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Market Solutions

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In This Issue

Market Solutions

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Market Solutions is a quarterly newsletter about the activities of the Financial Markets Association as well as legislative/regulatory developments of interest to FMA members. The opinions expressed in this publication are those of the authors, not necessarily those of the Association and are not meant to constitute legal advice. *Market Solutions* is provided as a membership service of the **Financial Markets Association**, 333 2nd Street, NE - #104B, 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.

FINANCIAL MARKETS ASSOCIATION

SEC Whistleblower Bounties: 10 Things Companies Can Do Right Now To Stay Ahead

By William R. McLucas, Andrea J. Robinson, Mary Jo Johnson, Thomas W. White, Jonathan D. Rosenfeld, Michael R. Dube, and Arian M. June
WilmerHale LLP

Under the Securities and Exchange Commission's new whistleblower program, individuals who report potential securities violations to the SEC may be entitled to a reward of between 10 and 30 percent of any monetary recovery exceeding $1 million. According to a report issued by the SEC, the agency has set aside $452 million for whistleblower compensation,[1] which it expects to begin paying out as early as August 12, 2011 when the final rules take effect. Sean McKessy, Chief of the SEC's new Office of the Whistleblower, and his staff have been developing procedures for receiving tips and processing award claims.

SEC officials report that the agency currently receives as many as 100 tips per day from whistleblowers and their attorneys. The SEC will exercise discretion in deciding whether to notify a company of its receipt of a whistleblower complaint. In making its determination, the SEC may consider factors such as the nature of the alleged conduct, whether the whistleblower has already reported internally and whether the alleged conduct involves senior management.

In instances where a whistleblower first reports a potential violation internally, that individual may still be eligible for an award if the whistleblower submits the same information to the SEC within 120 days of providing the information to the company. As a result, companies have an incentive to investigate reports of potential violations quickly while also ensuring compliance with the anti-retaliation protections, which apply irrespective of whether the whistleblower is entitled to an award.

As the SEC's bounty program provides incentives for whistle-blowers to report potential wrongdoing directly to the SEC, companies should take steps now to bolster internal reporting and investigative procedures and encourage employees to utilize internal reporting mechanisms. Most importantly, all companies should revisit the "tone at the top" of the enterprise and the basic tenets of their corporate culture, which should always encourage employees to "do the right thing."

What proactive measures should companies consider now?

1. **Enhance the culture of compliance.** Ensure that the existing compliance culture actively encourages internal reporting and resolution of potential violations. This includes monitoring the "tone at the top" and evenly applying internal policies across all levels.

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Legislative/Regulatory Actions

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

In this issue we address various developments in connection with the **Dodd-Frank Act** (including developments relating to *Living Wills, FMU Designation, Replacement of Credit Ratings, Compensation Clawback, Derivatives*, and *Counterparty Credit Risks*) and we have a look at Europe regarding **GSIBs/Additional Loss Absorbency** and the European Commission's **CRD IV**.

DODD-FRANK ACT

Update on Living Wills

On September 13, 2011, the FDIC Board unanimously approved a final rule implementing section 165(d) of the Dodd-Frank Act (the "Living Will Rule"), which requires a detailed resolution plan describing how nonbank financial companies supervised by the Federal Reserve Board of Governors (the "FRB") and large bank holding companies (collectively, "Covered Companies") can be sold, broken up, or wound down quickly and effectively in a way that mitigates serious adverse effects to U.S. financial stability. The resolution plan is commonly known as a "living will."

The Living Will Rule. Under the Living Will Rule, Covered Companies include (i) all bank holding companies (including foreign banking organizations that are or are treated as bank holding companies) with consolidated assets of $50 billion or more and (ii) all nonbank financial companies that the Financial Stability Oversight Council ("FSOC") designates for supervision by the FRB under section 113 of the Dodd-Frank Act. Of the 124 Covered Companies currently subject to the Living Will Rule, the vast majority appear to be foreign banking organizations. The Living Will Rule will ultimately be issued jointly by the FDIC and the FRB (collectively, the "Agencies") and published in the *Federal Register*, although the timing for FRB approval is uncertain.

The IDI Rule. At the same time, the FDIC Board unanimously approved an interim final rule that requires banks and other insured depository institutions ("IDIs") with $50 billion or more in assets ("Covered IDIs") to file resolution plans (the "IDI Rule"). Because most Covered IDIs will also be subject to the Living Will Rule, the FDIC endeavored to streamline many of the requirements of the IDI Rule with the Living Will Rule, including the deadlines and content requirements. Nevertheless, the policies behind the two rules vary, and therefore, Covered Companies and Covered IDIs should expect that the Agencies will have different standards when determining each plan's credibility. The interim final IDI Rule was published in the *Federal Register* on September 21, 2011 (***http://www.gpo.gov/fdsys/pkg/FR-2011-09-21/pdf/2011-24179.pdf)***.

Below is a brief description of some of the more notable aspects of the Living Will Rule. For additional information, see our client alert at ***http://www.mofo.com/files/Uploads/Images/110916-Living-Wills-Final-Rules.pdf.***

New Features of Living Will Rule. The Living Will Rule is similar to the proposed rule on the same subject, but there are some important differences.

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FMA Welcomes New Members!

Angelo Aldana	Mizuho Corporate Bank, Ltd.
David Blass	U.S. Securities and Exchange Commission
Bob Bostrom	SNR Denton US LLP
Mark Cahn	U.S. Securities and Exchange Commission
Jim Clinger	House Financial Services Committee
Mike Dardis	Commerce Bancshares, Inc.

SEC Whistleblower Bounties…

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2. **Publicize internal reporting procedures.** Internal publicity should promote the value of internal reporting to the company and provide assurances that employees who report potential violations will be taken seriously and not retaliated against.

3. **Provide supplemental HR training to supervisors.** Ensure that supervisors are adequately trained to respond to employee reports of possible violations quickly and appropriately. Regularly remind supervisors of policies against retaliation and the types of conduct that could be deemed retaliatory. Take steps to ensure that troubled workplace relationships are handled promptly and with care.

> *"SEC officials report that the agency currently receives as many as 100 tips per day from whistleblowers and their attorneys."*

4. **Strengthen infrastructure for receiving tips.** Regularly review corporate hotlines and other internal reporting channels and ensure that employees are aware of how to access these resources. Designate specific individuals within legal and compliance departments to review complaints and respond to whistleblowers.

5. **Provide regular opportunities for reporting.** Consider using periodic performance evaluation meetings as an opportunity to remind employees of the available mechanisms for internal anonymous reporting.

6. **Review existing reporting and disclosure policies to ensure compliance.** Ensure that confidentiality agreements neither state nor imply that SEC reporting violates confidentiality obligations.

7. **Create an investigative response team.** Consider establishing or reinforcing a response team of designated individuals from the legal department to investigate whistleblower complaints. Ensure that individuals on the response team have quick access to electronic data and are trained to handle documents and information in a manner that preserves privilege.

8. **Prepare procedures to guide investigations.** Establish a clear process for timely investigation of complaints of potential securities violations so that the company may determine whether there is actual misconduct to self-report to the SEC.

9. **Establish procedures for communicating with whistleblowers.** Provide whistleblowers with timely acknowledgment that the complaint is being addressed. Communicate with the whistleblower periodically throughout the investigative process as appropriate and once a final conclusion has been reached.

10. **Keep records of the complaints and how they are handled.** Ensure that complaints are properly maintained. Where appropriate, prepare a final report of investigation findings and maintain a log of all corrective action taken.

WilmerHale has established a special **Dodd-Frank Whistleblower Working Group** focused on SEC enforcement investigations, corporate compliance and employment issues arising from the new whistleblower rules. ***For a description of the whistleblower rules, see their May 27, 2011 Client Alert – http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=9795***. ■

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[1] U.S. Securities and Exchange Commission, *Annual Report on Whistleblower Program*, 6 (October 2010), ***www.sec.gov/news/studies/2010/whistleblower_report_to_congress.pdf***.

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Legislative/Regulatory Actions

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First, filing deadlines are staggered in three tiers, depending on the entities' asset size, presumably reflecting the Agencies' desire to focus on the institutions that would have the greatest impact on U.S. financial stability in the event of material distress or failure. Generally speaking, Covered Companies with $250 billion or more in total nonbank assets must file a resolution plan by July 1, 2012; Covered Companies with $100 billion or more in total nonbank assets must file a resolution plan by July 1, 2013; and Covered Companies with less than $100 billion in nonbank assets must file a resolution plan by December 31, 2013. The Agencies have, however, retained flexibility to move Covered Companies from one tier to another, depending on the Agencies' assessment of systemic risk.

Second, the Living Will Rule provides a "tailored" resolution plan option for qualifying Covered Companies. A tailored plan focuses more on the nonbanking operations of a Covered Company, such that a Covered Company is not required to include banking operations in most of the reporting plan elements. The tailored plan, therefore, will be less burdensome than a standard plan under the Living Will Rule. The tailored plan option is available only to Covered Companies that are bank holding companies that have less than $100 billion in total nonbank assets, and whose IDI subsidiaries comprise at least 85 percent of the total consolidated assets of the Covered Company. For foreign-based Covered Companies, the tailored plan prerequisites are U.S.-based: for the purpose of the 85 percent test (if it applies), the assets of any U.S. IDI operations, branches, and agencies are compared to the foreign-based Covered Company's U.S. total consolidated assets.

We note, however, that the effect of the tailored plan option in reducing the regulatory burden for most Covered Companies will be modest. Information concerning the banking operations of most covered companies will likely be reported under the IDI Rule, discussed above. In any event, the Agencies recognize that all resolution plans will vary depending on the size and complexity of the Covered Company, so Covered Companies eligible for tailored plans will likely have a lesser burden than Covered Companies ineligible for such plans.

Confidentiality. The Living Will Rule also modifies the proposed rule with respect to the confidential treatment of the resolution plans. Under the Living Will Rule, plans will include a public section and a confidential section. The confidential section will be protected both as trade and commercial secrets and as supervisory information under the Freedom of Information Act. The public sections include the executive summary, which must describe the Covered Company's business and include other information "to the extent material to an understanding" of the Covered Company.

The Living Will Rule enumerates eight categories of information that may or are likely to be material. These categories involve facts that in all likelihood would have been disclosed in call reports and reports required by the FRB, or in public materials required by the securities laws. However, the public executive summary must also include a "description, at a high level, of the . . . resolution strategy, covering such items as the range of potential purchasers of the [Covered Company], its material entities and core business lines." In order for this description to be meaningful, it would have to identify which entities and material lines might be sold off, which is a highly sensitive subject.

Application to Foreign Banking Organizations. With respect to foreign banking organizations

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FMA Welcomes *More* New Members!

Peggy Grieve	Bank of America
Randall Guynn	Davis, Polk & Wardwell
Shigeo Kawauchi	The Bank of Japan
Steve Kudenholdt	SNR Denton US LLP
Gary Lee	Morrison & Foerster LLP
Kevin MacMillan	U.S. Bank
Jennifer Marietta-Westberg	U.S. Securities and Exchange Commission

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("FBOs"), the Agencies have not changed the scope of application of the Living Will Rule; however, the supplementary information provides some important clarifications. The Agencies state that "the resolution plan of a foreign-based company that has limited assets or operations in the United States would be significantly limited in its scope and complexity." Furthermore, the Agencies state that it is "of utmost importance" to the Agencies how the resolution plan for such an FBO fits within its global resolution or contingency planning process, and the Agencies will consider "[t]he nature and extent of the home country's related crisis management and resolution planning requirements."

Deferred Rule on Credit Exposure Reports. Finally, of particular note, the Living Will Rule omits the credit exposure report requirement that was in the proposed rule. Instead, the Living Will Rule defers such a reporting requirement to a separate FRB rulemaking on credit concentrations. Nevertheless, even in the absence of a specific reporting requirement, a Covered Company preparing a resolution plan will have to collect much of the same information that would otherwise have appeared in a credit exposure report.

New SEC Criteria to Replace Credit Ratings

Section 939A of the Dodd-Frank Act requires federal agencies to review how existing regulations rely on credit ratings, remove such references from their rules, and replace them with standards of creditworthiness as each agency deems appropriate. On July 27, 2011, the SEC unanimously adopted rules to remove references to credit ratings in rules and forms promulgated under the Securities Act of 1933 and the Securities Exchange Act of 1934. For a detailed discussion of the new rules, see our news bulletin ***http://www.mofo.com/files/Uploads/Images/110801-Dodd-Frank-Update.pdf.***

Investment Grade Rating Criteria Replaced with Alternative Criteria

In order to be eligible to use Forms S-3 or F-3, an issuer must meet both the eligibility requirements and at least one of the form's transaction requirements. One such transaction requirement permits registrants to register primary offerings of non-convertible securities, if they are rated investment grade by at least one nationally recognized statistical rating organization. Under the new rules, the investment grade rating transaction criteria will be replaced with four alternative criteria. Issuers will need to satisfy any one of the following four criteria to use Forms S-3 or F-3:

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- the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) at least $1 billion in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act, over the prior three years;
- the issuer has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least $750 million of non-convertible securities, other than common equity, issued in primary offerings for cash, not exchange, registered under the Securities Act;
- the issuer is a wholly-owned subsidiary of a well-known seasoned issuer ("WKSI") as defined in Rule 405 under the Securities Act; or
- the issuer is a majority-owned operating partnership of a real estate investment trust ("REIT") that qualifies as a WKSI.

$1 Billion of Non-Convertible Securities or $750 Million of Non-Convertible Securities Outstanding

In determining compliance with both the $1 billion issued and the $750 million outstanding thresholds, issuers can do the following:

- aggregate the amount of non-convertible securities, other than common equity, issued in registered primary offerings that were issued within the previous three years (measured as of a date within 60 days prior to the filing of the registration statement) or, for the non-convertible securities (other than common equity) outstanding threshold, that are outstanding as of a date within 60 days prior to the filing of the registration statement;
- include only such non-convertible securities, other than common equity, that were issued in registered primary offerings for cash and not registered exchange offers; or
- for parent company issuers only, include in their calculation the principal amount of their full and unconditional guarantees, within the meaning of Rule 3-10 of Regulation S-X, of non-convertible securities, other than common equity, of their majority-owned subsidiaries issued in registered primary offerings for cash over the prior three years or, for the non-convertible securities (other than common equity) outstanding threshold, that are outstanding as of a date within 60 days prior to the filing of the registration statement.

In calculating the $1 billion or the $750 million amount, as applicable, issuers generally will be permitted to include the principal amount of any debt and the greater of liquidation preference or par value of any non-convertible preferred stock that was issued in primary registered offerings for cash. For insurance company issuers, the new rule provides specific guidance on how to calculate these thresholds.

Securities issued in unregistered offerings, registered exchange offerings, or Regulation S offerings cannot be included in calculating the $1 billion or $750 million calculations.

Subsidiaries of WKSIs

The new rules permit issuers that are wholly-owned subsidiaries of WKSIs to use Forms S-3 and F-3 for offerings of non-convertible securities other than common equity. Majority-owned or partially-owned subsidiaries are not eligible to use Forms S-3 or F-3 under the new criteria; however, pursuant to a limited exception, a majority-owned operating partnership subsidiary of a REIT is permitted to register offerings of non-convertible securities, other than common equity, on Forms S-3 or F-3, so long as the REIT parent is a WKSI.

Grandfathering of Other Currently Eligible Issuers

In order to ease transition to the new rules, the SEC has permitted issuers that reasonably believe that they would have qualified to use Forms S-3 or F-3 under the investment grade rating criteria to continue to use these forms for a period of three years from the effective date of the amendments. The issuer must have a *reasonable belief* that the issuer would have been eligible to use the form and *disclose* that belief and the basis for it in the registration statement. The new rules list various factors that may indicate a reasonable belief of eligibility of the issuer.

Separately, the FRB published a Report to the Congress on Credit Ratings in July 2011, which is available at ***http://www.federalreserve.gov/publications/other-reports/files/credit-ratings-report-201107.pdf.***

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Compensation Clawbacks from Executives of Failed Financial Companies

On July 7, 2011, the FDIC adopted final rules under Section 210(s) of the Dodd-Frank Act that permit the FDIC to recoup compensation paid in the past two years to current or former senior executives or directors who were substantially responsible for the failure of a covered financial company ("CFC"). This compensation clawback provision is part of a series of rules that deal with the relative priorities of various creditors with unsecured claims against a CFC.

Since the financial crisis, the FDIC's powers were significantly expanded to reach CFCs, such as bank holding companies, whose failure threatens to have significant adverse effects on financial stability in the United States. Title II of the Dodd-Frank Act establishes an "orderly liquidation authority" (the "OLA") through which the FDIC can be appointed as receiver and liquidate a CFC. As part of this process, the FDIC is permitted to recoup compensation paid in the past two years to current or former senior executives or directors who were substantially responsible for the failure of a CFC. There is an exception for cases of fraud, where there is no time limit.

The Final Rule provides that a senior executive or director would be deemed to be "substantially responsible" if he or she failed to conduct his or her responsibilities with the degree of skill and care an ordinarily prudent person in a like position would exercise under similar circumstances. The standard of care under this section is a negligence standard, not a gross negligence standard. This legal standard is more generous to the FDIC than the gross negligence standard that applies in civil damage actions by the FDIC against directors and senior executives of failed banks.

Section 380.7(b)(1) of the FDIC's regulations switches the burden of proof from the FDIC to executives through several broad presumptions that a director and senior executive must rebut with evidence. Among other provisions, a director or officer is presumed to have acted negligently and to have caused a loss materially contributing to failure if he or she was chairman of the board, CEO, president, or CFO (or had responsibility for strategic, policymaking, or company-wide operational decisions). The director or senior executive then is required to establish his or her non-negligence. The preamble to the final rule is explicit that business judgment or similar state law presumptions do not apply to recoupment claims.

In short, the FDIC could, under its proposed standards, state a claim against a former director or senior executive officer solely by alleging the failure of the CFC and the director or officer's position at the CFC.

The FDIC anticipates that it will seek recoupment of compensation through the court system using a procedure similar to the procedure that it currently uses when it seeks recovery from individuals whose negligent actions have caused losses to failed financial institutions. Similar to the procedure used in those situations, the FDIC anticipates that it will investigate whether the statutory criteria for compensation recoupment are met and, if so, will request authorization of a suit for recoupment. The Final Rule also has a "savings clause" to preserve the rights of the FDIC as receiver to recoup compensation under all applicable laws.

The rule became effective on August 15, 2011.

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FMA Welcomes *More* New Members!

Mark Mellon	Federal Deposit Insurance Corporation
Matt Morley	K&L Gates LLP
Jack Murphy	Promontory Financial Group, LLC
Cris Naser	American Bankers Association
Bill Nolan	FTI Consulting
Chris Paridon	Federal Reserve Board
Beate Parra	Mitsubishi UFJ Securities

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Derivatives

As the one-year anniversary of the Dodd-Frank Act approached, OTC derivatives markets and their participants faced many more regulatory questions than answers. In particular, it was unclear which effective date would apply to many of the provisions of Title VII of the Dodd-Frank Act governing derivatives and what the impact of those provisions would be upon their becoming effective.

The Dodd-Frank Act contemplates that, unless otherwise stated, the provisions of Title VII will take effect on the later of July 16, 2011 or, to the extent that a provision requires a rulemaking, not less than 60 days after publication of the final rule implementing the provision. However, because the CFTC and SEC had not finished their rulemaking by July 16, 2011, many market participants argued that without those rules in place and time for the market to implement them, it would have been extremely disruptive for any of the other provisions of Title VII to have become effective. In order to avoid widespread uncertainty and disruptions in the derivatives markets as to which provisions of Title VII were to be effective on July 16, 2011, the CFTC and SEC separately issued temporary exemptive orders and related no-action relief in July 2011 that, in effect, deferred most Title VII requirements. The temporary exemptions did not, however, limit the agencies' antifraud or anti-manipulation authority with respect to swaps and security-based swaps. Accordingly, that authority became effective on July 16, 2011.

The CFTC is endeavoring to complete most or all of its Title VII rulemaking by the first quarter of 2012. On September 8, 2011, the CFTC proposed two sets of rules that would establish phased implementation and compliance schedules for Title VII's clearing, trade execution, documentation, and margin requirements, subject to the corresponding final rules first being in place. As proposed, the implementation schedules would be based on the type of market participant involved.

Separately, various financial regulators provided key rulemaking in the area of retail foreign exchange. Section 742(c) of the Dodd-Frank Act added a new provision to the Commodity Exchange Act that prohibits certain regulated entities from offering or entering into certain foreign exchange transactions unless pursuant to a rule of their applicable financial regulator. Without specific rulemaking, this provision would have required those regulated entities to cease their retail foreign exchange activities on July 16, 2011. Fortunately (and in some respects, surprisingly), the CFTC, SEC, FDIC, and OCC adopted retail foreign exchange rules prior to that date, although the rule adopted by the SEC is a temporary one-year rule that contemplates further possible action by the SEC next year.

GSE Reform

As news headlines continue to be dominated by reports of new litigation being brought against banks relating to their mortgage activities, substantive discussion regarding the future of the GSEs and of housing finance in the United States continues to get limited press attention. Currently, there are more than 25 distinct bills that address Fannie Mae and Freddie Mac, with more being introduced regularly. The bills are diverse—some call for discrete changes, while others call for winding down the GSEs or merging the GSEs into a single FHFA-regulated corporation without profits or shareholders. We discuss the proposals in our alert at ***http://www.mofo.com/files/Uploads/Images/110725-GSE-Reform.pdf.*** There also have been numerous hearings to discuss these and other proposals; however, with elections soon approaching, it is doubtful (despite its significance) that GSE reform will progress in the short term.

Counterparty Credit Risk Guidance

In late June, the federal banking agencies issued new guidance on the management of counterparty credit risk. The guidance is intended for banking organizations with large derivatives portfolios, although portions of it certainly are useful for any bank in reviewing its derivatives business.

The guidance builds on and does not replace earlier guidance, but that guidance is from the 1990s and does not reflect either the growth or the increased complexity of the derivatives market or (naturally) the consequences of the financial crisis. The agencies note that the new guidance is not all-inclusive and refer banking organizations to best practices advanced by several trade and supervisory groups.

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Notwithstanding the caveat about the comprehensiveness of the guidance, it is wide-ranging and appears to cover virtually every aspect of a derivatives portfolio and its place in the operations and vitality of a banking organization. Some of the guidance borrows from standard risk management guidance and discusses the need for board and senior management oversight, for policies on acceptable credit risks and concentrations, for adequate information systems in order to ensure the availability of information on a timely basis, and for internal audits.

Other parts of the guidance reflect the experience of the financial crisis and the reforms enacted in response to the crisis and warrant special attention, as follows:

- Credit value adjustments ("CVAs"). Noting that a "large portion" of the counterparty credit risk ("CCR") losses during the financial crisis were due to CVA losses rather than actual counterparty defaults, the guidance recommends more robust CVA calculations and management, including greater counterparty-specific analysis and the use of VaR models to measure potential losses.
- Wrong-way risk. Noting also that wrong-way risk—the positive correlation of exposure to a counterparty and the probability of the counterparty's default—has caused "major losses" at banking organizations, the guidance directs that each organization should have a process to systematically identify, quantify, and control all wrong-way risk across the OTC derivative and SFT portfolios.
- Stress testing. This exercise has become vastly more important in the wake of the financial crisis. For CCR exposures, the guidance recommends stress testing that informs day-to-day exposure and concentration management. At least quarterly, senior management should review stress test results.
- Central counterparty exposures. With the emphasis in Dodd-Frank on the use of centralized credit counterparties, CCR management should consider the concentration risk posed by central credit counterparties ("CCPs") and should include an evaluation of each CCP's risk management framework and the soundness of its policies and procedures. Each banking organization also should take care that its exposures to CCPs are within regulatory limits.
- Legal risk management. With the increasing complexity of derivatives contracts, banking organizations should formalize a process for negotiating and approving contracts and should regularly review their efficacy in mitigating loss in the event of default.

The complete guidance can be found at ***http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110705a1.pdf.***

FMU Designation

On July 27, 2011, FSOC adopted a final rule implementing section 804 of the Dodd-Frank Act (the "Final Rule," available at ***http://www.gpo.gov/fdsys/pkg/FR-2011-07-27/pdf/2011-18948.pdf)***, which describes the process and criteria by which FSOC will designate financial market utilities ("FMU") as systemically important. The definition of FMU and the exclusions from that definition are taken directly from section 803 of the Dodd-Frank Act. Generally, systemically important FMUs will be the operators of large-value payment systems, commodities clearing systems, and securities settlement systems. If an FMU is designated systemically important, it will be subject to prescribed risk management standards, supervision and examination, and rule review by the FMU's supervisory agency. We note that the Final Rule does not implement FSOC's authority to regulate financial institutions' payment, clearing, and settlement activities ("PCS Activities").

The Final Rule constructs a two-stage analysis that informs FSOC's determination of systemic importance for FMUs. During the first stage, FSOC will identify a preliminary set of FMUs "whose failure or disruption could potentially threaten the stability of the U.S. financial system." FSOC will make this determination based on four specific considerations listed in section 804(a) of the Dodd-Frank Act, although FSOC retains flexibility to consider other factors:

a) aggregate monetary value of transactions processed;

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b) aggregate exposure to counterparties;

c) relationships, interdependencies, or other interactions with other FMUs or financial institutions' PCS Activities; and

d) the effect that a failure or disruption would have on critical markets, financial institutions, or the broader financial system.

The Final Rule lists subcategories and illustrative metrics for each consideration. The FSOC intends to use the data generated from these metrics to determine the preliminary set of FMUs. The second stage of the analysis is a more in-depth look at the preliminarily identified FMUs, with a greater focus on qualitative factors and institutional and market-specific considerations.

The Final Rule lists two specific determinations that FSOC will make before designating an FMU systemically important. First, FSOC must determine whether a failure or disruption of the FMU future could "create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets." Second, if FSOC finds that the FMU poses such a risk, then FSOC will determine whether this risk of contagion "could threaten the financial stability of the United States." If so, FSOC will designate the FMU systemically important.

With respect to process, FSOC will rely on publicly available information and data from FMUs' supervisory agencies to identify the preliminary set of FMUs that will be subject to the in-depth analysis in the second stage. If an FMU reaches the second stage, FSOC will typically notify the FMU and provide the FMU with an opportunity to submit written materials in support of or in opposition to designation. Ultimately, designation requires a two-thirds vote of FSOC. Again, we note that designation will likely be reserved for the largest FMUs; for example, among payment systems, FSOC stated that it expects to focus on large-value payment systems because there are readily available and timely alternatives to low-value systems.

EUROPE

Global Systemically Important Banks and Additional Loss Absorbency Requirements

On July 19, 2011, the Basel Committee on Banking Supervision published a paper, setting out its proposed methodology for identifying global systemically important banks ("GSIB") and for assessing the additional loss absorbency requirements that it proposes should generally apply to such institutions, due to the heightened levels of disruption that would be caused to the financial system as a result of their failure.

The Basel Committee proposes an indicator-based measurement approach to determining whether an institution is to be regarded as a GSIB. The Basel Committee proposes 5 indicators, each to be given an equal weighting, and most are made up of two or more sub-indicators. Based on these indicators, each bank would be assigned a score of between 0 and 5.

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FMA Welcomes *More* New Members!

Alfred Pollard	Federal Housing Finance Agency
Ken Raisler	Sullivan & Cromwell LLP
Lori Richards	PricewaterhouseCoopers LLP
Jess Sharp	U.S. Chamber of Commerce
Alex Sheers	Mitsubishi UFJ Securities
Don Smith	K&L Gates LLP
Debra Stone	Federal Reserve Bank of New York
Greg Todd	Bank of America
Jim Wigand	Federal Deposit Insurance Corporation
Charles Yi	Senate Banking Committee

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The first indicator is the bank's cross-jurisdictional activity. This would measure the global footprint of the bank, on the basis that the greater the global reach that a bank possesses, the more difficult its resolution would be and the more widespread would be the effects of its failure.

The next indicator would be the bank's size, judged by its total exposures, which are proposed to be measured in the same way as for the Basel III proposed leverage ratio.

The third indicator would be the interconnectedness of the bank. The Basel Committee believes that the larger the network of connections between a bank and other institutions, the more that financial stress at that bank could cause a contagion effect throughout the financial system.

The fourth indicator would be that of substitutability; in other words, the more that there exists a lack of realistic alternatives for the bank's customers and counterparties in respect of a major business line of the bank, the greater the impact that such bank's failure would cause.

The last proposed indicator is that of complexity; the more complex the business, structure, and operations of the bank, the greater systemic impact its failure is likely to have.

The Basel Committee proposes that there should be a continuing review of banks and the extent to which these indicators are present, and intends that it should be possible for their score to be reduced over time, based on changes they may wish to make to their risk profiles and business models, and that banks could drift on or off the list of GSIBs over time.

The Basel Committee has not stated the threshold score above which a bank is considered to be a GSIB, though it has stated that it considers there are currently 28 GSIBs—considerably less than the number of banks that would be considered systemically important, based on the $50 billion assets test contained in the Dodd-Frank Act.

The Basel Committee has proposed that there should be 4 categories of GSIBs, based upon the scores they receive on the above indicators. The category they fell into would determine the level of additional loss absorbent capital (above the levels resulting from the Basel III proposals) that they should be required to maintain: 1%, 1.5%, 2%, or 2.5%, each as a percentage of the GSIB's risk-weighted assets. In addition there would be a possible top level of 3.5% additional loss-absorbent capital, although the Committee proposes that this designation level would not initially contain any banks. It would effectively be reserved for banks that achieved a higher systemic-importance score than the current top scorers (although those scores are not known).

Despite previous discussions about the possibility of the additional loss absorbency requirements being able to be met with various forms of hybrid capital, including contingent convertible bonds, the Committee has recommended that only common equity tier 1 instruments should be eligible for this purpose.

The deadline for submissions to the Basel Committee on this paper expired on August 26, 2011, and the final recommendations of the Committee are expected to be submitted at the next G-20 meeting in November 2011. Assuming these are endorsed at that meeting, the Committee proposes that the additional loss absorbency requirements should be phased in over the same time period as the capital conservation buffer and countercyclical capital buffer proposed under Basel III, i.e., between January 1, 2016 and January 1, 2019. The entire paper of the Basel Committee on Banking Supervision on "Global systemically important banks: Assessment methodology and the additional loss absorbency requirement" can be found at ***http://www.bis.org/publ/bcbs201.pdf.***

Capital Requirements Directive IV

On July 20, 2011, the European Commission published a provisional draft of the so-called CRD IV legislative package, consisting of a draft regulation (which when in effect would be directly binding on EU regulators and financial institutions) and a draft directive (which would need to be separately implemented by each EU member state into its own laws). Among other things, the CRD IV package seeks to implement the Basel III proposals into EU law, and expressly aims to establish a single banking rule book for Europe. With the exceptions of the capital conservation buffer and the countercyclical buffer discussed later, the provisions which implement the Basel III proposals are contained in the draft regulation, such that there is no scope for individual member states to diverge as to how those

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provisions are implemented into their national laws, unlike the situation with respect to a directive. For a more in-depth discussion on the CRD IV legislative package, see our news bulletin at ***http://www.mofo.com/files/Uploads/Images/110822-CRD4.pdf***.

As proposed by Basel III, institutions will be required under CRD IV to hold minimum capital of at least 8% of their risk-weighted assets, of which the common equity tier 1 capital component (e.g., common stock and retained earnings) must be at least 4.5%. If the remaining 3.5% does not consist of common equity tier 1 capital, it can consist of additional tier 1 capital (e.g., preference shares and perpetual subordinated debt) and tier 2 capital (e.g., long-dated subordinated debt), provided that at least 1.5% is made up of additional tier 1 capital. The minimum capital requirements are to be phased in during 2013 and 2014.

The CRD IV package also follows very closely the Basel III prescriptions of the qualities that different instruments must possess in order to qualify for treatment as common equity, additional tier 1 capital, or tier 2 capital, in particular in terms of their permanence, their loss absorption capability, and flexibility of payments. The package also prescribes in some detail the regulatory adjustments, or deductions, that must be made from common equity in calculating the requirement.

Following Basel III's recommendations on loss absorption capacity, CRD IV requires that the terms of any additional tier 1 capital instrument must provide for the principal amount of the instrument to be written down or converted into equity at a pre-specified trigger point, and CRD IV has set that trigger point as a ratio of common equity tier 1 capital to total risk-weighted assets of less than 5.125%. The European Banking Authority is mandated to draft technical standards by January 1, 2013 as to the procedures and timings for determining the trigger point, as well as the method and extent of any write-down or conversion to equity.

In addition to the minimum capital requirements, institutions are required to hold a capital conservation buffer of 2.5% of risk-weighted assets, to consist of common equity tier 1 capital, and they can be required to maintain a further institution-specific countercyclical capital buffer of between 0-2.5% of risk-weighted assets, again consisting of common equity tier 1 capital. As envisaged by Basel III, this latter buffer will be set by individual national authorities as required at times of excessive credit growth and can be set by a national authority at a level greater than 2.5% by national authorities for their own nations' institutions. Failure to maintain the required level of these buffers will result in restrictions on the ability of the institution to make distributions or other discretionary payments such as bonuses and discretionary pension benefits. The buffer provisions are to be phased in between January 1, 2016 and January 1, 2019.

Notably, CRD IV does not, at the moment, prescribe any additional capital requirements for institutions considered to be global systemically important institutions (which subject is covered later in the context of the Basel Committee's recommendations in this regard).

As to leverage, CRD IV would require institutions to monitor, and report to their regulators, the ratio of their tier 1 capital to the total amount of their exposures between January 1, 2013 and January 1, 2017. Unlike the Basel III recommendations, it contains no commitment for institutions to maintain any particular level of leverage ratio, although the European Commission has expressed an intention to introduce a binding leverage ratio from January 1, 2018.

CRD IV broadly mirrors the Basel III proposals for institutions to maintain a liquidity cover ratio, measuring the value of the institution's liquid assets against its projected net outflows for a period of 30 days of stressed market conditions, but contains no commitment in respect of the longer-term net stable funding ratio as proposed by Basel III. The European Commission has stated that it is committed to introducing such a ratio by 2018, but that it intends to propose legislation only at a later date, during the pre-2018 observation period proposed by Basel III for this ratio.

In addition to provisions relating to the quality and quantity of capital to be held by institutions and to levels of leverage and liquidity, CRD IV introduces provisions aimed at reducing reliance by institutions on external credit ratings. This is provided for, not by proscribing their use, but by requiring European member states to ensure that institutions do not rely solely or mechanistically on such ratings.

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In addition, in line with Basel III proposals, institutions are being encouraged under CRD IV to migrate as much as possible of their over-the-counter derivative, repo and stock lending activities through central clearing counterparties. This is being effected through changes to the existing counterparty credit risk regime in Europe, which subjects institutions to an additional capital charge to cover losses that might arise from a deterioration in the creditworthiness of their counterparties. Trades which are centrally cleared will achieve a lower capital charge, although not zero; in line with Basel III recommendations, CRD IV still prescribes a risk-weighting of at least 2% for trades with a central clearing counterparty. These provisions are intended to complement some of the provisions contained in the draft European Markets and Infrastructure Regulation in Europe, which has a similar scope to Title VII of the Dodd-Frank Act.

When in its final form, after consideration and approval by the European Council and the European Parliament, CRD IV is intended to become effective on January 1, 2013, although as noted above many of its individual provisions will only take full effect at a later date, or on a phased basis. The CRD IV draft regulations can be found at ***http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/20110720_regulation_proposal_part1_en.pdf, http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/20110720_regulation_proposal_part2_en.pdf,*** and ***http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/20110720_regulation_proposal_part3_en.pdf*** and the draft directive at ***http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/20110720_directive_proposal_en.pdf.***

**Peter J. Green, Oliver I. Ireland, Jeremy C. Jennings-Mares, David H. Kaufman, David M. Lynn, Anna T. Pinedo, Dwight C. Smith, Alexandra Steinberg Barrage, David A. Trapani, Indira Lall, and Jeremy R. Mandell contributed to this column.*

Where Are They Now?

I retired on August 1, 2005 after nearly 32 years in the Law Department at Wells Fargo & Company and its predecessors Northwest Bancorporation and Norwest Corporation in Minneapolis, Minnesota as an Assistant General Counsel. I was a member of the original ABASA Lawyers' Committee and chaired the Committee from 1998 through May, 2005. During my tenure, the Gramm-Leach-Bliley Act was enacted and the related prolonged regulatory process begun but not finished.

We currently spend our summers at our lake home in Northeastern Minnesota about 35 miles west of Duluth and our winters in Florida. My only association with the financial markets is as an investor. During my lifetime, I have visited each of the 50 states and several foreign countries. Many of the state visits were post-retirement. We have an 8-year old grandson in Connecticut who is on schedule to become a black belt in karate in October.

Life is good in retirement. I play golf but not as well as I wished I could. I am very glad that I missed Dodd-Frank.

Bruce Moland

Watch For

SEC Press Release 2011-185 (September 19, 2011) – The SEC proposed a rule to prohibit conflicts of interest in certain asset-backed securities transactions.

CFTC Press Release 6113-11 (September 16, 2011) – The CFTC 's Division of Market Oversight issued a letter providing temporary relief from the requirements of the Commission's regulations regarding large trader reporting of physical commodity swaps.

FINRA Regulatory Notice 11-42 (September 16, 2011) – FINRA provided firms with information on the Operations Professional qualification examination, related examination fee and special procedures on the initial rollout of the examination.

MSRB Notice 2011-55 (September 15, 2011) – The MSRB reminded dealers that the deadline for submitting ARS and VRDO documents to the SHORT System was September 22, 2011.

FINRA Regulatory Notice 11-41 (September 12, 2011) – FINRA provided guidance on the prohibition against offering favorable research to induce investment banking business.

MSRB Press Release (September 13, 2011) – The MSRB sought to change dealer professional qualification requirements. The changes are proposed to take effect on November 7, 2011.

FDIC Press Release 150-2011 (September 13, 2011) – The FDIC approved an Interim Final Rule that would require an insured depository institution with $50 billion or more in total assets to submit periodic contingency plans to the FDIC for resolution in the event of the financial institution's failure.

MSRB Notice 2011-54 (September 13, 2011) – The MSRB filed a proposed rule change with the SEC to require passage of the Series 52 examination in order for a municipal securities representative to engage in any municipal securities activities other than sales to or purchases from customers.

OCC Bulletin 2011-38 (September 12, 2011) – The OCC adopted an interim final rule amending its rule governing retail foreign exchange transactions to apply to Federal savings associations and making conforming changes to the required risk disclosure statements.

MSRB Press Release (September 12, 2011) – The MSRB announced it is delaying its municipal advisor rule proposals currently before the SEC until the SEC adopts a permanent municipal advisor definition under the Securities Exchange Act of 1934.

MSRB Notice 2011-53 (September 12, 2011) – The MSRB filed a proposed rule change to extend the effective date of the amendment to the continuing disclosure service of the MSRB's EMMA system to provide for the posting of credit rating and related information on the EMMA public website from no later than October 13, 2011 to no later than December 31, 2011.

MSRB Notice 2011-52 (September 12, 2011) – The MSRB alerted municipal market participants of the potential applicability of MSRB rules to certain "direct purchases" and "bank loans". The MSRB also withdrew certain municipal advisor rule proposals, which were pending with the SEC.

MSRB Notice 2011-50 (September 8, 2011) – The MSRB requested comment on revisions to draft Rule G-43 (broker's brokers) and revisions to draft amendments to Rule G-8 (books and records) and Rule G-9 (preservation of records). The MSRB also requested comment on a draft interpretive notice concerning the obligations of brokers, dealers, and municipal securities dealers that use the services of broker's brokers. Comments should be submitted no later than November 3, 2011.

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Watch For *(Continued from page 14)*

FDIC Press Release 148-2011 (September 7, 2011) – The FDIC announced the launch of a new program – the Investor Match Program -- to encourage small investors and asset managers to partner with larger investors to participate in the FDIC's structured transaction sales for loans and other assets from failed banks.

SEC Press Release 2011-176 (August 31, 2011) – The SEC sought public comment on the treatment of asset-backed issuers as well as real estate investment trusts and other mortgage-related pools under the Investment Company Act.

Federal Reserve Press Release (August 31, 2011) – The Federal Reserve Board sought comment on a proposed rule outlining the procedures for securities holding companies to elect to be supervised by the Federal Reserve. Comments will be accepted through October 11, 2011.

SEC Press Release 2011-175 (August 31, 2011) – The SEC sought public comment on the use of derivatives by mutual funds and other investment companies.

FINRA Regulatory Notice 11-40 (August 29, 2011) – The SEC approved amendments clarifying certain exceptions under trade reporting rules and adopted a notice requirement for transactions that are part of an unregistered secondary distribution; effective date is November 1, 2011.

MSRB Press Release (August 25, 2011) – The MSRB published its first report summarizing the type and number of continuing disclosure documents for municipal securities available on the MSRB's Electronic Municipal Market Access website.

Federal Reserve Press Release (August 22, 2011) – The Federal Reserve Board proposed a two-year phase-in period for most savings and loan holding companies to file regulatory reports. The Federal Reserve Board will accept comments on the proposal through November 1, 2011.

CFTC Press Release 6093-11 (August 19, 2011) – The CFTC and SEC sought public input for a joint study on stable value contracts.

FINRA Regulatory Notice 11-39 (August 18, 2011) – Further guidance on the application of FINRA rules governing communications with the public to social media sites and a reminder to firms of the recordkeeping, suitability, supervision and content requirements for such communications.

MSRB Press Release (August 15, 2011) – The MSRB will provide written verification of the registration status of municipal advisors and dealers so that state and local governments and others can verify that these firms are currently registered with the MSRB. Municipal advisors and dealers who wish to obtain a registration certificate should contact the MSRB Market Information Department at 703/797-6668 or email ***MarketInformation@msrb.org.***

Federal Reserve Press Release (August 22, 2011) – The Federal Reserve Board issued an interim final rule establishing regulations for savings and loan holding companies. The Board will accept comments on the interim final rule through October 27, 2011.

MSRB Notice 2011-44 (August 12, 2011) – The MSRB published a notice clarifying certain requirements of Rule G-34(c), on variable rate security market information, which requires dealers to report information related to Auction Rate Securities and Variable Rate Demand Obligations to the MSRB Short-term Obligation Rate Transparency (SHORT) System.

SEC Press Release 2011-167 (August 12, 2011) – The SEC's new whistleblower program went into effect and a new webpage was launched to help people report violations of the federal securities laws and to apply for financial awards.

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Watch For *(Continued from page 15)*

MSRB Notice 2011-42 (August 10, 2011) – The MSRB requested comment on draft amendments to Rule G-21 (advertising) and on a draft interpretive notice concerning the application of Rule G-17 (fair dealing) to certain communications. The MSRB also requested comment on draft Rule G-46 (activities of municipal advisors). Comments were due by September 14, 2011.

MSRB Notice 2011-40 (August 8, 2011) – The MSRB reminded brokers, dealers, and municipal securities dealers that, in spite of any market disruption that may result from potential municipal rating actions, all MSRB rules continue to apply, including rules on fair practice, trade pricing, suitability and disclosure.

FINRA Regulatory Notice 11-38 (August 8, 2011) – In response to the downgrade of the United States long-term credit rating by Standard & Poor's issued on August 5, 2011, this notice provided guidance to firms on the application of the SEC's Net Capital and Customer Protection Rules to U.S. Treasury securities and other securities issued, or guaranteed as to principal and interest, by the United States or any of its governmental agencies.

Joint Press Release (August 5, 2011) – The federal banking agencies issued guidance on federal debt. For risk-based capital purposes, the risk weights for Treasury securities and other securities issued or guaranteed by the U.S. government, government agencies, and government-sponsored entities will not change. The treatment of Treasury securities and other securities issued or guaranteed by the U.S. government, government agencies, and government-sponsored entities under other federal banking agency regulations, including, for example, the Federal Reserve Board's Regulation W, will also be unaffected.

FINRA Regulatory Notice 11-37 (August 5, 2011) – As of August 8, 2011, the trading pause pilot rule—which had been applicable only to securities included in the S&P 500® Index, the Russell 1000® Index and a list of selected exchange-traded products (ETPs)—was expanded to include all National Market System (NMS) stocks.

MSRB Press Release (August 3, 2011) – The MSRB warned about the application of federal securities laws to private placements in the municipal market and that "bank loans" may, depending on the specific terms and conditions, be municipal securities.

MSRB Press Release (August 2, 2011) – The MSRB proposed groundbreaking rules on municipal securities underwriters' obligations to state and local government bond issuers.

FINRA Regulatory Notice 11-35 (July 29, 2011) – FINRA modified the process for firms to designate their allocation methodology for options exercise assignment notices; effective date was August 8, 2011.

OCC Bulletin 2011-34 (July 28, 2011) – The OCC adopted a final rule that authorized national banks, Federal branches and agencies of foreign banks, and their operating subsidiaries to engage in certain off-exchange transactions in foreign currency with retail customers.

Federal Reserve Press Release (July 28, 2011) – The Federal Reserve Board sought comment on a proposal that sets standards for banking organizations engaged in certain types of foreign exchange transactions with retail customers. Comments are due by October 11, 2011.

FINRA Regulatory Notice 11-34 (July 27, 2011) – FINRA reaffirmed its guidance in NTM 00-02 concerning the solicitation of business in foreign jurisdictions and also withdrew NTM 98-91 in light of legal and regulatory framework changes in the United Kingdom.

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Watch For *(Continued from page 16)*

SEC Press Release 2011-157 (July 27, 2011) – SEC staff issued a report identifying common weaknesses seen in sales of structured securities products and described measures by broker-dealers to better protect retail investors from fraud and abusive sales practices.

SEC Press Release 2011-156 (July 26, 2011) – The SEC re-proposed new shelf eligibility requirements for asset-backed securities.

SEC Press Release 2011-155 (July 26, 2011) – The SEC adopted new short form criteria to replace credit ratings.

MSRB Notice 2011-34 (July 26, 2011) – The MSRB filed a proposed rule change to establish a new interim municipal advisor assessment under new Rule A-11 and sought comment on a draft municipal advisor survey. Comments were due by September 12, 2011.

SEC Press Release 2011-154 (July 26, 2011) – The SEC adopted a new rule establishing large trader reporting requirements to enhance the agency's ability to identify large market participants, collect information on their trading, and analyze their trading activity.

CFTC Press Release 6078-11 (July 25, 2011) – The CFTC and SEC sought public comment for a joint study on international swap regulation.

FINRA Regulatory Notice 11-33 (July 22, 2011) – The SEC approved FINRA's proposal to establish a registration category and qualification examination requirement for certain operations personnel, and consolidated FINRA's Continuing Education rule. The rule becomes effective October 17, 2011.

SEC Press Release 2011-150 (July 20, 2011) – The SEC issued an investor bulletin highlighting some of the most significant risks that foreign currency exchange transactions may pose for individual investors.

OCC News Release 2011-95 (July 20, 2011) – The OCC issued a final rule implementing several provisions of the Dodd-Frank Act, including changes to facilitate the transfer of functions from the OTS and revisions to the OCC's rules on preemption and visitorial powers.

MSRB Notice 2011-33 (July 19, 2011) – The MSRB requested comment on a proposal to collect and disseminate information on 529 College Savings Plans.

FINRA Regulatory Notice 11-31 (July 15, 2011) – FINRA Rule 4240 established an interim pilot program with respect to margin requirements for certain transactions in credit default swaps. This *Notice* addressed FINRA's approval of margin methodologies used by clearing agencies or derivatives clearing organizations for purposes of Rule 4240. Effective date, July 16, 2011. FINRA has extended the Interim Pilot Program to January 17, 2012.

Federal Reserve Press Release (July 14, 2011) – The Federal Reserve Board issued a final rule to repeal Regulation Q, which prohibited the payment of interest on demand deposits.

Joint Press Release (July 5, 2011) – The federal bank regulatory agencies issued guidance to help ensure banking organizations practice effective counterparty credit risk management.

SEC Press Release 2011-141 (July 1, 2011) – The SEC provided additional guidance, interim relief and exemptions for security-based swaps under the Dodd-Frank Act.

OCC News Release 2011-84 (June 30, 2011) – The OCC issued guidance to banks regarding foreclosure practices.

Federal Reserve Press Release (June 29, 2011) – The Federal Reserve issued a final rule establishing standards for debit card interchange fees and prohibiting network exclusivity arrangements and routing restrictions.

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Watch For
(Continued from page 17)

Federal Reserve Press Release (June 29, 2011) – The Federal Reserve and other central banks announced an extension of the existing temporary U.S. dollar liquidity swap arrangements through August 1, 2012.

SEC Press Release 2011-137 (June 29, 2011) – The SEC proposed business conduct standards for security-based swap dealers and major security-based swap participants.

FINRA Regulatory Notice 11-30 (June 27, 2011) – FINRA revised the treatment of non-margin eligible equity securities and delayed the effective date to October 3, 2011.

SEC Press Release 2011-133 (June 22, 2011) – The SEC adopted Dodd-Frank Act amendments to the Investment Advisers Act.

MSRB Notice 2011-31 (June 21, 2011) – The MSRB filed revisions to the Series 51 study outline.

FINRA Regulatory Notice 11-29 (June 17, 2011) – Frequently asked questions on market orders and a new implementation date of September 26, 2011 for FINRA Rule 5131(b) and (d)(4).

Available Publications

August 12, 2011 – The FDIC's *Compliance Examination Manual* has been updated to incorporate new statutes, regulations, examination procedures and guidance – ***http://www.fdic.gov/regulations/compliance/manual/index_pdf.html.***

July 21, 2011 – The MSRB published a new report on municipal variable rate securities interest rate and trading data, available on the MSRB's EMMA website.

The July 2011 issue of *The User's Perspective,* the GASB's electronic user-oriented newsletter, is available on the GASB website – ***www.gasb.org.***

June 28, 2011 – The FFIEC issued a supplement to the *Authentication in an Internet Banking Environment* guidance. The supplement reinforced the risk-management framework described in the original guidance and updated the FFIEC member agencies' supervisory expectations regarding customer authentication, layered security, and other controls in the increasingly hostile online environment.

Happy 20th Anniversary, FMA!

Program Update

2011 Legal & Legislative Conference

Last Chance to Register! FMA's 20th **Legal & Legislative Conference** will take place **October 20 – 21** at the Four Points Sheraton Hotel here in Washington, DC. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance officers/risk managers, internal auditors and regulators. Participants are provided an opportunity to share information on current legal and regulatory developments as well as network with peers. And, **attendees are eligible for CLE and CPE accreditation**.

The Program Planning Committee has devised a timely agenda including noted industry leaders and senior regulatory officials. Members include: **Russell Bruemmer** *(WilmerHale LLP)*; **Kevin Fein** *(Citizens Wealth Management Group)*; **Kevin MacMillan** *(U.S. Bank)*; **Barbara Mendelson** *(Morrison & Foerster LLP)*; and **Richard Pearson** *(Balch & Bingham LLP)*.

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

General Counsels

- Scott Alvarez ■ FRB
- Dan Berkovitz ■ CFTC
- Mark Cahn ■ SEC
- Michael Krimminger ■ FDIC
- Marc Menchel ■ FINRA
- Julie Williams ■ OCC

Current Developments

- Robert Tortoriello ■ Cleary Gottlieb Steen & Hamilton LLP

Legislative Update with Hill Staffers

- Jim Clinger ■ House Financial Services Committee
- Charles Yi ■ Senate Banking Committee

Navigating the Dodd-Frank Whistleblower Rules

- Anthony Cavallaro ■ FINRA
- Matt Morley ■ K&L Gates LLP
- Lori Richards ■ PricewaterhouseCoopers LLP

Derivatives

- Kenneth Raisler ■ Sullivan & Cromwell LLP
- Jess Sharp ■ U.S. Chamber of Commerce
- Greg Todd ■ Bank of America

An End to Too Big to Fail?—SIFIS, Living Wills and Enhanced Regulation of Large Institutions

- Angelo Aldana ■ Mizuho Corporate Bank, Ltd.
- John C. Murphy, Jr. ■ Promontory Financial Group, LLC
- Mark Van Der Weide ■ Federal Reserve Board
- James Wigand ■ Federal Deposit Insurance Corporation

Secondary Mortgage Market: Looking Into the Crystal Ball

- Robert Bostrom ■ SNR Denton US LLP
- Stephen Kudenholdt ■ SNR Denton US LLP
- Alfred Pollard ■ Federal Housing Finance Agency

SEC Division Reports

- David Blass Trading and Markets
- Carlo di Florio ■ Office of Compliance Inspections and Examinations
- Hunter Jones ■ Investment Management
- Jennifer Marietta-Westberg ■ Risk, Strategy, and Financial Innovation
- Shelley Parratt ■ Corporation Finance
- Lorin Reisner ■ Enforcement

Cross-Border Insolvency and Resolution Issues

- Gary Lee ■ Morrison & Foerster LLP
- Debra Stone ■ Federal Reserve Bank of New York

Public Finance Initiatives

- Ernesto Lanza ■ MSRB
- Cristeena Naser ■ American Bankers Association
- Donald Smith ■ K&L Gates LLP

Dodd-Frank Act Update—Volcker Rule

- Margaret Grieve ■ Bank of America
- Randall Guynn ■ Davis, Polk & Wardwell
- Christopher Paridon ■ Federal Reserve Board

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2011 Legal & Legislative Conference

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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 or CPE by year-end). And, contact Dorcas Pearce *(dp-fma@starpower.net or 202/544-6327)* if you have questions or wish to register…2-for-1 team & agency/government personnel discounts are available.

FMA gratefully acknowledges these sponsors of FMA's 2011 Legal and Legislative Issues Conference:

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2012 Securities Compliance Seminar

PHOENIX is the front-runner city to host FMA's 2012 spring **Securities Compliance Seminar**, a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators. Current dates under consideration include April 18 – 20, April 25 – 27, May 2 – 4 and May 9 – 11. Final dates will appear on FMA's website shortly and will also be included in the December issue of *Market Solutions*.

The Planning Committee is now being assembled to begin work on program development. Contact Dorcas Pearce ***(dp-fma@starpower or 202/544-6327)*** to volunteer…as a committee member, a general session panelist, workshop facilitator or peer discussion leader…or to share topical and/or speaker suggestions. Please note…speakers receive a complimentary registration and are encouraged to attend as much of the seminar as possible…a great incentive in this budget-challenged environment.

FMA needs your input! A survey will be emailed within the next two weeks asking for "hot topic"/best practice ideas and speaker recommendations…you may even choose to volunteer! **Please email your thoughts to Dorcas Pearce by October 31**.

CPE / CLE accreditation…and team discounts…will be available, so be sure to budget for, and plan to attend, the 21st annual Securities Compliance Seminar next spring.

FMA is currently seeking seminar exhibitors and vendors. So that FMA can be most responsive, please suggest vendors or products that FMA can invite to participate at the 2012 Securities Compliance Seminar. Thanks!

Who's News

Alma Angotti, formerly Senior Special Counsel at FINRA, has joined Navigant's Global Investigations and Compliance Practice as a Director in their Washington, DC office. She will focus on AML, anti-bribery and corruption and other compliance issues.

John Bahr has joined U.S. Bancorp Investments, Inc. as a Supervision Principal in their Spokane office, covering Montana, Idaho and Washington.

Darrin Benhart has been named Deputy Comptroller for Credit and Market Risk at the OCC.

Robert Bostrom, formerly EVP, General Counsel & Corporate Secretary at Freddie Mac, has joined SNR Denton US LLP as Co-Head of their Global Financial Institutions Practice in the New York office.

Jamie Brigagliano, Deputy Director of the Division of Trading and Markets at the U.S. Securities and Exchange Commission, is leaving to join Sidley Austin LLP in their Washington, DC office.

Richard Thayer Burrow has formed **RTB Brokerage Regulatory Compliance, LLC** offering independent Broker-Dealer consulting services with over 20 years experience in the securities industry in the development of risk based internal supervisory controls and testing in the areas of: Operations, Trading, Margin, Investment Advisor, OATS Reporting and CEO Certification program development. For further information, please contact: ***rtbbrcllc@gmail.com*** or 646/808-5092.

Peggy Chastain, formerly Risk and Compliance Vice President at Fidelity Investments in Boston, recently joined the Wells Fargo Wealth Compliance group in San Francisco.

Kimberly Davis-Riffe was recently admitted into the Partnership of KPMG LLP. She co-leads the firm's National Mortgage and Consumer Lending Advisory Practice and is based in McLean, Virginia.

Mark Egert, formerly a Partner at Crowell & Moring's Corporate, Financial Services and White Collar & Regulatory Enforcement groups, has joined Brown Brothers Harriman as Director of Compliance.

Mark Gillett, formerly a Partner at Morrison & Foerster LLP, has joined Union Bank as Vice President & Senior Counsel in their Legal Division.

Andrew Kales, formerly an Associate at Goodwin Procter LLP, has joined Bingham McCuthchen's Washington, DC office as Of Counsel in their Financial Institutions Corporate and Regulatory practice group.

Elizabeth Khalil, formerly a senior associate in the Financial Institutions Group at Hogan Lovells US LLP, has joined the FDIC's Supervisory Policy Branch as a Senior Compliance Policy Analyst.

Don Lampe, formerly a Partner at Womble Carlyle Sandridge & Rice, PLLC, has joined the law firm of Dykema Gossett PLLC in Charlotte, NC where he will head the firm's national Financial Services Regulatory and Compliance Practice.

Ernesto Lanza has been named Deputy Executive Director & Chief Legal Officer at the Municipal Securities Rulemaking Board.

Michael Lugowski, formerly VP/Senior Compliance Officer at SunGard Institutional Brokerage Inc., has joined Alaric Compliance Services, LLC as Director of Compliance.

Marianne Smythe, formerly a Partner & Head of the Investment Management Practice Group at WilmerHale LLP and also a former Director of the Division of Investment Management at the U.S. Securities and Exchange Commission, has become a consultant to Atlantic Fund Services, a global services outsource provider, with the title of Vice President for Regulatory Administration.

Charles Taylor has been named Deputy Comptroller for Capital and Regulatory Policy at the OCC.

Caesar Velasco, formerly a corporate and financial institutions paralegal at WilmerHale, has joined Danaher Corporation as senior corporate paralegal. At Danaher, Caesar is focusing on subsidiary management and corporate governance.

Meg Zucker, formerly Executive Director in Morgan Stanley's Global AML Group, has joined PIMCO as its Global AML Officer.