

MARKET SOLUTIONS

Volume 24, Number 1

Financial Markets Association

March 2015

In This Issue

2015 Securities Compliance Seminar11

2015 Legal and Legislative Issues Conference.....14

Exam Priorities for 2015 4

Job Bank 15

Legislative/Regulatory Actions.... 2

New Members2,4, 6

Program Update 11

Sponsor Acknowledgement..... 13

Watch For..... 7

Who's News 15

MARKET SOLUTIONS

Editor

Dorcas Pearce

Contributing Editors*

Marc-Alain Galeazzi

Barbara R. Mendelson

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 - #104, Washington, DC 20002, dp-fma@starpower.net, 202/544-6327, www.fmaweb.org. Please let us have your suggestions on topics you would like to see addressed in future issues.

©2015, Financial Markets Association



Cybersecurity Exam by SEC Provides Insight About Focal Points for Broker-Dealers and Investment Advisers

By Frances Floriano Goins,
Michael Marrero & Gregory Stein
Ulmer & Berne LLP

On February 3, 2015, the Securities and Exchange Commission released a report (the “Summary”) detailing the results of its examination of the cybersecurity practices of 57 registered broker-dealers and 49 registered investment advisers. The Summary illuminates many areas of cybersecurity programs that may merit additional attention and improvement for broker-dealers and investment advisers. Notably, the broker-dealers consistently had a higher adoption rate for practices described in the Summary than investment advisers. Below are a few of the Summary’s critical findings:

- **Written Information Security Policies** – 93% of broker-dealers and 83% of investment advisers had adopted a written information security policy. 89% of broker-dealers and 57% of investment advisers perform audits to assess compliance with such policies.
- **Suffering Attacks** – A majority of broker-dealers (88%) and investment advisers (74%) have experienced a cyber-attack directly or through a vendor.

(Continued on Page 3)

How Compliance Officers May Address the Personal Enforcement Environment

By Andrea S. Hidalgo
Deloitte Transaction and Business
Analytics LLP

We are in a regulatory environment where Anti-Money Laundering Compliance Officers are facing greater scrutiny and may be held personally liable for Anti-Money Laundering program failures. Recent enforcement actions demonstrate that AMLCOs who fail to establish adequate AML Programs (with supervisory systems to detect and report suspicious activity) or who serve where programs are not effectively implemented may be vulnerable to personal liability.

There have been an increasing number of instances where institutions were fined for AML program failures and non-compliance with provisions in the Bank Secrecy Act, and the individuals running the programs were held accountable, including being fined personally and/or suspended from their position. Over the last two years, fines assessed against individuals by the Financial Crimes Enforcement Network and Financial Industry Regulatory Authority have included twenty-five thousand and one million dollars, and sanctions have included interference with employment roles.

(Continued on Page 3)

Legislative/Regulatory Actions

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

In this issue, we address selected developments with regard to the Volcker Rule, Title VII of the Dodd-Frank Act, and the Consumer Financial Protection Bureau (CFPB).

VOLCKER RULE

Agencies Issue Guidance for Foreign Banking Entities on the Application of the Marketing Restriction for the Volcker Rule's SOTUS Covered Fund Exemption

On Friday, February 27, 2015, the Volcker Inter-Agency Group¹ posted a new frequently asked question (FAQ 13), clarifying the scope of the so-called "marketing restriction" under the "solely outside the United States" (SOTUS) covered fund exemption. The SOTUS covered fund exemption is available to foreign banking entities, including foreign banking organizations (FBOs) and their non-US affiliates, that invest in certain private funds "solely outside the United States," subject to certain conditions. To qualify for the SOTUS covered fund exemption, the marketing restriction requires that ownership interests in a SOTUS fund must be sold (or must have been sold) pursuant to an offering that does not target residents of the United States. FAQ 13 explains that the marketing restriction applies only to activities of a foreign banking entity (including its affiliates) that seeks to rely on the SOTUS covered fund exemption and does not apply where the foreign banking entity seeks to invest in a covered fund that is sponsored and marketed by a third party. For more information please see our client alert at <http://www.mofo.com/~media/Files/ClientAlert/2015/03/150302SOTUSExemption.pdf>.

DODD-FRANK ACT TITLE VII UPDATE

The phase-in of Title VII of Dodd-Frank and the regulations thereunder continues. While the implementation of the CFTC's regulations is increasingly advanced, however, unresolved issues remain, particularly the lack of cross-border harmonization and the resulting fragmentation of the market. It now appears that such fragmentation may be a long-lasting, if unintended, consequence of the CFTC's regulations. For its part, the SEC continues to lag far behind the CFTC in implementing its regulatory framework for security-based swaps but has recently finalized a couple of significant rules, which we highlight below.

Given the advanced state of the CFTC's rulemakings, the pace of its rulemakings has slackened. The CFTC has issued no final rules so far this year. The pace of its issuance of no-action and interpretive letters is also significantly slower than it was last year. The market awaits the final versions of the CFTC's last major proposed rules regarding margin for uncleared swaps, position limits and capital for swap dealers.

However, important issues remain, and arguably none are more significant than the fragmentation of

(Continued on Page 4)

FMA Welcomes New Members!

Philip Allen	Bessemer Trust Company
Genna Battaglino	E*Trade Financial
Joseph Bielawa	Natixis North America LLC
Debra Bougie	Thrivent Financial
Pablo Calvete	Franklin Templeton Investments
Marcia Douglas	Mercantil Commercebank
Margaret Edmunds	BMO Harris Financial Advisors
Dionne Fajardo	Wiand Guerra King P.L.
David Fites	Federal Reserve Bank of Atlanta, Miami Branch
Ryan Gibbs	E*Trade Financial

SEC Cybersecurity Exam...

Continued from Page 1

The majority of such incidents stemmed from malware or fraudulent e-mails.

- **Authentication Procedures** – 25% of broker-dealers that have suffered a loss as a result of a fraudulent e-mail indicated the loss was because an employee failed to follow identity authentication procedures. The only investment adviser that suffered a loss also did so because of a failure to comply with the identity authentication procedures.
- **Third Parties** – While 72% of broker-dealers incorporate cybersecurity into their contracts with vendors, only 24% of investment advisers include such provisions in their vendor contracts.
- **Insurance** – 58% of broker-dealers and 21% of investment advisers maintain cybersecurity insurance.

Action Item: It can be beneficial for any broker-dealer or investment adviser to review the Summary and compare its cybersecurity practices against the results to identify strengths and weaknesses in a company's current cybersecurity practices, controls and procedures. By leveraging this information to enhance their own programs, broker-dealers and investment advisers can help ensure they are reducing their risk of a cyber-attack and improving their ability to respond to an attack. ■

If you have any questions or would like additional information, please contact a member of the Data Privacy & Information Security Practice at Ulmer & Berne LLP.

This article first appeared in the January 2015 issue of *Financier Worldwide* magazine. ©2015 Financier Worldwide Ltd. All rights reserved. Reprinted with publisher's permission. www.financierworldwide.com

Frances Floriano Goins – <http://www.ulmer.com/attorneys/Goins-Frances-Floriano.aspx>

Michael Marrero – <http://www.ulmer.com/attorneys/Marrero-Michael-A.aspx>

Gregory Stein – <http://www.ulmer.com/attorneys/Stein-Gregory-P.aspx>

AMLCOs & Personal Liability...

Continued from Page 1

How might a Compliance Officer mitigate personal risk?

While AMLCOs can have a wide range of responsibilities, from project management to interaction with and reporting to regulators, the following should be key centers of focus for AMLCOs:

- Maintain AML Policies and Procedures tailored to the environment, size, clientele and risk profile of the institution while keeping abreast of all regulatory changes
- Actively engage with internal auditors and external consultants that assess the AML program – ensure they have expertise in AML and regularly evaluate the maturity and effectiveness of the AML Program

“There have been an increasing number of instances where institutions were fined for AML program failures and non-compliance with provisions in the Bank Secrecy Act (BSA), and the individuals running the programs were held accountable, including being fined personally and/or suspended from their position.”

- Establish an open line of communication with senior management and a direct reporting line to the board to ensure adequate budget and resources allocation
- Develop and maintain mature transaction monitoring and risk rating processes while keeping abreast of developing technological platforms and future enhancements that would allow their institution to understand more about its customers
- Maintain open and candid dialogue with their regulators on self-identified deficiencies in the AML Program and inform them of plans put in place to mitigate them

(Continued on Page 4)

AMLCOs & Personal Liability...

Continued from Page 3

- Ensure that where material events occur, escalation and documentation protocols in place are carried out

Recent developments show that there is a growing expectation that AMLCOs identify risk areas and make an effort to prioritize them, providing their institution's AML program with clear paths to compliance with the BSA provisions designed to protect the financial system against money laundering and terrorist financing. When institutions do not comply, recent actions suggest AMLCOs may nonetheless be exposed to risk. AMLCOs should not willfully ignore red flags, gaps in their AML Program or suspicious activity going through their institution, even if their circumstances may make confronting the red flags or other problems seem difficult. The steps outlined above are prudent practices that may mitigate an AMLCO's risk of personal liability should a BSA violation occur at their institution. ■

Andrea S. Hidalgo is a manager in the Anti-Money Laundering (AML) and Economic and Trade Sanctions (Sanctions) practice of Deloitte Transaction and Business Analytics LLP, an affiliate of Deloitte Financial Advisory Services LLP. She specializes in AML compliance and investigative services and has assisted numerous domestic and foreign financial institutions with a variety of AML initiatives, including: program testing, alert threshold tuning, compliance assessments, transaction reviews ("Look-Backs"), Know Your Customer (KYC) remediations, among others. Specifically, Andrea has extensive AML/Sanctions experience with financial institutions in the U.S., Latin and Central America.

2015 Examination Priorities

SEC

<http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2015.pdf>

FINRA

<http://www.finra.org/Newsroom/NewsReleases/2015/P602237>

Legislative/Regulatory Actions

Continued from Page 2

the swap market into U.S. and non-U.S. segments and the lack of the cross-border harmonization that could lessen that fragmentation. Regulators are not making the content of their discussions regarding harmonization public, and it is difficult to verify or specify any progress that has been made. However, to all appearances, U.S. regulators have been unable to agree with their counterparties in other countries on how swap regulation should work across borders. The regulators have apparently been able to agree neither on the substance of their rules nor on which country's rules should apply to cross-border transactions. In a speech in early March, CFTC Chairman Timothy Massad stated his view that "there will inevitably be differences in specific rules and requirements, because the new framework can only be implemented through the actions of individual jurisdictions, each of which has its own legal traditions, regulatory philosophy, political process, and market concerns." He further stated that rules and supervision should be harmonized "to the greatest extent possible," but "this is a challenge, and progress will take time."

In his speech, Chairman Massad also noted his expectation that the CFTC will adjust its rules for trading swaps on swap execution facilities

(Continued on Page 5)

FMA Welcomes More New Members!

Jill Grenda	Hardin Compliance Consulting
Richard Grant	E*Trade Financial
Randall Guynn	Davis Polk & Wardwell LLP
Mark Harries	Lumesis
Kelley Hoffer	TD Securities
David Hutcheson	CD Funding
Theresa Lamie	Capital One Investing, LLC
Jeffrey McAbee	M&T Bank
Kären McRoberts	BBVA Securities, Inc.
Orlando Mais	Mercantil Commercebank
Daniel Meade	Wells Fargo

Legislative/Regulatory Actions

Continued from Page 4

(SEFs). Such adjustments might result in part from a white paper released by CFTC Commissioner J. Christopher Giancarlo in late January, which argued for a fundamental reconsideration of those rules. The white paper argues that the SEF rules are substantially to blame for market fragmentation because they drive global market participants away from transacting with entities subject to CFTC swaps regulation, increase market liquidity risk and make it expensive and burdensome to operate SEFs.

While the SEC continues to lag far behind the CFTC in the implementation of its swaps regulatory rules, it did finalize two significant rules in the early part of this year. One of these new rules, known as Regulation SBSR, provides for the reporting of security-based swaps to security-based swap data repositories (SBSDRs). The compliance schedule for SBS reporting is subject to a separate proposal subject to public comment. After it goes into effect, Regulation SBSR will generally require data for a security-based swap to be reported to an SBSDR within 24 hours, with no special provisions applicable to large “block” trades. Regulation SBSR establishes a reporting hierarchy similar to the hierarchy provided in the CFTC’s rules, in which, as between the parties, dealers are typically responsible to fulfill reporting requirements. However, Regulation SBSR is less prescriptive than the CFTC’s rules with regard to the particular data that is required to be reported.

The other rule that the SEC recently finalized pertains to the registration, duties and core principles of SBSDRs. Generally these appear to be parallel to the CFTC’s analogous rules. The compliance date for this rule is scheduled to occur in March 2016.

For a detailed analysis of the CFTC’s and prudential bank regulators’ proposed margin rules for uncleared swaps which, when finalized, will play an important role in determining the economics of the uncleared swaps market, see our client alert, available here: <http://www.mofo.com/~media/Files/ClientAlert/2015/02/150220MarginforUnclearedSwaps.pdf>.

FMA
Check us out on LinkedIn and on
the web @ www.fmaweb.org

CFPB UPDATE

CFPB Reinforces Prohibition on Sharing Confidential Supervisory Information

On January 27, 2015, the CFPB issued a Compliance Bulletin reminding supervised financial institutions about regulatory requirements surrounding Confidential Supervisory Information (CSI); specifically, the requirement to keep such information confidential. The bulletin provides examples of what constitutes CSI, such as CFPB examination reports and supervisory letters, information related to an institution’s supervisory rating, communications between a supervised institution and the CFPB related to the CFPB’s supervisory activities and information created by the CFPB in the exercise of its supervisory authority. The bulletin reminds supervised entities that they must obtain written approval from the Associate Director for Supervision, Enforcement, and Fair Lending prior to disclosing CSI to any party unless an exception applies. For our client alert on the bulletin, please visit <http://www.mofo.com/~media/Files/ClientAlert/2015/01/150129SupervisoryInformation.pdf>.

CFPB Enforcement Action Alleges Violations of RESPA’s Kickback Prohibitions

On February 10, 2015, the CFPB announced a consent order with NewDay Financial LLC (“NewDay”) in connection with the company’s mortgage lending activities. The consent order relates to allegations that the company violated RESPA’s prohibition against kickbacks by paying “licensing fees” and “lead generating fees” in exchange for referrals from a non-profit organization that serves veterans. According to the consent order, NewDay made 3,900 payments to a broker company and an organization serving veterans for the referral of business from the organization’s members. The consent order also alleges that NewDay became the exclusive lender for the veteran’s organization and paid for leads from more than 50 million direct mail solicitations sent to the organization’s members. Under terms of the consent order, NewDay must pay a \$2 million civil money penalty and submit a compliance plan detailing steps that the entity will take to address each allegation in the consent order. For our client alert on the consent

(Continued on Page 6)

Legislative/Regulatory Actions

Continued from Page 5

order, please visit <http://www.mofo.com/~media/Files/ClientAlert/2015/02/150219CFPBSection8.pdf>.

CFPB Proposes Suspending Quarterly Credit Card Agreement Submission Requirements

On February 26, 2015, the CFPB published a proposed rule that would suspend for one year the requirement under Regulation Z that credit card issuers submit their cardholder agreements to the CFPB on a quarterly basis. Regulation Z requires that credit card issuers submit agreements to the CFPB each quarter for inclusion in the CFPB's online repository, and also requires issuers to post their agreements in a prominent location on their own websites. Under the proposed rule, issuers would not be required to submit credit card agreements to the CFPB for the next four quarters, although the requirement to post agreements on issuer websites would remain in effect. The CFPB says it will work during the suspension period to develop a new electronic submission system that would make submitting credit card agreements less burdensome for issuers in the future. For our client alert on the proposal, please visit <http://www.mofo.com/~media/Files/ClientAlert/2015/02/150227CFPB.pdf>.

CFPB Releases Arbitration Study Report to Congress

On March 10, 2015, the CFPB submitted to Congress its study on pre-dispute arbitration provisions ("Arbitration Study") pursuant to Section 1028(a) of the Dodd-Frank Act. According to the CFPB, the Arbitration Study is "empirical, not evaluative," and reflects the most comprehensive empirical study of consumer financial arbitration to date. The Arbitration Study was issued pursuant to statutory authority granted to the CFPB under the Dodd-Frank Act to issue rules to prohibit or impose limitations on the use of arbitration clauses if the CFPB determines that doing so would be in the public's interest and would protect consumers. Director Cordray said in a press release announcing the Arbitration Study that the CFPB, following completion of the study, will now "consider what next steps are appropriate."

Legislation Introduced to Modify CFPB Structure

In March 2015, Representative Randy Neugebauer (R-TX) introduced legislation (H.R. 1266) that would change the CFPB into a "Financial Product Safety Commission" and would replace the current position of Director of the CFPB with a five-member bipartisan commission appointed by the President. H.R. 1266 is similar to H.R. 3194 that was passed by the House last year, but failed to garner passage by the Senate. One notable difference between H.R. 1266 and last year's bill is that H.R. 1266 omits provisions intended to subject the CFPB to Congressional appropriations oversight. While President Obama would likely veto the current bill, the bill may receive more support in the new Republican-controlled Senate and generate more momentum toward compromise legislation. For our client alert on the current bill, please visit <http://www.mofo.com/~media/Files/ClientAlert/2015/03/150311CFPBStructure.pdf>. ■

**Amanda J. Mollo, James C.H. Nguyen, and James Schwartz contributed to this column.*

FMA Welcomes More New Members!

Lydia Miceli	E*Trade Financial
Ashley Minium	UMB Financial Corporation
Mark Pretzat	Federal Housing Finance Agency
Jorge Rey	Kaufman, Rossin & Co.
David Rishel	Hardin Compliance Consulting
Gloria Rodriguez	Sabadell Bank
Sara Sotoodehfar	E*Trade Financial
Mark Squillante	Phoenix Advisors, LLC
Alexandra Vignola	E*Trade Financial
Patrick Villoldo	Sabadell Bank
Jeffrey Weiss	TD Ameritrade
Julius Williams III	SunTrust Investment Services

Watch For

OCC Bulletin 2015-20 (March 30, 2015) – The FFIEC issued a statement to notify financial institutions of the increasing threat of cyber attacks involving destructive malware and to recommend risk mitigation techniques. In some cases, destructive malware used in these attacks successfully compromised large quantities of data and rendered supporting systems inoperable. An institution's management is expected to maintain sufficient business continuity planning processes to ensure the rapid recovery, resumption, and maintenance of the institution's operations after a cyber attack involving destructive malware.

OCC Bulletin 2015-19 (March 30, 2015) – The FFIEC issued a statement to notify financial institutions of the growing trend of cyber attacks for the purpose of obtaining online credentials for theft, fraud, or business disruption and to recommend risk mitigation techniques. Financial institutions should address this threat by reviewing their risk management and controls over information technology networks and authentication, authorization, fraud detection, and response management systems and processes.

CFTC Press Release 7144-15 (March 27, 2015) – The CFTC's Division of Swap Dealer and Intermediary Oversight issued a no-action letter to futures commission merchants, swap dealers and major swap participants that provides relief from certain requirements under Regulation 3.3(f), which requires registrants to give the Commission their CCO annual report not more than 60 days after the end of their fiscal year. Among other things, the letter grants registrants an additional 30 days to provide their annual reports to the Commission.

OCC News Release 2015-45 (March 27, 2015) – Comptroller of the Currency Thomas Curry discussed efforts to protect seniors from financial abuse.

Federal Reserve Press Release (March 26, 2015) – The FRB and FDIC permanently adjusted the annual resolution plan filing deadline for these nonbank financial institutions – American International Group, Inc., General Electric Capital Corporation, Inc., MetLife Inc., and Prudential Financial, Inc., from July 1 to December 31 beginning in 2016. Each firm was previously designated by the FSOC for enhanced supervision by the Federal Reserve.

Federal Reserve Press Release (March 26, 2015) – A Federal Reserve survey (*Consumers and Mobile*

Financial Services 2015) provided information on mobile financial services.

FINRA Regulatory Notice 15-09 (March 26, 2015) – FINRA provided guidance on effective supervision and control practices for firms engaging in algorithmic trading strategies. These effective practices are focused on five general areas: General Risk Assessment and Response; Software/Code Development and Implementation; Software Testing and System Validation; Trading Systems; and Compliance.

OCC Bulletin 2015-18 (March 26, 2015) – Regulatory review to identify outdated, unnecessary or unduly burdensome regulations – the OCC, FRB and FDIC requested comment on the agencies' regulations in the Banking Operations, Capital, and Community Reinvestment Act categories. Due by May 14, 2015, comments may be submitted through the agencies' EGRPRA Web site, <http://egrpra.ffiec.gov>.

FINRA Regulatory Notice 15-08 (March 25, 2015) – Effective April 1, 2015, FINRA is increasing qualification examination fees.

SEC Press Release 2015-49 (March 25, 2015) – The SEC adopted final rules to facilitate smaller companies' access to capital. The new rules provide investors with more investment choices. The rules will be effective 60 days after publication in the *Federal Register*.

SEC Press Release 2015-48 (March 25, 2015) – The SEC proposed rule amendments to require that broker-dealers trading in off-exchange venues become members of a national securities association. The amendments would enhance regulatory oversight of active proprietary trading firms, such as high frequency traders. The SEC will seek public comment on the proposed rule amendment for 60 days following its publication in the *Federal Register*.

Federal Reserve Press Release (March 23, 2015) – The FRB and FDIC provided feedback on resolution plans submitted in 2014 by three large, foreign banking organizations. In addition, the agencies jointly identified specific shortcomings with the 2014 resolution plans that will need to be addressed in the 2015 submissions.

CFTC Press Release 7139-15 (March 23, 2015) – The CFTC's Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight issued a staff

(Continued on Page 8)

Watch For *(Continued from page 7)*

advisory (No. 15-14) to remind futures commission merchants, clearing members, foreign brokers, swap dealers and certain reporting markets of their reporting obligations pursuant to the ownership and control final rule. The OCR Final Rule is currently subject to staff no-action letter 15-03, issued on February 10, 2015. Pursuant to the no-action letter, reporting obligations under the OCR Final Rule follow a staggered implementation schedule with obligations beginning on October 1, 2015. Reporting parties should take preparatory steps, as described in staff no-action letter 15-03, so that they may successfully comply with their reporting obligations on October 1, 2015.

FINRA Regulatory Notice 15-07 (March 20, 2015) – The SEC approved Consolidated FINRA Rules 2040 (Payments to Unregistered Persons) and 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation), and Amendments to FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar); effective date: August 24, 2015.

March 19, 2015 – The MSRB requested approval from the SEC of a proposal to expand the post-trade data displayed on its EMMA website. Amendments to the MSRB's Real-Time Transaction Reporting System would require municipal securities dealers to indicate trades executed on an alternative trading system and trades involving non-transaction based compensation arrangements, among other changes.

FINRA Regulatory Notice 15-06 (March 19, 2015) – FINRA requests comment on a proposal to require registration as a Securities Trader of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for supervising or directing such activities. The comment period expires May 18, 2015.

MSRB Press Release (March 17, 2015) – The MSRB filed a rule change with the SEC to increase the development fee for MSRB professional qualification examinations to \$150 from \$60. The change, reflected in an amendment to MSRB Rule A-16, is effective immediately. Individuals who register for an MSRB-owned exam on or after April 1, 2015 will be charged the new rate. The \$150 MSRB fee will apply to its forthcoming Municipal Advisor Representative Qualification Examination and the pilot version of this exam to be administered later this year.

CFTC Press Release 7137-15 (March 17, 2015) – The CFTC unanimously approved a final rule removing the December 31, 2018 automatic termination of the phased-in compliance period for the Residual Interest Deadline for futures commission merchants.

Federal Reserve Press Release (March 16, 2015) – The Federal Reserve Board announced a proposal that would require banking organizations to include their existing Legal Entity Identifiers on certain regulatory reporting forms. The proposal would require banking organizations to include LEIs, a unique reference code to enable easier identification of a firm's legal entities, for its relevant units on certain reporting forms as of June 30, 2015. Comments on the proposal are requested within 60 days of publication in the *Federal Register*.

CFTC Press Release 7134-15 (March 10, 2015) – The CFTC solicited public comment in response to the U.S. District Court order regarding cross-border litigation. All comments must be received on or before May 11, 2015 and will be posted on the CFTC's website.

Federal Reserve Press Release (March 11, 2015) – The Federal Reserve announced it has not objected to the capital plans of 28 bank holding companies participating in the Comprehensive Capital Analysis and Review (CCAR). One institution received a conditional non-objection based on qualitative grounds, and the Federal Reserve objected to two firms' plans on qualitative grounds.

FINRA Regulatory Notice 15-05 (March 6, 2015) – The SEC approved the consolidated FINRA rule regarding background checks on registration applicants – effective date of FINRA Rule 3110(e): July 1, 2015. The SEC also approved FINRA Rule 3110.15 which establishes a temporary program that will issue a refund to members of Late Disclosure Fees assessed for the late filing of responses to Form U4 Question 14M, subject to specified conditions. FINRA Rule 3110.15 became retroactively effective on April 24, 2014, and it will automatically sunset on December 1, 2015.

March 5, 2015 – Current status of MSRB municipal advisor rulemaking: Supervision and Compliance Obligations (MSRB Rule G-44) – effective April 23, 2015 (except for Rule G-44(d) effective April 23, 2016); Professional Qualification Standards (MSRB Rule G-3) – effective April 27, 2015; Standards of Conduct (MSRB Draft Rule G-42) – comment period closed and SEC

(Continued on Page 9)

Watch For *(Continued from page 8)*

filing under development; Political Contributions (Draft Amendments to MSRB Rule G-37) – comment period closed and SEC filing under development; and Gifts and Gratuities (Draft Amendments to MSRB Rule G-20) – comment period closed and SEC filing under development.

MSRB Press Release (March 2, 2015) – The MSRB received approval from the SEC to create baseline standards of professional qualification for municipal advisors. The new standards will be incorporated through amendments to the MSRB's existing Rules G-2 and G-3 on professional qualifications and take effect April 27, 2015. The MSRB has finalized the content outline for the Municipal Advisor Representative Qualification Examination, which will be filed soon with the SEC and made publicly available as a study aid. After administering a pilot exam planned for later this year, the MSRB intends to begin administering the permanent municipal advisor exam in 2016 and will provide a one-year grace period during which individuals will be able to take the test while still engaging in municipal advisory activities.

MSRB Press Release (March 2, 2015) – The MSRB's EMMA website will include public finance ratings from Moody's Investors Service later this year.

MSRB Notice 2015-4 (March 2, 2015) – The MSRB received approval from the SEC on February 26, 2015 to amend MSRB Rule G-1, on separately identifiable department or division of a bank; Rule G-2, on standards of professional qualification; Rule G-3, on professional qualification requirements; and Rule D-13, on municipal advisory activities, to establish professional qualification requirements for municipal advisors and make related technical rule changes.

Federal Reserve Press Release (February 26, 2015) – The Federal Reserve Board extended until April 3, 2015 the comment period for its proposed rule to implement capital surcharges for the largest, most systemically important U.S. bank holding companies. Originally, comments were due by March 2, 2015.

CFTC Press Release 7126-15 (February 24, 2015) – The CFTC provided notice of the reopened comment period for its rulemaking proposals on position limits for physical commodity derivatives and aggregation. The comment periods will close on March 28, 2015.

Joint Press Release (February 20, 2015) – The federal bank regulatory agencies requested comment on a second set of regulatory categories as part of their review to identify outdated or unnecessary regulations applied to insured depository institutions. Comments will be accepted until May 14, 2015. The agencies also are holding a series of outreach meetings with financial institutions and interested parties to gather additional views.

Joint Press Release (February 18, 2015) – The FRB and FDIC announced they are extending the resolution plan submission deadline for American International Group, Inc., General Electric Capital Corporation, Inc., and Prudential Financial, Inc. The three organizations will be required to submit their second annual plans by Dec. 31, 2015, instead of July 1, 2015.

February 17, 2015 – The MSRB reminded dealers of the February 24, 2015 effective date for new Rule G-45 requiring underwriters of 529 college savings plans to electronically submit information about those plans to the MSRB through its EMMA system. Rule G-45 establishes semiannual reporting periods, the first of which is January 1 – June 30, 2015. Additional data on investment option performance is due on an annual basis, beginning with information for calendar year 2015. Underwriters have 60 days following the end of each semiannual reporting period and calendar year to submit the required information to the MSRB.

OCC Bulletin 2015-14 (February 11, 2015) – The OCC, FRB and FDIC have developed an automated tool to help national banks and federal savings associations calculate risk-based capital requirements for securitization exposures. The agencies are making this tool available for all banks that use the simplified supervisory formula approach to help calculate associated capital requirements. Banks may opt to use the simplified supervisory formula approach under the standardized approach, which is part of the revised capital rule that became effective January 1, 2015.

FINRA Regulatory Notice 15-04 (February 9, 2015) – FINRA is requesting comment on a proposal to expand dissemination of TRACE data to include additional Securitized Products and to reduce the reporting time frame for these products. The comment period expires April 10, 2015.

(Continued on Page 10)

Watch For *(Continued from page 9)*

SEC Press Release 2015-26 (February 9, 2015) – The SEC proposed rules for hedging disclosure. The amendments would enhance corporate disclosure of hedging policies for officers, directors and employees. The SEC will seek public comment on the proposed rule amendments for 60 days following their publication in the *Federal Register*.

FINRA Regulatory Notice 15-03 (February 6, 2015) – FINRA requested comment on a proposal to require alternative trading systems to submit quotation information relating to fixed income securities to FINRA solely for regulatory purposes. The comment period expires April 7, 2015.

SEC Press Release 2015-20 (February 3, 2015) – The SEC released publications that address cybersecurity at brokerage and advisory firms and provide suggestions to investors on ways to protect their online investment accounts.

MSRB Regulatory Notice 2015-03 (February 29, 2015) – The MSRB published a second advisory promoting more transparency of undisclosed debt of municipal bond issuers.

OCC Bulletin 2015-8 (January 29, 2015) – The OCC, FRB, FDIC, SEC, FHFA and Department of Housing and Urban Development issued a final rule to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15 USC 78o-11), as added by section 941 of the Dodd-Frank Act. The final rule requires sponsors of asset-backed securities to retain at least 5 percent of the credit risk of the assets underlying the securities and does not permit sponsors to transfer or hedge that credit risk during a specified period. The final rule applies to asset-backed securities issued on or after December 24, 2015, if the securities are backed by residential mortgages. The final rule applies to all other classes of asset-backed securities issued on or after December 24, 2016.

January, 2015 – The MSRB published a market advisory to alert municipal market participants of the importance of voluntary disclosure of bank loans.

Available Publications

OCC Bulletin 2015-17 (March 6, 2015) – The OCC issued the “Deposit-Related Credit” booklet of the *Comptroller’s Handbook*. This booklet replaces and clarifies the “Deposit-Related Consumer Credit” booklet issued February 11, 2015. It references relevant supervisory guidance and includes examination procedures that OCC examiners use to assess a bank’s deposit-related credit products and services.

MSRB Press Release (February 25, 2015) – The MSRB published its new annual Fact Book of municipal market data and invited user feedback.

OCC Bulletin 2015-13 (February 11, 2015) – The OCC issued the “Deposit-Related Consumer Credit” booklet of the *Comptroller’s Handbook*. This booklet replaces the “Check Credit” booklet issued in March 1990 and provides updated guidance and examination procedures that OCC examiners will use to assess a bank’s deposit-related consumer credit activities.

OCC Bulletin 2015-12 (February 10, 2015) – The OCC issued the “Personal Fiduciary Activities” booklet of the *Comptroller’s Handbook*, replacing a similarly titled booklet issued in August 2002.

OCC Bulletin 2015-11 (February 6, 2015) – The OCC issued an interim final rule with a request for comments on December 18, 2014, that amends the OCC’s subordinated debt rules for national banks at 12 CFR 5.47 by moving certain provisions from the current guidelines at appendix A of the “Subordinated Debt” booklet of the *Comptroller’s Licensing Manual* to 12 CFR 5.47 and making other clarifying and technical changes.

OCC Bulletin 2015-9 (February 6, 2015) – The FFIEC has released a new appendix, “Strengthening the Resilience of Outsourced Technology Services,” to the “Business Continuity Planning” booklet of the *FFIEC Information Technology Examination Handbook*. The new appendix ensures that the booklet aligns with regulatory guidance on third-party relationship risk management and incorporates emerging risks, such as cyber resilience risk concerns. “Business Continuity Planning” is one of the 11 booklets comprising the *FFIEC IT Examination Handbook*.

Program Update



2015 Securities Compliance Seminar

Early Bird Registration Extended!

Registrations are still being accepted for FMA's 24th Securities Compliance Seminar taking place April 22–24, 2015 at the Sonesta Fort Lauderdale (on the beach!) in Fort Lauderdale, Florida. This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators. Good news...the early bird registration rates have been extended until April 10!

The Planning Committee has been hard at work developing varied agenda topics and confirming noted industry leaders and regulators as speakers. Members include: Carl Fornaris (*Greenberg Traurig, P.A.*); Dan Tannebaum (*PricewaterhouseCoopers LLP*); Bao Nguyen (*Kaufman, Rossin & Co.*); Mac Northam (*FMA Board Member*); Brandon Reddington (*Credit Suisse*); Bill Reilly (*Oyster Consulting, LLC*) and Kristen Constantino (*Capital One Investing, LLC*).

The current agenda (which can be viewed/downloaded at www.fmaweb.org) includes these general sessions, concurrent workshops and confirmed speakers:

Key 2015 Legislative and Regulatory Initiatives

- › Russell Bruemmer ■ WilmerHale
- › Mark Carberry ■ Neal, Gerber & Eisenberg LLP
- › Jeffrey Holik ■ The PNC Financial Services Group, Inc.
- › Grace Vogel ■ PricewaterhouseCoopers LLP

Working with Retail Investors

- › Margaret Edmunds ■ BMO Harris Financial Advisors
- › David Hutcheson ■ CD Funding
- › Donald Litteau ■ FINRA

Internal Audit Hot Topics

- › Scott Norton ■ BankUnited
- › Daniel Suarez ■ Kaufman, Rossin & Co.
- › John White ■ WeiserMazars

AML / OFAC Compliance in a Dynamic Regulatory Environment

- › Sarah Green ■ FINRA
- › Brandon Reddington ■ Credit Suisse
- › Jeffrey Weiss ■ TD Ameritrade

2 Regulatory Forums—Securities and Banking

- › Askari Foy ■ SEC
- › Cynthia Friedlander ■ FINRA
- › Donald Litteau ■ FINRA
- › Saliha Olgun ■ MSRB
- › John Karansky ■ FRB
- › Frank Kulbaski III ■ CFPB
- › Gregory Moore ■ OCC

Understanding Municipal Advisor Regulations and Examinations

- › Cynthia Friedlander ■ FINRA
- › Saliha Olgun ■ MSRB
- › Mary Simpkins ■ SEC

Establishing Effective Policies, Procedures and Best Practices for Dealing with Elderly Clients

- › Neil Baritz ■ Baritz & Colman LLP
- › Joe Borg ■ Alabama Securities Commission
- › Ronald Long ■ Wells Fargo Advisors

Social Media Challenges

- › Michelle Dávila ■ Franklin Templeton Investments
- › Ann Robinson ■ RegEd
- › Frederick Schriels ■ GrayRobinson, P.A.

(Continued on page 12)

Program Update *(continued from page 11)*

Cybersecurity

- › Mauricio Angee ■ Mercantil Commercebank N.A.
- › Alfred Saikali ■ Shook, Hardy & Bacon LLP
- › David Weinberger ■ International Assets Advisory, LLC

Institutional Compliance

- › Joy Aldridge ■ Compliance Counsel LLC
- › Matthew Hardin ■ Hardin Compliance Consulting LLC
- › James Rabenstine ■ Nationwide Financial Services

Conflicts of Interest, Risk Assessments and Other Supervisory Issues

- › Dawn Calonge ■ FINRA
- › Hank Sanchez ■ Oyster Consulting, LLC
- › Vaughn Swartz ■ TD Securities (USA) LLC

Personal Liability Facing Financial Industry Compliance Personnel

- › David Klafter ■ FINRA
- › William Mack ■ Greenberg Traurig, P.A.
- › Marshall Martin ■ City National Bank of Florida

Peer Groups

Peer group discussions (lead by facilitators) will take place Wednesday and Thursday afternoons. Possible topics include: AML/OFAC; *Best Practices for Investment Advisers*; *Broker-Dealer Compliance Hot Topics*; *Compliance Officer Personal Liability*; *Compliance Issues for Elderly Clients*; *Conflicts of Interest/Risk Assessments/Supervisory Issues*; *Cybersecurity*; *Fixed Income Fair Pricing*; *Institutional Compliance*; *Internal Audit Hot Topics*; *Key 2015 Legislative and Regulatory Initiatives*; *Litigation and Regulation Enforcement*; *Managing Remote Offices and Employees*; *Privacy/Data Integrity/Identity Theft*; *Social Media*; *Understanding Municipal Advisor Regulations and Examinations*; and *Working with Retail Investors*. If you would like to facilitate one of these discussions, please contact FMA.

Session added...a post-seminar peer discussion has been tentatively scheduled for Friday afternoon for attendees needing maximum CLE/CPE hours.



Informal group dinners will take place Wednesday and Thursday evenings. Let Dorcas Pearce know if you'd like to sign up for these casual networking opportunities. Please note the cost is not included in the registration fee...everyone will be on their own.

FMA's room block at the Sonesta expires April 3. If you'll need overnight accommodations, please contact the hotel before that date to book a room at the FMA group rate of \$189. After April 3, room rates may increase by \$100 or more per night. Click [here](#) to make a reservation. If the block is gone, contact Dorcas Pearce. FMA has a few rooms in reserve at the group rate that will be given out on a first-come, first-served basis.

Team discounts are still available and additional discounts are available to Florida attendees.

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.

CLE & CPE accreditation (among others) are available. Good news...The Florida Bar has approved the program for 23.5 CLE hours. Contact Dorcas Pearce at dp-fma@starpower.net or 202/544-6327 if you need to sign up and/or have questions.

(Continued on Page 13)



photo ©East Village Images / Shutterstock

Program Update *(continued from page 12)*

Pre-Seminar Workshop

Louis Dempsey (Renaissance Regulatory Services) and **James Sallah** (Sallah Astarita & Cox, LLC) will lead an optional pre-seminar interactive workshop, **Regulatory Examinations and Investigations**, on Wednesday, April 22 from 8:30–10:45 am. This workshop will present a unique opportunity to network with other legal, compliance and audit professionals and provide an interactive format to address the questions and concerns of the participants.

The session is designed to enhance attendees’ knowledge about the regulatory examination and investigative process, and compare and contrast their similarities and differences. The moderators, former regulators, consultants, and

practicing attorneys, will explain their experiences and best practices for working with regulators in the context of examinations and investigations. Panelists will discuss a myriad of topics, including: staying prepared for a regulatory examination; managing the examination process (and your “day” job); the when, why, and how an examination turns into a formal Investigation; differences between a document request and a subpoena; document production best practices; utilizing outside resources – when and why; and negotiation early resolutions – advantages and disadvantages.

An additional \$100 registration fee will apply. Contact Dorcas Pearce at dp-fma@starpower.net or 202/544-6327 for details and/or to register.

FMA gratefully acknowledges these sponsors of FMA’s 2015 Securities Compliance Seminar



(Continued on Page 14)

Program Update *(continued from page 13)*

2015 Legal & Legislative Conference

FMA's 24th Legal & Legislative Conference is set to take place October 22–23 at the Hyatt Regency Washington on Capitol Hill (site of the 2014 program) 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 day and a half program provides participants with an opportunity to share information on current legal and regulatory developments as well as network with peers.

FMA is now assembling a Program Planning Committee to develop an agenda focusing on current areas of regulatory and Congressional scrutiny/activity. **If you would like to volunteer for the committee (or serve as a speaker), contact Dorcas Pearce at dp-fma@starpower.net or 202/544-6327.**

FMA requests your input! An e-survey will be sent out in April to a sampling of past conference attendees and colleagues asking for topical as well as speaker suggestions for the 2015 program. The Planning Committee will rely greatly on these responses when formulating the program...so please respond quickly and share your thoughts and ideas... even if you do not receive the survey. **Help us make this the best conference ever.**

CLE and CPE accreditation...as well as team discounts...will be available, so be sure to budget for (and plan to attend) the 2015 Legal & Legislative Issues Conference. Contact Dorcas Pearce at dp-fma@starpower.net or 202/544-6327 with questions and/or to volunteer.

ATTENTION SPONSORS!

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



photo © Jim Pruitt/Shutterstock.com

Who's News

Anthony Cipiti, formerly a Senior Attorney at Squire Patton Boggs, has joined Nationwide Financial as a Managing Counsel.

Pamela Dyson has been named the SEC's Chief Information Officer. She has served as Acting CIO since October, 2014.

Jason Fincke, formerly a Senior Attorney in the FDIC's Legal Division, has joined U.S. Bank as Regulatory Counsel.

Robert Fippinger, formerly a Senior Counsel at Orrick, Herrington & Sutcliffe, has joined the MSRB as their Chief Legal Officer, overseeing all legal and external affairs.

David Grim has been named Acting Director of the SEC's Division of Investment Management. He replaces Norm Champ, the division's former director, who left the SEC at the end of January.

Andrew Kales, formerly Of Counsel at Bingham McCutchen LLP, has joined TD Bank as Vice President and Senior Counsel in their Washington, DC office.

Malaika Lindo, formerly an Associate at Milbank, Tweed, Hadley & McCloy LLP, has

joined Vedder Price as an Associate in their Global Transportation Finance Group.

Yoan Manuel Lorenzo, AVP, Senior Audit Officer at Mercantil Commercebank, is leaving the bank to pursue his PhD in Conflict Analysis and Resolution at Nova Southeastern University's School of Humanities and Social Sciences.

David Porteous, formerly a Partner at Ulmer & Berne LLP, has joined Faegre Baker Daniels LLP's as head of the Investment Management Practice in Chicago, accompanied by **Jeff Blumberg**, **Kurt Lebakken** and **Jim Martignon**.

Michael L. Post has been promoted to General Counsel – Regulatory Affairs at the Municipal Securities Rulemaking Board.

Lawrence Sandor has been promoted to the new position of Chief Compliance Officer at the MSRB where he will be responsible for managing its corporate governance, regulatory support, internal legal and compliance activities.

Heather Seidel has been named Chief Counsel in the SEC's Division of Trading and Markets.

JOB BANK

Results-driven and dynamic senior-level industry professional with a proven record of accomplishment in Basel implementation and regulatory, compliance, and legal risk management. Develops and implements comprehensive, integrated compliance and business infrastructures to fulfill regulatory mandates and support new strategic ventures, products, and transactions,

including M&A and business model transformation. Manages sensitive regulatory relationships, examinations, and audits. A forward-thinking and innovative leader, with an in-depth understanding of evolving frameworks for international and domestic banking, securities, and derivatives activities. Contact David Harris at 980/254-2318 or [wilson.david.harris@gmail.com](mailto:david.harris@gmail.com).