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MARKET SOLUTIONS

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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* 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.

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FINANCIAL MARKETS ASSOCIATION

Assessing FINRA's Priorities and Results

By Richard G. Wallace and Joseph D. Edmondson, Jr.
Foley & Lardner LLP

The enforcement mission of the Financial Industry Regulatory Authority (FINRA) is, by design, a public one. Not only does it publicize the filing, settlement and adjudication of cases it brings against regulated persons and entities, it also regularly communicates with its membership and the public regarding its goals. As such, there are two basic sources of information about examination and enforcement priorities. The first source is FINRA's annual examination priorities letter. The second source is the information FINRA makes public about its disciplinary actions.

FINRA's Priorities: The Examinations Priorities Letter

On January 11, 2013, FINRA published its examination priorities letter for the coming year. This year's letter is significantly more focused and shorter than prior letters. The letter identifies 18 areas that will be the focus of FINRA's examinations and enforcement efforts, grouped into four major categories, each of which is discussed below. Amid the tried and true general areas of attention—such as retail investor suitability, which is perennially on its list—FINRA has added some very specific priorities, such as the use of "kill switches," as a failsafe against extreme trading events, which are more pointed than any prior guidance.

The letter's first category of priorities comes under the heading "Business Conduct and Sales Practice Priorities." Continuing a theme from prior years, the letter cautions that "retail investors have been challenged to find attractive returns within their risk tolerance." With this and other concerns in mind, FINRA will be looking at suitability, sales of complex products, microcap fraud, private placement securities, anti-money laundering, automated investment advice, and branch office supervision, among other issues. As in prior years FINRA has said it will focus on protecting retail investors. Of special note is FINRA's interest in cyber-security and data integrity, a priority that FINRA is likely to explore through examination of firms' policies, procedures and controls surrounding the protection of sensitive customer information from breaches, unauthorized access, and other disruptions.

Each year certain products and investments are identified as the subject of FINRA's scrutiny. This year business development companies, leveraged loan products, commercial mortgage-backed securities, high-yield debt instruments, structured products, exchange traded funds and notes, non-traded REITS, closed-end

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LAST CHANCE TO REGISTER for FMA's JUNE 19 BOND MARK-UP WORKSHOP
June 19, 2013 ■ Convene Center ■ New York, New York

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 selected developments in connection with **Title I**, **II**, and **VII** of the **Dodd-Frank Act**, the **Consumer Financial Protection Bureau**, and an update on certain developments regarding **Basel III**, the **UK's Financial Services Act**, and the **EU's Capital Requirement Directive.**

DODD-FRANK ACT TITLE I AND II

Significant Nonbank Firms "Predominantly Engaged in Financial Activities"

On April 3, 2013, the Federal Reserve Board adopted a final rule that specifies when a nonbank financial company is "predominantly engaged" in financial activities for the purposes of the Dodd-Frank Act Title I (systemic regulation). In turn, nonbank financial firms that meet this standard would be eligible for designation by the Financial Stability Oversight Council ("FSOC") as "systemically important" and subject to enhanced regulation under the Dodd-Frank Act.

The rule includes within the definition of "financial activities" those activities that are financial in nature under Section 4(k) of the Bank Holding Company Act, which includes the full list of activities that are closely related to banking under Section 4(c)(8) and the Board's Regulation Y. The rule also covers activities that are performed internally for a bank holding company. In some cases, the Board has not incorporated into the "financial activity" definition those activity conditions (financial or prudential) that are not part of the statutory authority for specified activity. In other cases, however, the Board has either discarded statutory conditions of a particular financial activity in defining it as such, or incorporated administrative conditions into the "financial activity" definition. Among the types of firms that the Board believes are engaged in "financial" activities are mutual funds and other types of investment funds, and these entities may now be subject to FSOC designation.

The net effect of the Board's action is to expand the types of activities that might qualify as financial activities for purposes of applying the "predominantly engaged" test, and thus enlarge the population of large nonbank firms that might potentially be designated as systemically important financial firms. Nonbank financial firms, therefore, should be mindful of the impact of the Board's final rule and proceed accordingly. To learn more, see our News Bulletin at ***http://www.mofo.com/files/Uploads/Images/130404-Federal-Reserve-Board.pdf.***

Further, on June 4, 2013, the FDIC adopted a final rule establishing criteria for determining if a company is predominantly engaged in "activities that are financial in nature or incidental thereto" for purposes of Title II of the Dodd-Frank Act. A company that is predominantly engaged in such activities is a "financial company" for purposes of Title II unless it is one of the few entities specifically excepted by the Act. A financial company, other than an insured depository institution, may be subject to Title II's orderly liquidation authority if, among other things, it is determined that the failure of the company and its resolution under otherwise applicable law would have serious adverse effects on financial stability in the United States. In developing

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FMA Welcomes New Members!

Steve Bischoff	National Alliance Securities
Jametriss Roulhac Boone	Florida Office of Financial Regulation
Gerardo Brignone	Santander Private Banking
Cindy Brown	Sterne, Agee & Leach, Inc.
Truman Butler	Wells Fargo
Jane Cameron	Zions Bank
Greg Carlin	S&P Capital IQ
Dan Casto	WilmerHale
Chris Charles	Wulff, Hansen & Co.

Assessing FINRA's Priorities and Results…

Continued from Page 1

funds, municipal securities, variable annuities, low-priced OTC securities, and private placement securities were specifically mentioned.

"Insider Trading" is the second broad category listed, replacing "Microcap Fraud," which was the second priority on the 2012 letter (although it lives on as an item of interest in the Sales Practice category). FINRA emphasized the need for firms to be "vigilant" in protecting material non-public information, suggesting six specific controls, in the form of reviews, training, and policies and procedures, that firms should assess for adequacy. While none of these controls is novel, the thrust of FINRA's objective will be aimed at ensuring that the controls are fully-implemented and followed by employees.

> *"This year's [exam priorities) letter is significantly more focused…than prior letters."*

"Financial and Operational Priorities" is the third category and includes a detailed reiteration of the requirement that firms follow GAAP in appropriately valuing and accounting for guarantees and contingencies, with an eye toward net capital requirements. The letter also discusses concerns in the area of margin lending and, in light of historically-low interest rates, the potential of mismatches between the maturities of a firm's assets and liabilities.

"Market Regulation Priorities" rounds out the major categories discussed in the letter. In this category, some of the priorities—such as FINRA's concerns about automated investment advice, alternative trading systems, and large options position reporting—are new priorities. In light of the market's vulnerability to disruption, FINRA will "focus significant resources" on algorithmic trading, high-frequency trading abuses, alternative trading systems, and options origin codes. At an October 2012 SEC Roundtable on Market Technology, academic and industry panelists vigorously discussed the concept of exchange "kill switches" as a response to recent market disruptions. The 2013 letter declares that FINRA will "focus on whether broker-dealers have firmwide disconnect or 'kill' switches, as well as procedures for responding to widespread system malfunctions." Presumably FINRA's requirement that firm's have a kill switch is derived from the SEC's Market Access Rule, 15c3-5, rendered subject to FINRA's enforcement authority through FINRA Rule 2010.

While some priorities from prior years are not mentioned in the 2013 letter, no one should assume that FINRA staff will not vigorously pursue such staples of FINRA enforcement such as information barriers, email retention and review (beyond the specific references as part of insider trading controls), OATS, and advertising. Just as supervision plays a part in a large portion of FINRA's disciplinary actions, FINRA's emphasis on reviewing member firm supervision is woven throughout the letter.

FINRA's Results: Disciplinary Actions Against Firms and Associated Persons

In 2012, FINRA brought 1,541 disciplinary actions, levied $68 million in fines and ordered $34 million in restitution. While FINRA reports the total number of cases resolved each year, it does not provide a breakdown of actions by subject area. FINRA does publish a monthly summary of disciplinary actions that meet the publication criteria established in FINRA Rule 8313. For a small subset of more prominent cases, FINRA also publishes a press release. Since 2009 the number of firms named in press releases about disciplinary actions has fluctuated between 30 and 40 per year. The current practice appears to be to issue a press release only for actions with fines or restitution of $300,000 or more.

FINRA's "Disciplinary Actions" webpage generally does not cite the section of law, federal securities regulation, or FINRA rule violated. Thus, it is impossible to derive a precise breakdown of the rules being enforced in FINRA disciplinary actions from the 709 pages of published disciplinary actions for 2012. Now that FINRA makes all disciplinary actions searchable through its Disciplinary Actions Online Database it is possible—though not easy—to obtain greater insight into the results of FINRA's disciplinary actions.

In 2012, FINRA published descriptions of 401 disciplinary actions against 312 different FINRA member firms. Sixty firms were the subject of multiple disciplinary actions. Among actions against firms in 197 instances, or 49 percent, there was a

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Assessing FINRA's Priorities and Results…

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finding of some form of supervisory violation. Many actions against firms included more than one non-supervisory violation. FINRA brought approximately 1,140 actions against individuals associated with member firms, barring 294 individuals and suspending 549.

The 25 press releases about disciplinary actions in 2012 were strongly focused on cases with customer harm. The most common violations, other than supervision, described in the press releases were fraud, pricing, and markups.

There is some overlap in the following breakdown of non-supervisory violations as many cases involve a finding of more than one rule violation.

> *"…no one should assume that FINRA staff will not vigorously pursue such staples of FINRA enforcement such as information barriers, email retention and review (beyond the specific references as part of insider trading controls), OATS, and advertising."*

Cases against firms involving customer harm from fraud, deceptive sales practices, suitability, and pricing (e.g., mark-ups, excessive compensation, and best execution) accounted for approximately 24 percent of the violations. Cases involving customer harm usually result in stiff sanctions and generally represent a significant allocation of FINRA's enforcement resources. FINRA also brought numerous cases for failure to supervise the conduct of associated persons which could, or did, lead to customer harm.

FINRA actions against firms involving some form of reporting or disclosure requirement (OATS, TRACE, RTRS, equity reporting, short interest reporting, U-4/U-5 disclosure, customer complaints, etc.) represented 40 percent of the non-supervisory violations for which sanctions were imposed by FINRA. Other areas not involving direct customer harm or risk (e.g., email retention, books and records, AML reporting, and improper responses to FINRA inquiries) accounted for another 14 percent of violations. Failure to comply with prophylactic regulations designed to protect investors (e.g., registration requirements, net capital and reserves, and short sale restrictions) were involved in approximately 13 percent of the findings.

In the first five months of 2013, FINRA has issued press releases about disciplinary actions involving AML compliance, best execution, supervision of wire transfers to third parties, email retention and review, and suitability.

Conclusion

FINRA's statement of examination priorities adds transparency to FINRA's examination and disciplinary process and is a helpful tool to promote compliance through education. Firms will also gain insight into FINRA's priorities by examining the cases brought last year as they tend to be an excellent predictor of types of cases that will be brought in the next year. ■

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The opinions expressed are those of the authors and do not necessarily reflect the views of the firm, or its clients. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

FMA Welcomes *More* New Members!

Troy Clark	Stephens Inc.
Jim Cooper	Zions Bank
Michelle Dávila	Franklin Templeton Investments
Steve Dean	RBS Citizens
Ann DiGiorgio	UnionBanc Investment Services
Frank Dos Santos	S&P Capital IQ
Robert Doty	AGFS
Jeri Dresner	SEC / Miami Regional Office
Karen Du Brul	MSRB
Mark duRivage	Charles Schwab

Legislative/Regulatory Actions

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the final rule the FDIC consulted and coordinated with staff from Treasury and the Federal Reserve and considered the Board's above mentioned final rule when making determination for which activity would be considered financial in nature.

Systemically Significant Nonbank Financial Institutions

In a June 3, 2013 closed-door meeting, the FSOC voted to propose the designation of three financial services companies as the first systemically significant nonbank financial institutions ("nonbank SIFIs") under section 113 of the Dodd-Frank Act. The FSOC decision, announced by the Treasury Secretary, did not identify specific names; but AIG, Prudential Financial and GE Capital each publicly confirmed its proposed nonbank SIFI status. If these proposed designations become final, the three companies will become the first nonbank SIFIs to be subjected to stringent Board oversight and supervision, as well as to capital and other regulatory requirements, under Title I of the Dodd-Frank Act. Should a designated company fail or be in danger of failing in the future, it may become subject to the Dodd-Frank Act's orderly liquidation authority that applies to systemically significant financial firms. For more information on the FSOC's proposed designation please read our Client Alert at ***http://www.mofo.com/files/Uploads/Images/130604-FSOC-Proposes-the-First-Three-Nonbank-SIFIs.pdf.***

DODD-FRANK ACT TITLE VII

The phase-in of the Dodd-Frank Act and the CFTC's regulations thereunder continues. The primary new developments are as follows:

- Numerous CFTC regulations have gone into effect in recent weeks. Most notably, May 1 saw many of the regulator's external business conduct rules become effective, including rules relating to, among other things, risk disclosures, confidential treatment of counterparty information, clearing disclosures, recommendations to counterparties, and requirements for dealings with counterparties that are "special entities," including certain municipalities and pension funds. Prior to May 1, counterparties, faced with the possibility of not being able to transact with swap dealers, rushed to adhere to the ISDA August DF Protocol, the industry's primary tool to address the complex representations and disclosures that the external business conduct rules require.
- The CFTC has also issued new final rules, which are scheduled to become effective in the coming weeks. Most significant among these are the much-anticipated rules regarding the operation of swap execution facilities ("SEFs"), which the CFTC issued on May 16 and 17 in three lengthy releases.. The rules address such matters as core principles and other requirements for SEFs; the process for a designated contract market or SEF to make a swap available to trade, and procedures to establish minimum block sizes for which certain reporting will be delayed. Other recently released CFTC final rules relate to the exemption from the mandatory clearing requirement for swaps between affiliates, and identity theft red flag rules applicable to swap dealers and major swap participants.

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FMA Welcomes *More* New Members!

Ana Dutra	Itau Private Bank
Lauren Epstein	Renaissance Regulatory Services, Inc.
David Fischer-Lodike	Edward D. Jones & Co., L.P.
Doreen Fisher	Southwest Securities, Inc.
Meredith Gay	Regions Financial Corporation
Mary Glancey	Janney Montgomery Scott LLC
Melissa Goldate	Greenberg Traurig, PA
Amy Heaney	AM Global Wealth Management
Zulay Hunter	GenTrust Wealth Management, LLC
Mark Hutchinson	HSBC Securities (USA), Inc.
Lou Igo	Ameriprise Financial

Legislative/Regulatory Actions

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- The SEC, which is responsible for regulating security-based swaps, in early May, released its proposed rules regarding cross-border security-based swap activities. Because of the international nature of the swaps market, the cross-border aspects of the implementation of Title VII of Dodd-Frank are among the most challenging. The CFTC first proposed its cross-border guidance in June 2012, but its proposal has proved controversial and the CFTC has not yet finalized it. The market's early reaction to the SEC's proposed cross-border rules has been encouraging, with the SEC proposed rules being viewed as more workable and more accommodating than the CFTC's proposed guidance.
- The implementation of mandatory clearing continues. Already applicable for specified types of vanilla interest rate swaps and credit default swaps between Category 1 entities (which include swap dealers, major swap participants and active funds), required clearing went into effect on June 10 for Category 2 entities, which include commodity pools, private funds other than active funds, and persons predominantly engaged in the banking business or financial activities. For all other market participants, subject to the exception to mandatory clearing for end-users, mandatory clearing is scheduled to go into effect on September 9. Market participants should continue to consider carefully their documentation needs in relation to clearing, which may include one or more of a Futures Account Agreement, a Cleared Derivatives Addendum and a Cleared Swap Execution Agreement.
- The application of the CFTC's rules to swaps entered into by securitization vehicles continues to cause questions, with industry groups attempting (thus far, without success) to receive in writing from the CFTC confirmation of the regulator's apparent view that swaps containing certain terms typical in the context of securitizations, but quite atypical in the context of clearinghouses, will not be required to be cleared. Separately, the CFTC extended, subject to conditions, no-action relief that it had previously given to operators of securitization vehicles possibly falling within the definition of "commodity pool" by reason of the vehicles' entering into swaps. For further details, please see the Morrison & Foerster News Bulletin at ***http://www.mofo.com/files/Uploads/Images/130410-CFTCs-Further-No-Action-Relief.pdf.***
- Much uncertainty remains as the market continues to await further guidance relating to margin for OTC transactions, final rules regarding the nature of Dodd-Frank's extraterritorial reach, the Volcker rule, the swaps push out rule and the possibility of partial unwind or corrective legislation. In addition, for information regarding the first significant legislative initiative to replace the current set of U.S. federal income tax rules applicable to financial derivatives with a "mark-to-market" regime, please see the Morrison & Foerster News Bulletin at ***http://www.mofo.com/files/Uploads/Images/130430-Tax-Talk.pdf.***

Also, on June 5, 2013, the Board approved an interim final rule clarifying the treatment of

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Legislative/Regulatory Actions

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uninsured U.S. branches and agencies of foreign banks under the so-called swaps push-out provision of Section 716 of the Dodd-Frank Act (the "Lincoln Amendment"). The rule accords such branches and agencies parity with U.S. insured depository institutions for purposes of the Lincoln Amendment. The Board's rule also establishes a procedure for it to approve, in consultation with the SEC or the CFTC, as appropriate, an application by an uninsured state branch or agency of a foreign bank, or state member bank, for a transition period of up to 24 months from the effective date of the Lincoln Amendment to bring itself into compliance with Section 716, with the possibility of a one-year extension. The Board's transition period process does not apply to uninsured federally-licensed branches; the OCC would need to implement a transition period approval process for those branches and agencies, as it previously did for national banks. For more information please see the Morrison & Foerster Client Alert at ***http://www.mofo.com/files/Uploads/Images/130606-Interim-Final-Rule-for-Foreign-Banks.pdf.***

CONSUMER FINACNIAL PROTECTION BUREAU

Litigation Challenges CFPB Appointment

Litigation continues in Noel Canning v. NLRB, where the U.S. Court of Appeals for the D.C. Circuit recently ruled that President Obama improperly used his recess appointment authority to appoint three members to the National Labor Relations Board. Bureau watchers continue to buzz about the implications of this case, as CFPB Director Richard Cordray was appointed under the same circumstances.

The NLRB and the Obama Administration filed their petition for certiorari on April 25, 2013. Noel Canning did not oppose the petition in its response, and recently filed a reply brief. Supreme Court watchers expect the Supreme Court to grant the petition, although the case will not be heard until the fall at the earliest.

In the meantime, the Third Circuit agreed with the D.C. Circuit, finding recess appointments to the NLRB in 2010 were invalid as well. NLRB v. New Vista Nursing & Rehab., No. 11-3440 et al., 2013 U.S. App. LEXIS 9860 (3d Cir. May 16, 2013). The Third Circuit relied on reasoning different from that of the D.C. Circuit, but reached the same conclusion.

Expanding Access to Credit

Regulation Z's ability-to-pay requirements have been called into question by policy makers, industry participants and consumer advocacy groups ever since the Federal Reserve Board applied the CARD Act's "independent" income standard to applicants of all ages. As a result of the Board's interpretation, spouses and other family members who did not work outside the home and were unable to demonstrate an independent income source were denied access to credit.

In response to criticism, the CFPB recently finalized an amendment to Regulation Z's ability-to-pay requirements to expand access to open-end credit to those spouses, partners, and family members who do not earn income outside of the home. The amendment permits a credit card issuer to consider income to which an applicant has a "reasonable expectation of access" that is used to regularly pay the applicant's expenses, such as a bank account funded by a working family member.

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FMA Welcomes *More* New Members!

Bonnie Kirksey	BBVA Compass
Avery Kranz	KGS Alpha
Patrick Laino	Morgan Stanley
Doug Landy	Milbank, Tweed, Hadley & McCloy LLP
Rick Lane	TD Securities (USA) LLC
Don Litteau	FINRA
Bart McDonald	Renaissance Regulatory Services, Inc.
Kim McManus	Alternative Regulatory Solutions, LLC
Rodney Mann	Sapient Global Markets
John Mariani	Shutts & Bowen LLP

Legislative/Regulatory Actions

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Issuers may assess an adult applicant's ability to pay in a variety of ways. However, the CFPB opted not to permit issuers to rely solely on responses to prompts for household income, citing concerns that applicants may mistakenly think they have a reasonable expectation of access to their roommates' income. Nonetheless, the amended requirements permit issuers to exercise flexibility in assessing a consumer's access to income in several different ways. The amendments also clarify that compliance with Regulation Z's updated standard will not create fair lending compliance risk for credit card issuers, as the CARD Act and Regulation Z require the issuers to make a distinction between those under the age of 21 and adult consumers.

First-Year-Fee Rule Creates Parity for Industry

The CFPB also announced a final rule amending Regulation Z to eliminate limits on pre-account opening fees, notwithstanding Regulation Z's current prohibition on first-year fees in excess of 25% of a cardholder's credit limit. The rule resolves questions that arose as part of industry litigation where a credit card issuer successfully challenged the Board's interpretation of the CARD Act's first-year-fee limitation provisions. The CFPB warns credit card issuers, though, that it will "continue to monitor the credit card market to determine if it should take further action to protect consumers."

CFPB Provides Novel Fair Lending Interpretation

On March 21, 2013, the CFPB published a guidance bulletin on fair lending compliance for indirect auto lenders. The bulletin announces the CFPB's concerns that indirect auto lending may introduce discriminatory lending practices, as auto dealers are given discretion to further mark up a borrower's interest rate at the point of sale. By doing so, the bulletin reflects the CFPB's view that discrimination may be proved through disparate impact, a theory that may yet be the subject of Supreme Court review. The bulletin also revives a controversial line of arguments relating to dealer pricing that had previously been used with mixed success by the Department of Justice and private litigants to prove discrimination.

The guidance also serves as an end-run around the Dodd-Frank Act's restrictions against the CFPB regulating the conduct of auto dealers, and indicates the regulatory gymnastics the CFPB is prepared to engage in to extend its reach beyond traditional consumer financial services market participants. For more information, please read the Morrison & Foerster Client Alert at ***http://www.mofo.com/files/Uploads/Images/130604-CFPB-Auto-Lenders.pdf.***

Effective Date for Remittance Transfer Rules Delayed Again

The CFPB recently released another round of amendments to its remittance transfer regulations. The revisions (1) relax a requirement for remittance transfer providers to disclose foreign taxes and fees imposed by a non-affiliated recipient institution and (2) reduce providers' liability when sender error causes funds to be deposited into an incorrect recipient's account. The CFPB also pushed back the effective date of the remittance transfer regulations yet again, to October 28, 2013.

Novel Preemption Determination for Gift Card Issuers

In its first preemption determination, the CFPB increased the compliance burden for gift card issuers.

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FMA Welcomes *More* New Members!

Pete Mentes	E*TRADE Securities
Tim Moore	SEC
John Nicoll	PNC Capital Markets LLC
Jim Pellicane	UBS
Jimena Perez	Santander Private Banking
Pam Peterson	UBS Financial Services
David Portilla	Shearman & Sterling LLP
Adrianna Ruwell	Benchmark Securities, LLC
Fred Schrils	Gray Robinson P.A.
Elsa Solis	Banco Santander International
Mark Steffensen	HSBC Securities (USA), Inc.

Legislative/Regulatory Actions

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Responding to industry requests for clarification, the CFPB addressed a Tennessee gift card law that deems gift cards abandoned after two years, triggering an obligation to transfer the unused funds to the state. The CFPB found that the five-year expiration requirement in the Electronic Funds Transfer Act and Regulation E preempted the Tennessee law to the extent that it authorized gift card issuers to refuse to honor a gift card before five years. (The decision can be found at ***http://files.consumerfinance.gov/f/201304_cfpb_Preemption-Determination.pdf.)*** This conclusion, as the CFPB recognized, creates the risk that an issuer will have to pay to a gift card holder funds that the issuer already has transferred to the state.

The CFPB also concluded that a Maine gift card law was not preempted, based on the Treasurer of Maine's view that the law required issuers to honor gift cards even if the issuer had transferred the funds to the state.

For more information, please read the Morrison & Foerster Client Alert available at ***http://www.mofo.com/files/Uploads/Images/130423-CFPB-Gift-Card-Issuers.pdf.***

Enforcement Action Marks First Use of Abusive Standard

On May 30, 2013, the CFPB filed a complaint against American Debt Settlement Solutions, Inc. ("ADSS"), a Florida debt-relief company that allegedly misled consumers and charged illegal fees for debt relief services. The complaint marks the CFPB's first public enforcement action involving the Dodd-Frank Act's prohibition against abusive acts and practices.

In discussing ADSS's operations, the CFPB's complaint describes how the company marketed debt relief services to consumers. Specifically, the complaint states that ADSS marketed debt relief programs that varied in length from 24 to 48 months, and that the company offered to renegotiate and settle debts on behalf of enrolled consumers. The complaint notes that ADSS's marketing materials also stated a consumer's first debt settlement "could be in 90 days, or as much as six months."

Count five of the CFPB's complaint alleges that ADSS has violated the abusive standard of Section 1036 of the Dodd-Frank Act. In making its allegations, the CFPB highlights that: (1) ADSS enrolled consumers in debt relief programs when it knew the financial conditions of those consumers made it "highly unlikely" that they could complete the program, and (2) ADSS collected enrollment fees within the first three to six months of the program without engaging in any negotiations with the consumer's creditors, as ADSS had allegedly represented in its marketing materials and form agreement.

The CFPB concludes that these practices are abusive because they take unreasonable advantage of consumers' lack of understanding of how long it would take ADSS to settle the consumers' debts, and because consumers would have reasonably relied on ADSS to act in his or her best interests.

Final Rules for Disbursing Civil Penalty Funds

The CFPB issued a final rule for administering its civil penalty fund, which is flush with funds due to the penalties imposed by the CFPB in its high-profile consent orders. The final rule—issued without a proposed rule—establishes a fund administrator, who is empowered to allocate funds to eligible victims or to consumer education and financial literacy programs. The rule requires the fund administrator to establish a schedule of six-month payment periods, at the end of which funds will be paid to eligible

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FMA Welcomes *More* New Members!

Lauren Stollow	BondDesk Group
George Tilghman	Guggenheim Securities, LLC
Greg Todd	Bank of America Merrill Lynch
Donna Trottnow	PNC Capital Markets LLC
Ken White	Franklin Templeton
Debbie Williamson	SEC / Miami Regional Office
Young Woo	FDIC
Steve Yarbrough	Benchmark Securities, LLC
Yancy Yohannan	Sterne, Agee & Leach, Inc.
David Zaperach	FINRA

Legislative/Regulatory Actions

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victims for their "uncompensated harm" (defined by the rule to be the harm caused by the consumer law violation, minus any redress the victim has received or can expect to receive). If funds remain after the six-month distribution period, the fund administrator may make payments to financial literacy and consumer education programs.

CFPB Releases Additional Complaint Data

On March 28, 2013, the CFPB released additional consumer complaint data, expanding the publicly available information to include complaints on mortgages, bank accounts and services, private student loans and other consumer loans. The database is now considered "live" and will include daily updates as the CFPB receives and processes new complaints. Each new complaint will be added to the database 15 days after it is received by the company.

The CFPB highlighted that it had received more than 130,000 consumer complaints, including 30,600 credit card complaints, 63,700 mortgage complaints and 4,100 consumer loan complaints through February 2013. Nearly half of the complaints were submitted through the CFPB's website, and another third came in as referrals from other regulators.

On May 31, 2013, the CFPB again updated its public consumer complaint data to include complaints relating to credit reporting and remittance transfers. The CFPB's complaint database also now includes sub-issues to provide more data about a complaint and the state in which a consumer lives.

CFPB Creates Position to Improve Relations with Businesses

In March, the CFPB announced it had created an Office of Financial Institutions and Business Liaison. The Office will "connect the CFPB with bank and nonbank trade associations, financial institutions, and businesses" in an effort to enhance communication and collaboration between the CFPB and industry participants. Dan Smith, formerly the Director for Industry and State Relations at Freddie Mac, will serve as the office's first Assistant Director.

CFPB Just Keeps on Growing

The CFPB's fiscal year 2013 and 2014 budgets and its strategic plan through fiscal year 2017, confirm what CFPB watchers already knew—the CFPB is planning on expansion. It plans to have 1,545 full-time employees by the end of 2014. And they'll be busy—CFPB's "supervision activities" continue to expand, with 149 actions opened in 2012, including 67 focused on fair lending. Also of note, the CFPB has budgeted $2.5 million for fiscal year 2014 to establish a "registration system," which will be "a system to implement a registration requirement, to be established by rule, for certain nonbank providers of consumer financial products and services. Registration of certain nonbanks will help the Bureau better understand the markets and institutions that it regulates."

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To save on printing/postage costs, FMA uses email "blasts" as much as possible to let our members and contacts know about our upcoming educational programs. FMA's email program format necessitates that these "blasts" be addressed "To: Dorcas Pearce/FMA" / "From: Dorcas Pearce/FMA" with the recipients in the "Bcc" section. Please make sure your technology department allows these e-mails, typically providing information on our annual **Compliance Seminar** and **Legal & Legislative Issues Conference**, to get through to you.

Unless you are a FMA member, you should receive no more than 5–7 e-mails annually. If you no longer want to be on FMA's distribution list, please contact Dorcas Pearce ***(dp-fma@starpower.net*** or 202/544-6327) to be deleted. At that time, please provide an alternate contact at your firm so that someone can route our e-mails appropriately…perhaps a training director or a compliance officer / internal auditor / attorney in the legal dept. Thanks for your help in keeping our costs in line and for getting our notices into the proper hands.

Legislative/Regulatory Actions

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EUROPE

Basel III Update

In April 2013, the Basel Committee on Banking Supervision ("BCBS") published its second progress report on Basel III implementation. The original deadline of January 1, 2013, has now passed and BCBS continues to seek a timely and consistent implementation of Basel III by its member jurisdictions.

BCBS reports that 14 Member States have commenced implementation of the Basel III capital standards, with 11 of these jurisdictions having final rules in place. The remaining 13 member countries (including the United States and jurisdictions within the EU) have all now issued draft Regulations and are urged by BCBS to finalize these as soon as possible, particularly those countries that are home to global systemically important banks. Around the same time that BCBS published its progress report, the European Parliament adopted the Credit Requirement Directive legislation ("CRD4") that will implement Basel III across the EU, and the current expectation is that the CRD4 will become effective from January 2014. The next BCBS progress report is likely to include an analysis of the final CRD4 legislation.

BCBS states that national supervisors have made good progress in ensuring that internationally active banks strengthen their capital bases to meet the new Basel III standards. For the 12 months ending in June 2012, average Common Equity Tier 1 capital ratio rose from 7.1% to 8.5% of risk weighted assets and for banks not yet meeting the current phase-in requirements, the capital shortfalls decreased from €450 billion to €200 billion. To seek greater consistency in Basel III implementing legislation across different jurisdictions, BCBS states that it is considering whether some modifications to the risk weighting of assets held in both trading and banking books due to factors other than risk exposures are necessary. Changes may include narrowing the modelling choices for banks and imposing greater harmony of supervisory practices in relation to model approvals.

BCBS states that, having now published final rules, it intends to finalize its work on the Liquidity Coverage Ratio during 2013. It also indicates that the bulk of the work on the Net Stable Funding Ratio, the trading book, securitization and large exposures should be completed during 2014. Recent progress in these areas includes:

- Following the end of the consultation period on its proposed overhaul of the securitization framework, BCBS has indicated it is considering the responses. The consultation seems likely to result in an increase of risk weightings for some longer dated instruments, but a lowering of some risk weightings for lower rated senior exposures. Revised proposals are expected to be published later this year.
- In March, BCBS published a consultative document on the treatment of credit protection, including a proposal that the present value of material credit protection costs not already recognized be treated as a separate exposure and be assigned a 1250% risk weighting. Comments are invited until June 21, 2012.
- In April, BCBS published its final document on supervisory monitoring tools for intraday liquidity management, including new monitoring tools for national supervisors to monitor management of banks' intraday liquidity risks.

The UK's Financial Services Act 2012: Summary

On April 1, 2013, following the implementation of the majority of the provisions of the Financial Services Act 2012 (the "FS Act"), the United Kingdom ushered in a new regulatory landscape as the Financial Services Authority ("FSA") was abolished and three new financial regulators were created. The changes, brought in after the preexisting regulatory structure proved ineffective during the financial crisis, included certain new powers granted to the regulators to assist them in identifying, preventing and, if necessary, responding quickly to financial stability issues in the future.

Regulatory Structural Changes

The Financial Conduct Authority ("FCA") takes over the legal status of the FSA and a significant portion of its previous functions. The FCA is responsible for the business conduct of all firms previously regulated by the FSA, including those firms also subject to additional prudential

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Legislative/Regulatory Actions

Continued from Page 11

supervision by the PRA (see below). The FCA acts as the prudential regulator of all firms other than those subject to PRA regulation. The objective of the FCA is to ensure that business across the financial services industry and markets is conducted in a manner that furthers the interests of market participants and consumers.

The Prudential Regulation Authority ("PRA"), a subsidiary of the Bank of England ("BoE"), is responsible for micro-prudential regulation of the largest banks, insurers and investment firms considered systemically important to the UK economy and markets. These "PRA-authorized firms" are known as dual-regulated firms since the FCA will remain as their business conduct regulator. The general objective of the PRA is to promote the safety and soundness of regulated firms, implementing policies to ensure that firms carry on their business in a way that avoids adverse effects on the financial system and attempts to minimize any wider effects of a firm's failure.

The Financial Policy Committee ("FPC") is a committee of the BoE, and is responsible for macro-prudential regulation of the UK financial industry. The committee considers prudential regulation issues across the entire UK financial system, looking at the general risks to the economy and analyzing emerging trends in order to prevent problems from arising. Unlike both the PRA and FCA, the FPC does not have direct regulatory responsibility for any particular types of firm or specific entities. The FPC's overall objective is to assist the BoE in achieving financial stability by identifying, monitoring and taking action to remove or reduce systemic risks.

Additional Powers of the Regulators

- New product intervention powers are available to the FCA that enable the regulator to:

  (a) make temporary product intervention rules where necessary or expedient to meet its consumer protection or competition objectives. Actions could include blocking the launch of a product or prohibiting the sale or distribution of an existing product to a particular type of investor, or altogether; and

  (b) make rules regarding the unenforceability of contracts made in breach of product intervention rules. Potential rules could include stipulations that such contracts are void and that consumers are entitled to recover payments made under them.

- The ability of the regulators to place systemically important entities under the special resolution regime (the "SRR"), which was originally designed for failing banks and building societies, has been extended to certain investment firms, group companies of investment firms and deposit-taking entities and UK-incorporated central counterparty clearing houses. The SRR provides a mechanism allowing the authorities to resolve failing entities in cases where failure is imminent and the other powers of the regulatory authorities are insufficient to minimize the effect on the economy in general.

- Recommendations from the recent controversies regarding the setting of the LIBOR benchmark have been implemented, resulting in:

  (a) the creation of a new criminal offense of manipulation of a benchmark by making false or misleading statements or creating a false or misleading impression in relation to specified benchmarks. This offence is punishable by imprisonment for a term not exceeding seven years (six months in the case of a summary conviction) and/or a fine; and

  (b) the creation of two new regulated activities relating to benchmarks. As a result, firms involved in providing information in relation to a specified benchmark or administering a specified benchmark will be subject to supervision by, and authorisation from, the FCA.

For further details on the UK's FS Act, please see the Morrison & Foerster News Bulletin at ***http://www.mofo.com/files/Uploads/Images/130415-The-UKs-Financial-Services-Act-2012.pdf.***

Capital Requirement Directive

The European Parliament and the Council of EU Ministers finally reached an agreement on the text of the new CRD4 and the Capital Requirements Regulation ("CRR"), which, among other things, will implement in the EU the provisions of the Basel III

(Continued on Page 13)

Legislative/Regulatory Actions

Continued from Page 12

recommendations. These will apply to all institutions to which the existing EU Capital Requirements Directive applies, not just to internationally active banks. The effective date of the CRD4 and the CRR is expected to be January 1, 2014, so long as the legislation can be translated and published in the *Official Journal* before July 1, 2013. If such publication takes place after July 1, 2013, it is expected that the effective date will be July 1, 2014.

The requirements as to quality and quantity of institutions' own funds are applicable on a phased-in basis from the date on which the CRR takes effect, with full compliance required from January 1, 2016, onward. Regulatory deductions from Common Equity Tier 1 items are also phased in from the same date, and require full application starting January 1, 2018. Own funds items (other than those constituting state aid) issued before December 31, 2011, that were eligible as own funds when issued, will be grandfathered in until December 31, 2021.

Under the CRD4, both the capital conservation buffer and the countercyclical capital buffer requirements should be implemented by individual Member States on a phased-in basis starting January 1, 2016, with the full buffer requirements to apply starting January 1, 2019. Individual Member States are given the discretion to shorten this transitional period, including the ability to implement the buffer requirements starting on the date on which the CRD4 is effective.

In addition to these Basel III buffers, the CRD4 allows Member States to impose three further risk buffers—a systemic risk buffer, a GSII buffer (for global systemically important institutions) and an OSII buffer (for other systemically important institutions), each to be met with Common Equity Tier 1 capital. Individual Member States are expected to implement these provisions on a phased-in basis from January 1, 2016.

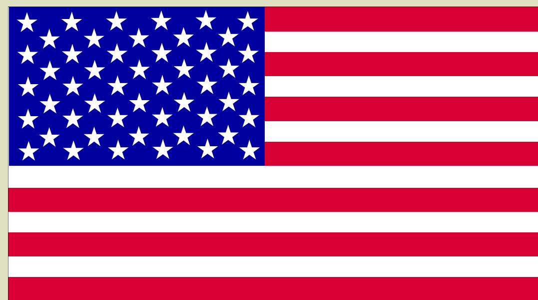
With respect to the leverage ratio, the European Commission must provide a report to the European Parliament and the Council of EU Ministers by December 31, 2016, as to the impact and effectiveness of the proposed ratio.

The liquidity cover ratio will be phased in starting January 1, 2015, and will become fully applicable starting January 1, 2018. The European Banking Authority must report to the European Commission, by December 31, 2015, as to the appropriateness of a binding net stable funding ratio, bearing in mind the likely effect on lending to small businesses and on trade financing. The European Commission, if it determines that a net stable funding ratio is appropriate, taking into account such report, must provide its legislative proposals for such a ratio to the European Parliament and the Council of EU Ministers by December 31, 2016.

The other major parts of the Basel III recommendations, as to counterparty credit risk, credit valuation adjustment risk and Pillar 3 capital quality disclosures, are all contained in the CRR and will take effect when the CRR becomes effective. ■

Peter J. Green, Charles M. Horn, Matthew W. Janiga, Jeremy C. Jennings-Mares, and James E. Schwartz contributed to this column.

Happy 4th of July!



Watch For

CFTC Press Release 6603-13 (June 7, 2013) – The CFTC's Division of Clearing and Risk issued an advisory pertaining to the effective date (June 18, 2013) of the clearing exemption for swaps between certain affiliated entities. This new effective date also applies to the "implementation" provision of the final rule.

OCC Bulletin 2013-15 (June 7, 2013) – The OCC is revising its policy by which banks may appeal agency decisions and actions to provide additional guidance on appealable matters.

OCC Bulletin 2013-14 (June 6, 2013) – This OCC bulletin reminded management of national banks, federal savings associations, and federal branches and agencies of foreign banks to be aware of mandatory clearing of certain interest rate and credit default swaps.

FDIC Press Release 48-2013 (June 6, 2013) – The FDIC released a report, "Credit Risk Assessment of Bank Investment Portfolios," on the new standards of creditworthiness banks now must apply to investment portfolios.

SEC Press Release 2013-101 (June 5, 2013) – The SEC proposed rules that would reform the way that money market funds operate in order to make them less susceptible to runs that could harm investors.

Federal Reserve Press Release (June 5, 2013) – The Federal Reserve approved an interim final rule, effective June 5, 2013, clarifying the treatment of uninsured U.S. branches and agencies of foreign banks under the so-called swaps push-out provision of the Dodd-Frank Act. Comments will be accepted through August 4, 2013, and the rule will be revised by the Board if necessary in light of the comments received.

FINRA Information Notice (June 5, 2013) – Starting this month, FINRA will conduct job analysis surveys to update the series 4, 9 and 10 qualification examinations.

CFTC Press Release 6597-13 (June 3, 2013) – The CFTC's Division of Clearing and Risk issued an extension of time for compliance with certain pre-trade screening requirements of the Commission's rule regarding bunched orders for futures. This extension is intended to provide sufficient time to transition to fully compliant pre-trade screening no later than September 1, 2013.

MSRB Notice 2013-12 (May 29, 2013) – The SEC approved amendments to MSRB Rule G-39 on telemarketing to more closely align certain provisions with similar FTC rules. The revisions become effective August 22, 2013.

FINRA Regulatory Notice 13-20 (May 28, 2013) – Effective June 27, 2013, FINRA will designate the NASDAQ Global Large Mid Cap Index to permit firms to use the volume and float criteria to calculate position limits for conventional equity options on securities in that index.

FINRA Regulatory Notice 13-19 (May 23, 2013) – The SEC approved amendments to require firms to report OTC transactions in equity securities as soon as practicable, but no later than 10 seconds, following execution, effective November 4, 2013. The amendments also apply to trade cancellations, as well as stop stock and prior reference price trades.

CFTC Press Release 6592-13 (May 22, 2013) – The CFTC's Division of Market Oversight issued an advisory regarding the ongoing obligation to report omnibus account information in a timely manner, per CFTC Regulation 17.04(a).

Federal Reserve Press Release (May 13, 2013) – Eighteen large U.S. bank holding companies are required to submit the results of their company-run, midyear stress tests to the Federal Reserve on July 5, the Federal Reserve said in instructions to those firms.

OCC Bulletin 2013-13 (May 10, 2013) – The OCC clarified treatment of certain sovereign and securitization positions.

CFTC Press Release 6583-13 (May 8, 2013) – The CFTC's Division of Market Oversight issued an advisory providing guidance to reporting markets on how to submit block trade volume data.

MSRB Notice 2013-11 (May 6, 2013) – Changes to MSRB Rules G-32 and G-34 became effective today that will streamline the process by which underwriters submit data to the MSRB's Electronic Municipal Market Access (EMMA®) system in connection with most primary offerings.

MSRB Press Release (May 6, 2013) – The MSRB announced that additional information about new issues of municipal securities is now available on its Electronic Municipal Market Access (EMMA®) website. EMMA now will display both the initial offering dollar price and yield for a bond, when available.

FINRA Regulatory Notice 13-18 (May 2, 2013) – FINRA provided guidance to firms on communications with the public concerning unlisted real estate investment programs.

MSRB Notice 2013-10 (May 1, 2013) – The MSRB requested comment on a proposal to consolidate guidance for municipal securities dealers on obligations to experienced investors. Comments were due no later than June 12, 2013.

SEC Press Release 2013-77 (May 1, 2013) – The SEC proposed rules and interpretive guidance for cross-border security-based swap activities.

OCC Bulletin 2013-11 and FDIC Press Release 31-2013 (April 25, 2013) – The OCC and FDIC each released guidance related to deposit advance products.

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Watch For *(Continued from page 14)*

April 23, 2013 – The MSRB made available a set of Real-time Transaction Reporting System (RTRS) Web tutorials on understanding, submitting to and obtaining reports and other information from RTRS Web. Online training videos on submitting primary market data and documents to the Electronic Municipal Market Access (EMMA®) website are also available.

FINRA Regulatory Notice 13-16 (April 17, 2013) – FINRA and the Intermarket Surveillance Group extended the effective date for certain electronic blue sheet data elements to November 1, 2013.

MSRB Press Release (April 15, 2013) – The MSRB published an introductory guide to EMMA for state and local government issuers of municipal bonds.

Federal Reserve Press Release (April 15, 2013) – The Federal Reserve invited comment on a proposal to establish an annual assessment of bank holding companies and savings and loan holding companies with $50 billion or greater in total consolidated assets and for nonbank financial companies designated by the Financial Stability Oversight Council for supervision by the Federal Reserve. Comments on the proposed rule must be submitted by June 15.

Joint Press Release (April 15, 2013) – The Federal Reserve and the FDIC announced the release of additional guidance, clarification and direction for the first group of institutions filing their resolutions plans pursuant to the Dodd-Frank Act.

FINRA Regulatory Notice 13-15 (April 12, 2013) – The SEC approved amendments to FINRA Rule 6730(d)(2) to require firms to report to TRACE the factor for each asset-backed securities transaction executed in agency capacity and subject to commission charges, effective July 22, 2013.

FINRA Regulatory Notice 13-14 (April 12, 2013) – The Securities Industry/Regulatory Council on Continuing Education released its Spring 2013 Firm Element Advisory. The updated FEA is available at: ***http://www.cecouncil.com/Documents/FEA_Semi_Annual_Update.pdf.***

FINRA Regulatory Notice 13-13 (April 9, 2013) – The SEC approved amendments to FINRA Rule 6440 relating to trading and quotation halts in OTC equity securities, effective May 9, 2013.

CFTC Press Release 6564-13 (April 10, 2013) – The CFTC and SEC approved joint final rules and guidelines to require certain regulated entities to establish programs to address risks of identity theft.

Federal Reserve Press Release (April 4, 2013) – The Federal Reserve Board announced the finalization of standards for banking organizations regulated by the Federal Reserve that engage in certain types of foreign exchange transactions with retail customers, effective May 13, 2013.

FDIC Press Release 24-2013 (April 3, 2013) – The FDIC released the first in a series of technical assistance videos to provide useful information to bank directors, officers, and employees on areas of supervisory focus and proposed regulatory changes. The videos and additional information can be accessed at ***http://www.fdic.gov/resourcecenter.***

Federal Reserve Press Release (April 3, 2013) – The Federal Reserve announced approval of a final rule, effective May 6, 2013, that establishes the requirements for determining when a company is "predominantly engaged in financial activities." The final rule also defines the terms "significant nonbank financial company" and "significant bank holding company."

SEC Press Release 2013-52 (April 3, 2013) – The SEC streamlined rule filing requirements for dually registered clearing agencies.

SEC Press Release 2013-51 (April 2, 2013) – The SEC said social media can be used for company announcements if investors have been alerted about which social media will be used to disseminate such information.

MSRB Notice 2013-09 (April 1, 2013) – The MSRB received SEC approval to expand disclosures related to contributions made by municipal securities dealers to bond ballot measure campaigns under MSRB Rules G-37 and G-8. The new disclosure requirements take effect July 1, 2013.

April, 2013 – The MSRB's electronic library of political contribution disclosures made by municipal securities dealers is available on the EMMA website under the "Political Contributions" tab in the "Market Activity" section.

Joint News Release 2013-52 (March 22, 2013) – Federal and state bank supervisors announced an increase in the number of required loan data fields in the Interagency Loan Data Request. Financial institutions using the ILDR should provide the new required loan data fields for examinations starting on September 30, 2013.

Available Publication

OCC Bulletin 2013-12 (May 6, 2013) – The OCC issued a booklet, "Foreword", which describes the organization and format of the updated Comptroller's Handbook and lists the titles of booklets that will compose the handbook. Additionally, the OCC refreshed some definitions of terms used in its supervision by risk program, including the eight risk categories in its risk assessment system.

Program Update

June 19
Bond Mark-Up Workshop

Registrations are still being accepted for the few remaining slots at the **Bond Mark-up Workshop—Everything You Must Know** taking place next week (Wednesday, June 19) at the Convene Center in New York. Presented in a small group format by **Malcolm Northam** (former FINRA Director of Fixed Income Securities), this program, eligible for CLE and CPE accreditation, will include:

- when is a transaction contemportaneous?
- the regulator method of determining a bond's prevailing market price, and issues that arise when you use a different method
- when is a firm a debt market maker?
- the rationale for reduced mark-ups (markdowns) in riskless transactions
- what factors regulators look at when considering a bond fair market value under either MSRB Rule G-30 or NASD Rule 2440 and IM-2440 at the time of a customer transaction
- what you should know when using a broker's broker
- a review of recent FINRA and SEC debt mark-up enforcement cases

Contact Dorcas Pearce at 202/544-6327 or ***dp-fma@starpower.net*** with questions and/or to register. Online registration is also available at ***www.fmaweb.org.***

2013 Legal & Legislative Conference

Save these dates! FMA's 22nd **Legal & Legislative Issues Conference** will take place **October 24–25** 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 and regulators. The day and a half program provides participants with an opportunity to share information on current legal and regulatory developments as well as network with peers and regulators.

The Program Planning Committee is currently developing an agenda focusing on current areas of regulatory and Congressional/agency scrutiny and activity. Members include:
Russell Bruemmer *(WilmerHale);*
Michael Halloran *(Pillsbury Winthrop Shaw Pittman LLP);*
Mark Hutchinson *(HSBC Securities USA Inc.);*
Mark Steffensen *(HSBC Securities USA Inc.);*
Gregory Todd *(Bank of America Merrill Lynch);*
Pratin Vallabhaneni *(Debevoise & Plimpton LLP);* and
Joseph Vitale *(Schulte Roth & Zabel LLP).*

The working agenda currently features these preliminary panels:

- **General Counsels: FRB, FDIC, FINRA, OCC, CFTC, SEC & Treasury**
- **Legislative Update from Hill Staffers**
- **Derivatives**
- **AML/OFAC/FCPA Updates**
- **Cross-Border Regulatory Initiatives**
- **Too Big to Fail**
- **SEC Division Reports:**
  Enforcement, Corporation Finance, Investment Management, Trading and Markets, OCIE and Economic and Risk Analysis (formerly Risk, Strategy & Financial Innovation)
- **Volcker Rule**
- **Cybersecurity, Data Privacy & Technology Vendor Management**

If you would like to volunteer to speak on any of these topics…or suggest other noted leaders in their field as panelists…please contact Dorcas Pearce (***dp-fma@starpower.net*** or 202/544-6327) and she will advise the program planning committee of your

(Continued on page 17)

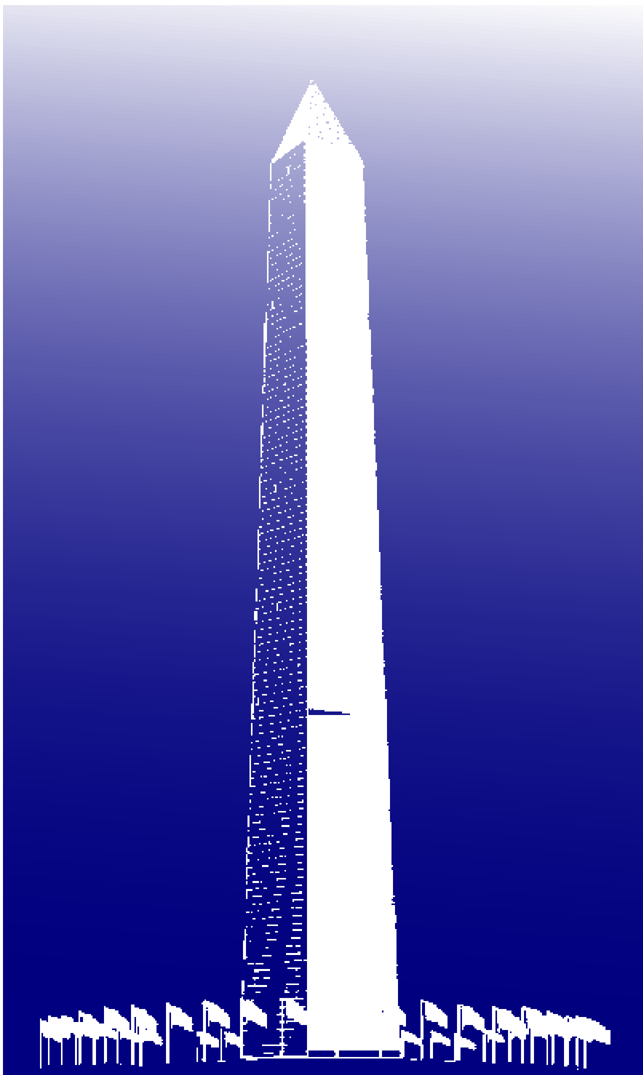
Program Update *(continued from page 16)*

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

CLE and CPE accreditation…as well as team discounts…will be available, so be sure to budget for (and plan to attend) the **22nd annual Legal & Legislative Issues Conference.**

ATTENTION SPONSORS!

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



2013 Securities Compliance Seminar

The B Ocean Hotel in Fort Lauderdale, Florida was the perfect setting to host FMA's 22nd **Securities Compliance Seminar**, April 24–26, 2013. This annual program was a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators. And, attendees were eligible for CPE and CLE accreditation.

Congratulations to the Program Planning Committee for developing a varied agenda and securing noted industry leaders and regulators as speakers. Members included: **Michelle Dávila** *(Franklin Templeton Investments);* **Ann DiGiorgio** *(UnionBanc Investment Services LLC);* **Lauren Epstein** *(Renaissance Regulatory Services, Inc.);* **Richard Kerr** *(Goodwin Procter LLP);* and **Mike Poell** *(U.S. Bank).*

The agenda featured these general sessions, concurrent workshops and peer discussions:

Key 2013 Legislative and Regulatory Initiatives

- Russell Bruemmer ■ WilmerHale
- Eileen Curran ■ PricewaterhouseCoopers
- Kevin Fein ■ TD Bank, NA
- Jeremy Newell ■ WilmerHale
- Richard Pearson ■ Balch & Bingham LLP

Dodd-Frank Swap Dealer Regulation

- Geoff Cole ■ Sapient Global Markets
- Preetha Gist ■ Chapman and Cutler LLP
- Thomas Kicak ■ SunTrust Robinson Humphrey
- Jeremy Newell ■ WilmerHale

Internal Audit Hot Topics

- James Connors ■ Wells Fargo Audit Services
- Louis Dempsey ■ Renaissance Regulatory Services, Inc.
- Nicolas Khouri ■ Ally Financial
- Nick Tootle ■ Kaufman, Rossin & Co., PA

(Continued on Page 18)

Program Update *(continued from page 17)*

AML/OFAC/FCPA Updates
- Barbara Alonso ■ Squire Sanders (US) LLP
- Paul Patton ■ Debevoise & Plimpton LLP
- Daniel Tannebaum ■ Booz Allen Hamilton

Regulatory Forum
- Jametriss Roulhac Boone ■ Florida Office of Financial Regulation
- Jeri Dresner ■ SEC
- Karen Du Brul ■ MSRB
- Donald Litteau ■ FINRA

Municipal Bond Rules Update
- Karen Du Brul ■ MSRB
- Cynthia Friedlander ■ FINRA
- Shane Triplett ■ UnionBanc Investment Services

Volcker Rule Developments
- David Block ■ Union Bank, NA
- Donald Lamson ■ Shearman & Sterling LLP

Communicating with the Public & Social Media in Financial Services
- Sarah Carter ■ Actiance, Inc.
- Margaret Paradis ■ Morris, Manning & Martin LLP
- Henry Stiles ■ Raymond James Financial, Inc.

Litigation
- David Chase ■ The Law Firm of David R. Chase, PA
- Wes Holston ■ Bressler, Amery & Ross, PC
- David Porteous ■ Ulmer & Berne LLP

Risk 2013 & Beyond
- Mitchell Avnet ■ Compliance Risk Concepts
- Sean Gray ■ PNC Financial Services Group
- Mark Knoll ■ Bressler, Amery & Ross, PA

Workshops

Electronic Trading Platform Compliance
- Steven Greenbaum ■ TradeStation Securities, Inc.
- Simon Spenser ■ Two Sigma Securities, LLC

KYC and Suitability
- Peter LaVigne ■ Goodwin Procter LLP
- Karim Lynn ■ UBS Financial Services Inc.

Retail Compliance
- Christine Kaufman ■ Impact Consultants, Inc.

Institutional Compliance
- Matthew Hardin ■ Hardin Compliance Consulting
- James Rabenstine ■ Nationwide Financial Services

Peer Discussions

Broker-Dealer Compliance Hot Topics (2 sessions)
- Debra Williamson
- Steven Greenbaum & Peter LaVigne

Internal Audit Hot Topics
- James Connors

Dodd-Frank Swap Dealer Regulation
- Geoff Cole

AML/OFAC/FCPA
- Daniel Tannebaum

Risk 2013 & Beyond
- Margaret Paradis

Municipal Bond Rules
- Malcolm Northam

Pre-Seminar Workshop

Christine Kaufman of Impact Consultants, Inc. led an optional pre-seminar interactive workshop on Wednesday, April 24 from 8:30 –10:45 am. This workshop presented a unique opportunity to network with other compliance and audit professionals in an intimate setting. This session was designed for persons new to the securities industry as well as seasoned compliance and audit personnel wanting answers to specific questions. Attendees were able to come away with new ideas and resources/best practices for making compliance more manageable.

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

* * * * * *

The B Ocean Hotel...the best!

(Continued on Page 19)

Program Update *(continued from page 18)*

FMA gratefully acknowledges these sponsors of FMA's 2013 Securities Compliance Seminar

Shearman & Sterling LLP

2014 Securities Compliance Seminar

There was no clear "winner" from attendee votes at the Fort Lauderdale seminar for the city to host FMA's **2014 Securities Compliance Seminar** next April/May. Where should the seminar take place next year? See the ballot below.

Vote for Your Choice for the 2014 Host City

- ☐ Nashville
- ☐ New Orleans
- ☐ Phoenix
- ☐ San Diego

The final decision won't be made until later this year, so contact Dorcas Pearce (***dp-fma@starpower.net*** or 202/544-6327) and vote today for your favorite city.

The announcement will appear on FMA's website (***www.fmaweb.org***) around Labor Day and will also be included in the September issue of ***Market Solutions***.

The Planning Committee will soon be assembled to begin work on program development. **Contact Dorcas Pearce to volunteer…as a committee member, a general session panelist/workshop facilitator or peer discussion leader…or to share topical and/or speaker suggestions.**

CPE / CLE accreditation will be available, so be sure to budget for, and plan to attend, the 23rd annual Securities Compliance Seminar next spring.

Who's News

Andrew J. Bowden has been named Director of the Office of Compliance Inspections and Examinations at the U.S. Securities and Exchange Commission. He will also lead its National Exam Program.

Win Brown retired from the practice of law at Milbank Tweed on March 31. He will be teaching a course on the regulation of the international financial markets at Johns Hopkins' School of Advanced International Studies and at American University's Kogod School of Business.

Hardy Callcott, formerly a Partner in the San Francisco office of Bingham McCutchen LLP, has joined the Securities and Derivatives Enforcement and Regulatory practice group as a Partner in Sidley Austin LLP's San Francisco office.

Acting Director **George Canellos** and former federal prosecutor **Andrew Ceresney** have been named Co-Directors of the Division of Enforcement at the U.S. Securities and Exchange Commission.

Effective June 24, **Carlo di Florio** will join FINRA as Executive Vice President/Risk and Strategy where he will lead FINRA's Office of Risk, Emerging Regulatory Issues, Enterprise Risk Management and Strategy. Carlo is currently the Director of the SEC's Office of Compliance Inspections and Examinations.

Michael Emerson, formerly General Counsel for Banking at the New York State Department of Financial Services, is now Head of Legal and Compliance, America at Australia and New Zealand Banking Group Limited.

Marc Fagel, formerly the director of the San Francisco Regional Office of the U.S. Securities and Exchange Commission, has joined Gibson Dunn & Crutcher LLP as a Partner in their Securities Enforcement practice.

Joan Guerin, SVP/Fiduciary & Investment Compliance at Regions Financial, is retiring at the end of the month after 40 years in the financial services industry. Congratulations, Joan!

Kerry Hamana recently joined First Republic Private Wealth Management in San Francisco as Senior Vice President of Operations.

Nick Hartofilis has joined Kaufman, Rossin & Co. as a Director in the Financial Services Advisory division in their Boca Raton office. Nick previously worked as an examination manager at FINRA. He focuses his practice on recognizing and assessing compliance risks at broker-dealers, hedge funds and investment advisers.

Chuck Hester, formerly the Master Principal Sales Consultant for compliance surveillance products at Oracle Financial Services Software, has joined NASDAQ OMX as the Lead Sales Executive.

Keith F. Higgins has been named Director of the Division of Corporation Finance at the U.S. Securities and Exchange Commission.

Jim Kaplan has joined Quarles & Brady LLP as a Partner in the Corporate Services Group in their Chicago office. His practice will focus on bank regulation and supervision, financial services merger and acquisition work and bank litigation.

Wayne Lee, formerly a shareholder at Greenberg Traurig, has founded Lee Lowinger PC where he will continue his corporate and regulatory practice focused on broker dealers and investment advisers. His daughter, Anne Lee Lowinger, who formerly practiced at Morgan Lewis & Bockius, is his partner.

Jennifer Marietta-Westberg has been named Deputy Director of the Division of Risk, Strategy, and Financial Innovation at the U.S. Securities and Exchange Commission.

David Medine, formerly an Attorney Fellow at the SEC and Special Counsel at the CFPB, has been confirmed as the Chairman of the Privacy and Civil Liberties Oversight Board.

Jeremy Newell, formerly Counsel in the Regulatory and Government Affairs Department and a member of the Financial Institutions Practice Group at WilmerHale, has joined The Clearing House Association as Managing

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Who's News

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Director and Senior Associate General Counsel to assist in the development of bank policy and regulatory strategy and advocacy.

Bao Nguyen, formerly CCO and AMLCO of a South Florida broker-dealer and Wealth Management firm, and former FINRA regulator, has joined Kaufman, Rossin & Co. as a Manager of the Financial Service Advisory division in their Boca Raton office.

Lou Ann (Grosvenor) Patterson, Senior Business Consultant/InTrader at SunGard has retired. Previously, Lou Ann was Vice President of Treasury Operations at AmSouth in Birmingham, AL.

Anne K. Small, formerly at the White House Counsel's Office, has been named General Counsel of the U.S. Securities and Exchange Commission.

Holland Stimac, CFA, has been promoted to Vice President & Global Financial Institutions Due Diligence Precision and Reporting Manager at Wells Fargo.

Henry Stiles, formerly Counsel at Shutts & Bowen LLP, has re-joined Raymond James Financial, Inc. as Associate Corporate Counsel in the Legal Department. Located at their headquarters in St. Petersburg, Florida, he will focus on regulatory enforcement defense, compliance, and litigation matters.

Dan Stolzer, formerly Chief Counsel for Special Projects at PNC Bank, has joined Fulton Financial Corporation as Executive Vice President, General Counsel, and Corporate Secretary.

Karen Van Ness has joined Compliance Risk Concepts as a Senior Consultant based in Austin, Texas.

Debbie Williamson has been promoted to Exam Manager in the Miami regional office of the U.S. Securities and Exchange Commission. Congratulations, Debbie!

Jim Wistman, formerly a Director at FIS Global, has joined National Australia Bank (NAB) as Head of Operational Risk and Compliance in the US.

Mike Wolk, formerly a Partner at Bingham McCutchen LLP, has joined the Securities and Derivatives Enforcement and Regulatory practice group as a Partner at Sidley Austin LLP in their Washington, DC office.

Eric Young, formerly Regional Chief Compliance Officer at RBS - Markets & International Banking/Americas, is now Global Chief Compliance Officer at McGraw Hill Financial – Standard & Poor's. He will lead the upgrade, implementation and integration of an effective compliance program over S&P's ratings, indices and Capital IQ businesses globally and consistently.

Milestone

FMA has received word that long-time friend and supporter **Mary Cobb** passed away on March 17. Mary had been a compliance consultant for many years. Her previous work history also included stints at the First Interstate Bank of California and the NASD (now FINRA). We will miss her.