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 - #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.

FINANCIAL MARKETS ASSOCIATION

U.S. Treasury Expected to Finalize QFC Recordkeeping Rule for Orderly Liquidation Authority in April

Getting Your Qualified Financial Contracts and Legal Agreements in Order

By Matthew P. Munafo
Lexmark Enterprise Software

On January 7, 2015 the U.S. Treasury's Notice of Proposed Rulemaking Regarding Qualified Financial Contracts ("QFC") Recordkeeping Related to Orderly Liquidation Authority ("OLA") was published in the *Federal Register.* Its purpose is to ensure that in the event of receivership, the Federal Deposit Insurance Corporation ("FDIC") has ready access to all QFC agreements electronically in searchable format as well as a comprehensive inventory of information about these agreements so it may prioritize and plan for an orderly resolution between the institution in receivership and its counterparties. Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (the "Dodd-Frank Act" or the "Act"), titled "Orderly Liquidation Authority," created a new federal receivership process whereby the FDIC may serve as receiver for large, interconnected financial companies, including broker-dealers, whose failure poses a significant risk to the financial stability of the United States. According to the timetable published at Reginfo.gov, final action is expected sometime in April of 2016.

The Secretary of the Treasury, as Chairperson of the Financial Stability Oversight Council ("FSOC"), has proposed rules to implement QFC recordkeeping requirements of the Dodd–Frank Act. The Act provides that if the federal primary financial regulatory agencies ("PFRAs") do not prescribe joint final or interim final regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver for a ("Covered Financial Company") to exercise its rights and fulfill its obligations under the Act within 24 months of the enactment of the Act, the Chairperson of the FSOC shall prescribe such regulations in consultation with the FDIC. Because the federal PFRAs did not prescribe joint final or interim final regulations, the Secretary is mandated to do so under the Act. The Proposed Rule requires recordkeeping with respect to positions, counterparties, legal documentation and collateral. This information is necessary to assist the FDIC as receiver to:

- Fulfill its obligations under the Dodd–Frank Act in deciding whether to transfer QFCs
- Assess the consequences of decisions to transfer, disaffirm or repudiate, or

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Route to: ❑ Audit ❑ Compliance ❑ Legal ❑ Risk Management ❑ Back Office ❑ Training

Legislative/Regulatory Actions

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

In this issue, we address various updates from the banking regulators, the SEC/CFTC, and the CFPB.

BANKING REGULATORS

OCC Outlines Notice and Response Procedures for Mandatory BSA Compliance Program Violation Cease-and-Desist Orders

On February 29, 2016, the Office of the Comptroller of the Currency (OCC) released OCC Bulletin 2016-6 ("Bulletin") which describes the OCC's process for providing notice and an opportunity to comment prior to the finalization of a mandatory cease-and-desist order for noncompliance with Bank Secrecy Act (BSA) compliance program requirements, or repeat or uncorrected problems with BSA compliance. The Bulletin applies to all OCC-supervised institutions ("Banks").

According to the Bulletin, if the OCC finds potential noncompliance, or repeat or uncorrected compliance problems, the facts are reviewed internally by the examiner-in-charge and representatives from both the OCC bank supervision and legal departments. The OCC will then provide the Bank with a written notice about the potential noncompliance, or the repeat or uncorrected problems, and the Bank has 15 days to respond.

Based on the information collected by the OCC and submitted by the Bank in its response, the OCC supervisory office and legal department will present a recommendation to the appropriate OCC Supervision Review Committee (SRC). The SRC then either determines whether to pursue an enforcement action, or makes a recommendation to the Senior Deputy Comptroller (SDC) if the determination has been delegated to the SDC. The OCC then proceeds in accordance with the determination made by the SDC or SRC, as applicable.

If an enforcement action is pursued, the final supervisory letter or report of examination and the proposed cease-and-desist order are provided to the Bank. The Bank then may consent to the issuance of the order, in which case the OCC will work with the Bank to finalize the order. If no consent is provided, the OCC will pursue the enforcement action through a notice of charges and administrative hearings.

If potential criminal violations of the BSA or violations of anti-money laundering laws are involved, the OCC coordinates with appropriate law enforcement and makes sure that suspicious activity reports are filed. The OCC will notify the Financial Crimes Enforcement Network (FinCEN) of all formal and informal enforcement actions. If the OCC is actively considering a civil money penalty, the OCC will issue a 15-day letter to the Bank or appropriate institution-affiliated parties. At the same time, the OCC will notify FinCEN of the potential civil money penalty action. The Bulletin is available at *http://www.occ.treas.gov/news-issuances/bulletins/2016/bulletin-2016-6.html.*

The Fed Proposes Single-Counterparty Credit Limits for Large Banking Organizations

On March 4, 2016, the Board of Governors of the Federal Reserve System (Fed) proposed rules

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FMA Welcomes New Members!

Gina Adelphia	Northern Trust Corporation
Heather Augustine	Hardin Compliance Consulting
Angela Bourgeois	Sigma Financial Corporation/ Parkland Securities, LLC
Steve Bridges	JLT Specialty USA
Steve Brown	PricewaterhouseCoopers Advisory Services LLC
Jason Cahaly	Bank of America
Ellis Casper	M&T Bank
Michael Craft	Lumesis, Inc.
Rachel Dondarski	OFAC

QFC Recordkeeping Rule…

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allow the termination of, QFCs with one or more counterparties

- Determine if any financial systemic risks are posed by the transfer, disaffirmance or repudiation, or termination of such QFCs

The industry and regulators share serious concern about cross-default provisions and other early termination rights that could be triggered by insolvency proceedings, potentially presenting significant impediments to resolvability for entities with significant portfolios of QFCs, as the automatic stay provisions of Chapter 11 of the federal Bankruptcy Code do not apply to QFCs. In the absence of an effective stay, counterparties are not barred from terminating QFCs and are often able to collect payment immediately by way of netting, termination, closeout and collateralization provisions, potentially to the detriment of the Chapter 11 estate. This industry-wide problem has prompted further action by regulators to ensure an orderly liquidation of collateral and assets between counterparties.

The industry and regulators share serious concern about cross-default provisions and other early termination rights that could be triggered by insolvency proceedings, potentially presenting significant impediments to resolvability for entities with significant portfolios of QFCs….”

Under Section 165(d) of the Dodd-Frank Act and rules issued by the Board of Governors of the Federal Reserve System and the FDIC, US systemically important financial institutions (SIFIs), which include bank holding companies with $50 billion in assets and nonbank and financial market companies designated as systemically important by the FSOC, are required to periodically update a plan for rapid and orderly resolution in the event of material financial distress or failure (a “Resolution Plan”). These Resolution Plans must consider how a hypothetical reorganization or liquidation of covered companies under the U.S. Bankruptcy Code could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of any serious adverse effects on U.S. or global financial stability. Under the Proposed Rule, further implementation of OLA under Title II will require Covered Financial Companies to consolidate and maintain position-level data, counterparty collateral data, legal agreements in full-text searchable format, and collateral detail data electronically on end-of-day QFC positions. As the Proposed Rule is written today, this information must be made available to regulators within a 24 hour period.

The Challenge Related to Consolidation and Inventory of QFC Legal Agreements and Supporting Documentation

Because the receiver has a limited period of time in which to evaluate QFC provisions, the availability of the legal agreements in fully searchable electronic form is of utmost importance.

For covered financial companies with large portfolios of QFCs across multiple lines of business and dozens of offices globally, this may prove to be a monumental and extraordinary effort.

Covered companies will need to establish and maintain legal agreement data for each QFC and master agreement between each records entity and counterparty. The Proposed Rule also requires a Records Entity to use a unique counterparty identifier for each legal entity and each non-U.S. office of a legal entity that conducts business as a separate branch or division. This is intended to facilitate the FDIC’s ability to understand cross-border exposure of the Covered Financial Company.

They must also maintain in readily accessible searchable format all of the following documents

- Legal agreements (including master agreements, annexes, supplements or other modifications with respect to the agreements) between the records entity and its counterparties that govern QFC transactions
- Documents related to and affirming the position; active or “open” confirmations, if the position has been confirmed
- Credit support documents
- Assignment documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment(s) have been obtained or satisfied

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QFC Recordkeeping Rule…

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Under the Proposed Rule, it is imperative that legal agreements between the records entity and counterparty be identified by name and any other unique identifier information. They must also identify relevant governing law and include a list and description of any events of default, termination events that are in addition to those specified in the form of agreement used, and events of default or termination events that have been removed by mutual agreement. Furthermore, each records entity would need to identify all "specified financial condition clauses" that are part of a given agreement.

> *"Because the receiver has a limited period of time in which to evaluate QFC provisions, the availability of the legal agreements in fully searchable electronic form is of utmost importance."*

In the Proposed Rule's Appendix, Table A-3 as it is written today, has almost 20 fields of information to be collected and maintained for each agreement.

What Does This Mean and How Do We Comply?

Those covered companies with multiple lines of business and separate legal entities globally will have the hardest challenge. Document management and recordkeeping can be done so many different ways and with varying degrees of organization, or the lack thereof. Often legal agreements and supporting documentation reside in silos, usually in document management systems (DMS), but there is still a tremendous volume of paper agreements that are stored in physical file cabinets in their offices of origin. All of these will need to be scanned applying optical character recognition (OCR) to the images which is what enables them to be machine-readable and electronically searchable. They will then need to be indexed and classified. The field data to be collected about these agreements as described above will need to be extracted from each agreement. All of this can be done manually, or electronically with enterprise software solutions designed to automate such actions to handle large page volumes.

As the Proposed Rule is written today, it will become effective 60 days after the final rule is run in the *Federal Register*. Covered companies will then have no more than 270 days from the effective date to get their QFCs in order. For Covered Financial Companies with hundreds or even thousands of contracts, automation will be critical in order to meet the U.S. Treasury's deadline.

Although intelligent capture software solutions make classification and indexing easier by way of automation, these QFCs can be sophisticated and complex agreements with terminology specific to the niche services being provided. For example, a standard ISDA agreement could have multiple SICAV counterparty lists for multiple types of transactions. A SICAV consists of sub-funds that are legal entities in their own right. These sub-funds could be listed multiple times if they are approved for multiple transaction types. An ISDA agreement could have over 100 legal entity names. Which one(s) will need to be extracted to populate the "Legal Name of Counterparty" field in Table A-3? A custody service agreement that holds collateral between counterparties might have over 80 global sub-custodians and upwards of 90 or more depositories all of which have their own legal entity names and identifiers. The point here is that even with automation software and intelligent capture capabilities, there will be a great deal of work involved for global teams to collaborate and establish the rules and logic necessary for how agreements will be aggregated, imaged, scanned, classified, and indexed. It will be even more difficult to establish the rules and logic for the data elements to be extracted from these agreements in order to build and maintain a centralized inventory of QFCs as well as sortable and searchable information about them required under the Proposed Rule. The reason for this is that QFCs are, for the most part, unstructured documents. Unlike structured forms and semi-structured documents where template-based capture solutions are sufficient to get the job done, unstructured documents make it incredibly difficult because each one is unique and different. While ISDA contracts have a semi-structured format and flow, securities lending agreements and supporting documentation generally do not.

As if there isn't enough work to do already as described above, creating naming conventions and

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QFC Recordkeeping Rule…

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taxonomies for these agreements can be a cultural and organizational challenge because consensus building and decision-making among multiple stakeholders can often be a trying and time consuming effort. It will be a critical one though, since much of the work to be done will be dependent on mutual agreement across the enterprise on how these QFCs will be classified and organized.

Expected Costs of Implementation

Based on discussions with the PFRAs who have experience supervising financial companies with QFC portfolios, the Secretary recognizes that the Proposed Rule's standardized form and availability requirements will impose costs and burdens on records entities. In order to comply with the Proposed Rule, each of the approximately 140 large corporate groups that the Secretary estimates would be subject to the recordkeeping requirements will need to have network infrastructure to maintain data in the required format. The Secretary expects that this will likely impose one-time initial costs on each large corporate group in connection with necessary updates to their recordkeeping systems, such as systems development, modifications, and even purchase of intelligent capture solutions. The initial costs will depend on whether a large corporate group already holds and maintains QFC data in an organized electronic format, and if so, whether the data currently reside on different systems rather than on one centralized system. Covered companies may need to amend internal procedures, reprogram systems, reconfigure data tables, and implement compliance processes. They may need to standardize the data and create tables to match the format required by the Proposed Rule. It is estimated that the initial recordkeeping burden averaged across all records entities will be a total one-time initial cost of approximately $8,030,599. The total estimated annual recordkeeping burden averaged across all records entities will be a total annual cost of approximately $2,077,799. The estimated average hourly wage rates for record keepers to comply with the initial and annual recordkeeping burden is based in part on the U.S. Department of Labor, Bureau of Labor Statistics' national occupational employment statistics and wage statistics, dated May 2012. The total estimated annual reporting burden under the Proposed Rules will be a total annual cost of approximately $542,500. These costs will be much higher for the largest institutions that need to comply with the Proposed Rule.

> *"Those covered companies with multiple lines of business and separate legal entities globally will have the hardest challenge."*

Conclusion

In summary, it has taken over four years for rules enforcing this part of the Dodd-Frank Act to finally be proposed and published in the *Federal Register*. The online docket for the Proposed Rule at Regulations.gov received 16 comments along with formal letters during the comment period from a number of large institutions as well as organizations including SIFMA, ABA, Financial Services Roundtable, and ISDA. It got very little attention from the analyst and advisory community and only a few law firms with securities practices did write-ups or blogged about it. All went quiet shortly after the comment period was closed with exception of a few meetings over the course of the year between the U.S. Treasury, FDIC and the private sector. Although this Proposed Rule has not gotten much attention in the press or industry trade publications, it will be going into effect very soon and those Covered Financial Companies that need to comply will not have much time to evaluate their options and decide on a course of action to meet the final rule's requirements and aggressive deadlines for full compliance. ■

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Legislative/Regulatory Actions

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to implement Section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which directs the Fed to limit single-counterparty credit exposures of large banking organizations. The proposed rules supplant previous proposals on the same issues published in 2011 and 2012. The proposed rules establish analogous, though separate, requirements for (i) all U.S. bank holding companies (BHCs) with at least $50 billion in total consolidated assets ("Covered BHCs"); and (ii) foreign banking organizations (FBOs) and intermediate holding companies (IHCs) with at least $50 billion in total consolidated assets ("Covered Entities"). The proposed rules do not apply to Covered BHCs or Covered Entities with less than $50 billion in total consolidated assets. The requirements would establish a three-tiered, tailored framework that imposes more stringent restrictions on counterparty exposure for larger institutions. The proposed rules' definition of "counterparty" includes (i) any natural person; (ii) a U.S. state and its agencies and subdivisions; and (iii) certain foreign sovereign entities.

Covered BHCs with less than $250 billion in total consolidated assets and less than $10 billion in on-balance-sheet foreign exposures ("Category I BHCs") would be limited to aggregate net credit exposure to a counterparty of no more than 25% of the Covered BHC's total regulatory capital plus the allowance for loan and lease losses (ALLL).

Covered BHCs with at least $250 billion in total consolidated assets or at least $10 billion in total on-balance-sheet foreign exposures ("Category II BHCs") would be limited to aggregate net credit exposure to a counterparty of no more than 25% of the Covered BHC's tier 1 capital.

Any Covered BHC that is a global systemically important bank ("Category III BHCs"), would be restricted to (i) aggregate net credit exposure to another systemically important financial firm of no more than 15% of tier 1 capital and (ii) aggregate net credit exposure to another counterparty of up to 25% of tier 1 capital.

Category I BHCs must comply with the requirements as of the end of each quarter, and have a system in place to calculate compliance on a daily basis. Category II BHCs and Category III BHCs must comply with the requirements as of the end of each business day and submit a monthly compliance report.

Covered Entities are subject to a similar tailored framework, though the credit exposure limits as applied to an FBO would only apply with respect to the credit exposures of its combined U.S. operations.

Covered Entities with less than $250 billion in total consolidated assets and less than $10 billion in on-balance-sheet foreign exposures are Category I Covered Entities. For Category I Covered Entities that are IHCs, the aggregate net credit exposure to a counterparty would be limited to no more than 25% of total regulatory capital plus the balance of ALLL not included in tier 2 capital under the capital adequacy standards. For Category I Covered Entities that are FBOs, the aggregate net credit exposure to a counterparty (with respect to the FBO's combined operations) would be limited to no more than 25% of total regulatory capital on a consolidated basis.

Covered entities with less than $250 billion in total consolidated assets and less than $10 billion in on-balance-sheet foreign exposures are Category II Covered Entities. For Category II Covered Entities that are IHCs, aggregate net credit exposure to a counterparty must be less than 25% of tier 1 capital. For Category II Covered Entities that are FBOs, aggregate net credit exposure to a counterparty (with

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FMA Welcomes *More* New Members!

James Enstrom	Chicago Board Options Exchange
Mary Giconi	Hardin Compliance Consulting
Patricia Hackett	The PNC Financial Services Group, Inc.
Jeannie Lewis	William Blair & Company, L.L.C.
Amy Manning	FTN Financial
Phillip Mason	UMB Bank, n.a.
Peter Newman	Lumesis, Inc.
Kathleen Olesinski	Hardin Compliance Consulting
Al Raymond	Deloitte & Touche LLP

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respect to the FBO's combined operations) must be less than 25% of total worldwide tier 1 capital.

Finally, any Covered Entities with total consolidated assets of $500 billion or more ("Category III Covered Entities"), would be restricted to (i) aggregate net credit exposure to another systemically important financial firm of no more than 15% of tier 1 capital and (ii) aggregate net credit exposure to another counterparty of up to 25% of tier 1 capital.

Category I Covered Entities must comply with the requirements as of the end of each quarter. Category II Covered Entities and Category III Covered Entities must comply with the restrictions as of the end of each business day and submit a monthly compliance report. Additionally, an FBO must ensure compliance of its U.S. IHC and combined U.S. operations.

The definitions and formulae in the proposed rules are complex, and may vary depending on the type of institution subject to the restrictions. More information on the contours of the proposed rules is available at *http://www.mofo.com/~/media/Files/ClientAlert/2016/03/160309FedLargeBankingOrganizations.pdf*.

Agencies Expand Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks

On February 29, 2016, the FDIC, the OCC, and the Fed ("Agencies") issued interim final rules that permit insured depository institutions (IDIs) and U.S. branches and agencies of foreign banks with up to $1 billion in total assets, assuming they meet certain other criteria, to qualify for an 18-month on-site examination cycle instead of a 12-month cycle. The Agencies are also seeking comments on the interim final rules, which are due by April 29, 2016.

The interim final rules implement Section 83001 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015. Previously, the asset threshold for an 18-month examination cycle was $500 million.

To qualify for the 18-month on-site examination cycle, IDIs with less than $1 billion in total assets must satisfy certain other criteria, including: obtaining a CAMELS composite rating of "1" or "2"; being "well capitalized" and "well managed"; not having undergone a change in control in the previous 12-month period; and not being subject to a formal enforcement proceeding or order. The interim final rules integrate the FDIC's rules for state savings associations and state nonmember banks. The expanded examination cycle also applies similarly to U.S. branches and agencies of foreign banks with assets at the branch or agency of less than $1 billion.

Notwithstanding the expanded examination cycle, the Agencies may examine any IDI or U.S. branch or agency of a foreign bank as frequently as is deemed necessary. The text of the interim final rules is available at: *https://www.fdic.gov/news/news/financial/2016/fil16017.html.* The FDIC Financial Institution Letter announcing the interim final rules is available at *https://www.fdic.gov/news/news/financial/2016/fil16017.html*.

Agencies Issue Guidance on Capital Deduction Requirement Under the Volcker Rule for Investments in Certain TruPS CDOs

On Friday, March 4, 2016, the Volcker Inter-Agency Group (consisting of representatives from the Fed, the OCC, the FDIC, the SEC, and the CFTC) posted a new frequently asked question (FAQ 21), clarifying the capital deduction requirement under the Volcker Rule for investments in collateralized debt obligations backed by trust preferred securities retained pursuant to 12 CFR 248.16 ("Qualifying TruPS CDOs"). FAQ 21 confirms that a banking entity is not required to deduct from its tier 1 capital an investment in a Qualifying TruPS CDO retained pursuant to section 248.16(a) of the interim final rule, which was issued by the Agencies in January 2014. For our client alert on Volcker Rule FAQ 21, please visit *http://www.mofo.com/~/media/Files/ClientAlert/2016/03/160310AgenciesIssueGuidance.pdf*.

Fed Approves/Denies Requests From Eight FBOs for Variances to Regulation YY Requirements

On February 18, 2016, the Fed issued letters to eight different foreign banking organizations ("FBOs"),

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responding to certain requested variances from the requirements under Regulation YY. In particular, the Fed (partially) approved the requests from four FBOs to exclude their ownership interest in certain U.S. subsidiaries from their U.S. intermediate holding companies (IHCs) and denied similar requests from two FBOs. Generally, the Fed has taken a narrow view to grant such requests only if foreign law would prohibit an FBO from owning or controlling one or more of its subsidiaries through a single IHC or if an FBO's ownership interest in a company without a U.S. banking presence is a minority interest and the FBO cannot force the other investors (that are not required to establish an IHC) to divest such interest or transfer it to the FBO's IHC.

Further, the Fed approved requests from two FBOs for a variance from certain U.S. risk committee requirements. The Fed has granted one FBO an exemption from the requirement of having an independent board member on the U.S. risk committee, since this FBO is prohibited by its home country law of having board members that are not executive officers of the FBO. Another FBO requested from the Fed to be exempt from the requirement to maintain its U.S. risk committee as a committee of its global board of directors and instead placing the risk committee at a U.S. bank holding company in anticipation of being subject to the IHC requirement in the near future. The Fed granted this request, stating that this would allow the FBO to "develop and maintain a U.S. risk-management structure while it expands its U.S. operations, which would facilitate an orderly transition to the IHC requirement and overall compliance with Regulation YY."

The eight letters, plus two letters from December 11, 2014, are published on the Fed's website at *http://www.federalreserve.gov/bankinforeg/regulation-yy-foreign-banking-organization-requests.htm.*

SEC/CFTC UPDATE

SEC Publishes Final Rules Addressing Security-Based Swap Dealing Transactions Between Non-U.S. Persons that are "Arranged, Negotiated, or Executed" in the United States

On February 19, 2016, the U.S. Securities and Exchange Commission (SEC) published final rules amending previously adopted rules that address how the security-based swap dealer definition applies to security-based swap dealing transactions between non-U.S. persons that are "arranged, negotiated, or executed" in the United States. The final rules will be effective on April 19, 2016. Compliance with the final rules will be required after the later of (i) February 21, 2017, or (ii) two months prior to the compliance date for registration as a security-based swap dealer under the registration rules.

Non-U.S. persons engaged in dealing activity with other non-U.S. persons using personnel located in the United States may not be required to register as a security-based swap dealer if the non-U.S. person's activities fall within a *de minimis* exception. Under the final rules, a security-based swap dealing transaction that is entered into by a non-U.S. person will count towards the *de minimis* exception threshold if the transaction is "arranged, negotiated, or executed" through personnel of: (i) the non-U.S. person located in a U.S. branch or office; or (ii) an agent of such non-U.S. person located in the United States.

A transaction is considered to be "arranged, negotiated, or executed" in the United States if the personnel or agent conducts "market-facing" activity. The terms "arrange" and "negotiate" encompass the market-facing activity of sales or trading personnel, including interactions with counterparties or their

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FMA Welcomes *More* New Members!

Jim Reilly	**TD Ameritrade**
Frank Ruester	**Commerce Bank**
Judy Skinner	**J.P. Morgan**
James Stephens	**UMB Bank, n.a.**
Timothy Stevens	**Lumesis, Inc.**
Amanda Stout	**E*TRADE Financial Corporation**
Liisa Thomas	**Winston & Strawn LLP**
Andrew Tino	**PNC Financial Services Group**
Terry Todd	**First Tennessee Bank**

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agents. The term "execute" means the market-facing act that causes the person to become legally bound under the security-based swap. Certain activities related to a transaction are not considered market-facing, including: designing security-based swaps; document preparation; ministerial or clerical tasks; collateral management activities; submission of transactions for clearing; and reporting transactions to U.S. security-based data repositories.

The SEC expects that activities by personnel of a non-U.S. person will only be included in the *de minimis* calculation if the personnel is assigned to, on an ongoing or temporary basis, or regularly working in, a U.S. branch or office. Activity conducted in the United States by personnel assigned to a foreign office is not included in the *de minimis* calculation if such personnel are only incidentally in the United States. The term "personnel" is not limited to employees of the non-U.S. person; instead, the SEC expects to consider whether the non-U.S. entity is able to supervise or control the actions of the individual.

The final rules exempt transactions by certain international organizations that are excluded from the definition of a U.S. person in 17 C.F.R. § 240.3a71-3(a)(4)(iii), for example, multilateral development banks and their agencies and pension plans. For our client alert on the final rules, please visit *http://www.mofo.com/~/media/Files/ClientAlert/2016/02/160216SECSwapDealer.pdf.*

CFTC Finalizes Relief from Trade Option Reporting and Recordkeeping Requirements for Commercial End Users
On March 16, 2016, the U.S. Commodity Futures Trading Commission ("CFTC") approved a final rule that eliminates the reporting and recordkeeping requirements in current CFTC regulations for trade option counterparties that are neither swap dealers nor major swap participants ("Non-SD/MSPs"), including commercial end users that transact trade options in connection with their businesses. Significantly, the final rule eliminates the requirement that such counterparties annually file a Form TO in connection with their trade options, and does not require them, as had been proposed, to notify the CFTC's Division of Market Oversight ("DMO") if they enter into trade options that have, or are expected to have, an aggregate notional value in excess of $1 billion in any calendar year. The final rule is effective upon publication in the *Federal Register*, which occurred on March 21, 2016. For more information on this topic please visit our client alert at *http://www.mofo.com/~/media/Files/ClientAlert/2016/03/160322CFTCFinalizesRelief.pdf.*

CFPB UPDATE

Dwolla Consent Order Is CFPB Foray Into Data Security
On March 2, 2016, the U.S. Consumer Financial Protection Bureau (CFPB) released a Consent Order against Dwolla, Inc. ("Dwolla"), under the Bureau's unfair, deceptive, or abusive acts and practices (UDAAP) authority, representing the agency's first action in the data security space. Specifically, the CFPB alleged in the Consent Order that Dwolla, an online payment platform, engaged in a prohibited "deceptive" act by misrepresenting its data security safeguards to consumers in a manner that was "likely to mislead a reasonable consumer into believing that Dwolla had incorporated reasonable and appropriate data-security practices when it had not." Under the Consent Order, Dwolla was subject to a $100,000 civil money penalty and prohibited from making any misrepresentations about its security practices. In addition, Dwolla must improve its security practices by patching identified security vulnerabilities, maintaining a written information security program, and conducting semi-annual risk assessments, as well as obtaining annual independent data security audits, among other things. The Consent Order not only is significant because it is the CFPB's first action within the data security space; the Consent Order is also an example of the Bureau's use of its UDAAP authority to take action outside the consumer protection laws specifically transferred to the CFPB under the Consumer Financial Protection Act. For our client

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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.

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alert on the Consent Order, please visit *http://www.mofo.com/~/media/Files/ClientAlert/2016/03/160303CFPBDataSecurityBeat.pdf.*

HMDA Reporting Requirements Take Shape
On February 18, the CFPB, along with the Federal Financial Institutions Examination Council (FFIEC), published new "File Specifications" for the format and method of reporting 2017 and 2018 data under HMDA and Regulation C. Significantly, 2018 data reports will need to include 110 individual data fields, as opposed to the 39 data fields required under the current Regulation C. Additionally, under the new File Specifications, data must be submitted directly to the CFPB, rather than to federal banking agencies or HUD; the only permissible method for submission will be via an encrypted web-based platform, rather than via encrypted email, CD-ROM, or diskette; and the only file format permitted for conveying the information will be a .txt text file with fields delimited by a vertical "pipe" bar character. These changes will burden lending institutions that have yet to move to some form of electronic data submission or have older back-office systems that may not easily accommodate the aggregation and storage of data as specified by the CFPB and FFIEC. Every institution subject to the HMDA data reporting requirements will need to make significant adjustments to accommodate the new requirement to report on 110 individual data fields—many of which may be seldom used. For our client alert on the File Specifications, please visit *http://www.mofo.com/~/media/Files/ClientAlert/2016/02/160223CFPBPublishesHMDASpecifications.pdf.*

No-Action Letter Policy Statement Finalized
On February 22, 2016, the CFPB published its Final Policy Statement ("Final Policy") on No-Action Letters (NALs). NALs would advise the recipient that the CFPB staff has "no present intention to recommend initiation of an enforcement or supervisory action against the requester with respect to a specified matter," subject to certain limitations. Under the Final Policy, Bureau staff will have discretion to issue NALs to specific applicants seeking a response from the Bureau regarding "innovative financial products or services that promise substantial consumer benefit" in circumstances where there is "substantial uncertainty" as to how the Bureau would apply specific provisions of statutes or regulations within the Bureau's jurisdiction. However, the Bureau indicates in the Final Policy that NALs "will be provided rarely and on the basis of exceptional circumstances and a thorough and persuasive demonstration of the appropriateness of such treatment." This, along with the relative burden of applying for the NAL and the fact that the CFPB could potentially modify or revoke a NAL, may dissuade financial institutions or start-ups from seeking CFPB NALs. The Bureau was responsive to a number of suggestions received through the 28 formal comments the Bureau received in response to an earlier Proposed Policy it had issued in October 2014. For example, the Bureau removed from the Proposed Policy language that categorically stated that the Bureau would not give no-action treatment to UDAAP matters. Additionally, the Bureau attempted to address commenters' concerns regarding the publication of proprietary business information or trade secrets when a NAL becomes public. For our client alert on the Policy Statement, please visit *http://www.mofo.com/~/media/Files/ClientAlert/2016/02/160223CFPBNoActionLetter.pdf.*

Overdraft-Free Accounts and Accurate Credit Reporting Are CFPB Priorities
On February 3, 2016, the CFPB published a series of materials related to consumer checking accounts. Specifically, the Bureau indicated that these materials are intended to advance its goal of improving consumer access to the banking system by promoting "lower-risk accounts that help consumers avoid overdrafts," signaling increased scrutiny with respect to the accuracy of the checking account reporting system, and providing consumers with several new "Consumer Guides" to understand the processes of shopping for and maintaining a checking account and options after being denied an account. In a letter to each of the top 25 retail banking companies, CFPB Director Richard Cordray urged these institutions to offer and promote an account that would present lower risk to the institutions because such an account does not allow overdrafts, and thus could be offered to more "unbanked" Americans. The CFPB's announcements included a compliance bulletin on furnisher compliance with reporting obligations under the FCRA when

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Legislative/Regulatory Actions

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reporting information to deposit account CRAs. This particular bulletin emphasizes the requirement to establish and implement reasonable written policies and procedures, "appropriate to the nature, size, complexity, and scope of each furnisher's activities," regarding the accuracy and integrity of information provided to CRAs. The materials also included a press release, prepared remarks of the Director Cordray at a field hearing on checking account access, and three consumer guides distributed via a blog post on the Bureau's web site.

For our client alert on this announcement, please visit *http://www.mofo.com/~/media/Files/ClientAlert/2016/02/160203OverdraftFreeAccounts.pdf.*

Know Before You Owe Letter Addresses Implementation Concerns

In a December 29, 2015 letter, CFPB Director Cordray responded to a written request from the Mortgage Bankers Association (MBA) to address concerns that the CFPB's consumer outreach efforts, industry feedback, and rulemaking to combine consumer disclosures in residential mortgage loan transactions, collectively known as "Know Before You Owe," is causing disruption in the origination of residential mortgage loans and subsequent sales to investors. In addressing these concerns, Director Cordray's letter repeated statements the CFPB had previously made informally, acknowledging that there will be "inadvertent errors" as mortgage originators implement their compliance efforts with respect to new requirements, and stating that there will be a "grace period" in which examiners will have a "corrective and diagnostic, rather than punitive" approach to enforcing the new Know Before You Owe rules. Furthermore, Director Cordray emphasized that the rule requiring that originators integrate disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) contains a number of provisions that allow originators to reissue potentially erroneous disclosures and therefore cure inaccurate disclosures. The letter also provided the CFPB's first specific written guidance on potential liability under TILA and RESPA for disclosure violations under the new rule. For our client alert on the Know Before You Owe letter, please visit *http://www.mofo.com/~/media/Files/ClientAlert/2016/01/160111KnowBeforeYouSell.pdf.*

Marketplace Lending Now Focus of CFPB Attention

On March 7, 2016, in its first step to regulate marketplace lending (also known as "peer-to-peer" lending), the CFPB issued two announcements: a press release describing the expansion of the CFPB consumer complaint portal to include marketplace lending products and a consumer bulletin titled "Understanding online marketplace lending," which lists and explains factors consumers should take into account when considering online marketplace loans. According to the press release, consumers of marketplace loans now will be able to submit complaints about marketplace lenders through the CFPB's online complaint portal. This could mean that the Bureau may use data it gathers from consumer complaints to regulate the marketplace lending market, either through a larger participant rule or other guidance. The consumer bulletin lists a number of factors that consumers are encouraged to consider before taking out a loan from a marketplace lender, including a few cautionary words about the relative newness of the marketplace lending industry. This could be interpreted as discouraging consumers from considering marketplace lenders, despite an acknowledgement that marketplace lenders are subject to the same legal standards as other, more established financial institutions. For our client alert on the marketplace lending publications, please visit *http://www.mofo.com/~/media/Files/ClientAlert/2016/03/160309CFPBMarketplaceLenders.pdf.* ■

Julian E. Hammar, Jiang Liu, Amanda J. Moll, and Mark R. Sobin contributed to this column.

2016 Examination Priorities

SEC

http://www.sec.gov/news/pressrelease/2016-4.html

FINRA

https://www.finra.org/sites/default/files/2016-regulatory-and-examination-priorities-letter.pdf

Watch For

CFTC Press Release 7349-16 (March 28, 2016) – The CFTC announced that it approved a final rule adding an alternative for foreign natural persons to the requirement to provide fingerprints when applying for CFTC registration. The final rule will allow any such person's registered firm to complete a criminal history background check in lieu of submitting fingerprints. It will become effective 30 days after its publication in the *Federal Register.*

MSRB Press Release (March 28, 2016) – The MSRB is seeking public comment on a potential approach to enhance investor and public access to information about the direct purchase and bank loan transactions of municipal securities issuers. In concept, the MSRB is considering whether to require municipal advisors to disclose information about the bank loans and direct purchases of their municipal entity clients to the MSRB's EMMA website. Comments should be submitted no later than May 27, 2016.

CFTC Press Release 7343-16 (March 16, 2016) – The CFTC approved a final rule that removes reporting and recordkeeping requirements for trade option counterparties that are neither swap dealers nor major swap participants (Non-SD/MSPs), including commercial end-users that transact in trade options in connection with their businesses. The Final Rule will become effective upon publication in the *Federal Register.*

CFTC Press Release 7340-16 (March 15, 2016) – The CFTC's Division of Swap Dealer and Intermediary Oversight announced that certain banking entities subject to Appendix B of Part 75 of the Commission's regulations should submit their CEO attestations through the following email address: *VolckerAttestation@cftc.gov*.

CFTC Press Release 7339-16 (March 14, 2016) – The CFTC's Division of Market Oversight issued a no-action letter extending the time period for relief in connection with swap trade confirmation requirements that previously was provided in CFTC Staff Letter 15-25, which expires on March 31, 2016. The no-action letter extends relief to the earlier of (1) 11:59 pm (Eastern Time) March 31, 2017 or (2) the effective date of revised CFTC regulations that establish a permanent solution to the confirmation matters raised by the current regulations. The relief is subject to terms and conditions in the letter.

March 14, 2016 – The MSRB reminds municipal securities dealers that new MSRB Rule G-18 on best execution for municipal securities transactions becomes effective on March 21, 2016. The MSRB provided implementation guidance to facilitate dealers' compliance with the new rule. See MSRB Notices 2015-23 and 2014-22.

SEC Press Release 2016-38 (March 8, 2016) – The SEC announced the creation of the Office of Risk and Strategy within its Office of Compliance Inspections and Examinations. The new office will consolidate and streamline OCIE's risk assessment, market surveillance, and quantitative analysis teams and provide operational risk management and organizational strategy for OCIE.

Federal Reserve Press Release (March 4, 2016) – The Federal Reserve Board proposed a rule to address the risk associated with excessive credit exposures of large banking organizations to a single counterparty. The proposal would apply single-counterparty credit limits to bank holding companies with total consolidated assets of $50 billion or more. The proposed limits are tailored to increase in stringency as the systemic footprint of a firm increases. The proposed rule implements part of the Dodd-Frank Act and builds on earlier proposals released by the Board in 2011 and 2012, and includes some modifications based on comments received. Additionally, the proposal seeks to promote global consistency by generally following the international large exposures framework released by the Basel Committee on Banking Supervision in 2014. The Board also released a white paper explaining the analytical and quantitative reasoning for the proposed rule's tighter 15 percent limit for credit exposures between systemically important financial institutions. Comments on the proposed rule are invited until June 3, 2016.

FINRA Regulatory Notice 16-09 (March 4, 2016) – FINRA requests comment on proposed amendments to FINRA rules to support the industry-led initiative to shorten the settlement cycle for securities in the U.S. secondary market from T+3 to T+2. The comment period expires April 4, 2016.

MSRB Notice 2016-09 (March 2, 2016) – The MSRB filed with the SEC a rule change to revise the effective date of several amendments to MSRB Rule G-14, on transaction reporting. The new effective date of the

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amendments will be July 18, 2016 to align with the implementation of similar FINRA reporting requirements. The MSRB, in its filing, designated this revision for immediate effectiveness.

OCC Bulletin 2016-7 (March 1, 2016) – The OCC, FRB and FDIC are jointly issuing the "Interagency Guidance on Funds Transfer Pricing Related to Funding and Contingent Liquidity Risks." This interagency guidance addresses funding risk and contingent liquidity risk for national banks and federal savings associations with consolidated assets of $250 billion or more.

March 1, 2016 – The MSRB is filing with the SEC proposed amendments to MSRB Rules G-12, on uniform practice, and G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle ("T+2") and technical conforming amendments.

OCC Bulletin 2016-6 (February 29, 2016) – This bulletin supplements the "Interagency Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements" by providing guidance on the process the OCC has implemented to provide national banks, federal savings associations, and federal branches and agencies with an opportunity to respond to potential noncompliance with Bank Secrecy Act compliance program requirements or repeat or uncorrected BSA compliance problems. This bulletin rescinds OCC Bulletin 2005-45, "Process for Taking Administrative Enforcement Actions Against Banks Based on BSA Violations," dated December 23, 2005.

OCC Bulletin 2016-5 (February 26, 2016) – The OCC is publishing its revised Policies and Procedures Manual policy for assessing civil money penalties. This revised PPM 5000-7 (REV), "Civil Money Penalties," dated February 26, 2016, replaces the PPM of the same title issued in June 1993. The revised PPM sets forth the OCC's policies and procedures for the assessment of CMPs against institution-affiliated parties, national banks, federal savings associations, federal branches and agencies, and bank service companies and service providers.

MSRB Press Release (February 25, 2016) – The MSRB published its first *Compliance Advisory for Brokers, Dealers and Municipal Securities Dealers*, which identifies some of the key compliance risks for dealers that, if not properly addressed, could adversely affect public confidence in the municipal securities market.

MSRB Notice 2016-08 (February 23, 2016) – The MSRB filed with the SEC an amendment to MSRB Rule G-33, on calculations, to modernize the mathematical formula in Rule G-33(b)(i)(B)(2) governing how brokers, dealers, and municipal securities dealers calculate the dollar price of interest-bearing municipal securities with periodic interest payments (e.g., daily, monthly, quarterly or annually) that have more than six months to redemption. The amended pricing formula, which was effective upon filing, accounts for the actual interest payment frequency of such securities eliminating the presumption in the calculation that interest is paid on a semi-annual basis, which better reflects the technologies currently available to efficiently conduct this more precise calculation. The compliance date for the amended pricing formula is July 18, 2016. MSRB filed interpretive guidance with the SEC, which was also effective upon filing, that provides that, prior to July 18, 2016, dealers would be in compliance with Rule G-33(b)(i)(B)(2) if calculating price and yield on interest-bearing securities with periodic interest payments and more than one coupon period to redemption factoring in the actual interest frequency rather than assuming a semi-annual interest payment.

MSRB Press Release (February 19, 2016) – The MSRB has published a new educational guide for retail investors outlining the several alternative *Ways to Buy Municipal Bonds.*

CFTC Press Release 7329-16 (February 18, 2016) – The CFTC's Division of Market Oversight and Office of Data and Technology staff extended the request for comment period on the draft technical specifications for certain prioritized swap data elements and associated questions. The comment period will be extended to March 7, 2016.

CFTC Press Release 7328-16 (February 18, 2016) – The CFTC's Division of Market Oversight issued a no-action letter providing time-limited relief for end users from the Form TO filing requirement under CFTC regulations. Under CFTC Regulation 32.3(b)(2), counterparties to trade options that are not required to be reported to a swap data repository must submit a Form TO filing by March 1 following the end of any calendar year during

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which they entered into one or more unreported trade options. While the CFTC is considering the finalization of the proposed Trade Options Rule, DMO will not recommend that the CFTC take enforcement action against a market participant that is neither a swap dealer nor a major swap participant (a Non-SD/MSP) for failing to report its otherwise unreported trade options entered into during 2015 on Form TO by April 1, 2016.

MSRB Notice 2016-07 (February 18, 2016) – The MSRB is seeking comment on draft amendments to MSRB Rule G-30, on prices and commissions, to provide guidance on establishing the prevailing market price and calculating mark-ups and mark-downs for principal transactions in municipal securities. Comments should be submitted no later than March 31, 2016.

MSRB Notice 2016-06 (February 17, 2016) – The MSRB's amendments to MSRB Rule G-37, on political contributions and prohibitions on municipal securities business, and related amendments to MSRB Rules G-8, on books and records, and G-9, on preservation of records, and Forms G-37 and G-37x were deemed approved under Section 19(b)(2)(D) of the Securities Exchange Act of 1934 on February 13, 2016. Once effective, amended Rule G-37 will extend the core standards under Rule G-37 to municipal advisors, their political contributions and the provision of municipal advisory business. The amendments are designed to address potential "pay-to-play" practices by municipal advisors consistently with the MSRB's existing regulation of dealers. The amendments to Rule G-37, Rules G-8 and G-9, and Forms G-37 and G-37x will become effective on August 17, 2016.

CFTC Press Release 7327-16 (February 12, 2016) – The CFTC's Division of Swap Dealer and Intermediary Oversight issued no-action relief from registration for persons located outside the United States who act as Introducing Brokers, Commodity Trading Advisors, or Commodity Pool Operators in connection with swaps that are not subject to a CFTC clearing requirement on behalf of persons located outside of the United States. This relief allows certain intermediaries to take advantage of the exemption from registration in CFTC Regulation 3.10(c)(3)(i), without meeting the condition that those intermediaries submit commodity interest transactions for clearing through registered Futures Commission Merchants in connection with swaps that are not required to be cleared.

Federal Reserve Press Release (February 11, 2016) – The Federal Reserve Board announced the repeal of one regulation and a proposal to repeal a second in order to comply with statutory provisions that transferred certain consumer protection rulewriting authority to the Consumer Financial Protection Bureau. The Board repealed its Regulation AA (Unfair or Deceptive Acts or Practices) as proposed in August 2014 and is inviting public comment on the proposed repeal of Regulation C (Home Mortgage Disclosure). Comments on the proposed repeal of Regulation C must be submitted within 60 days from the date of publication in the *Federal Register,* which is expected shortly.

SEC Press Release 2016-27 (February 10, 2016) – The SEC adopts cross-border security-based swap rules regarding activity in the U.S. The rules provide increased transparency and enhanced oversight. And, the SEC finalizes rulemaking in security-based swap dealing activity.

FDIC Press Release (February 9, 2016) – The FDIC released the economic scenarios that will be used by certain financial institutions with total consolidated assets of more than $10 billion for stress tests required under the Dodd-Frank Act of 2010. The baseline, adverse, and severely adverse scenarios include key variables that reflect economic activity, including unemployment, exchange rates, prices, income, interest rates, and other salient aspects of the economy and financial markets. The FDIC coordinated with the FRB and the OCC in developing and distributing these scenarios.

FINRA Regulatory Notice 16-08 (February 8, 2016) – FINRA's review of securities offering documents has revealed instances in which broker-dealers have not complied with the contingency offering requirements of Rules 10b-9 and 15c2-4 under the Securities Exchange Act of 1934. FINRA is publishing this Notice to provide guidance regarding the requirements of SEA Rules 10b-9 and 15c2-4 and to remind broker-dealers of their responsibility to have procedures reasonably designed to achieve compliance with these rules.

Federal Reserve Press Release (February 2, 2016) – In a report that comes one year after the publication of its "Strategies for Improving the U.S. Payment System", the Federal Reserve detailed the progress made and

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outlined anticipated steps for moving forward with its initiative to enhance payment system speed, efficiency, and security.

FINRA Regulatory Notice 16-07 (January 29, 2016) – The SEC approved new FINRA Rule 4518 as part of FINRA's proposal to establish the new Funding Portal Rules and related forms. This Notice provides further guidance on new Rule 4518, which applies to registered broker-dealer members of FINRA that contemplate acting as intermediaries in transactions involving the offer or sale of securities pursuant to the crowdfunding provisions of Title III of the JOBS Act and the SEC's Regulation Crowdfunding. Under the new rule, registered broker-dealer members must provide notification to FINRA, as specified in the rule and as discussed further in this Notice, prior to engaging in such activities. Effective date of FINRA Rule 4518 notification provisions: January 29, 2016; effective date for SEC regulation crowdfunding (other than registration requirements): May 16, 2016.

FINRA Regulatory Notice 16-06 (January 29, 2016) – The SEC approved FINRA's proposed Funding Portal Rules and related forms for SEC-registered funding portals that become FINRA members pursuant to the crowdfunding provisions of Title III of the JOBS Act and the SEC's Regulation Crowdfunding. FINRA's Funding Portal Rules will become effective on January 29, 2016, which aligns with the effective date of the SEC's registration rules under Regulation Crowdfunding. This Notice provides a brief overview of the new Funding Portal Rules and provides information for prospective funding portals that plan to apply for FINRA membership. Prospective funding portals must file all forms electronically through FINRA's Firm Gateway. The forms will be accessible on Firm Gateway effective January 29, 2016.)

Federal Reserve Press Release (January 28, 2016) – The Federal Reserve Board released the supervisory scenarios for the 2016 Comprehensive Capital Analysis and Review and Dodd-Frank Act stress test exercises and also issued instructions to firms participating in CCAR. This year, CCAR will include 33 bank holding companies with $50 billion or more in total consolidated assets. Each scenario includes 28 variables—such as gross domestic product, unemployment rate, stock market prices, and interest rates—encompassing domestic and international economic activity. Along with the variables, the Board is publishing a narrative that describes the general economic conditions in the scenarios and changes in the scenarios from the previous year. As in prior years, six bank holding companies with large trading operations will be required to factor in a global market shock as part of their scenarios. Additionally, eight bank holding companies with substantial trading or processing operations will be required to incorporate a counterparty default scenario. Bank holding companies participating in CCAR are required to submit their capital plans and stress testing results to the Federal Reserve on or before April 5, 2016. The Federal Reserve will announce the results of its supervisory stress tests by June 30, 2016, with the exact date to be announced later.

MSRB Notice 2016-05 (January 28, 2016) – The MSRB filed a proposed rule change with the SEC on January 22, 2016, to revise the content outline for the General Securities Sales Supervisor Qualification Examination (Series 9/10). The revisions to the Series 9/10 examination program are effective immediately and will be implemented on March 7, 2016 and the revised Series 9/10 content outline will replace the current content outline on FINRA's website.

OCC News Release 2016-8 (January 28, 2016) – The OCC releases Dodd-Frank stress test scenarios for 2016. On December 3, 2014, the OCC published its amended annual stress test rule. The rule states that the OCC will provide scenarios to covered institutions by February 15 of each year. Covered institutions are required to use the scenarios to conduct annual stress tests. The 2016 scenario information can be found on the *OCC DFAST Web site*. The final policy statement on the development and distribution of the scenarios was issued on October 28, 2013, in the *Federal Register*. And, see Federal Reserve press release above.

FINRA Regulatory Notice 16-05 (January 26, 2016) – This Notice provides firms with information regarding a no-action letter issued by the staff of the SEC's Division of Trading and Markets regarding electronic filing of broker-dealer annual and supplemental reports required under SEA Rules 17a-5 and 17a-12.

CFTC Press Release 7313-1 (January 22, 2016) – The CFTC issued Orders granting registration to 18 swap execution facilities SEFs. The SEFs issued a Registration Order previously were operating under

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temporary registration status. SEFs are trading facilities that operate under CFTC's regulatory oversight for trading and processing swaps. SEFs were authorized to be created by the Dodd-Frank Act of 2010 to provide greater pre-trade and post-trade transparency to the swaps market. With registration, the SEFs will be required to demonstrate continued compliance with all applicable provisions of the Commodity Exchange Act and CFTC regulations, including Part 37, and any future regulations, amendments, guidance, and interpretations issued by the CFTC. CFTC staff is continuing with registration reviews for the remaining five SEFs that currently are temporarily registered. Pending their reviews, those facilities continue to operate under temporary registration status.

CFTC Press Release 7312-16 (January 21, 2016) – The CFTC launched the CFTC Whistleblower Program's new website, *www.whistleblower.gov*. The new website provides an improved interface that educates the public about the Whistleblower Program and allows users to submit tips about potential violations of the Commodity Exchange Act and apply for monetary awards.

FINRA Trade Reporting Notice (January 20, 2016) – Firms must establish, maintain and enforce written policies and procedures that include a pre-determined response addressing over-the-counter trading and reporting in the event of a systems issue during the trading day (i.e., regular market hours) that prevents the firm from reporting OTC trades within the time frame prescribed by FINRA rules. A firm's procedures should address the firm's response to a FINRA facility systems issue, as well as an issue with its own or its vendor's systems.

MSRB Notice 2016-04 (January 19, 2016) – Regulation Systems Compliance and Integrity (Regulation SCI) was adopted by the SEC under the Securities Exchange Act of 1934 and requires the MSRB, as an SCI entity, to, among other things, require certain brokers, dealers, municipal securities dealers and municipal advisors registered with the MSRB to participate in the testing of the operation of the MSRB's business continuity and disaster recovery plans, in the manner and frequency specified by the MSRB, provided that such frequency shall not be less than once every 12 months. To facilitate this Regulation SCI requirement, the MSRB adopted Rule A-18, on mandatory participation in business continuity and disaster recovery testing, on November 2, 2015. Under Rule A-18, the MSRB will designate as Participants in the mandatory functional and performance testing of the operation of the MSRB's BC/DR Plans those MSRB Registrants whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB's data submission volume required to be provided by MSRB Registrants, measured during an established time period (the Measurement Period).

FINRA Regulatory Notice 16-04 (January 15, 2016) – The SEC approves a proposed rule change to merge FINRA Dispute Resolution, Inc. into and with FINRA Regulation, Inc. Effective date: December 20, 2015.

OCC Bulletin 2016-2 (January 15, 2016) – The OCC, FRB and FDIC are issuing this advisory to indicate their support for the principles and expectations set forth in the March 2014 Basel Committee on Banking Supervision supervisory guidance on external audits of internationally active U.S. financial institutions.

CFTC Press Release 7310-16 (January 15, 2016) – The CFTC's Division of Market Oversight issued a letter providing a conditional, time-limited extension of the relief provided in CFTC Letter 13-41 regarding masking of certain identifying information required to be reported. The current extension also permits reporting parties who previously met the conditions in CFTC Letter 13-41, or who meet those conditions in the future, to fulfill their reporting obligations while acknowledging privacy, secrecy and blocking laws in certain non-U.S. jurisdictions.

FINRA Regulatory Notice 16-03 (January 14, 2016) – The SEC approves an amendment to apply the FINRA rule governing mark-ups to transactions in exempted securities that are government securities. Implementation date: December 14, 2015.

MSRB Notice 2016-03 (January 13, 2016) – The MSRB received approval from the SEC of new MSRB Rule G-42, on duties of non-solicitor municipal advisors, and related amendments to MSRB Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, on December 23, 2015. Rule G-42 and the related amendments to Rule G-8 will become effective on June 23, 2016.

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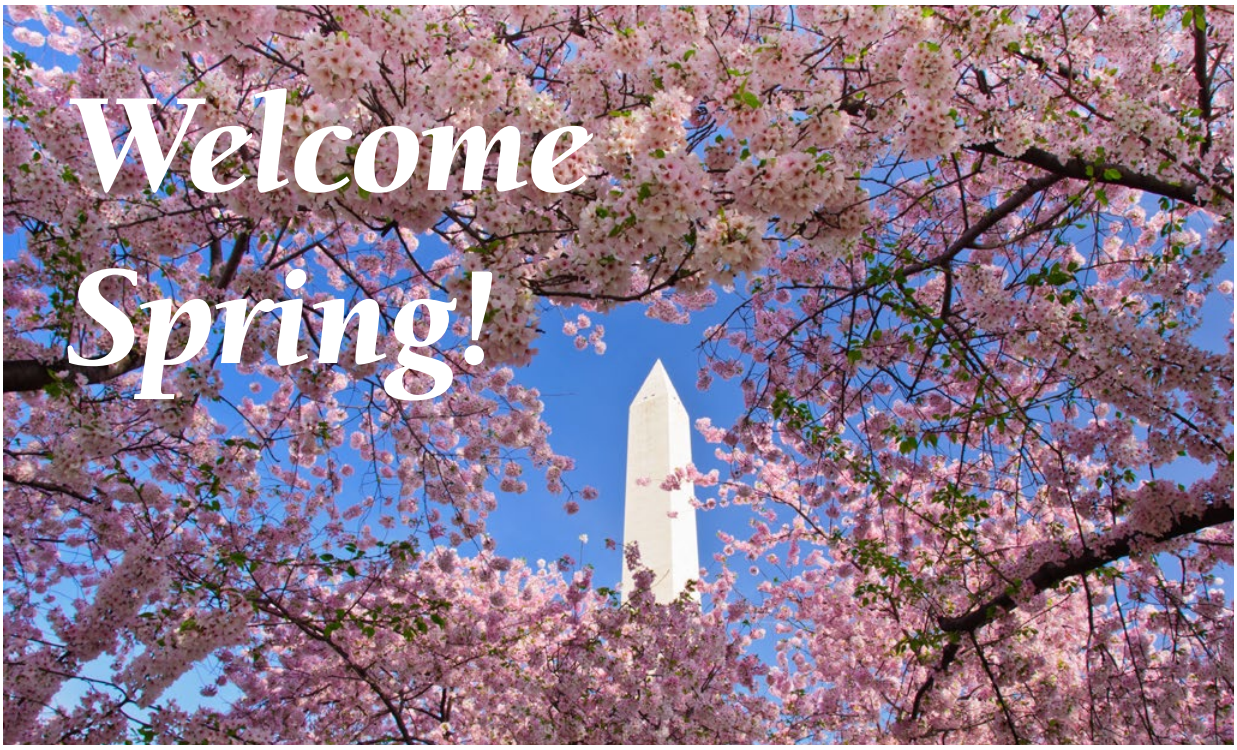
Available Publications

MSRB Press Release (March 3, 2016) – The MSRB publishes the annual *Fact Book* of municipal securities data. The *Fact Book* contains hundreds of statistics on municipal market trading patterns, the number and type of continuing and primary market disclosure in the municipal securities market, as well as interest rate resets for municipal variable rate securities.

OCC Bulletin 2016-4 (February 12, 2016) – The OCC issued the revised "Country Risk Management" booklet of the *Comptroller's Handbook*, replacing the booklet of the same title issued in March 2008. This booklet is prepared for use by OCC examiners in assessing a bank's exposure to country risk and includes procedures to evaluate the adequacy of the bank's country risk management framework. Country risk management topics include board and management oversight; policies and procedures; country exposure reporting system; country risk analysis process; country risk ratings; country exposure limits; monitoring country conditions; stress testing and integrated scenario planning; and independent risk management, internal controls, and audit.

FDIC Press Release (February 1, 2016) – "A Framework for Cybersecurity," which appears in the Winter 2015 issue of *Supervisory Insights,* discusses the cyber threat landscape and how financial institutions' information security programs can be enhanced to address evolving cybersecurity risks. The article also provides an overview of actions taken by the FDIC individually and with other regulators in response to the increase in cyber threats.



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Program Update

2016 Securities Compliance Seminar

Early Bird Registration Extended!

Registrations are still being accepted for FMA's 25th Securities Compliance Seminar taking place **April 20–22**, 2016 at the InterContinental Chicago Hotel (on the Magnificent Mile) in **Chicago, Illinois**. 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 8!**

The Planning Committee has been hard at work developing varied agenda topics and confirming noted industry leaders and regulators as speakers. Members include: **Mark Carberry** *(J.P. Morgan)*; **James Connors, CAMS, CRMA** *(Wells Fargo Audit Services)*; **Eric Hamilton** *(Kuehl Capital Corp / Hamilton Associates, P.C.)*; **Matthew Hardin** *(Hardin Compliance Consulting LLC)*; **Annie Hsu** *(BNP Paribas)*; and **Vaughn Swartz** *(Rabobank)*.

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

Pre-Seminar Interactive Workshop

- Christine Kaufman ■ Impact Consultants, Inc.

Key 2016 Legislative and Regulatory Initiatives

- Russell Bruemmer ■ WilmerHale *(retired)*
- Jeffrey Holik ■ Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
- Michele Meyer ■ Promontory Financial Group, LLC
- Tanya Solov ■ Illinois Securities Department

Cybersecurity Risk Oversight: Leveraging the "Three Lines of Defense"

- Steve Bridges ■ JLT Specialty USA
- Rebecca Chmielewski ■ FRB-Chicago
- James Enstrom ■ Chicago Board Options Exchange
- Kristofer Swanson ■ Charles River Associates
- Liisa Thomas ■ Winston & Strawn LLP

Internal Audit Hot Topics and Emerging Risks

- Gina Adelphia ■ Northern Trust Corporation
- Neil Bohlen ■ Wells Fargo Audit Services
- Jason Cahaly ■ Bank of America

AML 15 Years Later: Where Are We?

- Doug Hoffman ■ First National Bank of Omaha
- Kaitlin Lemmo ■ Protiviti, Inc.
- Matt Shull ■ FRB-Chicago

Regulatory Forum—Securities

- Cynthia Friedlander ■ FINRA
- Daniel Gregus ■ SEC
- Donald Litteau ■ FINRA
- Michael Post ■ MSRB

Retail Securities Hot Topics

- William Reilly, Jr. ■ Oyster Consulting, LLC
- Jeffrey Suhanic ■ PNC Investments, LLC
- Ed Wegener ■ FINRA

Compliance Risk Management: Culture of Compliance

- Susan Ameel ■ Deloitte & Touche LLP
- Andrew Mannarino ■ Citadel Securities, LLC
- Jim Reilly ■ TD Ameritrade

Institutional Compliance: Defining the CCO's Role in 2016

- Steve Brown ■ PricewaterhouseCoopers Advisory Services LLC
- James Rabenstine ■ Nationwide Financial Services

Registered Investment Advisers

- James Downing ■ BMO Harris Financial Advisors
- Jeannie Lewis ■ William Blair & Company, L.L.C.
- David Porteous ■ Faegre Baker Daniels LLP

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Regulatory Forum—Banking

- James Gallagher ■ OCC
- Komi Ketedji ■ FRB-Chicago
- William Orange ■ FDIC

Social Media and Advertising

- Joanna Belbey ■ Actiance, Inc.
- Angela Bourgeois ■ Sigma Financial Corporation/Parkland Securities, LLC
- Al Raymond ■ Deloitte & Touche LLP

The Evolving Role of Compliance / CCO Liability

- Yoon-Young Lee ■ WilmerHale
- Christina Petrou ■ TD Securities (USA) LLC
- Andrew Tino ■ PNC Financial Services Group

Peer group discussions (lead by facilitators) take place Wednesday and Thursday afternoons. Possible topics include: *AML; Ask the Regulators; Best Practices for Investment Advisers; Broker-Dealer Compliance Hot Topics; Complex/Alternative Products Compliance Issues; Compliance Risk Management; Compliance Issues for Elderly Clients; Customer Due Diligence; Cybersecurity; Evolving Role of Compliance/CCO Liability; Institutional Compliance; Internal Audit Hot Topics/Emerging Risks/Fraud Awareness; Key 2016 Legislative and Regulatory Initiatives; Managing Remote Offices and Employees; Municipal Bond Pricing and Disclosure Issues; New Fiduciary Standard; Registered Investment Advisers; Social Media and Advertising; Surviving a Regulatory Exam/Investigation; and Understanding Municipal Advisor Regulations and Examinations.* If you would like to facilitate one of these discussions, please contact FMA.

Informal group dinners 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.

The FMA room block expires March 29. After the block expires, 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.

Register today for this important spring conference. Deep discounts are available to teams, first-timers, regulators and Illinois "locals". 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

CLE & CPE accreditation (among others) is available. Good news…the **Illinois Commission on MCLE has approved the program for 18.0 CLE hours**. Pennsylvania, Florida, Kentucky and Nebraska have also approved the seminar for CLE. Contact Dorcas Pearce at ***dp-fma@starpower.net*** or 202/544-6327 to request accreditation and/or if you have questions.

Pre-Seminar Workshop

Christine Kaufman (Impact Consultants, Inc.) will lead an optional, **interactive** pre-seminar interactive workshop on Wednesday, April 20 from 8:30–10:45 am. This workshop will present a unique opportunity to network with other compliance and audit professionals and provide an interactive format to address the questions and concerns of the participants. A myriad of topics will be discussed – such as hot topics from the SEC's and FINRA's examination priority lists; how to evaluate a firm's compliance culture and control environment; preparing for increased surveillance of fixed income order handling, markups and disclosures; ways to help prevent elder abuse without violating privacy rules; best practices for reducing compliance officer liability and more – based on the needs of the participants. This session is designed for persons new to the securities industry as well as seasoned compliance and audit personnel. This is your chance to get answers to specific questions about your compliance and audit programs and to come away with new ideas and resources for making your job more manageable.

An additional $125 registration fee will apply. Contact Dorcas Pearce at ***dp-fma@starpower.net*** or 202/544-6327 for details and/or to register.

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Program Update *(continued from page 19)*

FMA gratefully acknowledges these sponsors of

FMA's 2016 Securities Compliance Seminar

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2016 Legal and Legislative Issues Conference

FMA's 25th **Legal & Legislative Conference** is set to take place **November 3–4** at the **Hyatt Regency Washington on Capitol Hill** (site of the 2015 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 agenda. 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 first-timer, govt/regulatory, team and 2-for-1 discounts…will be available, so be sure to budget for (and plan to attend) the 2016 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.

Who's News

Ted Brauch, formerly Director of Enterprise Risk Management at MainSource Bank, has joined Citi as Operational Risk Senior Manager.

Grace Dailey has been named to succeed **Jennifer Kelly** as Senior Deputy Comptroller for Bank Supervision Policy and Chief National Bank Examiner at the OCC. Ms. Kelly is retiring at the end of April after 37 years of service to the OCC.

Mark Egert, formerly Director of Compliance for Brown Brothers Harriman, has joined JPMorgan Chase & Co. as U.S. Head of Compliance for Global Investment Management.

Marlene Ellis, formerly VP & Senior Counsel at BMO Financial Group, has joined Charles Schwab as Legal Director-Regulatory.

Tammy Engle, formerly CCO at Nelnet Capital LLC, has joined Matrix Financial Solutions as Vice President, Operations.

Robert M. Fisher has been named Managing Executive of the SEC's Office of Compliance Inspections and Examinations. In this role, Dr. Fisher will oversee OCIE's business operations, technology services, examiner training, and Tips, Complaints and Referrals programs. He succeeds **Peter B. Driscoll** who has been named Chief Risk and Strategy Officer of OCIE's new Office of Risk and Strategy.

Grovetta Gardineer has been named to fill the newly created position of Senior Deputy Comptroller for Compliance and Community Affairs at the OCC.

Kelley Hoffer, formerly VP & CCO at TD Securities, Inc., has joined RBC Capital Markets as CCO and Head of RBC Capital Markets (Canada).

Daniel S. Kahl has been named Chief Counsel in the SEC's Office of Compliance Inspections and Examinations. In this role Mr. Kahl will oversee a staff of 15 lawyers and advise OCIE's leadership on legal, technical, and policy matters regarding the agency's National Exam Program.

Anthony S. Kelly has been named Co-Chief of the SEC's Enforcement Division's Asset Management Unit, which focuses on misconduct by investment advisers, investment companies, and private funds. He joins **Marshall Sprung** as Co-Chief of the unit and succeeds **Julie Riewe**, who left the agency last month.

Thomas Kicak, formerly CCO at SunTrust Robinson Humphrey, Inc., has joined BBVA Compass in Houston as EVP – Director of US Markets Compliance.

Donald Lamson, formerly a Partner at Shearman & Sterling LLP, has joined Barnett Sivon & Natter, P.C. as Partner. Mr. Lamson will also serve as Of Counsel at Squire Patton Boggs, assisting that firm's clients on financial regulatory matters.

Larry Lese, a Partner at Duane Morris LLP, will retire March 31 after 19 years at the firm. Congratulations and best of luck, Larry.

Dale Loeffler, Audit Manager at Commerce Bancshares, Inc., is retiring in June after 32 years in the financial services industry. Congratulations and best of luck, Dale!

Brendan Mathews, formerly SVP, Regional Head of Equities, Futures, Clearing and Collateral Operations at HSBC Global Banking and Markets, has been named Regional COO at HSBC Securities Services.

Malcolm Northam, Senior Advisor to FMA, and former FINRA Director of Fixed Income Regulation, has joined the Regional Municipal Operations Association (RMOA) as its new President.

Coryann Stefansson, formerly Managing Director at PricewaterhouseCoopers LLP, has joined BlackRock's Washington, DC office as Managing Director.

Steve Strombelline is the new Head of Corporate Compliance for the Charles Schwab Corporation, reporting to the CCO. Steve is still based in New York.

Daniel Suarez, CPA, formerly Supervisor at Kaufman, Rossin & Co., has joined Banco Santander as VP/ Finance.

Vaughn Swartz, formerly Chief Compliance Officer at TD Securities (USA) LLC, is now Executive Vice President at Rabobank.

Michael Vossler, formerly Managing Director at Lumesis, Inc., has joined American Stock Transfer & Trust Company, LLC as EVP.