible at https://www.federalreserve.gov/pubs/bulletin/2009/articles/onlinebanking/default.htm

[4] *See, e.g.*, "Evaluating the Consumer Lending Revolution," FDIC, September 17, 2003, accessible at https://www.fdic.gov/bank/analytical/fyi/091703fyi.pdf

[5] *See* "Identity Theft Reported by Households, 2007 – Statistical Tables," U.S. Department of Justice, Bureau of Justice Statistics, June 2010, NCJ 230742, which noted that "[f]rom 2005 to 2007, the number of households that experienced the unauthorized use a credit card, another existing account, and multiple types of identity theft in a single episode all increased significantly," accessible at https://www.bjs.gov/content/pub/pdf/itrh07st.pdf

[6] *See* Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681w(a)(1), accessible at https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf

[7] *See, specifically*, sections 114 and 315 of FACTA, accessible at https://www.congress.gov/108/plaws/publ159/PLAW-108publ159.pdf

[8] *See* Red Flags Rule, 16 C.F.R. § 681 et seq., accessible at https://www.govinfo.gov/content/pkg/CFR-2016-title16-vol1/pdf/CFR-2016-title16-vol1-part681.pdf

[9] *See* "FTC Issues Amended Rule on Identity Theft Red Flags," November 30, 2012, accessible at https://www.ftc.gov/news-events/press-releases/2012/11/ftc-issues-amended-rule-identity-theft-red-flags

[10] *See* "SEC Identity Theft," Executive Summary, accessible at https://www.finra.org/rules-guidance/key-topics/customer-information-protection/ftc-red-flags-rule

[11] *See* Dodd-Frank Act, 12 CFR § 252.1 et seq., accessible at https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf

[12] *See* Identity Theft Red Flags Rules (Regulation S-ID), Securities Exchange Act Release No. 69359, Investment Advisers Act Release No. 3582, Investment Company Act Release No. 30456 (April 10, 2013), 78 FR 23638 (April 19, 2013), accessible at https://www.govinfo.gov/content/pkg/FR-2013-04-19/pdf/2013-08830.pdf;

[13] *See* Regulation S-ID, 17 C.F.R. 248.201, accessible at https://www.sec.gov/rules/final/2013/34-69359.pdf

[14] *See* Note 13, 17 C.F.R. 201(b)(3).

[15] *See* Regulation S-P, 17 C.F.R. 248.30(a), accessible at https://www.sec.gov/spotlight/regulation-s-p.htm

[16] *See* "Disciplinary and Other FINRA Actions," July 2015, accessible at https://www.finra.org/sites/default/files/publication_file/July_2015_Disciplinary_Actions.pdf, on page 11.

[17] *Id.*

[18] *See* "SEC Charges Investment Adviser With Failing to Adopt Proper Cybersecurity Policies and Procedures Prior To Breach," September 22, 2015, accessible at https://www.sec.gov/news/pressrelease/2015-202.html

[19] *Id.*

[20] *See* "SEC: Morgan Stanley Failed to Safeguard Customer Data," June 8, 2016, accessible at https://www.sec.gov/news/pressrelease/2016-112.html

[21] *Id.*

[22] *See* "FINRA Fines 12 Firms a Total of $14.4 Million for Failing to Protect Records From Alteration," December 21, 2016, accessible at https://www.finra.org/media-center/news-releases/2016/finra-fines-12-firms-total-144-million-failing-protect-records#:~:text=WASHINGTON%20%E2%80%94%20The%20Financial%20Industry%20Regulatory,a%20format%20that%20prevents%20alteration.&text=was%20fined%20%241.5%20million.

[23] *Id.*

[24] *See* "SEC Charges Firm With Deficient Cybersecurity Procedures," September 26, 2018, accessible at https://www.sec.gov/news/press-release/2018-213; *see also* "SEC Slams Firm with $1M Fine for Weak Security Policies," September 26, 2018, accessible at https://www.darkreading.com/risk/sec-slams-firm-with-$1m-fine-for-weak-security-policies/d/d-id/1332899

[25] *See* Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Section 15(b) and 21C of the Securities and Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order, in the Matter of Voya Financial Advisors, Inc., accessible at https://www.sec.gov/litigation/admin/2018/34-84288.pdf

[26] *Id.*

[27] *Id.*

[28] *See* "Investment Adviser and Broker-Dealer Compliance Issues Related to Regulation S-P – Privacy Notices and Safeguard Policies," April 16, 2019, accessible at https://www.sec.gov/files/OCIE%20Risk%20Alert%20-%20Regulation%20S-P.pdf

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *See* "New and improved FTC data security orders: Better guidance for companies, better protection for consumers," January 6, 2020, accessible at https://www.ftc.gov/news-events/blogs/business-blog/2020/01/new-improved-ftc-data-security-orders-better-guidance

[35] *Id.*

[36] *Id.*, referencing data security orders entered against ClixSense (pay-to-click survey company), dressed (online games for kids), DealerBuilt (car dealer software provider), D-Link (Internet-connected routers and cameras), Equifax (credit bureau), Retina-X (monitoring app), and Infotrax (service provider for multilevel marketers).

[37] *Id.*

[38] See "Worldwide Payment Processor and Payments Industry Executive to Pay $40.2 Million to Settle FTC Charges of Assisting Fraudulent Schemes and Credit Card Laundering," May 19, 2020, accessible at https://www.ftc.gov/news-events/press-releases/2020/05/worldwide-payment-processor-payments-industry-executive-pay-402?utm_source=govdelivery

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

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- written agreement with the legal counsel or auditor providing that: (i) it will treat the CSI in accordance with the FRB's rules; and (ii) it will not use the CSI for any purpose other than as necessary to provide the services.

- Disclosure to Other Service Providers. A supervised financial institution may disclose CSI to other service providers without prior approval as long as the service provider is under written contract to provide services; the disclosure of CSI is necessary for the provision of the retained services; and the service provider agrees that: (i) it will treat CSI in accordance with the FRB's rules and (ii) it will not use the CSI for any purpose other than as provided under the contract to provide the services. A supervised financial institution must maintain a written account of any disclosures of CSI to its service providers (other than legal counsel and auditors). This written account must be made available to the FRB or Reserve Bank upon request.

The FRB's press release and a copy of the New CSI Rules are available at: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200724a.htm.

FDIC Issues Proposed Changes to Its Supervisory Appeals Process

On August 20, 2020, the Federal Deposit Insurance Corporation's ("FDIC") Board of Directors approved a proposed amendement to its guidleines for appealing material supervisory determination ("Proposed Guidelines"). Most significantly, the Proposed Guidelines would replace the current Supervision Appeals Review Committee ("SARC") with an independent, standalone Office of Supervisory Appeals ("OSA") within the FDIC. The OSA would have final authority to resolve appeals and would be independent within the FDIC organizational structure. The OSA would be staffed by individuals with bank supervisory or examination experience and, to further promote its independence, the FDIC would recruit externally to staff the OSA. If the changes are adopted, an institution unable to resolve a disagreement regarding a material supervisory determination with the examiner or the appropriate Regional Office or Division Director would be able to appeal that determination to the OSA. According to a press statement from FDIC Chairman Jelena McWilliams, the Proposed Guidelines seek "to establish a fair, independent process for a bank to appeal material supervisory decisions. Such an appeals process is key to promoting consistency among examiners across the country, ensuring accountability at the agency, and ultimately, maintaining stability and public confidence in the nation's financial system."

The FDIC press release and a copy of the Proposed Guidelines are available at: https://www.fdic.gov/news/press-releases/2020/pr20093.html.

BSA / AML

FinCEN Advises on COVID-19-related Cybercrime

On July 30, 2020, FinCEN released an advisory sharing potential indicia of cybercrime and cyber-enabled crime detected during the COVID-19 pandemic, to assist financial institutions in combating such crime. FinCEN listed red flags for the following categories of cybercrime: (1) targeting and exploitation of remote platforms and processes; (2) phishing, malware, and extortion; and (3) business email compromise schemes. Red flags include, respectively, the digital manipulation of identification documentation, email addresses that do not match the sender's name or company domain, and emailed transaction instructions requesting a change in payment method from checks to ACH transfers in response to the pandemic. FinCEN emphasizes that any single red flag is not necessarily indicative of suspicious activity, and that financial institutions should consider the context and the customer before determining that the activity is suspicious.

FinCEN's advisory is available at: https://www.fincen.gov/sites/default/files/advisory/2020-07-30/FinCEN%20Advisory%20Covid%20Cybercrime%20508%20FINAL.pdf.

FinCEN Issues Three New FAQs on CDD Requirements

On August 3, 2020, FinCEN released three frequently asked questions ("FAQs"), to clarify certain customer due diligence ("CDD") requirements. Among other items, the guidance notes that there is no CDD Rule requirement to collect specific customer information, but covered financial institutions should take a risk-based approach in collecting information on each

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FMA Welcomes New Members

Judith Germano	**Germano Law LLC**
Serge Gwynne	**Debevoise & Plimpton LLP**
Ryan Leist	**Farm Credit Administration**

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client. The CDD Rule also does not require covered financial institutions to use any specific method to develop a customer risk profile, but the profiles should be "sufficiently detailed to distinguish between significant variations in the risks of its customers." Finally, under the CDD Rule, covered financial institutions are not required to update customer information on any specific schedule but should update customer information at intervals developed based on related risks.

The guidance is available at: https://www.fincen.gov/sites/default/files/2020-08/FinCEN%20Guidance%20CDD%20508%20FINAL_2.pdf.

GAO Recommends FinCEN Update GTO Procedures

On August 13, 2020, the Government Accountability Office ("GAO") released a report recommending that FinCEN enhance its procedures for implementing and evaluating self-initiated geographic targeting orders ("GTO"). In 2016, FinCEN issued a GTO, requiring title insurers to report information on certain all-cash residential real estate purchases by legal entities. These GTOs assist law enforcement in combating money laundering in the United States real estate market by shell companies. Unlike previous GTOs, which were issued with the involvement of law enforcement agencies, FinCEN implemented this GTO on its own initiative but lacked the procedures necessary to effectively do so. Consequently, the GTO faced certain logistical delays and flaws. The GAO recommended that FinCEN consider how to plan for oversight, outreach, and evaluation of self-initiated GAOs.

The report is available at: https://www.gao.gov/products/GAO-20-546.

Federal Banking Agencies Issue Joint Statement on Enforcement Guidance and FinCEN Issues First Enforcement Guidelines

The federal banking agencies issued a joint statement on August 13, 2020, clarifying the circumstances under which the agencies will undertake certain enforcement actions. The guidance, which replaces a prior interagency statement from 2007, clarifies the agencies' policy for issuing cease and desist orders ("CDOs"). Under specific provisions of the BSA/AML regulations, the agencies must issue CDOs when depository institutions or credit unions fail to: (1) establish and maintain adequate AML programs or (2) correct deficiencies previously brought to the institution's attention by its regulator. The statement notes that isolated or technical violations will not usually result in a CDO.

FinCEN issued a separate, related statement on August 18, 2020, describing FinCEN's approach to BSA enforcement and the different actions available to the agency. The statement includes a list of non-exclusive factors that FinCEN may take into account when evaluating BSA violations, such as the financial gain or benefit resulting from the violations and the institution's history of similar violations.

The agencies' joint statement is available at: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200813a1.pdf.

FinCEN's statement is available at: https://www.fincen.gov/sites/default/files/shared/FinCEN%20Enforcement%20Statement_FINAL%20508.pdf.

Federal Banking Agencies and FinCEN Issue a Joint Statement on Bank Secrecy Act Due Diligence Requirements for PEPs

On August 21, 2020, the federal banking agencies and FinCEN issued a joint statement to address due diligence questions raised by banks related to BSA/AML regulatory requirements for politically exposed persons ("PEPs"). The statement notes that PEP is not a term defined by BSA/AML regulations but is commonly used in the financial industry to refer to foreign individuals entrusted with a prominent public function, along with close associates and family members. CDD measures for PEPs should be risk-based, but there is no CDD regulatory requirement, nor supervisory expectation, for banks to have unique due diligence steps for PEPs. The statement emphasizes that PEPs may pose a significant money laundering threat, and the statement should not be interpreted to minimize that risk.

The joint statement is available at: https://www.fincen.gov/sites/default/files/shared/PEP%20Interagency%20Statement_FINAL%20508.pdf.

OFAC

OFAC Issues New Round of Sanctions Against China

Tensions between the United States and China continue to rise as China implements its Hong Kong national security law. The United States has passed several pieces of sanctions legislation in response to this law and China's treatment of its Uyghur minority in Xinjiang.

On July 14, 2020, in response to China's enactment of the Hong Kong national security law, which the United States views as curtailing civil liberties in Hong Kong and reducing Hong Kong's historical autonomy, the President signed into law the Hong Kong Autonomy Act ("HKAA"), which, among other things, mandates sanctions against individuals and entities that

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materially contribute to the failure of the Chinese government to meet its obligations under the Joint Declaration or the Basic Law, including a menu-based set of secondary sanctions against non-U.S. financial institutions that engage in significant transactions with such persons.

On August 7, 2020, pursuant to the HKAA and a new executive order, OFAC designated 11 senior Hong Kong officials, including the chief executive of Hong Kong, for undermining Hong Kong's autonomy and restricting the freedom of expression or assembly of the citizens of Hong Kong.

Separately on June 17, 2020, in response to the situation in Xinjiang, the President signed the Uyghur Human Rights Policy Act of 2020 ("UHRPA"), which requires relevant U.S. federal departments and agencies to submit a report to Congress listing Chinese officials, entities, and others identified as being responsible for carrying out human rights abuses in Xinjiang. Once identified, the individuals and entities identified in the reports will be subject to sanctions and visa bans. On July 31, 2020, OFAC designated a Chinese government entity and two current or former government officials under its Global Magnitsky human rights sanctions in connection with serious rights abuses against ethnic minorities in Xinjiang.

The designations of Chinese government entities and officials represent a significant escalation of U.S.-China tensions related to Hong Kong and Xinjiang and could portend future U.S. sanctions against China.

For an overview of the new sanctions legislation related to China, please see our client alert at: https://www.mofo.com/resources/insights/200710-sanctions-spree.html.

OFAC Issues New GAZ Group General Licenses

On July 22, 2020, OFAC issued two new General Licenses ("GL"), GL 13O and GL 15I, related to GAZ Group, a Russian automotive conglomerate owned by Oleg Deripaska. OFAC sanctioned Deripaska in April 2018, along with several other Russian oligarchs closely associated with the Putin government, for the Russian government's "malign activity around the globe, including continuing to occupy Crimea and instigate violence in eastern Ukraine, supplying the Assad regime with material and weaponry as they bomb their own civilians, attempting to subvert Western democracies, and malicious cyber activities."

In conjunction with these designations, OFAC issued GLs authorizing certain wind-down and divestment activities related to GAZ Group and other sanctioned entities. OFAC reauthorized these GLs as related to GAZ Group numerous times, most recently on July 22, 2020. Notably, however, new GL 15I not only reauthorizes the existing authorization for wind-down activities but also greatly expands the scope of permitted activities pertaining to GAZ Group beyond wind-down activities to include engaging in many new transactions. Based on OFAC's FAQs and the language of GL 15I itself, it appears that OFAC and GAZ Group reached an agreement whereby GAZ Group would share significant amounts of information with OFAC in exchange for being able to reenter the global market. The end result appears to be that GAZ Group is largely back in action.

For an overview of OFAC's GAZ Group licenses, please see our client alert at: https://www.mofo.com/resources/insights/200806-gaz-group-sanctions.html.

OFAC Takes Action Against Cookware Coating Manufacturer for Sales to Iran

OFAC's recent action against a U.S. manufacturer shows the importance of dedicating sufficient resources to sanctions compliance and ensuring that your compliance function incorporates updates to sanctions rules.

The company is a cookware coating manufacturer based in Elverson, Pennsylvania. Between November 2012 and December 2015, the company's foreign subsidiaries exported goods to Iran, engaged in trade-related transactions with Iran,

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Directory

FMA will soon begin updating the **2020 Membership Directory** for distribution later in the year. The Directory will include each member's full name, accreditation(s), title/department, phone number, cell number (if used for business), email and firm web site (if provided). Please note that the directory will no longer include physical mailing address information. **If you feel strongly about retaining this in the Directory, please let me know by September 30**.

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

Members will be emailed and given 72 hours to correct their information on file and/or provide missing data. Those who don't respond will have their information on file included in the directory. So, please respond ASAP by email (**dp-fma@starpower.net** – easiest!) or phone (202/544-6327). FMA wants your directory to be as accurate as possible, so be sure to submit your information on time.

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and the U.S employees facilitated these transactions. A regulatory affairs manager of the company (who did not specialize in sanctions compliance) incorrectly advised that the foreign subsidiaries could legally continue selling to Iran so long as there were no direct connections between a subsidiary and Iran. Based upon this advice, a U.S. manager of the company developed and adopted a plan to continue selling to Iran by instructing that sales to Iran go indirectly through third-party distributors and documents related to those sales avoid referencing Iran. After the company became aware of Iran General License H (now rescinded), it realized these activities violated U.S. sanctions against Iran. Before learning of General License H, the company's foreign subsidiaries engaged in 74 prohibited transactions in violation of U.S. sanctions against Iran and received a $824,314 fine.

In concluding remarks on compliance considerations, OFAC noted that this case demonstrates "the importance of companies dedicating sufficient resources to U.S. sanctions compliance, staying abreast of changes to sanctions regulations, and understanding the full scope of sanctions prohibitions, especially when operating in higher risk jurisdictions."

CFPB UPDATE

CFPB Introduces Advisory Opinion Programs

On June 22, 2020, the CFPB published two notices in the *Federal Register* announcing (1) the launch of a pilot advisory opinion ("AO") program ("Pilot AO Program"); and (2) a proposed permanent AO program ("Proposed Permanent AO Program"), which will replace the Pilot AO Program after the Proposed Permanent AO Program is finalized. Both programs are intended to provide guidance to address uncertainty regarding the Bureau's existing regulations and are part of the Bureau's broader efforts to provide additional and clearer guidance to regulated entities. The Pilot AO Program and the Proposed Permanent AO Program are similar in many respects to advisory opinion programs offered by other agencies for purposes of clarifying how a law or regulation applies to a specific set of facts. AOs issued pursuant to the programs are applicable to the party that submits the request, as well as similarly situated parties; however, AOs are interpretive rules and are not binding, like rules that have gone through notice and comment. In other words, unlike formal regulations, which are binding upon all persons and courts to the same extent as a congressional statute, the advisory opinions will not bind other federal or state agencies but may be persuasive in advocacy before or litigation with such agencies. The Pilot AO Program took effect as of June 22, 2020. Comments on the Proposed Permanent AO Program were due on August 21, 2020.

The Pilot AO Program and the Proposed Permanent AO Program are available at: https://www.govinfo.gov/content/pkg/FR-2020-06-22/pdf/2020-13504.pdf and https://www.govinfo.gov/content/pkg/FR-2020-06-22/pdf/2020-13505.pdf, respectively.

CFPB Settles with Contract for Deed Companies for Alleged UDAP and FCRA Violations

On June 23, 2020, the Bureau announced a Consent Order resolving alleged Fair Credit Reporting Act ("FCRA") violations by companies involved in issuing contracts for mortgage deeds. The primary defendant allegedly acquired foreclosed properties in bulk at auction from entities such as Fannie Mae and Freddie Mac and resold them to individual buyers who were unable to obtain conventional mortgage financing. The other defendants allegedly serviced the contracts as the primary defendant's agents. The Bureau alleged that consumers who called defendants to complain about consumer reporting errors were incorrectly told that they had to file a dispute with the consumer reporting agency. The Bureau also alleged that the defendants' policies, procedures, and internal controls were inadequate. Under the settlement, the defendants agreed to injunctive relief and payment of a $25,000 civil money penalty ("CMP") by the primary defendant and a $10,000 CMP by the alleged servicer defendants.

The CFPB's press release and a copy of the Consent Order are available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-companies-engaging-deceptive-acts-practices-violating-credit-reporting-rules/.

U.S. Supreme Court Strikes CFPB Director for-Cause Removal Provision

On June 29, 2020, the U.S. Supreme Court issued its ruling in *Seila Law LLC v. Consumer Financial Protection Bureau*. In a 5-4 majority opinion written by Chief Justice John Roberts, the Supreme Court held that the CFPB's leadership structure—with a single director removable only for inefficiency, neglect, or malfeasance—is unconstitutional because it violates the separation of powers. A separate 7-2 majority of the Court held that the for-cause removal provision was severable from the rest of the Dodd-Frank Act. Accordingly, the CFPB remains intact, but the President can remove the director of the CFPB for any reason. CFPB Director Kathy Kraninger commented that it is now clear that the agency and its director "are fully accountable to the President." In response to the Court's ruling, the CFPB ratified a number of its previous actions, explaining that it was taking this action to "resolve any possible uncertainty" and "out of an abundance of caution."

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CFPB Releases July Complaint Bulletin: Complaints Mentioning Coronavirus Keywords

On July 16, 2020, the CFPB released a consumer complaint bulletin ("Complaint Bulletin") focusing on complaints mentioning coronavirus keywords. The Bureau has received more than 180,000 consumer complaints in 2020 with over 8,000 complaints mentioning coronavirus keywords, such as COVID, coronavirus, pandemic, CARES Act, and stimulus. The top three products by COVID-complaint volume were mortgage, credit card, and credit or consumer reporting. In the analysis section of the Complaint Bulletin, the Bureau offered certain observations. First, the Bureau noted that consumers complained about deferment programs offered by credit card issuers, with common complaints expressing confusion over enrollment status and issuers' failure to implement deferment terms as advertised. Second, the CFPB noted a number of consumer complaints regarding some mortgage servicers providing information in conflict with guidance regarding lump sum payments due at the end of the forbearance period. Third, consumer complaints increasingly focused on disbursement of Economic Impact Payments ("EIP") after the program began making deposits into consumers' accounts in April. Consumers expressed confusion over banks' overdraft practices and their hold policies when EIP payments were deposited into overdrawn accounts.

The full Complaint Bulletin is available at: https://files.consumerfinance.gov/f/documents/cfpb_july-complaint-bulletin_coronavirus-complaints_2020-07.pdf.

CFPB Publishes Final Rule on Small Dollar Lending

On July 22, 2020, the CFPB published its final rule ("Final Rule") on Payday, Vehicle Title, and Certain High-Cost Installment Loans, rescinding the mandatory underwriting provisions of the Bureau's 2017 rule while leaving intact the 2017 rule's payments provisions. In rescinding the underwriting provisions, the Bureau cited insufficient legal and evidentiary bases, as well as a desire to ensure the continued availability of small-dollar lending products. The payment provisions of the Final Rule require lenders to provide consumers with written notice before making their first attempt to withdraw funds from a consumer's account as well as before making subsequent withdrawal attempts that involve different dates, amounts, or payment channels. In addition, the Final Rule prohibits lenders from making a new attempt to withdraw funds from a consumer's account after two consecutive attempts at withdrawal from that account have failed, unless the consumer has provided consent to further withdrawals.

The Final Rule will be effective on October 20, 2020, and is available at: https://www.govinfo.gov/content/pkg/FR-2020-07-22/pdf/2020-14935.pdf.

CFPB Announces Plan to Issue ANPR on Consumer-Authorized Access to Financial Data

On July 24, 2020, the CFPB announced that it plans to issue an advance notice of proposed rulemaking ("ANPR") on Consumer Access to Financial Records and Section 1033 of the Dodd-Frank Act ("ANPR Announcement"). The ANPR Announcement follows the Bureau's February 2020 symposium on the topic, and the Bureau also published a report summarizing the symposium's proceedings on the same day as the ANPR Announcement. The Bureau anticipates that the ANPR will allow it to solicit stakeholder input on how to effectively and efficiently implement the financial access rights described in Section 1033 of the Dodd-Frank Act, seek information regarding the possible scope of data that might be made subject to protected access, and inquire into whether—and, if so, how—issues of regulatory uncertainty may be impacting this market to the potential detriment of consumers. While the Bureau did not provide a specific date of when it intends to publish the ANPR, it expects to do so before the end of 2020.

The ANPR Announcement and the Bureau's symposium report are available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-anpr-consumer-authorized-access-financial-data/ and https://files.consumerfinance.gov/f/documents/cfpb_bureau-symposium-consumer-access-financial-records_report.pdf, respectively.

CFPB Seeks Input on Improving Access to Credit

On August 3, 2020, the CFPB published a Request for Information ("RFI") that seeks comment on ways to clarify the Equal Credit Opportunity Act's ("ECOA") implementing regulation, Regulation B, to expand access to credit and improve protections against credit discrimination. The CFPB states that the RFI is one way in which it is "continuing to explore ways to ensure nondiscriminatory access to credit as well as cutting-edge issues at the intersection of fair lending and innovation, including how innovation can increase access to credit for all consumers… without unlawful discrimination." The CFPB seeks comment on actions the agency can take, or should consider taking, to prevent credit discrimination; encourage responsible innovation; promote fair, equitable, and nondiscriminatory access to credit; address potential regulatory uncertainty; and develop viable solutions to Regulation B compliance challenges. Comments are due by December 1, 2020.

The RFI is available at: https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16722.pdf.

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CFPB Announces Settlement with National Bank for Illegal Overdraft Practices

On August 20, 2020, the CFPB announced a settlement with a large, national bank regarding the marketing and sale of its optional overdraft service. The Bureau found that the bank violated the Electronic Fund Transfer Act ("EFTA") and Regulation E by failing to obtain consumers' affirmative consent before charging them overdraft fees. In addition, the CFPB found that the bank had violated the Consumer Financial Protection Act of 2010 ("CFPA") by deceptively claiming that its overdraft service was a "free" feature of new checking accounts, which in fact charged consumers a thirty-five dollar fee for each overdraft transaction. The Bureau also alleged that the bank engaged in abusive acts or practices by materially interfering with consumers' ability to understand the terms and condition of the overdraft service. The Bureau's consent order with the bank requires it to provide $97 million in restitution to consumers, pay a civil money penalty of $25 million, and correct its overdraft service enrollment practices as well as its practices for obtaining consumers' affirmative consent.

The consent order and the Bureau's related press release are available at: https://files.consumerfinance.gov/f/documents/cfpb_td-bank-na_consent-order_2020-08.pdf and https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-settlement-td-bank-illegal-overdraft-practices/.

CFPB Issues RFI Seeking Information on the Impact of the CARD Act Regulations on Small Entities and on the Consumer Credit Card Market

On August 28, 2020, the CFPB published a RFI to gather feedback on two related, but separate, inquiries: (1) the economic impact on small entities of the rules that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act Rules" or "Rules") and (2) a general review examining the consumer credit card market as a whole. The review of the state of the consumer credit card market is mandated by Section 502(a) of the CARD Act, which requires the CFPB to conduct a biennial review of the market. To date, the CFPB has issued four reports on the state of the market.

Comments in response to both inquiries are due by October 27, 2020. The RFI is available at: https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-19112.pdf.

CFPB Publishes Report on the Early Effects of the COVID-19 Pandemic on Consumer Credit

On August 31, 2020, the CFPB published a report examining the Early Effects of the COVID-19 Pandemic on Consumer Credit. Focused on mortgage, student and auto loans, and credit card accounts from March 2020 to June 2020, the Bureau's report did not find significant increases in consumer credit delinquency or other negative credit outcomes as a result of the COVID-19 pandemic. In fact, results from the Bureau's Consumer Credit Panel found that new delinquencies fell during the examined time period. However, the Bureau noted that payment assistance provided to borrowers increased during this time, with marked increases on auto loan and credit card accounts. Lastly, the Bureau found that credit card balances fell substantially at the onset of the pandemic and continued to decline steadily through June.

A copy of the report is available at: https://files.consumerfinance.gov/f/documents/cfpb_early-effects-covid-19-consumer-credit_issue-brief.pdf. ■

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

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FMA Welcomes *More* New Members

Desiree McAloon	**Citizens Securities, Inc.**
Dena Milligan	**Discover**
Jennifer Newton	**Greenberg Traurig**
Matt Pearson	**Bank of America**
Jeff Robins	**Debevoise & Plimpton LLP**
Adam Schneider	**Debevoise & Plimpton LLP**
Barry Sloane	**Newtek Business Services Corp.**
Catherine Stephen	**Royal Bank of Canada**
Kristin Stephens	**UBS Financial Services, Inc.**
Barry Taylor-Brill	**Wells Fargo Bank, N.A.**
Eric Young	**Young Enterprises LLC**

Watch For

COVID-19

CFTC Press Release 8242-20 (September 15, 2020) – The CFTC's Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk issued a joint staff letter containing an advisory and time limited, conditional no-action relief related to the treatment by futures commission merchants of separate accounts for a particular customer. This advisory and no-action relief builds on CFTC Staff Letter 19-17 in addressing CFTC Regulation 1.56's prohibition on limited recourse, as well as requirements set forth by Regulation 39.13(g)(8)(iii) concerning FCM margining practices with respect to customers with more than one cleared derivatives account.

CFTC Press Release 8240-20 (September 11, 2020) – The CFTC announced the Division of Swap Dealer and Intermediary Oversight and the Division of Market Oversight are further extending certain elements of the temporary no-action relief issued in response to the COVID-19 pandemic that are set to expire on September 30, 2020. The extended relief expires January 15, 2021. To date, the CFTC has taken 20 actions to provide market participants targeted, temporary relief in response to the pandemic.

July 31, 2020 – Final day of temporary suspension of late fees under MSRB Rules A-11 and A-12(d) (MA/BD). In an effort to afford regulated entities an opportunity to better manage and allocate resources during these unprecedented times, the MSRB (i) suspended late fees owed for the period of March 1, 2020 through July 31, 2020. Read Notice 2020-09.

FinCEN News Release (July 30, 2020) – FinCEN issued an advisory to alert financial institutions to potential indicators of cybercrime and cyber-enabled crime observed during the COVID-19 pandemic. The advisory contains descriptions of COVID-19-related malicious cyber activity and scams, associated financial red flag indicators, and information on reporting suspicious activity.

Federal Reserve Press Release (July 29, 2020) – The Federal Reserve announced the extensions of its temporary U.S. dollar liquidity swap lines and the temporary repurchase agreement facility for foreign and international monetary authorities through March 31, 2021. The extensions will help sustain recent improvements in global U.S. dollar funding markets by maintaining these important liquidity backstops. In addition, the FIMA repo facility will help support the smooth functioning of the U.S. Treasury market by providing an alternative temporary source of U.S. dollars other than sales of securities in the open market. The extension of the temporary swap lines applies to all nine central banks previously announced on March 19, 2020. The FIMA repo facility was originally announced on March 31, 2020. Its extension will allow approved FIMA account holders to continue to 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.

Federal Reserve Press Release (July 28, 2020) – The Federal Reserve Board announced an extension through December 31 of its lending facilities that were scheduled to expire on or around September 30. The three-month extension will facilitate planning by potential facility participants and provide certainty that the facilities will continue to be available to help the economy recover from the COVID-19 pandemic.

CFTC Press Release 8206-20 (July 17, 2020) – The CFTC's Division of Swap Dealer and Intermediary Oversight announced that, in light of the continuing challenges resulting from the COVID-19 pandemic, it has extended the time period for the targeted no-action relief provided in CFTC Staff Letter No. 20-16 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 the conditions stated in the staff letter, until September 30, 2020, or until such earlier date as the National Futures Association notifies the public that it has resumed the processing of fingerprints, a fingerprint card for a newly-listed principal or an applicant for AP registration need not be submitted under certain circumstances. Principals and APs of registrants and applicants for registration relying upon the relief provided in the staff letter will still be required to submit their fingerprints to NFA within 30 days of NFA's public announcement of its resumption of fingerprint processing.

FinCEN News Release (July 7, 2020) – FinCEN issued an advisory to alert financial institutions to potential indicators of imposter scams and money mule schemes, which are two forms of consumer fraud observed during the COVID-19 pandemic. The advisory contains descriptions of these scams and schemes, financial red flag indicators for both, and information on reporting suspicious activity. The advisory is based on FinCEN's analysis of COVID-19-related information obtained from Bank Secrecy Act data, open source reporting, and law enforcement partners.

FDIC Press Release (July 1, 2020) – The FDIC and FRB provided information to the eight largest and most complex domestic banking organizations that will guide their next resolution plans, which are due by July 1, 2021. The 2021 plans will be required to include core elements of a firm's resolution plan – such as capital, liquidity, and recapitalization strategies – as well as how each firm has integrated changes to and lessons learned from its response to the coronavirus into its resolution planning process. Separately, the agencies recently completed a review of "critical operations," which are operations at certain firms whose failure or discontinuance

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would threaten U.S. financial stability, and informed the firms of their findings. The agencies also plan to complete another such review by July 2022, and this review will include a further, broader evaluation of the framework used to identify critical operations.

OCC News Release 2020-86 (June 29, 2020) – The OCC reported the key issues facing the federal banking system and the effects of the COVID-19 pandemic on the federal banking industry in its *Semiannual Risk Perspective for Spring 2020*. Banks entered the national health emergency related to COVID-19 in sound condition but face weak economic conditions resulting from the economic shutdown in response to the pandemic that will stress financial performance in 2020. The OCC reported weak financial performance, and increasing credit, operational, and compliance risks, among the key risk themes in the report. The report also highlights government relief programs as a special topic in emerging risks. The report covers risks facing national banks and federal savings associations based on data as of December 31, 2019.

Federal Reserve Press Release (June 25, 2020) – The Federal Reserve Board released the results of its stress tests for 2020 and additional sensitivity analyses that the Board conducted in light of the coronavirus event. In light of these results, the Board took several actions following its stress tests to ensure large banks remain resilient despite the economic uncertainty from the coronavirus event. For the third quarter of this year, the Board is requiring large banks to preserve capital by suspending share repurchases, capping dividend payments, and allowing dividends according to a formula based on recent income. The Board is also requiring banks to re-evaluate their longer-term capital plans. All large banks will be required to resubmit and update their capital plans later this year to reflect current stresses, which will help firms re-assess their capital needs and maintain strong capital planning practices during this period of uncertainty. The Board will conduct additional analysis each quarter to determine if adjustments to this response are appropriate. The Board also released the results of its full stress test designed before the coronavirus. The results from that test are comparable to the V-shaped downside scenario in the sensitivity analysis, in aggregate, and show that all large banks remain strongly capitalized. The Board will use the results of this test to set the new stress capital buffer requirement for these firms, which will take effect, as planned, in the fourth quarter. Additionally, the Board will not be objecting to five foreign banks whose capital planning practices were evaluated as part of the stress tests.

June 25, 2020 – The MSRB updated answers to frequently asked questions FAQs about COVID-19 pandemic-related regulatory relief and guidance. A new FAQ addresses a question related to the application of MSRB Rule G-23 to the SEC's emergency temporary conditional order concerning direct placements of municipal securities. The MSRB will continue to monitor the COVID-19 pandemic and the related risks of market disruption and operational challenges to determine whether additional guidance and relief may be appropriate.

FDIC Press Release (June 23, 2020) – The four federal agencies in conjunction with the state bank and credit union regulators issued examiner guidance to promote consistency and flexibility in the supervision and examination of financial institutions affected by the COVID-19 pandemic. No action on the part of supervised institutions is required. The interagency guidance instructs examiners to consider the unique, evolving, and potentially long-term nature of the issues confronting institutions due to the COVID-19 pandemic and to exercise appropriate flexibility in their supervisory response.

Federal Reserve Press Release (June 15, 2020) – The Federal Reserve Board announced updates to the Secondary Market Corporate Credit Facility, which will begin buying a broad and diversified portfolio of corporate bonds to support market liquidity and the availability of credit for large employers. As detailed in a revised term sheet and updated FAQs, the SMCCF will purchase corporate bonds to create a corporate bond portfolio that is based on a broad, diversified market index of U.S. corporate bonds. This index is made up of all the bonds in the secondary market that have been issued by U.S. companies that satisfy the facility's minimum rating, maximum maturity, and other criteria. This indexing approach will complement the facility's current purchases of exchange-traded funds.

Federal Reserve Press Release (June 15, 2020) – The Federal Reserve Board announced that it will resume examination activities for all banks, after previously announcing a reduced focus on exam activity in light of the coronavirus response. The Board anticipates that exams will continue to be conducted offsite until conditions improve and will continue to work with banks to understand any specific issues they may be facing.

CFTC

CFTC Press Release 8247-20 (September 17, 2020) – The CFTC approved three final rules to revise CFTC regulations for swap data reporting, dissemination, and public reporting requirements for market participants. The Commission also unanimously approved a final rule that will permit derivatives clearing organizations organized outside of the U.S. to be registered with the CFTC. Finally, the Commission unanimously approved a supplemental notice of proposed rulemaking regarding amendments to the CFTC's regulations that govern bankruptcy proceedings for commodity brokers.

CFTC Press Release 8235-20 (September 10, 2020) – The CFTC announced the issuance of new, public, staff-level

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guidance by the Division of Enforcement, which outlines factors that will be considered when evaluating compliance programs in connection with enforcement matters. The guidance, which will be published in the agency's Enforcement Manual, is the first of its kind issued by the Division. It follows the recent update of the agency's civil monetary penalty guidance, which was released in May. [See CFTC Press Release No. 8165-20.]

CFTC Press Release 8234-20 (September 9, 2020) – The CFTC's Climate-Related Market Risk Subcommittee of the Market Risk Advisory Committee released a report entitled *Managing Climate Risk in the U.S. Financial System*. The Climate Subcommittee voted unanimously 34-0 to adopt the report. *Managing Climate Risk in the U.S. Financial System*, which presented 53 recommendations to mitigate the risks to financial markets posed by climate change, is the first of its kind effort from a U.S. government entity.

CFTC Press Release 8228-20 (August 31, 2020) – The CFTC announced that the Division of Swap Dealer and Intermediary Oversight, Division of Market Oversight, and Division of Clearing and Risk have each issued revised no-action letters providing additional relief to swap dealers and other market participants related to the industry-wide initiative to transition from swaps that reference the London Interbank Offered Rate (LIBOR) and other interbank offered rates to swaps that reference alternative benchmarks. The original no-action letters were issued on December 17, 2019, making the CFTC one of the first federal agencies to provide LIBOR-transition relief. [See CFTC Press Release No. 8096-19]

CFTC Press Release 8219-20 (August 14, 2020) – The CFTC announced it has voted unanimously to approve two proposals amending certain margin requirements for swap dealers and major swap participants. The Division of Swap Dealer and Intermediary Oversight delivered a staff presentation on the proposed rulemakings during the Open Meeting held on July 22, 2020. Both proposed rules have a 30-day comment period following publication in the *Federal Register*.

CFTC Press Release 8214-20 (July 30, 2020) – The CFTC's Market Risk Advisory Committee approved recommendations regarding the scheduled October 2020 transition of discounting and price alignment interest for certain products to the secured overnight financing rate, otherwise known as the "Single-Step Transition," at its July 21, 2020 public meeting. The recommendations, in the MRAC Interest Rate Benchmark Reform Subcommittee's report on its June 2, 2020 table top exercise on the transition, aim to provide next steps that market participants can take to better improve education, risk management, and internal preparedness with respect to the transition, as well as points of consideration for market regulators. The recommendations will be submitted to the Commission for consideration.

CFTC Press Release 8212-20 (July 23, 2020) – In conjunction with the Commission's approval of the final cross-border rule, the Divisions of Swap Dealer and Intermediary Oversight, Clearing and Risk, and Market Oversight withdrew a staff advisory and no-action relief regarding certain cross-border situations and issued new no-action relief. The final cross-border rule states that until the CFTC issues future cross-border rulemakings relating to unaddressed TLRs, the CFTC will not consider, as a matter of policy, a non-U.S. swap dealer's use of their personnel or agents located in the U.S. to "arrange, negotiate, or execute" swap transactions with non-U.S. counterparties in determining whether such requirements apply to such transactions.

CFTC Press Release 8211-20 (July 23, 2020) – The CFTC approved a final rule on the cross-border application of certain swap provisions under the Commodity Exchange Act. The Commission also approved an Amendment Order regarding European Union trading facilities. This final rule is effective 60 days after publication in the Federal Register and the amended order is effective July 23, 2020. Additional information on this rulemaking and order can be found here.

CFTC Press Release 8210-20 (July 22, 2020) – The CFTC approved a final rule regarding new capital and financial reporting requirements for swap dealers and major swap participants. Adoption of this rule marks the completion of the CFTC's required rulemakings under Section 731 of the Dodd-Frank Act, which was enacted 10 years ago. This final rule is effective 60 days after publication in the *Federal Register*. Market participants must be compliant by October 6, 2021. Additional information on this rulemaking can be found here.

CFTC Press Release 8188-20 (June 25, 2020) – The CFTC approved two final rules, withdrew a previously proposed rule and supplemental proposal, and advanced two proposed rules on the following matters: proposed rule on electronic trading risk principles; withdrawal notice on proposed rule and supplemental proposal for Regulation AT; proposed rule on margin requirements for uncleared swaps for swap dealers and major swap participants (Phase VI compliance date extension); and final rules on post-trade name give-up on swap execution facilities and exemption from the swap clearing requirement for certain affiliated entities – alternative compliance frameworks for anti-evasionary measures (Inter-Affiliate Exemption 50.52). Additional information on these rulemakings, including effective dates, can be found here.

CFTC Press Release 8187-20 (June 25, 2020) – Five federal regulatory agencies finalized a rule modifying regulations implementing the Volcker Rule's prohibition on banking entities investing in or sponsoring hedge funds or private equity funds — known as covered funds. The final rule is broadly similar to the proposed rule from January. The Volcker Rule

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generally prohibits banking entities from engaging in proprietary trading and from acquiring or retaining ownership interests in, sponsoring, or having certain relationships with a hedge fund or private equity fund. Like the proposal, the final rule modifies three areas of the rule by: streamlining the covered funds portion of the rule; addressing the extraterritorial treatment of certain foreign funds; and permitting banking entities to offer financial services and engage in other permissible activities that do not raise concerns that the Volcker Rule was intended to address. The final rule will be effective on October 1, 2020.

FDIC

FDIC Press Release (August 26, 2020) – The federal bank regulatory agencies finalized three rules, which are either identical or substantially similar to interim final rules currently in effect that were issued earlier this year. They include: a final rule that temporarily modifies the community bank leverage ratio, as required by the CARES Act (effective October 1, 2020); a final rule that makes more gradual, as intended, the automatic restrictions on distributions if a banking organization's capital levels decline below certain levels (effective January 1, 2021); and a final rule that allows institutions that adopt the current expected credit losses or "CECL" accounting standard in 2020 to mitigate the estimated effects of CECL on regulatory capital for two years (effective immediately upon publication in the *Federal Register*). Taken together, these measures offer institutions a transition period of up to five years. In a change from the interim rule, the final rule expands the pool of eligible institutions to include any institution adopting CECL in 2020.

FDIC Press Release (August 21, 2020) – The Board of Directors of the FDIC approved a proposal to amend its Guidelines for Appeals of Material Supervisory Determinations. The most significant change in the proposal would be to replace the current Supervision Appeals Review Committee with an independent, standalone Office of Supervisory Appeals within the FDIC. If the changes are adopted, an institution unable to resolve a disagreement regarding a material supervisory determination with the examiner or the appropriate Regional Office or Division Director would be able to appeal that determination to the Office. Comments will be accepted through October 20, 2020.

FDIC Press Release (August 21, 2020) – The FRB, FDIC, FinCEN, NCUA and OCC issued a joint statement clarifying that Bank Secrecy Act due diligence requirements for customers who may be considered politically exposed persons should be commensurate with the risks posed by the PEP relationship. The statement clarifies that, while banks must adopt appropriate risk-based procedures for conducting customer due diligence, the CDD rule does not create a regulatory requirement, and there is no supervisory expectation for banks to have unique, additional due diligence steps for customers who are considered PEPs. This joint statement does not alter existing BSA and anti-money laundering legal or regulatory requirements and does not require banks to cease existing risk management practices.

FDIC Press Release (August 13, 2020) – The federal banking agencies (FRB, FDIC, NCUA and OCC) issued a joint statement updating their existing enforcement guidance to enhance transparency regarding how they evaluate enforcement actions that are required by statute when financial institutions fail to meet Bank Secrecy Act/anti-money laundering obligations. FinCEN simultaneously issued a "Statement on Enforcement of the Bank Secrecy Act" that sets forth its approach to enforcement in circumstances of non-compliance with the BSA.

FDIC Press Release (July 24, 2020) – The FDIC and the SEC have adopted a final rule required by the Dodd-Frank Act clarifying and implementing provisions relating to the orderly liquidation of certain brokers or dealers (covered broker-dealers) in the event the FDIC is appointed receiver under Title II of the Dodd-Frank Act. The FDIC and SEC developed the final rule in consultation with the Securities Investor Protection Corporation. The final rule is substantively identical to the proposed rule published in the *Federal Register* in 2016. It will be effective 60 days after publication in the *Federal Register*.

FDIC Press Release (June 22, 2020) – The FDIC approved a final rule that mitigates the deposit insurance assessment effects of participating in the Paycheck Protection Program established by the U.S. Small Business Administration and the Paycheck Protection Program Liquidity Facility and Money Market Mutual Fund Liquidity Facility established by the Board of Governors of the Federal Reserve System. Under the final rule, the FDIC will generally remove the effect of PPP lending in calculating an IDI's deposit insurance assessment. Among other changes, the final rule provides an offset to an IDI's total assessment amount for the increase in its assessment base attributable to participation in the PPP and MMLF. The final rule will be effective immediately upon publication in the *Federal Register*, with an application date of April 1, 2020, and changes will be applied to assessments starting in the second quarter of 2020.

Federal Reserve Board

Federal Reserve Press Release (August 11, 2020) – The Federal Reserve Board announced revised pricing for its Municipal Liquidity Facility. The revised pricing reduces the interest rate spread on tax-exempt notes for each credit rating category by

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50 basis points and reduces the amount by which the interest rate for taxable notes is adjusted relative to tax-exempt notes.

Federal Reserve Press Release (August 6, 2020) – The Federal Reserve Board announced details of the FedNow℠ Service, a new 24x7x365 interbank settlement service with clearing functionality to support instant payments in the United States. The Federal Reserve will take a phased approach to service implementation. The first release of the FedNow Service will provide core clearing and settlement features that will support market needs and help banks manage the transition to a 24x7x365 service. Based on ongoing stakeholder engagement, additional features and service enhancements will be introduced over time. The target launch date for the service remains 2023 or 2024, with a more specific time frame to be announced after additional work is completed.

FinCEN

FinCEN News Release (September 16, 2020) – FinCEN issued an Advance Notice of Proposed Rulemaking to solicit public comment on a wide range of questions pertaining to potential regulatory amendments under the Bank Secrecy Act. The proposals under consideration are intended to provide financial institutions greater flexibility in the allocation of resources and greater alignment of priorities across industry and government, resulting in the enhanced effectiveness and efficiency of anti-money laundering programs. Comments should be submitted within 60 days of the ANPRM's publication in the *Federal Register*.

FinCEN News Release (September 14, 2020) – FinCEN issued a final rule that requires minimum standards for anti-money laundering programs for banks lacking a Federal functional regulator. The final rule also extends customer identification program and beneficial ownership requirements to those banks. Banks lacking a Federal functional regulator will have 180 days from the day the final rule is published in the *Federal Register* to be in compliance.

FinCEN News Release (August 18, 2020) – As the primary regulator and administrator of the Bank Secrecy Act, the FinCEN issued a statement that sets forth its approach to enforcing the rules and regulations within the BSA. The statement describes FinCEN's enforcement authorities, dispositions, and the factors it evaluates in determining the appropriate response and enforcement of BSA violations.

FinCEN News Release (July 16, 2020) – FinCEN alerted financial institutions to a high-profile convertible virtual currency scam involving Twitter. Cyber threat actors compromised the accounts of public figures, organizations, and financial institutions to solicit payments to CVC accounts, claiming that any CVC sent to a wallet address would be doubled and returned to the sender.

FINRA

FINRA News Release (September 18, 2020) – Two rulemaking items were approved during FINRA's Board of Governors virtual meeting on September 9 and 10 – Proposed Amendments to Financial Exploitation of Specified Adults Rule and Proposal Relating to the Use of Electronic Signatures.

FINRA Regulatory Notice 20-32 (September 17, 2020) – FINRA reminds firms to be aware of fraudulent options trading in connection with potential account takeovers and new account fraud. This Notice provides member firms and associated persons with information regarding options transactions in connection with these account takeover and new account fraud schemes to help identify, prevent and respond to such activity.

FINRA Regulatory Notice 20-31 (August 31, 2020) – FINRA is issuing this *Regulatory Notice* to provide members with guidance on requirements relating to the Consolidated Audit Trail, and FINRA Rule 6800 Series (the "CAT Rules"). In particular, FINRA is reminding members of their supervisory responsibilities under the CAT Rules and FINRA's Supervision Rule (Rule 3110). Members may wish to consider whether the practices and recommended steps described in this notice are applicable to their own circumstances and would enhance their supervisory systems and compliance programs. Questions relating to CAT industry member registration or reporting, interpretive guidance, or technical specifications should be directed to the FINRA CAT Help Desk at (888) 696-3348 or help@finracat.com.

FINRA Regulatory Notice 20-30 (August 20, 2020) – Several firms have recently informed FINRA that malicious actors are using registered representatives' names and other information to establish websites ("imposter websites") that appear to be the representatives' personal sites and are also calling and directing potential customers to use these imposter websites. Imposters may be using these sites to collect personal information from the potential customers with the likely end goal of committing financial fraud. This *Notice* describes certain common characteristics of these sites and actions firms and registered representatives can take to monitor for and address these sites.

FINRA Regulatory Notice 20-29 (August 17, 2020) – FINRA requests comment on the practice of internalizing customer trades in the corporate bond market after obtaining auction responses, commonly known as "pennying." In particular, pennying involves a dealer, after receiving a customer order, initiating a bid or offer wanted auction process on behalf of a customer, reviewing the auction responses, and then executing the customer order itself at a price that either matches or slightly improves the best priced auction response. FINRA performed a review of corporate bond auctions conducted by retail firms on electronic trading platforms. FINRA found in

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the review that firms internalized executions at varying rates after initiating auctions, and that these internalized executions offered varying amounts of price improvement. Consistent with a recommendation from the SEC's Fixed Income Market Structure Advisory Committee and a similar request for comment published by the MSRB, FINRA is soliciting comment on when such executions reflect a practice of pennying, how pennying impacts market quality and whether further regulatory action would be appropriate. Comments must be received by October 16, 2020.

FINRA Regulatory Notice 20-28 (August 14, 2020) – FINRA has released an updated Security Futures Risk Disclosure Statement to replace the one that was last updated in 2018, and a supplement that reflects the disclosure updates described therein. The 2020 Statement incorporates all cumulative changes made to date, which include, among others, conforming changes for updates to the market-wide circuit breaker benchmark and thresholds, the higher position limits for security futures contracts and changes to the large trader reporting timeframe. The implementation date of the 2020 Statement and 2020 Supplement is September 14, 2020. Firms may elect to use the 2020 Statement and 2020 Supplement prior to the implementation date.

FINRA Regulatory Notice 20-27 (August 12, 2020) – FINRA is warning member firms of a new imposter website www.finnra.org (please *notice the extra "n" in the domain name*). One portion of the website contains a link to a registration site that is not legitimate. In addition, it is possible bad actors could leverage the domain to send fake emails including those with imbedded phishing links or attachments containing malware. The domain of "finnra.org" is not connected to FINRA and firms should delete all emails originating from this domain name. FINRA has requested that the Internet domain registrar suspend services for "finnra.org". FINRA reminds firms to verify the legitimacy of any suspicious email prior to responding to it, opening any attachments or clicking on any embedded links.

FINRA Regulatory Notice 20-26 (August 5, 2020) – FINRA reminds firms to evaluate their exposure to LIBOR (formerly, the London Interbank Offered Rate), and review their preparedness to manage LIBOR's phase-out. To understand how firms are preparing for that phase-out, FINRA surveyed a representative cross-section of member firms, including some firms with significant trading volume or positions in LIBOR-linked securities. The survey found that while some large firms, notably large brokers-dealers affiliated with bank holding companies, had implemented extensive programs to prepare for the phase-out, others had made only limited efforts. Exposure to LIBOR could include, for example, firm or customer holdings of securities or contracts referencing LIBOR that mature after the phase-out date or references to LIBOR in a firm's financial models, such as market, credit or liquidity risk models.

FINRA Regulatory Notice 20-25 (July 20, 2020) – FINRA has amended its Codes of Arbitration Procedure for Customer and Industry Disputes to apply minimum fees to requests for expungement of customer dispute information, whether the request is made as part of the customer arbitration or the associated person files an expungement request in a separate arbitration (straight-in request). The amendments also apply a minimum process fee and member surcharge to straight-in requests, as well as a minimum hearing session fee to expungement-only hearings. The amendments are effective for cases filed on or after September 14, 2020.

FINRA Regulatory Notice 20-24 (July 16, 2020) – FINRA requests comment on two proposed changes to the TRACE reporting rules that were recommended by the SEC's Fixed Income Market Structure Advisory Committee. The proposed changes would require firms to: (1) identify corporate bond trades where the price of the trade is based on a spread to a benchmark Treasury security that was agreed upon earlier in the day (*i.e.*, a "delayed Treasury spot trade") and report the time at which the spread was agreed upon; and (2) identify corporate bond trades that are a part of a larger portfolio trade. Comments must be received by September 14, 2020.

FINRA Regulatory Notice 20-23 (July 9, 2020) – For the past two years, FINRA has encouraged firms to keep their Risk Monitoring Analyst (formerly known as a "Regulatory Coordinator") informed if the firm, or its associated persons or affiliates, engaged, or intended to engage, in activities related to digital assets, including digital assets that are non-securities. FINRA appreciates members' cooperation with this request and is encouraging firms to continue to keep their Risk Monitoring Analyst abreast of their activities related to digital assets until July 31, 2021.

FINRA Regulatory Notice 20-22 (July 2, 2020) – FINRA Rule 4210 (Margin Requirements) prescribes requirements governing the extension of credit by members. The FINRA Rule 4210 interpretations provide further guidance regarding application of the rule. This *Notice* announces, effective immediately, clarifications of interpretations of (1) FINRA Rule 4210(e)(8), which specifies margin requirements for control and restricted securities, and (2) FINRA Rule 4210(f)(5), which specifies conditions for the consolidation of two or more accounts carried for the same customer. These interpretation updates are available in portable digital format (PDF) on the Interpretations of FINRA's Margin Rule webpage.

FINRA Regulatory Notice 20-21 (July 1, 2020) –
This *Notice* provides guidance to help member firms comply with FINRA Rule 2210, Communications with the Public, when creating, reviewing, approving, distributing, or using retail communications concerning private placement offerings.

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FINRA Regulatory Notice 20-20 (June 29, 2020) – FINRA is issuing this *Regulatory Notice* to provide members an update on regulatory coordination efforts concerning compliance with CAT reporting rules (the "CAT compliance rules"). In particular, FINRA and the national securities exchanges, as CAT NMS Plan Participants, have entered into a Rule 17d-2 Plan and corresponding Regulatory Services Agreements to coordinate regulation of the CAT compliance rules through FINRA. Relatedly, FINRA and the exchanges developed a coordinated approach for enforcement of the CAT compliance rules under the Participants' respective Minor Rule Violation Plans.

FINRA Information Notice (June 25, 2020) – FINRA's Digital Experience Transformation is changing the way that firms and their personnel access and interact with FINRA's systems and complete their compliance and regulatory tasks.
This *Information Notice* highlights near-term changes to the manner in which firms and their personnel access, and interact with, FINRA's registration and continuing education applications and provides relevant dates when FINRA anticipates those changes will occur. Some of these changes will require registered persons (and persons seeking registration) to exclusively use FINRA's Financial Professional Gateway (FinPro).

FINRA Regulatory Notice 20-19 (June 23, 2020) – FINRA and the other U.S. members of the Intermarket Surveillance Group are enhancing the Electronic Blue Sheets to improve their ability to analyze broker-dealers' trading activities. Effective immediately, firms will be required to update certain data elements for EBS to reflect the SEC's May 10, 2019, and May 4, 2020, approvals of Long Term Stock Exchange and Members Exchange, respectively, and to reserve certain data elements for MIAX PEARL Equities and Boston Security Token Exchange. Attachment A to this *Notice* sets forth the modifications to the EBS record layout and changes from the version previously published in FINRA *Regulatory Notice 19-33*. Effective November 30, 2020, firms will be required to move the Exchange Code field and its values to another position within the EBS record layout. Attachment A to this *Notice* sets forth the change to the EBS record layout and changes from the version previously published in FINRA *Regulatory Notice 19-33*. Firms are reminded that failure to properly fill out the EBS fields is a violation of FINRA Rule 8211 or 8213.

FINRA Regulatory Notice 20-18 (June 19, 2020) – FINRA has amended its suitability rule, Capital Acquisition Broker suitability rule and rules governing non-cash compensation to provide clarity on which standard applies and to address potential inconsistencies with the SEC's Regulation Best Interest. These changes have been approved by the SEC and become effective on June 30, 2020, the compliance date of Reg BI.

MSRB

July 31, 2020 – Quarterly form G-37 disclosure submission period closes (MA/BD). MSRB-regulated entities must submit information to the MSRB through Form G-37 on their municipal securities and advisory business and related political contributions to municipal entity officials, state and local political parties, and bond ballot campaigns. Read instructions for Form G-37.

MSRB Press Release (July 13, 2020) – The MSRB published research findings on the pricing benefits of increased competitive bidding activity in the municipal securities market.

July 1, 2020 – A new feature on the MSRB's free EMMA website makes it easier and faster for users to understand the timing of annual financial disclosures from municipal bond issuers. The "EMMA Submission Calculator" was approved by the SEC to enhance transparency for investors.

July 1, 2020 – *Federal Register* Notice of Approval: Proposed Rule Change to Align Certain MSRB Rules to Securities Exchange Act Rule 15l-1, Regulation Best Interest.

MSRB Notice 2020-13 (June 26, 2020) – The MSRB received approval from the SEC on June 25, 2020 of amendments to MSRB rules that align MSRB rules to the Commission's recently adopted Rule 15l-1 under the Exchange Act2 ("Regulation Best Interest"). Pursuant to the amendments: Rule G-19 will apply only in circumstances in which Regulation Best Interest does not apply; Rule G-48 will make clear that the exception from the requirement to perform a customer-specific suitability analysis when making a recommendation to a Sophisticated Municipal Market Professional, as defined in Rule D-15, is available only for recommendations that are subject to Rule G-19; Rule G-20 will require any permissible non-cash compensation to align with the requirements of Regulation Best Interest; and dealers will be required to maintain books and records required by Regulation Best Interest and the related SEC Form CRS requirement. The effective date of the amendments to MSRB rules is June 30, 2020, which is the compliance date for Regulation Best Interest.

MSRB Notice 2020-12 (June 24, 2020) – The MSRB received approval from the SEC on February 18, 2020 to amend the information facility of the MSRB's EMMA system (the "EMMA IF"). The amendments to the EMMA IF approved by the SEC provide for certain enhancements to the free EMMA website (emma.msrb.org) that will improve transparency in the municipal securities market, including by providing information regarding the timing of annual financial information for a municipal security. The MSRB announced that the operative

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date for the enhancements will be July 1, 2020. The MSRB has set an operative date for the enhancements to the EMMA Portal of July 1, 2020.

OCC

OCC News Release 2020-106 (August 17, 2020) – The OCC released an update to the Bank Accounting Advisory Series. The BAAS covers a variety of topics and promotes consistent application of accounting standards among OCC-supervised banks. Additionally, this edition includes recent answers to frequently asked questions from the industry and examiners. The OCC updates the BAAS annually.

OCC News Release 2020-98 (July 22, 2020) – The OCC published a letter clarifying national banks' and federal savings associations' authority to provide cryptocurrency custody services for customers. In the letter, the OCC concludes that providing cryptocurrency custody services, including holding unique cryptographic keys associated with cryptocurrency, is a modern form of traditional bank activities related to custody services. Crypto custody services may extend beyond passively holding "keys." The OCC also recognizes that the need will increase for banks and other service providers to leverage new technology and innovative ways to serve their customers' needs. By doing so, banks can continue to fulfill the financial intermediation function they have historically played in providing payment, lending, and deposit services. This opinion applies to national banks and federal savings associations of all sizes and is consistent with a number of states which have already authorized state banks or trust companies to provide similar functions.

OCC Bulletin 2020-68 (July 1, 2020) – The member agencies of the Federal Financial Institution Examination Council issued a statement regarding the risks of expected cessation of the London Interbank Offered Rate (Libor) after the end of 2021. The FFIEC statement encourages supervised institutions to prepare for this transition and address associated risks. This OCC bulletin expands on the FFIEC statement and provides banks with guidance for identifying applicable risks, planning, and successfully transitioning to replacement rates. The concepts in this OCC bulletin also generally apply to the cessation of other interbank offered rates, should such cessations occur.

SEC

SEC Press Release 2020-212 (September 16, 2020) – The SEC adopted amendments to Exchange Act Rule 15c2-11, an important component of the over-the-counter market regulatory structure. The amendments are designed to modernize the rule, which was last substantively amended nearly thirty years ago, including to recognize advances in communications technologies. The amended rule enhances disclosure and investor protection in the OTC market by ensuring that broker-dealers, in their role as professional gatekeepers to this market, do not publish quotations for an issuer's security when current issuer information is not publicly available, subject to certain exceptions. The Rule will become effective 60 days following publication of the amendments in the *Federal Register*. The amendments also are designed to enhance the efficiency of the OTC market and facilitate capital formation for issuers for which information is current and publicly available. The Rule will have a general compliance date that is nine months after the effective date as well as a compliance date that is two years after the effective date regarding provisions to require an issuer's financial information for the last two fiscal years to be current and publicly available.

SEC Press Release 2020-205 (September 11, 2020) – The SEC announced it has adopted rules to update and expand the statistical disclosures that bank and savings and loan registrants provide to investors, in light of changes in this sector over the past 30 years. The rules also eliminate certain disclosure items that are duplicative of other Commission rules and requirements of U.S. GAAP or IFRS. The rules replace Industry Guide 3, Statistical Disclosure by Bank Holding Companies, with updated disclosure requirements in a new subpart of Regulation S-K. The rules are intended to help ensure that investors have access to more meaningful, relevant information about these registrants to facilitate their investment and voting decisions. The rules will be effective 30 days after publication in the Federal Register and will apply to fiscal years ending on or after December 15, 2021. However, voluntary compliance with the new rules will be accepted in advance of the mandatory compliance date. Guide 3 will be rescinded effective January 1, 2023.

SEC Press Release 2020-200 (August 31, 2020) – The SEC announced that it updated its list of unregistered entities that use misleading information to solicit primarily non-U.S. investors, adding 23 soliciting entities, eight impersonators of genuine firms, and seven bogus regulators. The latest additions to the Public Alert: Unregistered Soliciting Entities (PAUSE) list are firms that SEC staff found were providing inaccurate information about their affiliation, location, or registration. Under U.S. securities laws, firms that solicit investors generally are required to register with the SEC and meet minimum financial standards and disclosure, reporting, and recordkeeping requirements. In addition to alerting investors to firms falsely claiming to be registered, the PAUSE list flags those impersonating registered securities firms and bogus regulators who falsely claim to be government agencies or affiliates.

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SEC Press Release 2020-191 (August 26, 2020) – The SEC adopted amendments to the "accredited investor" definition, one of the principal tests for determining who is eligible to participate in our private capital markets. Historically, individual investors who do not meet specific income or net worth tests, regardless of their financial sophistication, have been denied the opportunity to invest in our multifaceted and vast private markets. The amendments update and improve the definition to more effectively identify institutional and individual investors that have the knowledge and expertise to participate in those markets. The amendments and order become effective 60 days after publication in the *Federal Register*.

SEC Press Release 2020-189 (August 21, 2020) – The SEC proposed amendments to the national market system plan governing the Consolidated Audit Trail (the "CAT NMS Plan") to bolster the Consolidated Audit Trail's data security. While the CAT NMS Plan currently sets forth a number of requirements regarding the security and confidentiality of CAT data, the proposed amendments to the CAT NMS Plan are the latest SEC action to limit the scope of sensitive information required to be collected by CAT and enhance the security of the CAT and the protections afforded to CAT data. The public comment period will begin following publication on SEC.gov and remain open for 45 days after publication in the *Federal Register*.

SEC Press Release 2020-188 (August 19, 2020) – The SEC voted to rescind a rule exception that allowed a proposed national market system (NMS) plan fee amendment to become effective upon filing, prior to review and comment by investors and other market participants. The new procedures require public notice of any proposed NMS plan fee amendment, an opportunity for public comment, and Commission approval by order before a new or changed fee can be charged. The Commission also modified the procedures for review of all proposed NMS plans and plan amendments, including fee amendments, to specify timelines for Commission action for each step of the process, adding certainty to the process for NMS plan participants. The amendments will be effective 30 days after publication in the *Federal Register*.

SEC Press Release 2020-165 (July 28, 2020) – The SEC announced the creation of the Event and Emerging Risks Examination Team in the Office of Compliance Inspections and Examinations. The EERT will proactively engage with financial firms about emerging threats and current market events and quickly mobilize to provide expertise and resources to the SEC's regional offices when critical matters arise. The EERT will focus on implementing OCIE exam priorities, including those identified in OCIE's annual examination priorities publication and will help ensure, through examinations and other firm engagement and monitoring activities, that firms are better prepared to address exigent threats, incidents, and emerging risks. The EERT will also work with OCIE staff to provide expertise and support in response to significant market events that could have a systemic impact or that place investor assets at risk, such as exchange outages, liquidity events, and cyber-security or operational resiliency concerns. The SEC also announced that Adam D. Storch has been named Associate Director of the EERT.

SEC Press Release 2020-163 (July 24, 2020) – The SEC and the FDIC have adopted a final rule required by the Dodd-Frank Act clarifying and implementing provisions relating to the orderly liquidation of certain brokers or dealers (covered broker-dealers) in the event the FDIC is appointed receiver under Title II of the Dodd-Frank Act. The FDIC and SEC developed the final rule in consultation with the Securities Investor Protection Corporation (SIPC). Among other things, the final rule clarifies how the relevant provisions of SIPA would be incorporated into a Title II proceeding. In addition, the final rule describes the claims process applicable to customers and other creditors of a covered broker-dealer and clarifies the FDIC's powers as receiver with respect to the transfer of assets of a covered broker-dealer to a bridge broker-dealer. The final rule is substantively identical to the proposed rule published in the *Federal Register* in 2016. It will be effective 60 days after publication in the *Federal Register*.

SEC Press Release 2020-147 (June 29, 2020) – The SEC issued an order to update the filing threshold for broker-dealers' Form 17-H filings made pursuant to Exchange Act Rules 17h-1T and Rule 17h-2T. The threshold, which had not been updated in nearly 30 years, will exempt certain smaller broker-dealers from the reporting requirements of the rules while continuing to provide important information to the Commission on the financial condition of covered broker-dealers and their affiliates. The order follows the recommendation of the SEC's Office of Inspector General, published earlier this year, that raising the reporting threshold would, among other things, increase the overall efficiency of the Form 17-H filing intake and review processes and reduce the reporting burden on smaller broker-dealer firms. The exemptive order is effective immediately.

Available Publication

FINRA News Release (July 31, 2020) – FINRA published the 2020 FINRA Industry Snapshot, its annual statistical report on the brokerage firms, registered representatives and market activity that FINRA regulates. The latest edition includes data ranging from the size and geographic distribution of the firms FINRA regulates to the number of individuals in the industry, and from trading activity to how firms market their products and services. All of the data appear in aggregate form.

Program Update

2020 Legal and Legislative Issues Conference *Webinar*

Last chance to register for FMA's 29th Legal and Legislative Issues Conference Webinar taking place **October 29-30** as a virtual event. This annual program is a high-level forum for banking/securities/regulatory attorneys as well as senior compliance officers, risk managers, internal auditors, consultants and regulators. Participants are provided with a unique opportunity to share information on current legal and regulatory developments as well as get updates from key industry and regulatory speakers. And, **attendees are eligible for CLE accreditation**.

The Program Planning Committee has devised a timely agenda including noted industry leaders and senior regulatory officials. 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 agenda, focusing on current areas of regulatory and Congressional activity/scrutiny, includes these sessions and confirmed speakers:

Banking General Counsels

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

Legislative Update from Hill Staffers

- **Senior Staff of the U.S. House of Representatives and the U.S. Senate** ***(Invited)***

Government Programs' Responses to the COVID-19 Crisis

- **Barry Sloane** — **Newtek Business Services Corp.**
- **Kristin Stephens** — **UBS Financial Services Inc.**
- **Representative** — **FRB** ***(Invited)***

Key Bank Regulatory Developments

- **Kevin Clarke** — **UBS**
- **Benjamin McDonough** — **Federal Reserve Board**
- **Ursula Pfeil** — **PNC Bank, N.A.**
- **Curtis Tao** — **Citi**
- **Charles Yi** — **Arnold & Porter Kaye Scholer LLP**

courtesy of washington.org

Securities General Counsels

- **Robert Colby** — **FINRA**
- **Daniel Davis** — **CFTC**
- **Jacob Lesser** — **MSRB**
- **Natalie Shioji** — **SEC**
- **Robert Stebbins** — **SEC**

COVID-19 Related Investigations and Litigation—Assessing Risks

- **Matt Pearson** — **Bank of America**
- **Dena Milligan** — **Discover**
- **Representative** — **CFPB** ***(Invited)***

Cybersecurity

- **Judith Germano** — **Germano Law LLC**
- **Catherine Stephen** — **Royal Bank of Canada**

SEC Division Reports

- **Anita Bandy** — **Enforcement**
- **Melissa Gainor** — **Investment Management**
- **Mark Wolfe** — **Trading and Markets**
- **Representative** — **OCIE** ***(Invited)***
- **Representative** — **Corporation Finance** ***(Invited)***

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

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

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Program Update

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FMA gratefully acknowledges these sponsors of FMA's 2020 Legal and Legislative Issues Conference

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2021 Securities Compliance Seminar

In-person or virtual…you decide!

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. However, travel policies (personal inclinations!), social distancing rules and meeting room maximum attendee numbers may require that we consider a virtual webinar instead.

This annual program has historically been a three-day educational and networking experience for compliance professionals, internal auditors, risk managers, attorneys, regulators and consultants.

The Planning Committee will soon begin work on plans for next spring. Contact Dorcas Pearce (*dpfma@starpower.net* or 202/544-6327) to volunteer…as a committee member, speaker or sponsor…or to share topical and/or speaker suggestions.

FMA needs your input! A survey will be emailed later 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 30th annual Securities Compliance Seminar next spring. Contact Dorcas Pearce at **dp-fma@starpower.net** or 202/544-6327 with questions and/or to volunteer.

Will you be willing…and will your firm allow you…to meet in person and/or travel/fly to our program next April?

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

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Who's News

Valerie Abend has been promoted to Global Banking Security Lead at Accenture.

Sebastian Gomez Abero has been named Deputy Director of the SEC's Office of the Advocate for Small Business Capital Formation. In his new role, he will oversee strategic initiatives and help lead the team in the SEC's newest office, which is focused on advocating for solutions to challenges faced by small businesses and their investors in raising capital, from startups to small cap public companies.

Stacey Bolton has been promoted to Chief Risk Officer for Northern Trust's Corporate & Institutional Services and Global Services businesses.

Angel Chen has joined Merrill Lynch as FADP Performance Manager at Merrill Lynch Wealth Management. Previously, Angel was SVP, Wealth Management at Citigroup Global Markets.

Jeffrey Dinwoodie, who most recently served as Chief Counsel for SEC Chairman Clayton, moved over to the Treasury Department in July. He is serving as the Principal Deputy Assistant Secretary responsible for leading the Department's Financial Institutions portfolio.

Askari Foy has co-founded a new endeavor, Venture Alliance Real Estate Enterprise, LLC. Previously, Askari was Managing Director/Governance, Risk, Compliance and Cybersecurity at ACA Compliance Group and a senior officer at the SEC.

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Who's News

Continued from Page 24

Mark Gregory has joined Edward Jones as Chief Compliance Officer of the Edward Jones Trust Company. Previously, Mark was Head of U.S. Global Asset Management Compliance at BMO Financial Group.

Jacob Lesser has been promoted to Deputy General Counsel at the MSRB.

Michael Lipsitz has joined Wells Fargo as Chief Policy Officer and EVP. Previously, Michael was Chief Legal Officer and Senior EVP at Santander US.

Gail Marshall, Chief Compliance Officer at the MSRB, has been named the Interim Chief Regulatory Officer.

Ann-Marie Mason has been promoted to General Counsel of Asset Management and Broker Dealer Operations at The Penn Mutual Life Insurance Company. In that role she will be responsible for all legal functions related to the company's asset management, registered investment advisory and broker dealer business.

Michael Phillips has joined Alumni Ventures Group as General Counsel. Previously, Mike was General Counsel and COO at Parker Infrastructure Partners and a Managing Director at TIAA / Nuveen.

Diana Silberberg has joined Citi as SVP – Compliance AML Intelligence Group Manager. Previously, Diana was SVP – BSA & OFAC Officer at Eastern National Bank.

Robert A. Sollazzo, longtime leader of the SEC's New York Regional Office Broker-Dealer Examination Program, retired in July after more than 38 years of service.

Michael VanHuysen has been promoted to Associate Inspector General for Audits & Evaluations at the Office of Inspector General, Federal Reserve Board and Consumer Financial Protection Bureau.

Romy Vinas has joined iSoftware4Banks, Inc. as Chief Compliance Officer. Previously, Romy was CCO at United Bank for Africa.

Chris Walmsley has joined Wells Fargo as Senior Counsel. Previously, Chris was Managing Director and Head of U.S. Capital Markets Law Group at RBC Capital Markets.

Ed Wegener has joined Oyster Consulting, LLC as a Managing Director. Previously, Ed was SVP & Midwest Regional Director at FINRA.

Elizabeth Yoka has been promoted to Manager of the Vulnerable Adults and Seniors Team at FINRA.

Zachary Zweihorn has been named a Partner at Davis Polk & Wardwell LLP.