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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.

FINANCIAL MARKETS ASSOCIATION

FINRA Gives Member Firms a Thumbs Up on Suitability Rule Compliance

By Daniel A. Nathan and Ana-Maria Ignat

Having issued a new suitability rule and explicated it for the industry, on September 25, 2013, the Financial Industry Regulatory Authority (FINRA) took the next step and issued Regulatory Notice 13-31 ("Notice"), providing practical advice to member firms about how it will be examining for compliance with the rule, some findings about failures to comply and a set of best practices for compliance. The good news is that FINRA's examinations have found that firms for the most part have adopted policies, procedures and systems to address the requirements of the suitability rule. Moreover, firms have been very responsive to FINRA's feedback resulting from exams by addressing deficiencies.

The Notice and the practices highlighted therein are envisioned by FINRA to be "positive steps in building a strong compliance environment." FINRA encourages firms to carefully consider the practices discussed in the Notice in the near term to determine whether additional efforts are required to improve the suitability determination and supervision process, rather than wait for a regulatory examination that finds their practices to be wanting. To help firms adjust to the new rule, we will summarize FINRA's findings and best practices.

Setting the Stage: Suitability Rule Requirements

Rule 2111, effective as of July 9, 2012, pulled together into one rule FINRA's prior suitability rule together with case law established by FINRA and other policy-related enhancements. The rule imposes three suitability obligations:

- **Reasonable-basis analysis** requires a firm or associated person to perform reasonable diligence to understand the nature of a recommended security or investment strategy involving a security, its potential risks and rewards, and determine whether a recommendation for investment in that security is suitable for **any** investors;
- **Customer-specific analysis** requires a firm or associated person to have a reasonable basis to believe that an investment recommendation is suitable for a **particular customer**, based on the customer's investment profile; and
- **Quantitative analysis** requires a firm or associated person with actual or de facto control over a customer account to have a reasonable basis to believe that a series of recommended transactions, even if individually suitable, are **not excessive** when viewed collectively.

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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 selected developments in connection with the Volcker Rule under the Bank Holding Company Act and Title VII of the Dodd-Frank Act, and an update from the Consumer Financial Protection Bureau.

VOLCKER RULE

The Final Rule

The wait is over! More than two years after the proposed rule, and three and a half years after the Dodd-Frank Act became the law of the land, the Federal Reserve, the FDIC, the OCC, the SEC and the CFTC (together, the "Agencies") adopted on December 10, 2013, a final rule implementing Section 13 of the Bank Holding Company Act: the Volcker Rule.

The Volcker Rule generally prohibits, subject to exceptions, banking entities – a broad term that includes banks, bank holding companies, foreign banks treated as bank holding companies, and their respective affiliates – from (i) engaging in proprietary trading and (ii) acquiring or retaining ownership interests in, or acting as sponsors to, certain hedge funds and private equity funds ("covered funds"). Certain trading and fund activity is expressly permitted – notably, underwriting activities, market-making related activities, and risk-mitigating hedging activities. In addition, the Volcker Rule has special application for foreign banking organizations.

The Volcker Rule legislation covered the area with a broad brush, leaving many significant issues open to regulatory interpretation. The Final Rule is complex in scope and has already elicited significant commentary and questions from the banking industry and the public at large. In this column we address only certain selected topics from the Final Rule on a high level basis and we may include further topics in future newsletters. The purpose of this guide is to discuss the requirements of the Final Rule at a practical level. The Final Rule with all of its "fine print" – the many detailed definitions and conditions that comprise the Final Rule (as well as the extensive commentary contained in Attachment B to the Final Rule) – will provide ample grounds for discussions and it is expected that there will be further guidance from the Agencies over the coming months and years.

Proprietary Trading

Proprietary trading is defined as engaging as principal for the trading account of the banking entity in the purchase or sale of a financial instrument. The Final Rule does not prohibit a banking entity from engaging in agency or riskless principal transactions. A "financial instrument" includes: a security; a derivative; and a contract of sale of a commodity for future delivery (or an option on the same). Specifically excluded from the definition of "financial instrument" are loans; a commodity that is not an "excluded commodity," a derivative or a commodity future; and foreign exchange or currency. A "trading account" is also broadly defined and, given that, certain types of trading are specifically excluded from the rule's coverage, such as repo and securities lending transactions and trades where the banking entity is acting solely as agent, broker or custodian. However, trades are presumed to be for the trading account of a banking entity if the banking entity

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FMA Welcomes New Members!

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Andrew Bowden	SEC
Katelynn Bradley	Better Markets
Christina Broch	Shearman & Sterling LLP
Dan Caneva	UnionBanc Investment Services

FINRA Suitability Rule Compliance

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The rule applies suitability determinations to explicit recommendations to "hold" a security and recommended investment strategies, in addition to recommendations to buy or sell a security. The rule adds new customer investment profile factors (age, investment experience, time horizon, liquidity needs and risk tolerance) to the previous list (other holdings, financial situation and needs, tax status and investment objectives) and provides an exemption to customer-specific suitability for recommendations to institutional customers if certain criteria are met.

A Glimpse Behind the Curtain: The Mechanics of FINRA's Suitability Examinations

The Notice reveals that FINRA examiners start analyzing suitability rule compliance by analyzing a firm's controls, that is, its policies and procedures, in light of the products sold and customers served, and its readiness to control risks related to suitability. The depth and breadth of such testing is determined by the supervisory systems and controls already developed, the products and strategies recommended by the firm, its business activities and customer base and other relevant information.

> *"The good news is that FINRA's examinations have found that firms for the most part have adopted policies, procedures and systems to address the requirements of the suitability rule."*

Member firms should expect that examiners will seek suitability-related information on topics such as:

- training offered regarding suitability rule amendments, and investment strategy and hold recommendations;
- investment strategy definition and supervision;
- supervisory and compliance procedures for reasonable-basis, customer-specific and quantitative suitability;
- tools used to identify in-and-out trading and high turnover rates and commission-equity ratios;
- institutional account determinations; and
- determination of portfolio analytic tools or models' compliance with the suitability rule or their qualification for a safe harbor.

After FINRA examiners obtain this information, they review firm controls to determine whether firm procedures are being followed, and may expand the scope of the examination to analyze material deviations between procedures and practices. Examiners may also review transactions and related suitability documentation when there are red flags raised as to potential unsuitable recommendations. Red-flag transactions could be those that: appear to deviate from the firm's internal suitability guidelines for a particular security; provide a long-term investment for an investor with a short-term horizon; constitute a speculative investment or strategy held in the account of an investor with a conservative investment objective; or indicate that the same security was held in the account or the same strategy was implemented for multiple investors of a particular representative despite differing customer profiles.

Plaudits and Pans: Findings from FINRA's Suitability Examinations

While noting that the suitability rule was amended only recently, and that many firms have not been examined since those amendments became effective, the Notice concluded that most firms examined to date have updated policies, procedures and systems, trained staff and obtained additional customer investment profile information. At the same time, a small percentage of firms examined have not taken "a comprehensive approach to best ensure compliance with the rule." The most frequent deficiency noted consisted of inadequate procedures for supervising and documenting hold recommendations. FINRA disposed of the vast majority of examinations with deficiencies through an informal Cautionary Action, while it referred a few examination findings involving suitability violations actionable under the predecessor suitability rule to FINRA's Enforcement Department.

Practice Makes Perfect: Effective Practice Observations

While acknowledging that there is no one-size-fits-all approach to compliance and supervision, the Notice

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FINRA Suitability Rule Compliance

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highlighted some measures and practices that could bolster a firm's suitability-focused supervisory and compliance procedures.

Reasonable-basis suitability analysis. FINRA found that many firms have implemented a new product vetting process in an effort to adhere to the rule's reasonable-basis suitability review requirements. While observing that the new product vetting process alone does not satisfy the associated persons' obligations to understand the securities and investment strategies recommended to customers, FINRA reported approvingly that some firms post to internal websites documents related to product due diligence, such as audited financial statements, notes of interviews with key product sponsor or issuer personnel and other information on the product and its features. Associated persons may consult these documents prior to making investment recommendations. Additionally, some firms require associated persons to complete instructor-led or online training prior to engaging in the sale of an approved product and may even require them to pass a test at the conclusion of the training.

> *"The most frequent deficiency noted consisted of inadequate procedures for supervising and documenting hold recommendations."*

Customer-specific suitability analysis. The Notice found that many firms began collecting additional information for new customers and supplementing existing customer investment profile information prior to the effective date of the amended rule by updating account forms and using electronic customer relationship management systems to capture this information. FINRA also found that firms made significant technological changes to internal systems to capture the added customer profile data. Some firms have even prohibited recommended transactions unless the customer fully completed or updated account information with all of the factors listed in the amended rule.

Firms have also implemented new policies and exception systems flagging vulnerable investors, such as those unable to sustain more than limited losses, individuals near or in retirement or other investors who rely on an income stream from an investment portfolio.

Quantitative suitability analysis. FINRA learned that to comply with the quantitative suitability provision of the rule, most firms had already been monitoring customer accounts for churning and excessive trading. Some firms upgraded their surveillance and monitoring systems, and exception reports, by integrating additional customer profile information. Going forward, FINRA recommended that firms evaluate their compensation arrangements to determine whether they incentivize a sales person to engage in unsuitable excessive trading, or to make unsuitable recommendations.

The institutional-customer exemption. While some firms with an institutional customer base use tailored account opening documents, others use separate forms or certifications to facilitate compliance with the institutional-customer exemption. In these documents, the institutional customer acknowledges in writing that it will exercise independent judgment in evaluating recommendations. Other firms obtain the affirmative indication through conversations with their institutional customers and then document those conversations. Yet other firms use third-party vendors to verify the institutional status and sophistication of customers.

Hold and other investment strategy recommendations. FINRA learned that the "hold" and "investment strategy" aspects of the suitability rule created behavioral and cultural challenges for firms, since it was not previously customary for registered representatives to consider an explicit hold as a recommendation or to document a strategy. Therefore, many firms provided initial and ongoing training on this aspect of the rule, while other firms were deficient in adapting to the new requirement.

FINRA acknowledged systems some firms adopted to achieve compliance with the hold and strategy requirements, including: (a) a "hold ticket" or "hold blotter" capturing the hold and other types of strategy recommendations; (b) notes of conversations with clients regarding explicit hold or other strategy recommendations, including the use by some small

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firms of clearing firm platforms to capture explicit hold recommendations or other strategies; (c) branch office inspections focusing on the documentation of the hold and other strategy conversations with clients; (d) revised new account forms that include specific investment strategies; (e) new or amended account opening forms signed by the customer when the associated person recommends changes to a previous account investment strategy; and (f) a prohibition on associated persons engaging firm clients in their outside business activities.

Supervision and compliance. FINRA examinations indicated that an effective and reasonable system of supervision and compliance over the areas covered by the suitability rule delineates who is responsible for conducting a specific review, what will be reviewed, the frequency of reviews and the documentation required to evidence the review. To detect potential red flags, some small firms look beyond an individual customer's account, at concentrated positions of a security in the accounts serviced by specific registered representatives or across customer accounts or branch offices for an accumulation of a security that is not readily explained (*e.g.*, a security not followed by the firm). These red flags may then become the subject of review by the firm.

Conclusion

The Notice provides a wealth of information on the types of approaches, systems, procedures and practices that member firms have been using and that FINRA has determined to be most effective in ensuring compliance with the suitability rule. Although other ways to comply with the rule certainly exist, member firms should review the Notice and consider incorporating the practices discussed or practices likely to achieve similar outcomes. ■

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Directory Updates

The **2013 FMA Membership Directory** was emailed to all current members on November 25. See below for additional updates received since its distribution. If you are a current FMA member and did not receive (or perhaps misplaced) the Directory, contact Dorcas Pearce directly…202/544-6327 or *dp-fma@starpower.net*.

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holds the position for fewer than sixty days, unless the banking entity can demonstrate otherwise.

The Volcker Rule permits certain trading activities – notably, in connection with permitted underwriting activities, market making-related activities, and risk-mitigating hedging activities – and the Final Rule addresses the parameters of and possible conditions on these activities. In order to engage in a permitted activity, a banking entity must comply with three overall conditions: the banking entity must maintain an internal compliance program required by Subpart D to ensure that the banking entity complies with the conditions permitting the activity; the compensation arrangements of personnel involved in these activities must not be designed to reward or to create incentives to engage in prohibited proprietary trading; and the banking entity must be licensed or registered to engage in the permitted activity. We provide a practical overview of the Final Rule in our Volcker Rule User's Guide at ***http://www.mofo.com/files/Uploads/Images/131223-A-Users-Guide-to-The-Volcker-Rule.pdf.***

Trading in connection with underwriting activities is permitted only if the trading desk's underwriting position is related to a "distribution" of securities for which the banking entity is acting as underwriter. The underwriting position must be designed not to exceed the reasonably expected near-term demands of clients, customers, or counterparties, and reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security. In order to determine "near-term demands," an underwriter must make reasonable judgments based on its experience with similar offerings, its knowledge of the market and market conditions, and its book-building experience.

The prohibition on proprietary trading does not apply to purchases or sales of financial instruments by a banking entity made in connection with the banking entity's market making-related activities. Market making-related activities are permitted only if the relevant trading desk "routinely stands ready" to purchase and sell one or more types of financial instruments related to its financial exposure and is "willing and available" to quote, purchase or sell those types of financial instruments for its own account in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity and depth of the market for the relevant types of financial instruments. The amount, types and risks of the financial instruments in the market-maker inventory must be designed not to exceed the reasonably expected near-term demands of clients, customers or counterparties.

The prohibition on proprietary trading does not apply to certain risk-mitigating hedging activities. Subject to numerous conditions, hedging activities that are "in connection with and related to individual or aggregated positions, contracts or other holdings" and "designed to reduce the specific risks to the banking entity" that are "related to such positions, contracts or other holdings" are permitted. In order to distinguish between these permitted hedging activities and impermissible proprietary trading, the Final Rule requires that a banking entity establish a compliance program, which we discuss in our *Volcker Rule User's Guide*. The banking entity should determine at the inception of its trading that the risk-mitigating hedging activity should be demonstrably risk reducing or mitigating. The Agencies note that "at the inception of the hedging activity, the risk-reducing hedging activity [must not] give rise to significant new or additional risk that is not itself contemporaneously hedged." The Release also makes clear that this exemption is not intended to address

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a banking entity's hedging activities with respect to "generalized risks that a trading desk or combination of desks, or the banking entity as a whole, believe exists based on non-position-specific modelling or other considerations."

The prohibition on proprietary trading does not apply to the following: trading in U.S. government or government agency securities; trading in municipal bonds; trading by a foreign banking entity or a foreign bank subsidiary of a U.S. banking entity of debt of a foreign government (or of any agency or political subdivision of that foreign government) issued by the foreign country in which the foreign banking entity or the foreign bank subsidiary is organized; and trading by a banking entity that is a regulated insurance company (including a foreign insurance company), whether for the insurance company's general account or for a separate account. In addition, the prohibition does not extend to trades by the banking entity as trustee or in a similar fiduciary capacity for a customer, so long as the transaction is conducted for the account of, or on behalf of, the customer, and the banking entity (or an affiliate) does not have or retain a beneficial ownership of the financial instruments. A banking entity also can conduct riskless principal activities so long as these are "customer-driven and may not expose the banking entity to gains (or losses) on the value of the traded instruments as principal." The Final Rule establishes an exemption for proprietary trading by an FBO to the extent the trading is conducted solely outside the United States.

The permitted proprietary trading activities referenced above are not permissible under the Final Rule if they would involve or result in a material conflict of interest between the banking entity and its clients, customers or counterparties; they would result in a material exposure by the banking entity to a high-risk asset or a high-risk trading strategy; or they pose a threat to the safety and soundness of the banking entity or to the financial stability of the United States (the so-called "prudential backstops").

Fund Investment and Sponsorship

General prohibition. The Volcker Rule generally prohibits a banking entity, as principal, directly or indirectly (in other words, through a subsidiary), from acquiring or retaining an ownership interest in, or sponsoring, a "covered fund."

Exception. This prohibition does not apply to a banking entity that acts solely as agent, broker or custodian, so long as the activity is conducted for the account of, or on behalf of, a customer, and the banking entity (and any affiliate) does not retain beneficial ownership interest. The prohibition also does not apply to a banking entity that acts as a trustee for a customer that is not itself a covered fund.

What is a covered fund? Broadly speaking, a covered fund falls into three categories or prongs.

First, a covered fund includes any issuer that would be an "investment company" as defined in the Investment Company Act of 1940 (the "ICA"), but for exemptions for private funds provided by section 3(c)(1) and section 3(c)(7) of the ICA. Section 3(c)(1) excludes issuers whose outstanding securities are beneficially owned by not more than 100 persons and is not making or proposing to make a public offering. Section 3(c)(7) excludes issuers, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition, are "qualified purchasers" and are not making or proposing to make a public offering.

Second, a covered fund includes a commodity fund for which the commodity pool operator ("CPO")

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Kristen Gudewicz	AIG Investments and Financial Services
Mary Louise Guttmann	Wells Fargo Securities
Steve Hall	Better Markets
Kevin Hawkins	Bureau of the Fiscal Service

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has claimed an exemption under Rule 4.7 under the Commodity Exchange Act (available when pool offerings are limited to certain qualified investors). Thus, exempt commodity pools fall within the definition of a covered fund because they have characteristics similar to those of private funds, as discussed above.

Third, covered funds include foreign funds (that is, those organized abroad and whose interests are sold abroad to non-U.S. residents) that are sponsored by a U.S. banking entity or its affiliate. Covered funds do not include foreign funds that, if organized in the United States, would be investment companies but for section 3(c)(1) or section 3(c)(7) of the ICA.

Exemptions. The Final Rule excludes several entities from the definition of covered fund, including:

- Foreign public funds;
- Wholly-owned subsidiaries;
- Joint ventures;
- Certain acquisition vehicles;
- Securitization-related vehicles;
- Registered investment companies; and
- Certain other entities related to insurance company separate accounts and retirement funds.

Entities not specifically excluded from the definition of covered fund. The Final Rule does not specifically exclude certain entities, such as financial market utilities, collateral cash pools, pass-through real estate investment trusts, municipal securities tender option bond transactions and venture capital funds, because while they appear to fall within the definition of covered funds, they may be able to rely on exemptions from the definition of an investment company other than the exemptions found in section 3(c)(1) and section 3(c)(7).

Scope of the prohibition. Generally, banking entities may not "sponsor" or acquire an "ownership interest" in a covered fund, subject to certain exceptions for permissible activities. The Final Rule defines sponsorship and ownership interest in detail. Note that interests that may not be ownership interests in some contexts may fall within the definition of ownership interests for purposes of the rule.

Permitted covered fund sponsorship and investments. The rule allows banking entities to invest in or sponsor covered funds under limited circumstances. For example, banking entities may own or sponsor covered funds for certain "customer funds" in a fiduciary capacity, subject to many conditions. Banking entities must limit their investment to three percent of the value of the covered fund, or the number of ownership interests in the covered fund. During the "seeding period," banking entities may exceed this limit. In addition, the Final Rule exempts foreign banking entities from the prohibition against investment in and sponsorship of covered funds to the extent the activity is conducted solely outside the United States, as further described below.

Super 23A. The rule also restricts banking entities from entering into "covered transactions" with respect to permissible covered funds. Covered transactions means the kinds of transactions between banking entities and their affiliates that section 23A of the Federal Reserve Act restricts. Unlike section 23A, however, the rule imposes absolute transactions prohibitions, and thus this part of the rule is referred to as "Super 23A."

More information on the Volcker Rule's restrictions on fund investment and sponsorship can be found in our Volcker Rule User's Guide a***t http://www.mofo.com/files/Uploads/Images/131223-A-Users-Guide-to-The-Volcker-Rule.pdf.***

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Penny Michael	FTN Financial
Roberto Mirabal	Mercantil Commercebank

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Volcker Rule Impacts on Securitization

Banking entities involved as investors in, sponsors of, or transaction parties (e.g., credit or liquidity providers) with securitization issuers may be subject to severe restrictions or required divestiture if the securitization issuer is a covered fund.

In the Dodd-Frank Act, Congress stated its intent that the Volcker Rule not limit or restrict the ability of banking entities to sell or securitize loans. In the Final Rule, the Agencies generally followed this intent by making clear that most securitizations of traditional loan products (e.g., mortgage loans, auto loans, student loans and credit card receivables) are not covered funds.

However, the Final Rule creates the possibility that certain securitization vehicles – particularly those whose assets include securities or derivatives (as opposed to loans) – may be covered funds. The consequences of a securitization vehicle being determined to be a covered fund are binary. If the vehicle is a covered fund, investors, sponsors and transactional counterparties will be subject to severe restrictions that in many cases will preclude their involvement altogether; if the vehicle is not a covered fund, banking entities may be involved with the securitization without restriction under the Volcker Rule.

As described above, the basic definition of "covered fund" is a three-pronged test. For most securitization issuers, the relevant test will be that set forth in the first prong of the definition – whether the issuer would be an investment company under the ICA but for the exemptions set forth in section 3(c)(1) or section 3(c)(7) of the ICA.

Many securitizations rely on other exemptions from the ICA and are therefore not covered funds. Even if the transaction was intended to rely on section 3(c)(1) or section 3(c)(7), it may still not be a covered fund if another ICA exemption is also available or if the transaction can be restructured to comply with another exemption.

If the securitization issuer relied on section 3(c)(1) or section 3(c)(7) and another ICA exemption is not available, it may still avail itself of one or more of the 14 enumerated exclusions from the definition of covered fund. These include exclusions for qualifying loan securitizations, asset-backed commercial paper ("ABCP") conduits, qualifying covered bonds, and securities issued by certain wholly owned subsidiaries of a securitization issuer.

For most securitizations that rely on section 3(c)(1) or section 3(c)(7), including many collateralized debt obligations, collateralized loan obligations and certain collateralized mortgage obligations, the key question will be whether the so-called "loan securitization exclusion" is available. This exclusion is available only if the assets underlying the securitization consist only of loans as opposed to securities or derivatives, with very limited exceptions for certain types of ancillary assets that support the securitization. If the primary assets of a section 3(c)(1) or section 3(c)(7) securitization include non-permitted securities or derivatives – which is often the case with CDOs, CLOs and CMOs – the securitization vehicle will likely be a covered fund.

As noted above, banking entities are prohibited from, among other things, acquiring or holding "ownership interests" in covered funds. While most market participants fully expected that the definition of "ownership interest" would include truly equity-like interests such as residuals and deeply subordinated debt securities, the definition of "ownership interest" in the Final Rule is sufficiently broad that it includes not only these equity-like interests, but also potentially senior, highly rated debt securities issued by securitization vehicles such as CDOs and CLOs as the result of certain voting or other management control rights given to such senior classes in many transactions. As a result, many banking entities are analyzing whether securities they previously considered to clearly be debt securities may nonetheless be considered prohibited "ownership interests" for purposes of the Final Rule, most likely requiring divestiture prior to the end of the conformance period.

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2014 Examination Priorities

SEC

http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540599051#.UtAWaNKA1kA

FINRA

http://www.finra.org/Newsroom/NewsReleases/2014/P412649

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Limited Regulatory Relief

On January 14, 2014, the Agencies issued an interim final rule granting banking entities relief from Volcker Rule restrictions for certain previously issued CDOs backed by trust preferred securities. This relief is of limited applicability and does not address many of the interpretational concerns raised by securitization market participants regarding the Final Rule. It is unclear whether additional guidance addressing these concerns will be forthcoming from the Agencies.

More information can be found in our Volcker Rule User's Guide at ***http://www.mofo.com/files/Uploads/Images/131223-A-Users-Guide-to-The-Volcker-Rule.pdf***.

Compliance

One of the greatest impacts of the Volcker Rule upon banking entities is found in its requirements that the covered institutions adopt compliance systems and procedures designed to ensure that they are complying with the Rule. The scope of the requirements depends on the banking entity's size and the extent of its proprietary trading and covered fund activities. Banking entities not engaged in such activities have no obligation to establish a relevant compliance program, and those with "modest activities," that is, total assets of $10 billion or less, have very minimal requirements that may be included in their existing compliance policies and procedures. All others must implement a compliance program that addresses these six points:

- Written policies and procedures reasonably designed to supervise proprietary trading and covered fund activities;
- Internal controls reasonably designed to monitor compliance with the Volcker Rule;
- A management framework that delineates responsibility and accountability for compliance with the Volcker Rule;
- Independent testing and auditing of the effectiveness of the compliance program;
- Training to appropriately implement and enforce the compliance program; and
- Recordkeeping sufficient to demonstrate compliance with the Volcker Rule.

In addition, the Final Rule requires larger entities, those with total consolidated assets of $50 billion or more or, in the case of a foreign bank, with total U.S. assets of $50 billion or more, to have the "enhanced minimum standards for compliance programs" provided in Appendix B to the Final Rule. In general, the enhanced standards address similar requirements to those in the six-point program required of all firms, but also provide highly prescriptive and detailed obligations for all components of an entity's proprietary trading activities, including its trading desks; descriptions of risks and risk management processes; authorized risks, instruments and products; hedging policies and procedures; analysis and quantitative measurements; and remediation. A similar level of detail is given to the enhanced compliance program for covered funds activities or investments.

The Final Rule also requires a banking entity with significant trading assets and liabilities – over $50 billion between June 30, 2014 and April 29, 2016; $25 billion between April 30, 2016 and December 30, 2016; and $10 billion beginning on December 31, 2016 – that are engaged in proprietary trading permitted by the Rule to furnish periodic reports – within 30 days of the end of the month, and for the largest entities within 10 days of the end of the month beginning in January 2015 – reporting

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FMA Welcomes *More* New Members!

Clayton Mitchell	Crowe Horwath
James Newfrock	Booz Allen Hamilton
Christopher Paridon	Federal Reserve Board
Jeff Pienta	Farm Credit Administration
John Ramsay	SEC
Dylan Ramsey	Capital One
Brandon Reddington	OFAC
Graham Rehrig	FDIC
Richard Saltz	Wells Fargo

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various quantitative measures to their regulators, and to maintain relevant records, in order to assist the regulators in determining whether the banking entities are complying with the Final Rule. The seven quantitative measurements fall into three categories: Risk-Management Measurements, Source-of-Revenue Measurements and Customer-Facing Activity Measurements.

For more information please visit our Volcker Rule User's Guide at ***http://www.mofo.com/files/Uploads/Images/131223-A-Users-Guide-to-The-Volcker-Rule.pdf.***

Foreign Banking Organizations

The Final Rule also impacts FBOs – in other words, foreign banks that own U.S. banks or Edge Corporations or operate branches or agencies in the United States, and companies that control such foreign banks – and banking entities that are affiliates of FBOs (together, "foreign banking entities").

In particular, the Volcker Rule exempts foreign banking entities from the prohibition against proprietary trading to the extent the activity is conducted solely outside the United States ("SOTUS Exemption"). Under the Final Rule, foreign banking entities are now permitted to rely on the SOTUS Exemption to engage in proprietary trading subject to the following requirements:

- The foreign banking entity may not be directly or indirectly be controlled by a U.S. banking entity;
- The foreign banking entity must be a qualifying foreign banking organization ("QFBO") or an affiliate of a QFBO that has the preponderance of its business outside of the United States;
- The foreign banking entity engaging in the trading activity (including any relevant personnel of the foreign banking entity that arrange, negotiate or execute the trades, but not those who clear or settle the trades) must be located outside the United States and must not be organized under U.S. law;
- The trading decisions must be made outside of the United States;
- The trades, including any related hedging transactions, must be booked, and the profit or loss must be accounted for as principal, outside of the United States in an entity that is not organized under the laws of the United States; and
- No financing of any trades may be provided by a U.S. branch or affiliate of the foreign banking entity.

Trades may not be conducted with or through a U.S. entity except:

- Trades with the foreign operations of a U.S. entity, as long as no personnel of the U.S. entity located in the United States are involved in the arrangement, negotiation or execution of the trades;
- Trades through an unaffiliated intermediary acting as principal, provided that the trades are promptly cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty; or
- Trades through an unaffiliated market intermediary acting as agent, if conducted anonymously on an exchange or similar trading facility and promptly cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty.

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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.

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Further, the Final Rule also permits foreign banking entities to engage in proprietary trading in their home-country government obligations.

The Volcker Rule also exempts foreign banking entities from the prohibition against investment in and sponsorship of covered funds to the extent the activity is conducted solely outside the United States. The exemption for foreign banking entities under the Final Rule is subject to the following requirements:

- The foreign banking entity may not be directly or indirectly controlled by a U.S. banking entity;
- The foreign banking entity must be a QFBO or an affiliate of a QFBO that has the preponderance of its business outside of the United States;
- Ownership interests in the covered fund in which the foreign banking entity invests have been sold only in an offering that does not target residents of the United States;
- Investment/sponsorship decisions must be made outside of the United States;
- The fund investment, including any related hedging transactions, must be booked outside of the United States in an entity that is not organized under the laws of the United States; and
- No financing of any fund investment may be provided by a U.S. affiliate of the foreign banking entity.

The Final Rule also excludes foreign funds from the definition of covered funds, subject to certain requirements, if they are not sponsored by U.S. banking entities or no U.S. banking entities have an ownership interest in the fund, and the funds' ownership interests must be offered or sold solely outside the United States.

For more information of the effect of the Final Rule on FBOs please see our Client Alert at ***http://www.mofo.com/files/Uploads/Images/131211-Volcker-Rule.pdf.***

TITLE VII

The phase-in of Title VII of the Dodd-Frank Act and the CFTC's regulations thereunder continues. A number of swap execution facilities ("SEFs") have submitted "made available to trade" determinations to the CFTC, and the era of mandatory trading on SEFs of many interest rate swaps and index credit default swaps is likely to commence by next month. In addition, in recent months, the CFTC has finalized regulations relating to standards for systemically important derivatives clearing organizations, and the right of a counterparty to require a swap dealer to segregate initial margin posted by the counterparty in connection with uncleared swaps. It has also proposed new position limit rules for swaps linked to certain commodities.

However, with many of the CFTC's substantive rules in final form, much of the focus in the past few months has been on extent of the cross-border application of those rules, based in significant part on the cross-border guidance that the CFTC released in July of 2013. That guidance is intended to state the extent to which the CFTC's rules will apply to non-U.S. entities and to transactions involving such entities. Among the recent developments relating to cross-border matters are the following:

- On December 2, 2013, the CFTC released the first eight of what could be many substituted compliance determinations. Each such

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FMA Welcomes *More* New Members!

Robert Schwartz	CFTC
Rebecca Simmons	Sullivan & Cromwell LLP
Ed Skala	House Financial Services Committee
Colby Smith	Debevoise & Plimpton LLP
Rebecca Smith	Milbank Tweed Hadley & McCloy LLP
Jeffrey Suhanic	PNC Investments, LLC
Joseph Uradnik	CCO Investment Services Corp
Daniel Vogel	Wells Fargo & Company
Blane Warrene	Analyst
Frank Weigand	HSBC Securities (USA), Inc.

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determination is intended to state whether specified non-U.S. rules are sufficiently extensive and comparable to the CFTC's own rules that compliance with such non-U.S. rules, in lieu of the CFTC's own rules, is sufficient for the CFTC's purposes. The CFTC's rules will generally apply to U.S. Persons (as defined by the CFTC) and to transactions involving U.S. Persons. Substituted compliance, that is, compliance with non-U.S. rules, may be permissible in certain circumstances involving non-U.S. Persons or swap dealers acting through non-U.S. offices. The CFTC's December 20 substituted compliance determinations related primarily to entity-level rules of Australia, Canada, the EU, Hong Kong, Japan and Switzerland. As a result of those substituted compliance determinations, non-U.S. swap dealers and major swap participants based in these jurisdictions will generally be able to satisfy the CFTC's requirements by complying with their home jurisdiction's rules with regard to, among other things, a chief compliance officer, risk management program and monitoring of position limits. Significantly, however, the CFTC's substituted compliance determinations do not address many of the CFTC's transaction-level requirements, including the CFTC's trade execution and clearing requirements.

- On November 14, 2013, the CFTC's Division of Swap Dealer and Intermediary Oversight issued a controversial interpretation of the CFTC's authority with regard to swaps between non-U.S. Persons. In its cross-border guidance, the CFTC had stated that a swap to which a U.S. branch of a non-U.S. swap dealer is a party would in all cases be subject to the CFTC's transaction-level requirements with no possibility of substituted compliance. In its advisory, the Division took this one step further, stating that even a swap between a non-U.S. swap dealer and a non-U.S. Person that is booked in a non-U.S. branch of the dealer is subject to the CFTC's transaction-level requirements if the non-U.S. swap dealer uses personnel or agents located in the U.S. to negotiate, arrange or execute the swap. Subsequently, the CFTC issued a request for comment with respect to the Division's advisory and issued related no-action relief that by its terms will apply until September 15, 2014 of this year.
- Plaintiffs including ISDA and SIFMA brought suit against the CFTC based on the CFTC's cross-border guidance and other CFTC guidance and rules. The lawsuit is pending. In the lawsuit the plaintiffs allege, among other things, that the CFTC failed to engage in the cost-benefit analysis required under the Commodity Exchange Ac, and violated the Administrative Procedure Act by acting arbitrarily and capriciously with regard to the scope of the entities and transactions covered by its rules. Significantly, plaintiffs have not sought injunctive relief, which means that implementation of the cross-border guidance is likely to continue while the suit is pending.

CFPB

Bulletin Advises Furnishers to Review Full e-OSCAR Transmissions

In September 2013, the CFPB issued a Bulletin highlighting the obligation of data furnishers to investigate consumer disputes referred by credit reporting agencies. Although these duties are not new, furnishers have begun receiving significantly more data due to updates in the e-OSCAR system. In this regard, the Bulletin appears to be intended to put furnishers on notice of their obligation to review and consider *all* information transmitted by a credit bureau in a dispute file. Specifically, the CFPB expects furnishers to maintain a system reasonably capable of receiving all information transmitted in connection with a dispute. The Bulletin also indicates that the CFPB expects furnishers to conduct an investigation of the disputed information, including "all relevant information" that is transmitted by the credit bureau and the furnisher's own information that may relate to the dispute. Furnishers may want to review their policies and procedures with an eye toward review of new data that may be provided through e-OSCAR and any obligations imposed by the Bulletin.

CFPB Adds On to its Consent Order Tally

In September 2013, the CFPB and the OCC entered into consent orders with Chase Bank USA, N.A. and JPMorgan Chase Bank, N.A. regarding credit card add-on products. The consent orders allege

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that Chase engaged in an unfair business practice by billing for credit reporting services that were not provided by third-party vendors acting on Chase's behalf. The settlement includes restitution to customers and civil money penalties to both the CFPB and the OCC.

Later in December 2013, the CFPB, OCC and FDIC entered into consent orders against American Express regarding alleged unfair billing practices and deceptive marketing of add-on products. Notably, the consent orders alleged that American Express and its operating subsidiaries failed to provide call center marketing staff with Spanish-language scripts and also failed subsequently to provide Spanish-language disclosures for certain products offered to consumers, yet did not attempt to quantify the amount of consumer harm that occurred due to these practices. While the CFPB and other regulators took issue with these practices because American Express's marketing was directed at Spanish-speaking residents of Puerto Rico, regulators could easily adapt their rationale from the consent order to apply to credit card marketing activities aimed at larger non-English-speaking populations in states such as California or Texas. Card issuers and their service providers may wish to review non-English language marketing practices to ensure they are consistent with regulatory expectations highlighted in the consent orders against American Express.

OCC and Federal Reserve Issue Updated Guidance for Third-Party and Affiliate Relationships

In October 2013, the OCC issued new guidance on risks presented by third-party and affiliate relationships. The bulletin builds on the OCC's previous guidance in this area, expressing concern that bank risk management practices have not kept pace with the complexity of third-party relationships and outsourcing to affiliates. The new bulletin rescinds the previous version and provides considerably more detail on the OCC's expectations for bank contractual relationships with, and oversight responsibilities for, third parties and affiliates. These expectations include extensive up-front due diligence about the affiliate's or third party's compliance with applicable law, processes for incident reporting and employee management and the fee and incentive structures used by service providers.

The guidance is intended to direct banks to focus additional resources on third-party and affiliate relationships that relate to "critical activities," which include significant bank functions such as payment, clearing, settlement and custody functions. The guidance also indicates that regulators will view shared services, such as information technology, as critical.

The Federal Reserve issued similarly updated guidance in December 2013.

For more information, read our Client Alert at ***http://www.mofo.com/files/uploads/images/131121-occ-issues-new-third-party-risk-management-guidance.pdf.***

CFPB Continues to Focus on HMDA Obligations

The CFPB continues its regulation efforts for, and enforcement of, the Home Mortgage Disclosure Act and announced two consent orders alleging violations of HMDA reporting obligations in October 2013. Both companies agreed to pay civil penalties, resubmit HMDA data, and implement various compliance and monitoring requirements. The same day, the CFPB issued Bulletin 2013-11, which provides HMDA Resubmission Schedule and Guidelines and the first CFPB guidance on the factors it will consider in taking action in the event of HMDA violations. In the bulletin, the CFPB reminded mortgage market participants of (1) the strong nexus between CFPB examination findings and enforcement actions; (2) the importance of compliance with consumer protection laws that are often considered to be outside of the "core" of a risk-based compliance program; and (3) the importance of accurate data reporting, especially in relation to fair lending and anti-discrimination.

For more information, read our Client Alert at ***http://www.mofo.com/files/Uploads/Images/131015-HMDA-Violations.pdf.***

Guidance Responds to Industry Qualified Mortgage and Fair Lending Concerns

In October 2013, five federal regulators, with HUD noticeably absent, issued the first interagency guidance on the much-debated intersection of fair

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lending enforcement and the Ability-to-Repay and Qualified Mortgage Rule taking effect in January 2014. In an Interagency Statement, the CFPB, OCC, FRB, FDIC, and National Credit Union Administration responded to industry concerns about whether the decision to offer only QMs will put lenders at risk for fair lending claims. The agencies advised that they "do not *anticipate* that a creditor's decision to offer only qualified mortgages would, *absent other factors*, elevate a supervised institution's fair lending risk" under the Equal Credit Opportunity Act. However, the guidance also notes that cases will be evaluated on their individual merits and warns that creditors should continue to evaluate fair lending risk as they would other products, such as by carefully monitoring their policies and practices.

Functionally, while the guidance should assist market participants during their upcoming regulatory examinations, it does not limit the ability of private plaintiffs or HUD to bring claims under the FHA or other state or federal statutes. Further, the guidance is non-binding and would not prevent regulators from bringing a disparate impact claim if a lender's data appeared to suggest that making only QM loans created a statistically significant adverse outcome for a protected class of borrowers. As a result, the lesson from the guidance may be that lenders electing to make only QM loans should continue to carefully evaluate and monitor fair lending risk through HMDA data analysis and other prudent measures within a robust compliance management system.

For more information, see our guidance at ***http://www.mofo.com/files/Uploads/Images/131028-Interagency-Fair-Lending-Guidance.pdf.***

CFPB Requests Comments from Consumer Debt Market Participants

In November 2013, the CFPB issued an advance notice of proposed rulemaking seeking comments, data, and information about debt collection practices. The ANPR is being issued in anticipation of a proposed rule and generally follows the CFPB's July 2013 release of two guidance bulletins for creditors and third-party debt collectors on similar topics. The questions in the ANPR suggest that the CFPB is considering three new categories of requirements for the debt collection industry: (1) operational elements of debt sales and transfers; (2) debt collection activities that may involve newer forms of communication via digital and social media; and (3) disclosures to consumers regarding debt ownership and dispute rights. The CFPB recently extended the comment period to February 28, 2014.

For more information, see our Client Alert at ***http://www.mofo.com/files/Uploads/Images/131120-FDCPA-CFPB-Consumer-Communications.pdf.***

Disparate Impact Analysis Applied in Settlement with Captive Indirect Auto Lender

In December 2013, the CFPB and Department of Justice announced a settlement with Ally Financial Inc. and Ally Bank (collectively, "Ally") in which Ally would pay $80 million in alleged damages to minority borrowers and another $18 million in civil money penalties. The consent order follows a March 2013 guidance bulletin relating to the potential for discrimination to result from a lender's purchase of indirect auto loans.

According to the consent order, Ally was alleged to have engaged in discriminatory pricing because it purchased retail instalment contracts from auto dealers who marked up a borrower's interest rate beyond Ally's buy rate. Interestingly, Ally appears to have only purchased indirect loans within the markup ranges previously established by private settlements between consumer advocacy groups such as the National Consumer Law Center and a majority of the captive auto finance companies operating in the United States. This could have implications for other indirect auto dealers who assume they are inoculated from fair lending claims by operating within the parameters of the National Consumer Law Center settlements. Further, despite alleged fair lending issues, the consent orders do not appear to discuss disparate impact or treatment of borrowers, nor is any mention made of whether the Department of Justice or CFPB investigated the individual dealers to see why the specific mark-ups had occurred.

The remediation efforts required of Ally also do little to answer the question of what other lenders can do to mitigate the risk of future CFPB or Department of Justice actions. For example, Ally is required to implement a compliance program to prevent future discrimination and effectively eliminate pricing disparities on a portfolio-wide basis. Of note, Ally purchases loans from approximately 12,000 different dealers.

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GE Capital Retail Bank Serves as CFPB's First Target in Novel Deferred Interest Action

Also in December 2013, the CFPB announced a consent order with GE Capital Retail Bank and its subsidiary CareCredit (collectively, "CareCredit") related to what the CFPB alleges were unfair and deceptive enrolment and disclosure practices. Of note, the consent order marks the first public enforcement action by the CFPB against deferred interest products, and offers a glimpse of the ways that the CFPB may look to regulate such products in the future, including by imposing a potentially burdensome application process.

The consent order specifically alleges that CareCredit engaged in unfair acts and practices by failing to (1) adequately train provider staff and monitor the sale of its CareCredit card at the provider level and (2) ensure disclosures given to consumers could counteract the "erroneous" information provided orally to consumers. The CFPB further alleges that CareCredit engaged in deceptive acts and practices because it operated the provider sales channel for the CareCredit card and, therefore, was responsible for incorrect statements from provider staff about "no interest" programs and failures by staff to inform consumers of the full APR that would apply if the consumer failed to pay the deferred balance in full and on time.

Industry participants who offer deferred interest programs could be significantly burdened if the CFPB applied the terms of the CareCredit consent order to the marketplace as a whole. The consent order also raises questions about how CareCredit, or any other entity subject to similar efforts in the future, should meet its new remediation obligations in a manner that is consistent with the requirements of Regulation Z.

For more information see our Client Alert at ***http://www.mofo.com/files/Uploads/Images/131211-CFPB-Brings-First-Enforcement.pdf.*** ■

**Jay G. Baris, Matthew W. Janiga, Kenneth E. Kohler, Daniel A. Nathan, Anna T. Pinedo, and James Schwartz contributed to this column.*

Who's News

Sebastian Gomez Abero has been named Chief of the SEC's Office of Small Business Policy.

Dan Berkovitz, former CFTC General Counsel, has joined WilmerHale's futures and derivatives practice.

John Buchman, formerly General Counsel and Corporate Secretary at E*TRADE Bank, has joined General Electric Capital Corporation as Executive Counsel – Regulatory Affairs.

Mark Cahn, former SEC General Counsel, has rejoined WilmerHale's securities litigation and enforcement practice.

George Canellos, Co-Director of the SEC's Enforcement Division, is leaving the agency later this month after four-and-a-half years of service in senior leadership positions.

Dan Casto, formerly an associate in the Financial Institutions Group at WilmerHale, has joined American Public University System as their Director of Legal Affairs

Vanessa Countryman has been named Chief Counsel of the SEC's Division of Economic and Risk Analysis.

Paula Dubberly, former Deputy Director of the SEC's Division of Corporation Finance, has retired after more than 20 years of service.

Karen Du Brul, formerly an Associate General Counsel at the Municipal Securities Rulemaking Board, is now in private practice at Law Offices of Karen Du Brul, LLC in Philadelphia. She concentrates her practice on public finance, municipal advisory and related matters. She advises law firms, advisors and others as either counsel or consultant.

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Watch For

CFTC Press Release 6835-14 (January 17, 2014) – The CFTC reopened the comment period for its Concept Release on Risk Controls and System Safeguards for Automated Trading Environments. The new comment period opened on January 21, 2014 and extends through February 14, 2014.

OCC News Release 2014-40 (January 16, 2014) – The OCC proposed formal guidelines for its heightened expectations for large banks.

Federal Reserve Press Release (January 14, 2014) – Five federal agencies approved an interim final rule to permit banking entities to retain interests in certain collateralized debt obligations backed primarily by trust preferred securities (TruPS CDOs) from the investment prohibitions of section 619 of the Dodd-Frank Act (the Volcker rule).

January 14, 2014 – The MSRB requested approval from the SEC of a proposed rule change consisting of Amendments to MSRB Rule A-12, on Initial Fee, Rule G-14, on Reports of Sales or Purchases, and the Facility for Real-Time Transaction Reporting and Price Dissemination (RTRS Facility); Deletion of Rules A-14, on Annual Fee, A-15, on Notification to the Board of Change in Status or Change of Name or Address, and G-40, on Electronic Mail Contacts; Deletion of References to RTRS Testing Requirements in Rule G-14(b)(v), (c), on RTRS Procedures, and in the RTRS Facility; Elimination of MSRB Forms RTRS and G-40, and Adoption of a Single, Consolidated Electronic Registration Form, New Form A-12.

Federal Reserve Press Release (January 14, 2014) – The Federal Reserve Board sought comment to help inform its consideration of physical commodity activities conducted by financial holding companies, including current authorizations of these activities and the appropriateness of further restrictions. Comments are welcome through March 15, 2014.

January 13, 2014 – The FDIC made available the public sections of the resolution plans submitted to the FDIC and Federal Reserve under Title I of the Dodd-Frank Act.

SEC Press Release 2014-8 (January 13, 2014) – The SEC announced that compliance with the final municipal advisor registration rules will not be required until July 1, 2014, the date on which the first set of municipal advisors will be required to register under the final rules.

Federal Reserve Press Release (January 10, 2014) – The Federal Reserve Board requested comment on proposed revisions to the Regulation HH risk-management standards for certain financial market utilities that have been designated as systemically important by the Financial Stability Oversight Council, including those for which the Board is the Supervisory Agency pursuant to Title VIII of the Dodd-Frank Act. The Board also requested comment on related revisions to part I of the *Federal Reserve Policy on Payment System Risk* (PSR policy), which is applicable to financial market infrastructures (FMIs) more generally, including those operated by the Federal Reserve Banks. Comments on both proposals must be submitted by March 31, 2014.

FDIC Press Release 2-2014 (January 10, 2014) – The Federal Reserve Board and the FDIC made available the public portions of resolution plans for 116 institutions that submitted plans for the first time in December 2013, the latest group to file resolution plans with the agencies. The FDIC also released the public sections of the recently filed resolution plans of 22 insured depository institutions.

SEC Press Release 2014-7 (January 10, 2014) – The SEC announced that its Office of Municipal Securities has issued interpretive guidance to address questions from market participants regarding the implementation of new final SEC rules requiring municipal advisors to register with the SEC.

CFTC Press Release 6821-14 (January 9, 2014) – The CFTC extended the comment period on its proposed amendment to rules on aggregation for the position limits in part 150 of its regulations to February 10, 2014.

MSRB Notice 2014-01 (January 9, 2014) – The MSRB requested comment on draft Rule G-42 on standards of conduct and duties of municipal advisors when engaging in municipal advisory activities other than the undertaking of solicitations. The MSRB also sought comment on associated draft amendments to Rules G-8, on books and records, and G-9, on the preservation of records. Comments should be submitted no later than March 10, 2014.

FINRA Information Notice (January 8, 2014) – FINRA reminded firms of their obligation to file Annual Audit, Financial and Operational Combined Uniform Single (FOCUS) Reports, Form Custody and FINRA required supplemental FOCUS Report information.

CFTC Press Release 6817-14 (January 3, 2014) – The CFTC approved a request for comment on the application of Commission regulations to U.S. activities of non-U.S. swap dealers.

FINRA Regulatory Notice 14-01 (January 2, 2014) – FINRA issued this Notice to help firms review, reconcile and respond to their Final Renewal Statements as well as view the reports that are currently available in Web CRD/IARD for the annual registration renewal process. The payment deadline was January 10, 2014.

FINRA Regulatory Notice 13-45 (December 30, 2013) – FINRA reminded firms of their responsibilities concerning IRA rollovers. Reviewing firm practices in this area will be an examination priority for FINRA in 2014.

OCC Bulletin 2013-40 (December 26, 2013) – The OCC issued in the *Federal Register* final "Guidance on Supervisory

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Concerns and Expectations Regarding Deposit Advance Products". This guidance addressed safe and sound banking practices and consumer protection in connection with deposit advance products.

SEC Press Release 2013-272 (December 24, 2013) – The SEC issued its annual staff reports on credit rating agencies.

Federal Reserve Press Release (December 24, 2013) – The Federal Reserve Board approved a final rule clarifying the treatment of uninsured U.S. branches and agencies of foreign banks under section 716 of the Dodd-Frank Act (the swaps push out provision). The final rule, effective January 31, 2014, adopts without change the interim final rule issued by the Board on June 5, 2013.

CFTC Press Release 6807-13 (December 23, 2013) – The CFTC's Division of Swap Dealer and Intermediary Oversight issued an advisory concerning commodity trading advisors and swaps.

FINRA Regulatory Notice 13-44 (December 23, 2013) – FINRA announced updates of the Interpretations of Financial and Operational Rules.

FINRA Regulatory Notice 13-43 (December 23, 2013) – The SEC approved a limited exception from FINRA Rule 5131(b) to permit firms to rely upon a written representation from certain unaffiliated private funds, effective February 3, 2014.

FINRA Regulatory Notice 13-42 (December 23, 2013) – FINRA requested comment on a concept proposal to develop a new Comprehensive Automated Risk Data System, a rule-based program that would allow FINRA to collect on a standardized, automated and regular basis, account information, as well as account activity and security identification information that a firm maintains as part of its books and records. The comment period expires February 21, 2014.

Federal Reserve Press Release (December 20, 2013) – The Federal Reserve Board advised large financial institutions to carefully evaluate transactions intended to reduce risk to ensure that, if risks are shifted to a thinly capitalized counterparty or affiliated entity of the firm, any residual risk is effectively captured in the firm's internal capital adequacy assessment. Examiners will closely consider such transactions, and potential residual risks, when evaluating an institution's capital adequacy.

FINRA Regulatory Notice 13-41 (December 19, 2013) – Beginning with the monthly FOCUS Report due on February 26, 2014 (covering the January 31, 2014, reporting period), FINRA is updating specified reporting schedules under the eFOCUS system (applicable to joint broker-dealers/futures commission merchants) to incorporate several of the new financial reporting requirements the CFTC has adopted.

OCC News Release 2013-195 (December 19, 2013) – Three federal financial institution regulatory agencies issued a FAQ document to provide clarification and guidance to banking entities regarding investments in "Covered Funds" and whether collateralized debt obligations backed by trust preferred securities could be determined to be Covered Funds under the final rules to implement section 619 of the Dodd-Frank Act.

OCC News Release 2013-192 (December 19, 2013) – The OCC issued a report, Semiannual Risk Perspective (Fall 2013), focusing on risks facing national banks and federal savings associations.

SEC Press Release 2013-267 (December 19, 2013) – Six federal financial regulators extended the comment period (to February 7, 2014) for their proposed policy statement on assessing diversity policies and practices of regulated entitles.

SEC Press Release 2013-265 (December 18, 2013) – The SEC proposed rules to increase access to capital for smaller companies.

OCC Bulletin 2013-39 (December 17, 2013) – The OCC, in collaboration with the other members of the FFIEC, published in the *Federal Register* final supervisory guidance titled "Social Media: Consumer Compliance Risk Management Guidance".

MSRB Press Release (December 13, 2013) – The MSRB requested comment on a continuing education proposal for municipal securities dealers.

Federal Reserve Press Release (December 10, 2013) – Five federal agencies issued final rules developed jointly to implement section 619 of the Dodd-Frank Act (the "Volcker Rule"). The Federal Reserve Board also announced that banking organizations covered by section 619 will be required to fully conform their activities and investments by July 21, 2015.

MSRB Press Release (December 10, 2013) – The MSRB received approval from the SEC to enhance protections for investors in municipal securities against unexpected changes in bond authorizing documents while preserving issuers' legitimate interest in updating those documents (Rule G-11); effective February 3, 2014.

FDIC Press Release 112-2013 (December 10, 2013) – The FDIC Board released for comment their Single Point of Entry strategy for the resolution of Systemically Important Financial Institutions.

Federal Reserve Press Release (December 6, 2013) – The Federal Reserve Board issued a final rule that makes technical changes to the Board's market risk capital rule to align it with the Basel III revised capital framework adopted by the Board earlier this year.

Federal Reserve Press Release (December 5, 2013) – The Federal Reserve Board issued a final rule that amends Regulation HH to set out the conditions and requirements for a Federal Reserve Bank to open and maintain accounts for and provide financial services to financial market utilities designated as systemically important by the Financial Stability Oversight Council.

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Federal Reserve Press Release (December 5, 2013) – The Federal Reserve Board released guidance reminding financial institutions it supervises to exercise appropriate risk management and oversight when using service providers.

Joint Press Release (December 3, 2013) – FinCEN and the Federal Reserve Board announced a final rule amending definitions in the Bank Secrecy Act.

December 3, 2013 – SEC requested an extension on consideration of proposed rule changes to MSRB Rule G-47 (on Time of Trade Disclosure Obligations), MSRB Rule G-19 (on Suitability of Recommendations and Transactions), MSRB Rules D-15 and G-48 (on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance).

OCC Bulletin 2013-35 (November 29, 2013) – The OCC, FRB and FDIC issued a notice of proposed rulemaking that would implement a quantitative liquidity requirement consistent with the liquidity coverage ratio established by the Basel Committee on Banking Supervision. The comment period for the proposed rule ends January 31, 2014.

MSRB Interpretive Notice (November 22, 2013) – The MSRB issued a restated interpretive notice to MSRB Rule G-29 (on the availability of MSRB rules). To ensure that the digital availability of MSRB rules meets the needs of municipal securities dealers and municipal advisors, the MSRB began providing, as of January 2, 2014, a link on its website to a comprehensive PDF format of the Rule Book that will be updated on a quarterly basis with any new MSRB rules and amendments that have become effective.

FDIC Press Release 105-2013 (November 21, 2013) – The FDIC issued final supervisory guidance regarding deposit advance products. The guidance is intended to ensure that banks are aware of the credit, reputational, operational and compliance risks associated with deposit advance products and have taken steps to mitigate these risks effectively.

MSRB Press Release (November 20, 2013) – The MSRB prepared a new educational resource for issuers on disclosure of bond ballot campaign contributions.

FINRA Regulatory Notice 13-40 (November 15, 2013) – The SEC approved amendments to the Discovery Guide used in customer arbitration proceedings to address electronic discovery, product cases and affirmations. The amendments became effective on December 2, 2013.

CFTC Press Release 6775-13 (November 15, 2013) – The CFTC's Division of Market Oversight issued new guidance on the application of certain commission regulations to swap execution facilities.

CFTC Press Release 6773-13 (November 15, 2013) – The CFTC issued final rules for derivatives clearing organizations to align with international standards.

CFTC Press Release 6772-13 (November 14, 2013) – The CFTC's Divisions of Clearing and Risk, Market Oversight and Swap Dealer and Intermediary Oversight issued guidance on the application of certain commission regulations to swap execution facilities.

CFTC Press Release 6771-13 (November 14, 2013) – CFTC staff issued an advisory on the applicability of transaction-level requirements in certain cross-border situations.

FDIC Press Release 100-2013 (November 12, 2013) – The FDIC released economic scenarios that will be used by certain financial institutions with total consolidated assets of more than $10 billion for stress testing in 2014.

OCC Bulletin 2013-33 (November 12, 2013) – This bulletin provided guidance and established standards that the OCC uses when it requires national banks, federal savings associations, or federal branches or agencies to employ independent consultants as part of an enforcement action to address significant violations of law, fraud, or harm to consumers.

Federal Reserve Press Release (November 7, 2013) – The Federal Reserve Board issued a final policy statement describing the processes it will use to develop scenarios for future capital planning and stress testing exercises.

FINRA Regulatory Notice 13-39 (November 7, 2013) – The SEC approved amendments to FINRA Rule 2360 (Options) and FINRA Rule 4210 (Margin Requirements) in connection with over-the-counter options cleared by the OCC; effective November 7, 2013.

CFTC Press Release 6765-13 (November 5, 2013) – The CFTC issued a proposed rule to require all registered introducing brokers, commodity pool operators, and commodity trading advisors to become and remain members of a registered futures association.

FINRA Regulatory Notice 13-38 (November 1, 2013) – FINRA and the other U.S. members of the Intermarket Surveillance Group extended the effective date for compliance with certain new data elements for Electronic Blue Sheets identified in Regulatory Notice 13-16 to May 1, 2014. They also extended the effective date for compliance with certain other data elements to be consistent with the exemptive relief provided by the SEC, which extended the compliance date for certain broker-dealer recordkeeping and reporting requirements of SEA Rule 13h-1 (Large Trader Rule) from November 1, 2013 to November 1, 2015.

Federal Reserve Press Release (November 1, 2013) – The Federal Reserve Board issued the supervisory scenarios that will be used in the 2014 capital planning and stress testing program, as well as instructions to firms with timelines for submissions. The program includes the CCAR of 30 bank holding companies with $50 billion or more of total consolidated assets.

OCC News Release 2013-171 (November 1, 2013) – The OCC released Dodd-Frank stress testing scenarios for 2014 and the final policy statement for developing the annual stress test scenarios.

(Continued on Page 20)

Watch For *(Continued from page 19)*

Federal Reserve Press Release (October 31, 2013) – The Bank of Canada, the Bank of England, the Bank of Japan, the European Central Bank, the Federal Reserve, and the Swiss National Bank announced that their existing temporary bilateral liquidity swap arrangements are being converted to standing arrangements, that is, arrangements that will remain in place until further notice.

FINRA Regulatory Notice 13-36 (October 31, 2013) – FINRA revised the Investment Company and Variable Contracts Products Representative (Series 6) examination program. The changes appear in Series 6 examinations administered on or after December 16, 2013.

FINRA Regulatory Notice 13-35 (October 30, 2013) – SEC approved amendments to TRACE rules and dissemination protocols to disseminate Rule 144A transactions in TRACE-eligible securities and related fees; effective June 30, 2014.

OCC Bulletin 2013-29 (October 30, 3013) – This bulletin provided updated guidance to national banks and federal savings associations for assessing and managing risks associated with third-party relationships.

OCC Bulletin 2013-28 (October 29, 2013) – The OCC, FRB and FDIC jointly issued the "Uniform Agreement on the Classification and Appraisal of Securities Held by Depository Institutions". This guidance replaced the previously issued OCC Bulletin 2004-25, "Uniform Agreement on the Classification of Securities" by applying the agencies' revised investment grade standards of creditworthiness, in place of credit ratings, as the basis for classifying investment securities.

OCC Bulletin 2013-27 (October 28, 2013) – The OCC added to its website a "Guidance on Advanced Approaches" series to address technical matters relating to the implementation of the advanced approaches risk-based capital rule.

FINRA Information Notice (October 25, 2013) – FINRA amended Form U4 regarding the reporting of judgment/lien events; effective October 26, 2013.

Federal Reserve Press Release (October 24, 2013) – The Federal Reserve Board proposed a rule to strengthen the liquidity positions of large financial institutions. The Federal Reserve developed the proposed rule with the FDIC and the OCC. Comments will be received through January 31, 2014.

CFTC Press Release 6748-13 (October 23, 2013) – The CFTC announced that the third (final) phase of mandatory clearing of certain iTraxx CDS indices began on this date and reminded market participants that cross-border exemptive relief expired on October 9, 2013.

SEC Press Release 2013-228 (October 23, 2013) – Six federal financial regulatory agencies proposed joint standards for assessing the diversity policies and practices of the institutions they regulate.

SEC Press Release 2013-227 (October 23, 2013) – The SEC voted to propose rules under the JOBS Act to permit companies to offer and sell securities through crowdfunding.

FINRA Regulatory Notice 13-34 (October 23, 2013) – FINRA requested comment on proposed Funding Portal Rules and related forms. The comment period expires February 3, 2014.

OCC Bulletin 2013-25 (October 18, 2013) – The OCC, FRB, FDIC, SEC, FHFA and the U.S. Department of Housing and Urban Development sought comment on a notice of proposed rulemaking that would implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934. The proposal would require sponsors of asset-backed securities to retain at least 5 percent of the credit risk of the assets underlying the securities and would not permit sponsors to transfer or hedge that credit risk, replacing an earlier proposal published by the agencies on April 29, 2011.

FINRA Regulatory Notice 13-33 (October 18, 2013) – The Securities Industry/Regulatory Council on Continuing Education released its Fall 2013 Firm Element Advisory update.

OCC Bulletin 2013-23 (October 11, 2013) – The OCC and FRB published a final rule in the *Federal Register* that replaces their existing risk-based and leverage capital rules. Subject to various transition periods, the rule is effective for advanced approaches banks on January 1, 2014, and for all other banks on January 1, 2015.

FINRA Regulatory Notice 13-32 (October 9, 2013) – The SEC approved amendments to FINRA Rule 9217 to include additional rule violations eligible for disposition under FINRA's Minor Rule Violation Plan; effective September 26, 2013.

SEC Press Release 2013-217 (October 9, 2013) – The SEC launched a market structure data and analysis website – ***www.sec.gov/marketstructure.***

MSRB Press Release (October 8, 2013) – The MSRB released a report that documents for the first time statistics on the average time after the end of a fiscal year it takes issuers of municipal securities and other obligated persons to make their financial information available to the public.

MSRB Notice 2013-20 (September 27, 2013) – The SEC approved amendments to Rules G-8, G-11 & G-32 to include provisions specifically tailored for retail order periods. The changes will be made effective on March 31, 2014.

September 26, 2013 – The MSRB adopted a policy for the formal use of economic analysis in MSRB rulemaking to ensure regulations that support a fair and efficient municipal market appropriately balance the benefits of protections for investors and municipal issuers with the burdens placed on regulated entities.

(Continued on Page 21)

Watch For *(Continued from page 20)*

FINRA Regulatory Notice 13-31 (September 25, 2013) – FINRA highlighted examination approaches, common findings and effective practices for complying with its suitability rule (Rule 2111 became effective on July 9, 2012).

Federal Reserve Press Release (September 24, 2013) – The Federal Reserve Board issued two interim final rules that clarify how companies should incorporate the Basel III regulatory capital reforms into their capital and business projections during the next cycle of capital plan submissions and stress tests; effective immediately.

OCC News Release 2013-148 (September 24, 2013) – Seven federal regulatory agencies issued guidance to clarify that the privacy provisions of the Gramm-Leach-Bliley Act generally permit financial institutions to report suspected elder financial abuse to appropriate authorities.

FINRA Regulatory Notice 13-29 (September 20, 2013) – FINRA requested comment on a revised proposal regarding the Consolidated FINRA Rules governing FINRA's membership application proceedings. The comment period expired November 4, 2013.

FINRA Information Notice (September 20, 2013) – FINRA implemented the new S901 Regulatory Element Program for Operations Professionals, the continuing education requirement for Series 99 registered persons who do not hold any other FINRA registration, on October 17, 2013.

SEC Press Release 2013-186 (September 18, 2013) – The SEC proposed a new rule that would require public companies to disclose the ratio of the compensation of its chief executive officer to the median compensation of its employees.

SEC Press Release 2013-185 (September 18, 2013) – The SEC approved registration rules for municipal advisors as required by the Dodd-Frank Act. The new rule requires a municipal advisor to permanently register with the SEC if it provides advice on the issuance of municipal securities or about certain "investment strategies" or municipal derivatives. A Factsheet is available at **http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539817759**.

Available Publications

January 8, 2014 – The MSRB published its *2013 Annual Report* which highlights the MSRB's progress in key priority areas, including enhancing regulatory efficiency, improving financial disclosure by state and local governments, and increasing municipal market transparency.

FDIC Press Release 120-2013 (December 19, 2013) – The FDIC released a publication (Winter 2013's *Supervisory Insights*) that focuses on the need for effective interest-rate risk management.

December 13, 2013 – The MSRB published a series of education resources to help municipal advisors prepare for regulatory oversight and actively participate in the MSRB's rulemaking process, including *Participating in the Rulemaking Process: A Guide for Municipal Advisors* and *The Municipal Advisor's Introduction to MSRB Rules.*

November 21, 2013 – The newly updated GASB 2013-2014 Annual Bound Editions are available for purchase. These publications equip preparers, auditors, and financial statement analysts with resources needed to stay abreast of the evolving governmental accounting environment.

OCC Bulletin 2013-31 (November 6, 2013) – The OCC issued the "Insider Activities" booklet of the *Comptroller's Handbook,* providing guidance for examiners and bankers on how national banks may legally and prudently engage in transactions with insiders.

OCC Bulletin 2013-30 (November 6, 2013) – The OCC issued the "Qualified Thrift Lender" booklet, which is new to the *Comptroller's Handbook.*

October 10, 2013 – The MSRB published on its website an educational resource to help newly registered municipal advisors prepare for regulatory oversight. *Preparing for Regulation: A Guide for Municipal Advisors* provides information in an easy-to-read checklist format about the importance of registration, the role of the MSRB and what it means to be regulated by a self-regulatory organization. The resource also helps municipal advisors begin to assess their business practices, access available resources and stay informed about MSRB activities.

OCC Bulletin 2013-20 (September 13, 2013) – The OCC issued the "Other Real Estate Owned" booklet of the *Comptroller's Handbook.*

Please add dp-fma@starpower.net to your email address book as well as your firm's "white" list. This will keep FMA newsletters and program notices from being accidentally filtered.

Program Update

2014 Securities Compliance Seminar

Registrations are now being accepted for FMA's 23rd Securities Compliance Seminar taking place April 23 – 25, 2014 at the Marriott Nashville Hotel (at Vanderbilt University) in Music City…Nashville! This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators.

The Planning Committee has been hard at work developing varied agenda topics and confirming noted industry leaders and regulators as speakers. Members include: **Cindy Keenum Brown** *(Sterne Agee)*; **Kevin Lesinski** *(Seyfarth Shaw LLP)*; **Penny Michael** *(FTN Financial)*; **Mac Northam** *(Securities Risk Management, Ltd.)*; **Diane Novak** *(RBS Citizens Wealth Management Division)*; and **Jeff Suhanic** *(PNC Investments, LLC)*.

A complete brochure will be emailed next week and will then also be available on the FMA website – *www.fmaweb.org.* Currently, the working agenda includes these general sessions, concurrent workshops and confirmed speakers:

Key 2014 Legislative and Regulatory Initiatives
- Russell Bruemmer ■ WilmerHale
- Mark Carberry ■ Neal, Gerber & Eisenberg LLP
- Jeffrey Holik ■ PNC Financial Services Group, Inc.

The Volcker Rule...At Last
- David Block ■ Union Bank, NA
- Donald Lamson ■ Shearman & Sterling LLP

Internal Audit Hot Topics
- Ally Kidik ■ KeyBank

Anti-Money Laundering and OFAC: What's Next?
- Alistair Johnson ■ FINRA
- Daniel Tannebaum ■ PricewaterhouseCoopers
- Brandon Reddington ■ OFAC *(Invited)*

Regulatory Forum
- Tony DiMilo ■ FDIC *(Invited)*
- Askari Foy ■ SEC
- Donald Litteau ■ FINRA

- Michael Post ■ MSRB
- Daphne Smith ■ Tennessee Dept. of Commerce and Insurance
- Representative ■ FRB *(Invited)*

Municipal Advisor Compliance
- Cynthia Friedlander ■ FINRA
- Michael Post ■ MSRB
- Mary Simpkins ■ SEC's Office of Municipal Securities *(Invited)*

KYC 2111 & Suitability
- Sara Andres ■ Capital One
- Kelly Brennan Bolvig ■ Sterne Agee
- Buddy Doyle ■ Oyster Consulting

Dual Registration / Best Practices for Investment Advisors
- Louis Dempsey ■ Renaissance Regulatory Services
- Gary Klein ■ NEXT Financial Group, Inc.

Workshop: Retail Compliance
- Christine Kaufman ■ Impact Consultants, Inc.

Workshop: Institutional Compliance
- Matthew Hardin ■ Hardin Compliance Consulting
- James Rabenstine ■ Nationwide Financial

Electronic Communications / Social Media
- Mark Griffin ■ Baker, Donelson, Bearman, Caldwell & Berkowitz, PC *(Invited)*
- Joanna Belbey ■ Actiance, Inc. *(Invited)*

Whistleblowers & CCO Liability
- Christopher Robertson ■ Seyfarth Shaw LLP

Conflicts of Interest / Insider Trading
- Francois Cooke ■ ACA Compliance Group
- David Porteous ■ Ulmer & Berne LLP
- Jeff Walter ■ U.S. Bancorp Investments *(Invited)*

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Program Update *(continued from page 22)*

In addition, peer group discussions (lead by facilitators) will take place on Wednesday and Thursday afternoon. Possible topics include: *AML/FCPA/OFAC; Ask the Regulators; Broker-Dealer Compliance Hot Topics; Compliance & Technology; Conflicts of Interest/Insider Trading; Dual Registration/Best Practices for Investment Advisors; Electronic Communications/Social Media; Fixed Income Fair Pricing; Internal Audit Hot Topics; KYC 2111 & Suitability; Legislative & Regulatory Initiatives; Municipal Advisor Compliance; Privacy & Protection of Information/Identity Theft; Surviving a Regulatory Exam; TMPG/Master Security Forward Transaction Agreements; Volcker Rule*; and *Whistleblowers & CCO Liability*. If you would like to facilitate one of these discussions, or if you have additional topical suggestions, please contact FMA (see below).

Register today for this important spring conference – CPE / CLE accreditation and team (as well as in-state) discounts will be available. Contact Dorcas Pearce at ***dp-fma@starpower.net*** or 202/544-6327 with questions and/or to register. Online registration is also available at ***www.fmaweb.org.***

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 2014 Securities Compliance Seminar. Thanks!

Early Registration Prize Drawing!

Congratulations to Robert Jacobs at Frost Bank. He won a two night stay at the B Ocean Hotel in Fort Lauderdale, Florida, the site of FMA's 2013 Securities Compliance Seminar.

2013 Legal & Legislative Conference

FMA's 22nd **Legal & Legislative Conference** took 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/risk managers, internal auditors and regulators. The two-day program provided participants with an opportunity to share information on current legal and regulatory developments as well as network with peers. And, **attendees were eligible for CLE and CPE accreditation (among others)**.

Congratulations to the Program Planning Committee for developing a timely agenda that included noted industry leaders and senior regulatory officials. Members included: **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 agenda, which focused on current areas of regulatory and Congressional activity/scrutiny, included these sessions and confirmed speakers:

General Counsels

- Scott Alvarez ■ FRB
- Robert Colby ■ FINRA
- Michael Conley ■ SEC
- Amy Friend ■ OCC
- Christopher Meade ■ U.S. Dept. of the Treasury
- Robert Schwartz ■ CFTC
- John Thomas ■ FDIC

Legislative Update with Hill Staffers

- Cory Claussen ■ Senate Agriculture Committee
- Andrew Devlin ■ Office of Sen. Kay Hagan
- Jason Goggins ■ House Agriculture Committee
- Ed Skala ■ House Financial Services Committee

Volcker Rule

- Eric Kriftcher ■ Bank of America Merrill Lynch
- Christopher Paridon ■ Federal Reserve Board
- Tina Tsui ■ Deutsche Bank AG New York *(now at The Bank of New York Mellon's Hong Kong office)*
- Joseph Vitale ■ Schulte Roth & Zabel LLP

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Program Update *(continued from page 23)*

Derivatives
- Donald Bendernagel ■ Citigroup Global Markets Inc.
- Tracey Jordal ■ PIMCO
- Donna Parisi ■ Shearman & Sterling LLP

AML/OFAC/FCPA Updates
- Jason Gonzalez ■ Federal Reserve Board
- Brandon Reddington ■ OFAC/U.S. Dept. of the Treasury
- Colby Smith ■ Debevoise & Plimpton LLP
- Daniel Tannebaum ■ Booz Allen Hamilton *(now at PricewaterhouseCoopers LLP)*

Cybersecurity, Data Privacy & Technology Vendor Management
- Valerie Abend ■ OCC
- David Bodenheimer ■ Crowell & Moring LLP
- Andrew Cadel ■ JPMorgan Chase & Co.
- Harvey Rishikof ■ Drexel University

SEC Division Reports
- Andrew Bowden ■ Office of Compliance Inspections and Examinations
- Andrew Ceresney ■ Enforcement
- Vanessa Countryman ■ Economic and Risk Analysis
- James Daly ■ Corporation Finance
- David Grim ■ Investment Management
- John Ramsay ■ Trading and Markets

Cross-Border Regulatory Initiatives
- Chris Dickens ■ HSBC Global Markets
- Jeremy Newell ■ The Clearing House Association
- Richard Pearson ■ Balch & Bingham LLP
- Rebecca Simmons ■ Sullivan & Cromwell LLP

Too Big to Fail
- Michael Bleier ■ Reed Smith LLP
- John Buchman ■ General Electric Capital Corporation
- Joseph Lynyak ■ Pillsbury Winthrop Shaw Pittman LLP
- Jack Murphy ■ Promontory Financial Group

Thanks to all the committee members, speakers, moderators and attendees for their participation at this annual fall event.

FMA gratefully acknowledges these sponsors of FMA's 2013 Legal and Legislative Issues Conference:

Schulte Roth & Zabel

HSBC

WilmerHale

pillsbury

Promontory

Securities Risk Management

Who's News *(continued from page 16)*

Martin Dunn, formerly Chief Counsel, Deputy Director and Acting Director at the SEC's Division of Corporation Finance, has joined the Corporate Finance practice at Morrison & Foerster, LLP.

Jorge Gonzalez, Audit Manager for Wells Fargo, will be relocating to Hong Kong to establish Wells Fargo's Internal Audit presence in Asia-Pacific and Australia.

Kevin Goodman has been named National Associate Director of the SEC's Broker-Dealer Examination Program.

Sean Gray, formerly SVP & CCO of Asset Management, Broker Dealer, Capital Markets and Derivatives/Alt Investments Compliance at PNC Financial Services Group, has joined Wilmington Trust Company (M & T Bank) as SVP & Chief Risk Officer.

Elaine Greenberg, former Chief of the SEC's Municipal Securities and Public Pensions Enforcement Unit and former Associate Director of the SEC's Division of Enforcement, has joined Orrick, Herrington & Sutcliffe LLP's Washington DC office as a Partner on their Securities Litigation & Regulatory Enforcement team.

Patricia Harms, formerly VP & Audit Relationship Manager at Union Bank, has retired after 37 years in the financial services industry. Congratulations and best of luck, Pat!

Tabitha Mendoza, formerly an Operational Risk Consultant at Wells Fargo, has joined Bank of America as a Senior Enterprise Compliance Program Manager covering Reg W for Global Markets, Corporate Investments and Treasury.

Andrew Olmem, former Republican Chief Counsel on the Senate Banking Committee, has joined Venable LLP as a Partner in their Financial Services & Legislative and Government Affairs Groups.

Paul Patton, formerly Counsel at Debevoise & Plimpton LLP, has joined Citibank, NA as an Associate General Counsel.

David L. Portilla, who recently left the staff of the Financial Stability Oversight Council at the Department of the Treasury, has joined the Financial Institutions Group at Debevoise & Plimpton LLP in New York.

Ravi Ramnarain, CPA (MA) has been named Assistant Financial Reporting Manager (GAAP/SEC) at Mercantil Commercebank.

Gianna Ravenscroft, formerly a Counsel in the Financial Institutions Group at WilmerHale, has joined Toyota Financial Services as Managing Counsel.

Kathleen Scott, formerly Counsel at Arnold & Porter LLP, has joined the Financial Institutions Group at Norton Rose Fulbright LLP as a Senior Counsel.

Dan Tannebaum, formerly Senior Associate – Commercial Financial Crimes Leader at Booz Allen Hamilton, has joined PricewaterhouseCoopers LLP as a Director and Leader of the U.S. Sanctions Practice.

Tina Tsui, formerly Director & Senior Counsel at Deutsche Bank AG New York, has joined the Bank of New York Mellon's Hong Kong office as Managing Director & Managing Counsel/Legal Affairs.

Richard Wallace, formerly a Partner at Foley & Lardner LLP, has joined the Options Clearing Corporation as SVP & Chief Compliance Officer.