MARKET SOLUTIONS

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In This Issue

MARKET SOLUTIONS

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

FinCEN Customer Due Diligence Requirements For Financial Institutions: Final Rule

By Ellen Zimiles, Alma Angotti, Samantha Welch and Deborah Ferrara Navigant

1. Introduction

On May 11, 2016, the Financial Crimes Enforcement Network ("FinCEN"), Treasury, released the long awaited Customer Due Diligence ("CDD") Requirements for Financial Institutions Final Rule ("Final Rule") that formally requires covered financial institutions to collect beneficial ownership information from customers at account opening and to ensure the information is accurate on an ongoing basis.[1] FinCEN has adopted the Final Rule because it has determined that more explicit rules for covered financial institutions[2] are needed to clarify and codify CDD within the Bank Secrecy Act ("BSA") regime. The final rule is effective July 11, 2016. Covered financial institutions must be in compliance by May 11, 2018 (the "Applicability Date").[3]

A. Key Elements of the Final Rule

FinCEN released the Final Rule in two key provisions, first introducing a requirement to obtain and verify beneficial ownership information for legal entity customers; and second, codifying the existing expectation that financial institutions establish a customer risk profile and conduct ongoing monitoring against that profile.

1. **Beneficial ownership identification and verification**

The Final Rule contains a new requirement to establish and maintain written procedures to identify—and on a risk-based approach—verify the identity of, beneficial owners of legal entity customers. FinCEN guidance allows a financial institution to rely on the beneficial ownership identity information supplied by the customer, provided that it has no knowledge of facts that would reasonably call into question the reliability of the information.

FinCEN points out that the identification and verification procedures for beneficial owners are similar to those for individual customers under a financial institution's customer identification program ("CIP").[4] Like the CIP rule, the agency has provided both specific exemptions from the rule, and exclusions to the definition of "legal entity customer," and financial institutions are permitted to rely on another financial institution to execute the requirements. Critically, an

(Continued on Page 3)

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 selected developments from the OCC, the CFPB, and the CFTC, as well as with regard to cybersecurity regulation.

OCC

OCC Lays Out Responsible Innovation Framework

On October 26, 2016, the Office of the Comptroller of the Currency ("OCC") issued its Recommendations and Decisions for Implementing a Responsible Innovation Framework (the "Framework"). The Framework discusses the recommendations made by the OCC's Innovation Framework Development Team that were approved by the Comptroller and the OCC Executive Committee. According to the Framework, key approved recommendations include the following:

Create the OCC Office of Innovation – A stand-alone Office of Innovation ("Office") within the OCC will serve as a central point of contact and facilitate responses to inquiries and requests; conduct outreach and provide technical assistance; enhance awareness, culture, and education; monitor the evolving financial services landscape; and collaborate with other domestic and international regulators.

Develop an Innovation Outreach Strategy – The outreach strategy will use a wide variety of channels, including holding "office hours;" organizing innovation workshops and roundtables on specific topics; leveraging existing OCC-sponsored outreach events; sponsoring a periodic Responsible Innovation Forum; and participating as appropriate in non-OCC-sponsored events.

Provide Technical Assistance to Banks and Nonbanks – Technical assistance will be provided to banks and FinTechs to facilitate understanding of regulatory expectations. Technical assistance would include creating resource material for banks and nonbanks on regulatory principles, processes, and expectations; designing "rules of the road" material for nonbanks; and sharing success stories and lessons learned.

Develop an Optional Program for OCC Participation in Bank-Run Pilots – The OCC will develop and implement an optional program for agency participation in bank-run pilots that meet certain conditions.

Improve OCC Staff Awareness – The OCC will develop materials for OCC staff that provide the "fundamentals of emerging products, services, processes, and technology;" develop a process for reviewing and updating OCC training materials to address the changing trends and new products and services; and recruit individuals with more diverse technical experience, among other things.

Improve Timeliness and Transparency of OCC Decision-Making – The OCC will establish "clear response expectations, time frames, and workflows" to provide "more consistent, transparent, and timely processes and facilitate disposition of inquiries and proposals." The OCC will also implement an inquiry and request tracking process.

Conduct Research – The OCC will develop a research function within the Office to collect information

(Continued on Page 7)

FMA Welcomes New Members!

Nathan Anonick	**Cypress Group**
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Harry Chaffee	**Renaissance Regulatory Services**
Tom Christel	**E*TRADE Financial Corporation**

FinCEN Customer Due Diligence…

Continued from Page 1

account is a "new account" only if it is opened at the covered financial institution on or after the rule's Applicability Date.[5] Consistent with previous rulemaking, the Final Rule requires retention of beneficial ownership records for five (5) years.[6]

a. What is a Beneficial Owner?[7]

FinCEN determined that the minimum threshold for equity holdings that constitutes ownership is 25 percent, whether directly or indirectly held. The proposed 25 percent threshold is consistent with that of many jurisdictions (including European Union ("EU") member states) and with Financial Actions Task Force ("FATF") standards. FinCEN believes that a 25 percent threshold strikes the appropriate balance between the benefit of identifying key natural persons who have substantial ownership interests in the legal entity and the costs associated with implementing this information collection requirement. FinCEN addressed the particular nuances of trusts in the Final Rule, by in such cases that a trust is the 25 percent beneficial owner of a legal entity, defining the beneficial owner as the trustee.

In addition to those individuals with 25 percent equity interest, the Final Rule also includes within the definition of "beneficial owner" individuals with significant responsibility to control, manage or direct the legal entity customer, such as a Chief Executive Officer, Chief Financial Officer, General Partner, Managing Member or another individual who regularly performs similar functions. The rule specifically references control over the customer not the account. Financial institutions should also determine as appropriate that it understands who is in responsible for directing the activity in the account.

b. FinCEN's Certification Form[8]

The Final Rule requires that a person opening a new account on behalf of a legal entity certify the information presented to the financial institution. FinCEN provides a form as an appendix to the rule for financial institutions to use to collect such beneficial owner information, including name, date of birth, address and a Social Security Number for US persons or a government issued identification number such as a passport number for non-US persons. Although the form is not mandated by the rule, the information and certification therein is. The identification of beneficial owners is required at the time a new account is opened.

> *"The Final Rule contains a new requirement to establish and maintain written procedures to identify—and on a risk-based approach—verify the identity of, beneficial owners of legal entity customers."*

2. **Anti-Money Laundering Program Amendments**[9]

FinCEN also amended rules relating specifically to banks, brokers or dealers in securities, mutual funds and futures commission merchants and introducing brokers in commodities. The amendments include a requirement to develop risk-based procedures to conduct ongoing due diligence to develop a customer risk profile and to conduct ongoing monitoring to identify and report suspicious activity and update customer information. The revisions also reiterate existing requirements to implement and maintain an anti- money laundering program that includes training, independent testing, a designated individual responsible for compliance and a system of internal controls to ensure compliance with the BSA and relevant regulatory or SRO rules.

(Continued on Page 4)

FinCEN Customer Due Diligence…

Continued from Page 3

a. Customer Risk Profile
In drafting the Final Rule, FinCEN codified the implicit requirement for a covered financial institution to understand its customer's anticipated activity, required to comply with existing suspicious activity reporting ("SAR") requirements, specifically the requirement to report activity with no business or apparent lawful purpose or that which is not the sort in which the customer would be expected to engage. In addition to profiling against industry typologies, in order to satisfy its existing reporting obligations, a financial institution must also understand what is behaviorally normal or usual for a customer to understand what is unusual and therefore potentially suspicious. To ensure financial institutions can satisfy the requirement, the amendments require covered financial institutions to understand the nature and purpose of the customer's relationship to develop a customer risk profile indicating. Examples include the products and services used by the customer and for what purpose, basic facts about the customer's annual income or net worth, domicile, principal occupation or business, whether the customer is operating through a financial intermediary, and for existing customers, the history of activity.

b. Ongoing Monitoring, and Maintaining and Updating Customer Information
FinCEN clarifies and codifies that financial institutions are expected to conduct ongoing monitoring to identify and report suspicious activity—an expectation that was previously only implied by the SAR reporting requirements. Additionally, FinCEN clarifies in the Final Rule that when a financial institution detects information (including a change in beneficial ownership information) about the customer in the course of normal monitoring that is relevant to assessing or reevaluating the risk posed by the customer, it must update the customer information, including beneficial ownership information. Covered financial institutions are to take a risk-based approach to updating customer information, including beneficial ownership information, however FinCEN clarifies that this requirement should be event driven and occur as a result of normal monitoring. The rule also highlights that this requirement is applicable to all legal entity customers, including those existing on the Applicability Date.

> *"FinCEN believes that a 25 percent threshold strikes the appropriate balance between the benefit of identifying key natural persons who have substantial ownership interests in the legal entity and the costs associated with implementing this information collection requirement."*

II. Why Impose A CDD Rule?

The Final Rule is intended to strengthen CDD within the BSA regime, which in turn will enhance financial transparency and help to safeguard the financial system against illicit use, from terrorist financing and sanctions evasion to more traditional financial crimes, including money laundering, fraud and tax evasion.

FinCEN aims to advance the purposes of the BSA by enhancing the availability of beneficial ownership information to law enforcement, federal functional regulators and self-regulatory organizations ("SROs").[10] Additionally, requiring all covered financial institutions to identify and verify the identities of beneficial owners in the same manner and pursuant to the same definition promotes consistency across the industry.

III. What This Means To You

Time is short and the changes are significant. To ensure adherence to the final CDD rule, compliance officers will need to evaluate, and where applicable,

(Continued on Page 5)

FinCEN Customer Due Diligence…

Continued from Page 4

enhance their financial institution's AML program policies, procedures and controls impacted by the Final Rule, including changing account onboarding processes and potentially re-engineering risk assessments. Compliance officers will need to partner with technology to review existing customer profile, monitoring and record retention systems. This will help determine whether existing infrastructure can accommodate the new requirements and any cascading effects on the financial institution's other processes. Financial institutions should also identify areas to leverage within the firm to access information if such information is not already integrated.

FinCEN expects that with the adoption of the Final Rule, SARs filed by financial institutions will be increasingly likely to include beneficial ownership information for legal entity accounts. Any increase in the number of SARs filed under the Final Rule would likely be offset by the capacity of newly collected beneficial ownership data to remove some flagged transactions from suspicion. Both account opening staff and investigators will need to evaluate the impact of the Final Rule.

IV. What You Can Do Right Now

A. Compliance Officers should socialize the new rule with senior compliance and business management, and include those responsible for technology planning and budgeting. Consider providing an update to sales or similar staff which may be impacted and answering client questions.

B. A gap analysis should be prepared to evaluate the financial institution's current program against the proposed rule.

C. Based on the gap analysis, prepare a formal action plan for implementation of the changes that will be necessary, and identify those changes which require the most lead time. Determine which governance forum or committee in your organization should be responsible for overseeing and sponsoring the implementation and determine how and when updates should occur.

D. Evaluate changes in technology that might be required at both on-boarding and transaction monitoring. Create a timeline to ensure critical path actions are identified and scoped early.

E. Identify which high-risk customers for whom you may want to obtain beneficial ownership information even in cases where it is not technically required by the rule.

F. Identify any sources of customer information which may be stored in other parts of the organization and can be leveraged to create a customer risk profile. ■

[1] *Financial Crimes Enforcement Network, Treasury, 31 CFR Parts 1010, 1020, 1024, and 1026, RIN 1506-AB25, Customer Due Diligence Requirements for Financial Institutions, Action: Final rules. Available at: http://federalregister.gov/a/2016-10567, and on FDsys.gov*

(Continued on Page 6)

2017 Examination Priorities

FINRA

http://www.finra.org/sites/default/files/2017-regulatory-and-examination-priorities-letter.pdf

SEC

https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf

FinCEN Customer Due Diligence…

Continued from Page 5

[2] *Defined to include federally regulated banks, brokers and dealers in securities, mutual funds, and future commission merchants and introducing brokers in commodities.*
[3] *Ibid At 29398*
[4] *31 CFR 1020.220, 1023.220, 1024.220, 1026.220*
[5] *Ibid At 29398*
[6] *Ibid At 29453*
[7] *Ibid At 29451-29452*
[8] *Ibid At 29451, 29454-29455*
[9] *Ibid At 29451, 29458*

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Job Bank

Position Sought

Legal Consultant: Available for temporary/part-time assignment with company seeking an experienced executive to fill open management position(s) or with special project needs.

Seasoned advisor to financial institutions (banking/capital markets/broker-dealer) with a focus on complex business problem solving, helping seize strategic opportunities and advising management and boards on federal/state regulatory matters, corporate governance, crisis management and corporate communications issues.

Functioned during 35-year public and private company career in Executive and General Counsel roles advising business lines and managing control functions, including as Director of Risk Management. Also advise and liaison with corporate boards.

B.A. from Yale University; J.D. from Georgetown University Law Center. Licensed in New York, New Jersey and North Carolina.

Contact Stephen Antal at ***antals@bellsouth.net*** or 704/877-1663. Will travel as required.

Position Sought

A top performing Broker-Dealer and Bank Compliance Executive with established expertise in the development and implementation of risk based Internal Controls Supervisory Testing and FINRA CEO Certification programs, Financial and Brokerage Operations, Brokerage and Bank Audit Programs, Financial and Operational Risk Management, Equity, Fixed Income, Options, and Mutual Fund Trading, Custody and Clearing Arrangements, and OATS Reporting among other industry regulatory expertise developed at four Fortune 500 Broker-Dealers and Banks over more than twenty years.

B.S., Bowling Green State University College of Business and LLM, Michigan State University College of Law.

Please email or phone for resume and other additional information – 646/808-5092 (c) or ***rtbbrcllc@gmail.com*** (Richard Thayer Burrow).

Legislative/Regulatory Actions

Continued from Page 2

on innovations and industry technology trends; analyze the effects of innovation on banks, bank segments, and the federal banking system as a whole; and obtain information on consumer needs, demographics, and financial inclusion.

Promote Interagency Collaboration – The OCC will leverage its existing relationships with other regulators, such as the Consumer Financial Protection Bureau ("CFPB") and various working groups and committees within the Treasury Department, to discuss industry innovation, share information, and develop consistent approaches among regulators.

For our client alert discussing the Framework, please visit *https://media2.mofo.com/documents/161028-occ-innovation-framework.pdf*.

OCC Announces Special Purpose National Bank Charter for FinTech Companies

On December 2, 2016, Comptroller of the Currency Thomas Curry confirmed that the Office of the Comptroller of the Currency ("OCC") will begin considering applications from FinTech companies to become special purpose national banks ("SPNBs"). The OCC also released a white paper on issues associated with, and conditions for, extending national bank charters to FinTech companies (the "White Paper").

The OCC will grant an SPNB charter to companies that either engage in fiduciary activities or engage in at least one of the three core banking functions: 1) receiving deposits; (2) paying checks; or (3) lending money. Issuing debit cards or engaging in other means of facilitating payments electronically is, according to the OCC, the "modern equivalent of paying checks" and, therefore, money transmission may be considered a core banking function for purposes of eligibility for an SPNB charter. The OCC is also willing to consider the permissibility, on a case-by-case basis, of any new activities conducted by FinTech companies seeking an SPNB charter.

Rules and Standards for an SPNB

Both the White Paper and Comptroller Curry indicated that SPNBs would be subject to the same laws, regulations, and examinations as national banks currently supervised by the OCC. SPNBs are also subject to state laws in the same way, and to the same extent, as national banks (e.g., state fair lending laws and debt collection); however, an SPNB charter may eliminate the need to obtain certain state licenses. The White Paper also notes that SPNBs that do not take deposits would not be required to be insured by the FDIC and therefore would not be subject to laws that generally apply to insured depository institutions, including certain provisions under the Federal Deposit Insurance Act.

Supervisory Expectations and Chartering Process

In general, entities supervised by the OCC are subject to safety and soundness requirements, have obligations to provide fair access to financial services, and otherwise must comply with applicable law. The White Paper sets out the OCC's "baseline" supervisory expectations (e.g., business plans, compliance risk management, and appropriate governance structures), noting that the OCC tailors these standards to the size, complexity, and risks of the supervised entity. The OCC noted that the supervisory expectations for SPNBs will be at least comparable to the supervisory expectations for traditional national banks, including requirements related to capital and liquidity, financial inclusion, recovery, and exit strategies. However, supervisory expectations may be tailored to the SPNB's particular activities.

(Continued on Page 8)

FMA Welcomes *More* New Members!

Susan Collet	MSRB
Patricia Cowart	Wells Fargo & Co.
Todd Cranford	Financial Accounting Foundation
Jenny Dahlen	Wells Fargo & Company
Seth Davis	WilmerHale
Ryan Dirks	Fifth Third Bank
Karen Dowling	Bureau of the Fiscal Service
Kurt Eidemiller	Bureau of the Fiscal Service

Legislative/Regulatory Actions

Continued from Page 7

The OCC requested comments from the public on a series of issues related to the White Paper, which were due on January 15, 2017.

For our client alert discussing the White Paper and the Comptroller's remarks, please visit *https://media2.mofo.com/documents/161205-occ-announces-special-purpose.pdf*.

Cybersecurity

The NYDFS Revises Cybersecurity Proposal

On December 28, 2016, the New York State Department of Financial Services ("NYDFS") released a revised version of its proposed cybersecurity rules, originally proposed in September of last year. The original proposal sparked a significant degree of public comment and critique, as the rules would have imposed substantial compliance and implementation challenges for covered institutions.

Among other features, the original proposal broadly defined "nonpublic information" to include any information provided by an individual "in connection with the seeking . . . of any financial product or service," as well as any information "that can be used to distinguish or trace an individual's identity" or that may be "linkable to an individual," including an individual's name. The original proposal would have required covered financial institutions to notify the NYDFS within 72 hours of any "cybersecurity event" that "affects" nonpublic information, including any event involving "actual or potential" access to "nonpublic information." The original rules also would have included significant encryption requirements made more onerous by the breadth of the "nonpublic information" definition.

The revised proposal would still require covered financial institutions to put in place significant controls designed to protect "nonpublic information" and the information systems that handle that "nonpublic information." However, in a number of respects, the newly proposed revisions would narrow the rules and make them less prescriptive. The changes include:

Nonpublic Information: The definition of "nonpublic information" has been narrowed to focus on sensitive types of consumer information, such as name *in combination* with a Social Security number or biometric data. However, the revised definition continues to include "business related information" of a covered institution that if accessed or disclosed would "cause a material adverse impact to the business, operations or security" of the institution. To date, cybersecurity requirements throughout the world have focused on information relating to individuals. The process of identifying what business information could have a "material adverse impact" on a financial institution would undoubtedly require unique analysis in light of its potential subjectivity, as well as new controls.

Breach Notification: The revised proposal has narrowed the types of cybersecurity events that covered institutions would be required to report to the NYDFS within 72 hours. The revised regulations would require a covered institution to provide notice of any event that it is *required* to report to any other government entity, as well as any event that has "a reasonable likelihood of materially harming any material part of the normal operations of" the financial institution. While narrower in scope, a 72-hour time period for reporting would be among the shortest time periods contemplated in law.

Encryption: Under the revised proposal, a covered institution would be required, based on its risk assessment, to "implement controls, including encryption," to protect "nonpublic information" in transit and at rest. While narrower (particularly

(Continued on Page 9)

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Marian Fowler	**SEC**
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Mark Griffin	**Baker Donelson**
Eric Hebert	**FINRA**
Marie-Louise Huth	**SEC**
Brant Imperatore	**Cypress Group**

Legislative/Regulatory Actions

Continued from Page 8

because of the narrower definition of "nonpublic information"), the revised proposal is not completely clear as to whether encryption is a mandate and whether compensating controls can only be adopted as an alternative when encryption is "infeasible."

Despite the many revisions to the original proposal, covered financial institutions will face challenges establishing the type of comprehensive cybersecurity program and security controls that would be required if the proposal is finalized as revised. The difficulties will be particularly acute for those institutions that have not historically been subject to scrutiny of their cyber practices or that lack mature cybersecurity processes and controls.

The revised regulations are subject to a 30-day comment period that began on December 28, 2016, the date the proposal was published in the New York State Register. At the end of this comment period, the NYDFS is expected to publish final regulations at 23 NYCRR 500.

For additional information regarding the original proposal and its recent revision, visit *https://www.mofo.com/resources/publications/160926-nydfs-cybersecurity-proposal.html* and *https://www.mofo.com/resources/publications/170112-nydfs-revises-cybersecurity-proposal.html*. For a copy of the NYDFS proposal, please visit *http://www.dfs.ny.gov/legal/regulations/proposed/rp500t.pdf*.

FinCEN Advisory

On October 25, 2016, FinCEN issued an advisory, "Advisory to Financial Institutions on Cyber-Events and Cyber-Enabled Crime," in order to "assist financial institutions in understanding their Bank Secrecy Act (BSA) obligations regarding cyber-events and cyber-enabled crime." FinCEN also issued supplemental FAQs on the same date. It should be noted that, while this is a noteworthy development, SAR reporting regarding cyber events has been an expectation for more than a decade for many financial institutions under the Gramm-Leach-Bliley Act incident response program guidance.

In the Advisory, FinCEN explains that law enforcement agencies regularly use information reported under the BSA, including cyber information, to investigate crime. With that context in mind, the Advisory clarifies the responsibilities of financial institutions with regard to BSA reporting, including the following:

Mandatory SAR reporting of cyber events: Cyber events that are intended to affect a transaction or series of transactions should be considered part of an attempt to conduct a suspicious transaction or series of transactions. Such events would be reportable as suspicious transactions if they meet the applicable monetary threshold "because they are unauthorized, relevant to a possible violation of law or regulation, and regularly involve efforts to acquire funds through illegal activities." To determine monetary amounts involved, a financial institution should aggregate the funds and assets involved in (or put at risk) by the cyber event.

Voluntary reporting of cyber events: FinCEN encourages financial institutions to report "egregious, significant, or damaging cyber events and cyber-enabled crime when such events and crime do not otherwise require the filing of a SAR."

Including cyber information in SAR reporting: Financial institutions should include cyber-related information when reporting suspicious activity, whether that activity relates to cyber events or to other activity (e.g., wire transfers). Such information includes "IP addresses with timestamps, virtual-wallet information, device identifiers, and cyber-event information." The Advisory also clarifies that institutions should manually complete discrete SAR filings until such time as their software is updated to allow for the inclusion of cyber information.

(Continued on Page 10)

FMA Welcomes *More* New Members!

Leon Johnson	**Securities America, Inc.**
Anthony Kelly	**SEC**
Roomy Khan	**Roomyk, LLC**
Amit Khosla	**U.S. Bank**
Pamela Kwiatkoski	**PNC Financial Services**
Charles McCallum III	**SunTrust Bank**
Matt McDonald	**FINRA**

Legislative/Regulatory Actions

Continued from Page 9

Collaboration between BSA/AML and cybersecurity units: The Advisory states that relevant units within a financial institution should coordinate and share information in order to conduct "a more comprehensive threat assessment and develop appropriate risk management strategies to identify, report, and mitigate cyber-events and cyber-enabled crime."

Sharing cyber information between financial institutions: The Advisory notes that section 314(b) of the USA PATRIOT Act provides a safe harbor from liability for financial institutions that share information, including cyber information, for the purpose of identifying and reporting terrorist activities and money laundering, provided such institutions satisfy certain conditions.

To view the October 25, 2016, FinCEN advisory, visit the FinCEN website at *https://www.fincen.gov/sites/default/files/advisory/2016-10-25/Cyber%20Threats%20Advisory%20-%20FINAL%20508_2.pdf*. To view the FAQs, please see *https://www.fincen.gov/sites/default/files/shared/FAQ_Cyber_Threats_508_FINAL.PDF*.

CFPB UPDATE

Prepaid Account Rule Finalized

On October 5, 2016, the CFPB issued its final rule (the "Prepaid Rule") to amend provisions of Regulation E and Regulation Z to further regulate prepaid card products, or "prepaid accounts." The Prepaid Rule, which generally takes effect on October 1, 2017, covers prepaid products beyond conventional network-branded general-purpose reloadable prepaid cards, including payroll cards, government benefit cards, and reloadable prepaid cards whose "primary function" is to conduct transactions with multiple unaffiliated merchants or at ATMs or to conduct P2P transfers.

The final Prepaid Rule generally tracks the proposed rule issued by the CFPB in November 2014; however, it also includes several important revisions. For example, the final Prepaid Rule clarifies its scope, addresses identity verification at the time a cardholder asserts an error, and creates a narrow exemption so that incidental overdrafts would not be considered an extension of credit in certain circumstances. The final Prepaid Rule also modified the content and delivery requirements for the disclosures that issuers must provide before consumers acquire a card. These disclosure requirements differ slightly depending on the type of prepaid card (e.g., payroll card account or general purpose reloadable card account), the features of the prepaid account (e.g., whether it is a hybrid credit-prepaid card), and how the account is marketed (e.g., in retail stores or orally by telephone).

For our client alert on the Prepaid Rule, please visit *https://media2.mofo.com/documents/161006-cfpb-prepaid-account-rule.pdf*.

PHH Decision Deals Blow to CFPB

On October 11, 2016, the D.C. Circuit issued its opinion in PHH Corp. v. CFPB, overturning on constitutional, statutory, and administrative grounds the CFPB's order for PHH to pay $109 million in disgorgement. The case involved a mortgage lender, PHH, which had a subsidiary that provided mortgage reinsurance on mortgages originated by PHH. Relying on longstanding official interpretations of Section 8(c) of the Real Estate Settlement Procedures Act, PHH often referred borrowers to mortgage insurers that used PHH's subsidiary for mortgage reinsurance, priced at market value. The CFPB deemed this referral system an improper "kickback," despite past official interpretations stating that such systems came within a safe harbor as long as the services were offered at market value.

(Continued on Page 11)

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Christina McGlosson-Wilson	**SEC**
Kendal McManus	**FinCEN**
Dave Neel	**BBVA Securities**
Nina Nichols	**FHFA**
Diane Novak	**DPN Consulting Services**

Legislative/Regulatory Actions

Continued from Page 10

The D.C. Circuit held that the structure of the CFPB was unconstitutional because, under statute, its single, independent director may be removed by the President only "for cause." The court also rejected the CFPB's reading of RESPA, holding that Section 8(c) is a real safe harbor for captive reinsurance arrangements like PHH's, as long as "the amount paid by the mortgage insurer for the reinsurance does not exceed the reasonable market value of the reinsurance." Furthermore, the court held that the disgorgement remedy imposed on PHH violated fair-notice principles rooted in the Due Process Clause and administrative law and that CFPB's position that there is no statute of limitations for its administrative enforcement proceedings brought under RESPA was invalid.

For our client alert on the PHH decision, please visit *https://media2.mofo.com/documents/161013-cfpb-setback.pdf*.

FinTech Update: Project Catalyst Report and Money 20/20 Remarks

On October 24, 2016, the CFPB's Project Catalyst released its first report ("Report"), and Director Richard Cordray made remarks regarding FinTech at the Money 20/20 conference in Las Vegas. Launched in November 2012 to achieve the CFPB's statutory directive to "operate transparently and efficiently to facilitate access and innovation," Project Catalyst's objective is to engage with the innovator community, participate in initiatives that inform its policy work, and monitor emerging trends. The Report highlights Project Catalyst's work to date and describes a number of innovative market developments that have the potential to benefit consumers. The Report also highlights Project Catalyst's efforts to engage with industry stakeholders and government agencies through Project outreach and expresses the CFPB's intention to facilitate innovation in the areas of cash flow management, improved credit assessment, consumer financial data access, student lending and refinancing, mortgage servicing platforms, credit reporting accuracy and transparency, and peer-to-peer payments. In his Money 20/20 remarks, Director Cordray reiterated a point made in the Project Catalyst report: the CFPB does not believe that FinTech companies receive special regulatory treatment as compared to industry incumbents, and both banks and non-banks must be held accountable to the same compliance standards and oversight.

For our client alert on the CFPB's activities with respect to FinTech, please visit *https://media2.mofo.com/documents/161026-cfpb-fintech.pdf*.

CFPB Requests Information Regarding Data Aggregation Services

On November 17, 2016, in conjunction with a field hearing in Salt Lake City, the CFPB published a Request for Information ("RFI") seeking information regarding consumers' ability to access, control and share personal financial data relating to them in a usable electronic form. Consumer access includes access by a third party authorized by the consumer in connection with a product or service offered by the third party, such as a data aggregator. At the field hearing, CFPB Director Richard Cordray stated that the goal of the RFI is to learn the extent to which consumers already authorize access to financial records; how safe and secure the sharing of financial records is or can be; and how much control consumers have over financial records pertaining to them. Responses to the RFI will help the CFPB determine whether to issue guidance or engage in rulemaking with respect to data aggregation and consumer access to information.

(Continued on Page 12)

FMA Welcomes *More* New Members!

Joel Oswald	**Williams & Jensen**
Rodney Peck	**Pillsbury Winthrop Shaw Pittman LLP**
Steve Polansky	**FINRA**
Deborah Prutzman	**The Regulatory Fundamentals Group LLC**
Robert Robbins	**Pillsbury Winthrop Shaw Pittman LLP**
Kevin Rosen	**Shutts & Bowen LLP**

Legislative/Regulatory Actions

Continued from Page 11

For our client alert on the, please visit *https://media2.mofo.com/documents/161121-cfpb-requests-information.pdf.*

CFTC UPDATE

CFTC Proposes Rules Regarding Cross-border Application of Title VII

On October 11, 2016, the U.S. Commodity Futures Trading Commission ("CFTC") issued proposed rules to address certain issues related to the cross-border application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), the comprehensive framework for swaps regulation enacted by Congress in 2010. If adopted, the proposed rules would supersede the CFTC's Cross-Border Guidance, the interpretative statement adopted by the CFTC in 2013 to address cross-border application of Dodd-Frank, with respect to these issues. Among other things, the proposed rules would:

- provide definitions of "U.S. person" and "foreign consolidated subsidiary," which would apply for purposes of subsequent rulemakings addressing cross-border application of Dodd-Frank;
- clarify in certain respects the treatment of transactions that are "arranged, negotiated, or executed" in the United States by non-U.S. persons; and
- address the cross-border application of swap dealer and major swap participant registration thresholds and the cross-border applicability of the external business conduct standards.

For further information, please read our client alert available at *https://media2.mofo.com/documents/161110-cftc-cross-border-proposal.pdf.*

CFTC Approves Final Rule Amendments to CPO Financial Report Regulations

On November 21, 2016, the CFTC approved final rule amendments to its regulations that (i) allow commodity pool operators (CPOs) to use certain additional alternative generally accepted accounting principles, practices, or standards in preparing financial statements for non-U.S. commodity pools; (ii) exempt commodity pools from the audit requirement for Annual Reports covering the "stub period," subject to conditions; and (iii) further exempt audited financial reports for "insider" pools. These rules became effective on December 27, 2016, and are available at *http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-28388a.pdf*. For more information, please see the BD/IA Regulator blog at *http://www.bdiaregulator.com/.* ■

Meghan E. Dwyer, Julian E. Hammar, Amanda J. Mollo, Mark R. Sobin, and Nathan D. Taylor contributed to this column.

FMA Welcomes *More* New Members!

Racquel Russell	FINRA
Jared Shaw	Ernst & Young
Dafina Stewart	Federal Reserve Board
Catherine Topping	FDIC
Mercedes Tunstall	Pillsbury Winthrop Shaw Pittman LLP
Scott VanHatten	Wells Fargo & Company
Kari Walter	FHFA
Keith Watson	Fifth Third Bank

Watch For

January 24, 2017 – The MSRB filed with the SEC a proposed new rule, Rule G-49, on Transactions Below the Minimum Denomination of an Issue. The proposed new rule incorporates from MSRB Rule G-15(f) the existing prohibition regarding below-minimum denomination transactions with customers, without substantive amendment, and the two exceptions to the prohibition, with certain amendments.

CFTC Press Release 7520-17 (January 23, 2017) – The CFTC announced it is extending the comment period for the supplemental proposal for Regulation Automated Trading to May 1, 2017. The CFTC recognizes the broad range of topics addressed in the supplemental proposal and the number of questions within it. Notice of this action will be published in the *Federal Register* shortly.

CFTC Press Release 7518-17 (January 19, 2017) – The CFTC's Division of Enforcement issued two new Enforcement Advisories outlining the factors the Enforcement Division will consider in evaluating cooperation by individuals and companies in the agency's investigations and enforcement actions.

MSRB Press Release (January 18, 2017) – The MSRB has received approval from the SEC to apply its customer complaint rules to municipal advisors while also modernizing the rules, which currently apply to municipal securities dealers. The updated rules, which take effect in nine months, will more clearly focus on customer and municipal advisory client education and protection.

Federal Reserve Press Release (January 13, 2017) – The FRB, OCC & FDIC extended until February 17, 2017, the comment period for the advance notice of proposed rulemaking on enhanced cyber risk management standards for large and interconnected entities under their supervision and those entities' service providers. The agencies are considering five categories of cyber standards: cyber risk governance; cyber risk management; internal dependency management; external dependency management; and incident response, cyber resilience, and situational awareness. Originally, comments were due by January 17, 2017. The agencies extended the comment period to allow interested persons more time to analyze the issues and prepare their comments.

CFTC Press Release 7513-17 (January 13, 2017) – The CFTC unanimously approved proposed changes to swap data rules that implement Congressional action to remove indemnification requirements for the use of swap data by other regulators. In a separate proposal, the Commission voted to update Parts 3 and 9 to integrate existing advisory guidance, incorporate swap execution facilities, and update provisions currently applicable to designated contract markets. The comment period will be open for 60 days after publication in the *Federal Register*.

CFTC Press Release 7512-17 (January 12, 2017) – The CFTC unanimously approved proposed amendments to Regulation 1.31. The proposed amendments would modernize and make technology-neutral the form and manner in which regulatory records must be kept, as well as rationalize the rule text for ease of understanding. The CFTC is seeking comments on the proposed amendments. The comment period ends 60 days after the proposal's publication in the *Federal Register*.

MSRB Press Release (January 9, 2017) – The MSRB added a new issue calendar to its EMMA website. The calendar lists municipal bonds scheduled for sale to investors as well as pricing of recently sold issues.

January 6, 2017 – Next month, the MSRB will enhance the alerts feature on its EMMA website. An improved email design will provide more information about the trade activity or newly filed disclosure documents that triggered the alert. Users also will be able to subscribe to individual types of continuing disclosure filings, such as audited financial statements or bond calls.

MSRB Notice 2017-01 (January 6, 2017) – The MSRB is seeking comment on draft amendments to modernize MSRB Rule G-26, on customer account transfers. The draft amendments are designed to promote market efficiency and reduce risk by creating a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers that are engaged in municipal securities activities. Comments should be submitted no later than February 17, 2017.

OCC Bulletin 2017-3 (January 6, 2017) – The OCC, FRB and FDIC have published an interagency final rule that adopts without change the February 29, 2016, interim final rule amending the regulations governing eligibility for the 18-month on-site examination cycle. Pursuant to the FAST Act, the interim final rule made qualifying 1- and 2-rated national banks, federal savings associations, and federal branches and agencies with less than $1 billion in total assets eligible for an 18-month (rather than a 12-month) examination cycle. The OCC retains the authority to examine a bank on-site

(Continued on Page 14)

Watch For *(Continued from page 13)*

more frequently, as the agency deems necessary or appropriate.

Federal Reserve Press Release (December 20, 2016) – The Federal Reserve Board extended until February 20, 2017, the comment period for its proposed rule that would strengthen existing requirements and limitations on the physical commodity activities of financial holding companies. The proposal would help reduce the catastrophic, legal, and financial risks that physical commodity activities pose to financial holding companies. The Board extended the comment period to allow interested persons more time to analyze the issues and prepare their comments. Comments were originally due by December 22, 2016.

Federal Reserve Press Release (December 19, 2016) – The Federal Reserve Board approved a rule requiring for the first time that large banking organizations publicly disclose certain quantitative liquidity risk metrics. The disclosures will provide market participants and the public with reliable and timely information for evaluating the financial strength and resiliency of the nation's largest banking organizations. While generally similar to the rule proposed in November 2015, in response to comments, the final rule extends the implementation timeline of the public disclosure requirements by nine months. Compliance dates would range from April 2017 through October 2018.

CFTC Press Release 7502-16 (December 19, 2016) – The CFTC's Division of Market Oversight announced time-limited no-action relief to derivatives clearing organizations and reporting entities for certain swaps reporting obligations amended by a CFTC Final Rule published June 27, 2016. The action relieves DCOs of their obligations to report original swap terminations as required by the Cleared Swap Rule for up to six months or until DCOs can sufficiently test required changes to their reporting systems. This action also relieves all swaps reporting entities of obligations to report new primary economic terms data fields added by the Cleared Swap Rule for up to three months or upon the acceptance of such PET data fields by swap data repositories.

CFTC Press Release 7501-16 (December 19, 2016) – The CFTC's Division of Market Oversight announced time-limited no-action relief to entities submitting swaps for clearing by derivatives clearing organizations operating under CFTC exemptive orders or no-action relief that CFTC staff provided. The action relieves entities submitting such swaps for clearing of obligations to terminate the original "alpha" swap and to report any swaps between the Relief DCO Counterparties and the Relief DCO. Relief DCOs are required to report such resulting swap data by the terms of their exemptive or no-action relief. This action also provides relief for counterparties to report certain primary economic terms data fields for swaps intended to be cleared by a Relief DCO as a cleared swap.

CFTC Press Release 7499-16 (December 15, 2016) – The CFTC's Division of Clearing and Risk issued no-action relief to swap market participants to permit a provision of the inter-affiliate exemption from required clearing to be relied upon for swaps executed between certain U.S. swap market participants and their affiliated counterparties located in Australia or Mexico. This relief offers counterparties located in Australia and Mexico the same relief that has been available to counterparties located in the European Union, Japan, and Singapore.

Federal Reserve Press Release (December 12, 2016) – The Federal Reserve Board announced additional details regarding how banking entities may seek an extension to conform their investments in a narrow class of funds that qualify as "illiquid funds" to the requirements of section 619 of the Dodd-Frank Act, commonly known as the Volcker Rule.

Federal Reserve Press Release (December 9, 2016) – The Federal Reserve Board announced the approval of technical amendments to its rule that identifies global systemically important bank holding companies and requires those firms to hold additional amounts of risk-based capital to avoid restrictions on capital distributions and discretionary bonus payments. The changes would not materially alter the underlying rule approved by the Board in July 2015. The amendments are being adopted without change from the proposal released for comment earlier this year. Also, the Board invited comment on an interim final rule that extends the initial implementation of certain reporting requirements related to the GSIB surcharge rule. The adjusted timeline applies to firms that have $50 billion or more in total consolidated assets and are not currently identified as GSIBs. The reporting requirements are being harmonized with similar reporting requirements from other rules.

December 9, 2016 – The Municipal Advisor Representative (Series 50) Exam is available and practicing municipal advisor representatives have until September 12, 2017 to take and pass the exam while continuing to engage in municipal advisory activities. After September 12, 2017, a person cannot engage in municipal advisory activities without having passed the

(Continued on Page 15)

Watch For *(Continued from page 14)*

Series 50 examination. The MSRB is continuing to develop a set of professional qualification requirements and is creating a principal exam that will be required for all municipal advisors acting in a principal capacity. In addition, all municipal advisor representatives will be subject to continuing education requirements in the future. Current draft amendments to MSRB Rule G-3 aim to establish robust CE requirements for municipal advisors while balancing the need to avoid unnecessary regulatory overlap with existing CE requirements for municipal securities dealers, who may also act as municipal advisors.

December 9, 2016 – As regulated entities, municipal advisors have multiple obligations throughout the year to maintain their registration status with the MSRB and ensure compliance with MSRB rules. Municipal advisors should be aware of the following key compliance dates in 2017.
2017: Rule G-44 Compliance Certification
January 1-26, 2017: Annual Registration Affirmation
January 31, 2017: Form MA-I
April 30, 2017: Annual Municipal Advisor Professional Fee
September 12, 2017: Series 50 Grace Period Ends
October 31, 2017: Annual Registration Fee

FINRA Information Notice (December 5, 2016) – FINRA reminds firms of their Annual Audit, Financial and Operational Combined Uniform Single (FOCUS), Form Custody, and supplemental FOCUS Report filing obligations. All such filings must be received by FINRA by their required due dates to avoid specified fees as set forth in Schedule A to FINRA's By-Laws and to avoid suspension of FINRA membership. This Notice provides the due dates for filings that are due in 2017 or in the first quarter of 2018. All filings submitted to FINRA must be made electronically though FINRA's Firm Gateway.

FINRA Trade Reporting Notice (December 5, 2016) – FINRA interprets the "as soon as practicable" requirement under FINRA trade reporting rules to require that firms release information relating to over-the-counter OTC transactions in NMS stocks to other market participants no sooner than they release such information to a FINRA trade reporting facility for dissemination (or "tape") purposes.

CFTC Press Release 7495-16 (December 5, 2016) – The CFTC voted unanimously to repropose regulations implementing limits on speculative futures and swaps positions as called for in the Dodd-Frank Act. In a separate vote, CFTC approved final aggregation regulations, which are a key component of the CFTC's existing position limits regime. The reproposal will be open for public comment for 60 days after publication in the *Federal Register*. The CFTC is also reproposing the definition of bona fide hedging position, as well as exemptions for bona fide hedging positions in physical commodities. Exemptions are being reproposed for, among other things, positions that are established in good faith prior to the effective date of the initial limits that would be established by final regulations.

OCC News Release 2016-152 (December 2, 2016) – Comptroller Thomas J. Curry announced that the OCC would move forward with considering applications from financial technology (fintech) companies to become special purpose national banks. Accompanying his decision, the OCC published a paper discussing the issues and conditions that the agency will consider in granting special purpose national bank charters. The paper is available on the agency's website at and comments may be submitted through January 15, 2017.

CFTC Press Release 7494-16 (December 2, 2016) – The CFTC unanimously approved proposed rules establishing swap dealer and major swap participant minimum capital requirements. As required by the Dodd Frank Act, the rules propose minimum levels of qualifying capital for SDs and MSPs that are not subject to the capital rules of a prudential regulator. In addition, the rules also propose recordkeeping, reporting and notification requirements for SDs and MSPs relative to their respective capital requirements. The comment period for this proposal will be open for 90 days following the publication in the *Federal Register*.

MSRB Press Release (December 1, 2016) – The MSRB provided interpretive guidance for municipal securities dealers to address questions about the application of certain MSRB rules to municipal bond transactions with registered investment advisers having full discretion to purchase or sell municipal securities on behalf of their investor clients. Specifically, the guidance clarifies certain obligations for dealers that execute transactions with a registered investment adviser that is classified as a "sophisticated municipal market professional" under MSRB rules and authorized to exercise full discretion on behalf of its clients. The guidance makes clear that, for purposes of complying with the rules addressed in MSRB Rule G-48, dealers do not owe obligations to clients of such registered investment advisers beyond those under Rule G-48, which outlines modified obligations for dealers when

(Continued on Page 16)

Watch For *(Continued from page 15)*

transacting with sophisticated municipal market professionals. The principal rules relevant to these interpretive questions are Rules G-47, D-15, and G-48.

CFTC Press Release 7493-16 (November 30, 2016) – The CFTC's Division of Swap Dealer and Intermediary Oversight provided no-action relief to futures commission merchants and introducing brokers to streamline the process for providing risk disclosure statements to non-institutional customers (i.e., customers that are not "eligible contract participants" as defined under the section 1a(18) of the Commodity Exchange Act). Specifically, the no-action letter permits FCMs and IBs to provide non-institutional customers with a single risk disclosure document that consolidates the separate risk disclosure statements required by Regulations 1.55, 30.6, 33.7 and/or 190.10.

CFTC Press Release 7491-16 (November 30, 2016) – The CFTC announced that it has issued an order granting CME Clearing Europe Limited registration as a derivatives clearing organization under the Commodity Exchange Act. Under the order, CMECE will be authorized to provide clearing services for U.S. clearing members as well as their customers under Section 5b of the CEA. The order permits CMECE to provide these clearing services for swaps as well as for futures and options on futures traded on or subject to the rules of a designated contract market. With CMECE's registration, 16 DCOs are registered with the CFTC, including seven that are based outside of the United States.

MSRB Notice 2016-28 (November 29, 2016) – The MSRB announced the effective date for amendments to MSRB Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements with respect to customer transactions, and Rule G-30, on prices and commissions, to require municipal securities dealers to disclose mark-ups and mark-downs to retail customers on certain principal transactions, and to provide dealers guidance on prevailing market price for the purpose of determining mark-ups and mark-downs and other Rule G-30 determinations. The new disclosure requirements and prevailing market price guidance will become effective on May 14, 2018, approximately 18 months from the date of SEC approval of the amended rule.

CFTC Press Release 7490-16 (November 28, 2016) – The CFTC's Divisions of Clearing and Risk and Market Oversight each extended previously-issued no-action relief from the clearing and trade execution requirements for certain inter-affiliate transactions. The DCR and DMO are extending, until December 31, 2017, no-action relief that was previously provided in DCR No-Action Letter 15-63 and DMO No-Action Letter 15-62, respectively.

OCC Bulletin 2016-41 (November 22, 2016) – The OCC, FRB and FDIC are inviting comment on an advance notice of proposed rulemaking regarding enhanced cyber risk management standards for large and interconnected entities under their supervision. The agencies are considering establishing enhanced standards to increase the operational resilience of a covered entity, lower the probability of a covered entity's failure or inability to serve as a financial intermediary, and reduce the potential impact on the financial system of a cyber event affecting a covered entity. The ANPR was published in the *Federal Register* on October 26, 2016, and comments are due by January 17, 2017.

MSRB Notice 2016-27 (November 22, 2016) – The MSRB published a regulatory notice to remind municipal securities dealers of their obligations under MSRB Rule G-47 to disclose to their customers, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. In periods when interest rates rise, municipal bonds may frequently be sold in the secondary market for less than par value at a market discount. The MSRB's notice states its interpretation that the fact that a municipal security bears a market discount is material information that must be disclosed under Rule G-47 to a customer that is not a sophisticated municipal market professional. The existence of market discount may have significant tax implications and therefore impact an investor's decision to purchase or sell an affected bond or determination of what price to pay or accept for such bond.

CFTC Press Release 7489-16 (November 21, 2016) – The CFTC's Division of Market Oversight issued a time-limited no-action letter that extends relief provided to certain CFTC-registered swap dealers and major swap participants in CFTC Letter No. 15-61. The letter states that the Division will not recommend that the CFTC take an enforcement action against a non-U.S. SD or a non-U.S. MSP established in Australia, Canada, the European Union, Japan or Switzerland, that is not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company, for failure to comply with the swap data reporting requirements of Part 45 and Part 46 of the CFTC's regulations, with

(Continued on Page 17)

Watch For *(Continued from page 16)*

respect to its swaps with non-U.S. counterparties that are not guaranteed affiliates, or conduit affiliates, of a U.S. person. The relief is provided subject to certain terms and conditions outlined in the letter and is time-limited, expiring on the earlier of: (a) 30 days following the issuance of a comparability determination by the CFTC with respect to the SDR Reporting Rules for the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established or (b) December 1, 2017.

CFTC Press Release 7487-16 (November 21, 2016) – The CFTC announced that it has unanimously approved amendments to its regulations applicable to the financial reports that commodity pool operators are required to provide on their pools' operations. The amendments announced today incorporate into CFTC regulations relief that, to date, has been available through exemptive or no-action letters.

MSRB Press Release (November 18, 2016) – The MSRB has received approval from the SEC to require municipal securities dealers to disclose their compensation when transacting with retail investors. The MSRB has worked in coordination with FINRA, and the SEC also approved a similar rule proposed by FINRA for the corporate and agency debt markets, which harmonizes the new requirements across these fixed-income markets.

Federal Reserve Press Release (November 18, 2016) – The Federal Reserve Board announced it is broadening the scope of post-employment restrictions applicable to Federal Reserve Bank senior examiners and officers. The restriction on former officers will be effective on December 5, 2016, and the revised senior examiner policy will be effective on January 2, 2017.

MSRB Notice 2016-26 (November 17, 2016) – The MSRB received approval from the SEC on September 13, 2016, to establish an historical data product to provide institutions of higher education with post-trade municipal securities transaction data collected through the Real-Time Transaction Reporting System for purchase. While academic institutions currently have access to the post-trade municipal securities transaction data disseminated from RTRS, the RTRS Academic Data Product improves the usefulness of this data by enabling academics to distinguish transactions executed by different dealers. Subsequent to its approval, the MSRB established fees related to the RTRS Academic Data Product on October 25, 2016. In both rule filings submitted to the SEC, the MSRB explained that it would announce the effective date of the RTRS Academic Data Product in a regulatory notice to be published no later than December 12, 2016, and that the effective date would be no later than June 9, 2017. Accordingly, the MSRB is publishing this regulatory notice to announce that the effective date of the RTRS Academic Data Product will be February 27, 2017. As of that date, academic institutions will be able to request one-year data sets on a rolling basis for a fee of $500 per one-year data set, with a one-time initial set-up fee of $500, as specified in the MSRB's RTRS Facility.

CFTC Press Release 7484-16 (November 16, 2016) – The CFTC's Division of Market Oversight reminds all participants in CFTC-regulated derivatives markets of the upcoming scheduled expiration of certain no-action relief associated with the Ownership and Control Final Rule. Specifically, with the expiration of certain relief in CFTC Letter No. 16-32, certain electronic submission requirements for Forms 40/40S and 71 will commence on November 18, 2016, at 12:00 a.m. U.S. Eastern Time.

CFTC Press Release 7483-16 (November 16, 2016) – CFTC Staff issued a report detailing the results of a supervisory stress test of major clearinghouses. The purpose of the analysis was to assess the impact of a hypothetical set of extreme but plausible market scenarios across multiple clearinghouses and their clearing members. Staff provided the clearinghouses an opportunity to comment on the methodology and results.

FINRA Regulatory Notice 16-43 (November 16, 2016) – Effective February 27, 2017, FINRA will make available for a fee the Academic Corporate Bond TRACE Data product—an enhanced historical TRACE data product available solely to institutions of higher education. The rule text is available in the online FINRA Manual.

SEC Press Release 2016-240 (November 15, 2016) – The SEC voted to approve a national market system plan to create a single, comprehensive database known as the consolidated audit trail that will enable regulators to more efficiently and thoroughly track all trading activity in the U.S. equity and options markets. The NMS plan details the methods by which SROs and broker-dealers will record and report information, including the identity of the customer, resulting in a range of data elements that together provide the complete lifecycle of all orders and transactions in the U.S. equity and options markets. The NMS plan also sets forth how the data in the CAT will be maintained to ensure its accuracy, integrity and security. Within two months of the approval of the NMS plan the SROs must select a plan processor to build and operate the CAT. SROs will

(Continued on Page 18)

Watch For *(Continued from page 17)*

be required to begin reporting to the CAT within one year of approval, with large broker-dealers following the next year and small broker-dealers the year after.

CFTC Press Release 7482-16 (November 10, 2016) – The CFTC unanimously approved a final rule amending a CFTC regulation addressing the timing for filing chief compliance officer annual reports for certain registrants. The Final Rule amends CFTC regulation 3.3 to provide futures commission merchants, swap dealers, and major swap participants 90 days following their fiscal year-end to file chief compliance officer annual reports and clarifies the filing requirements applicable to swap dealers and major swap participants located in jurisdictions for which the CFTC has granted a comparability determination with respect to the contents of the reports. The Final Rule codifies and supersedes CFTC Staff Letter No. 15-15 issued March 27, 2015. The Final Rule is effective immediately upon publication in the *Federal Register*.

MSRB Press Release (November 10, 2016) – In a recent letter to the Securities and Exchange Commission Investor Advocate on potential risks to retail investors in the municipal market, the MSRB identified disclosure practices, price fairness and transparency, types of ownership of municipal bonds and senior investor protection as areas of particular concern. The MSRB wrote to SEC Investor Advocate Rick Fleming in response to a request that the MSRB identify products and practices within the municipal securities market that may have an adverse impact on retail investors.

November 9, 2016 – The MSRB reminds municipal securities dealers that the amendments to MSRB Rule G-12 on uniform practice, regarding close-out procedures for municipal securities, will become effective on November 16, 2016. Among other changes, the amendments require that inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10-calendar day extension at the buyer's discretion. The changes seek to reduce the risk and cost associated with inter-dealer fails.

OCC News Release 2016-143 (November 7, 2016) – The OCC will launch a web-based system for banks to file licensing and public welfare investment applications and notices starting on January 17, 2017. The Central Application Tracking System is designed to help authorized national banks, federal savings associations, and federal branches and agencies to draft, submit, and track licensing and public welfare investment applications and notices. The system also allows OCC analysts to receive, process and manage those applications and notices.

CFTC Press Release 7479-16 (November 4, 2016) – The CFTC approved a supplemental proposal to Automated Trading Regulation (RegAT) at an Open Commission meeting.

CFTC Press Release 7478-16 (November 2, 2016) – The CFTC announced that CFTC Chairman Timothy Massad signed a Counterpart to a 2014 Memorandum of Understanding with John O'Brien, Superintendent of Securities for Newfoundland and Labrador, and Patricia Hearn, Deputy Minister for Intergovernmental Affairs. The MOU relates to cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and in Canada.

FINRA Regulatory Notice 16-42 (November 1, 2016) – Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative, and Branch Renewals for 2017; Payment Deadline: December 16, 2016. The 2017 Renewal Program begins on November 14, 2016, when FINRA makes the online Preliminary Statements available to all firms in E-Bill. Firms should note the following key dates in the renewal process:
October 24, 2016: Firms may begin submitting post-dated Form U5 and BR Closing/Withdrawal filings via Web CRD/IARD.
Firms may begin submitting post-dated Form BDW and ADV-W filings via Web CRD/IARD.
November 1, 2016: Please Note—Registrations terminated by post-dated filings submitted by 11 p.m., Eastern Time (ET), November 11, 2016, do not appear on the firm's Preliminary Statement. The only allowed date for post-dated filings is December 31, 2016.
November 14, 2016: Preliminary Statements are available in E-Bill.
December 16, 2016: Full payment of Preliminary Statements is due.
January 3, 2017: Final Statements are available in E-Bill.
January 20, 2017: Full payment of Final Statements is due.
FINRA advises FINRA-registered firms that failure to remit full payment of their Preliminary Statements to FINRA by December 16, 2016, may cause the firm to become ineligible to do business in the jurisdictions where it is registered, effective January 1, 2017. FINRA-

(Continued on Page 19)

Watch For *(Continued from page 18)*

registered firms will also be subject to a late fee if payment is not received by December 16, 2016. In addition to this Notice, firms should review the renewal instructions, the IARD Renewal Program Bulletin (if applicable) on the Investment Adviser Registration Depository website, and any information mailed to ensure continued eligibility to do business in 2017.
November 1, 2016 – The MSRB filed with the SEC a proposed rule change consisting of amendments to MSRB rules related to existing customer complaints and recordkeeping requirements for brokers, dealers, and municipal securities dealers and an extension of those requirements, as well as related record retention requirements, to municipal advisors. Amendments to MSRB Rule G-10, on delivery of investor brochure, Rule G-8, on books and records to be made by dealers and municipal advisors, and Rule G-9, on preservation of records, and an MSRB interpretation regarding electronic delivery and receipt of information by municipal advisors under Rule G-32, on disclosures in connection with primary offerings, are included in the filing.

SEC Press Release 2016-232 (November 1, 2016) – SEC staff made available additional economic analysis related to the Commission's proposed rule regarding the use of derivatives by registered funds and business development companies. The analysis is posted on the SEC's website as part of the comment file for a rule proposed by the Commission in December 2015 that is designed to enhance the regulation of the use of derivatives by registered investment companies, including mutual funds, exchange-traded funds and closed-end funds, as well as business development companies. The proposed rule would limit funds' use of derivatives and require them to put risk management measures in place, which would result in better investor protections. Interested parties may provide comments. Comments may be submitted to the comment file (File No. S7-24-15) for the proposed rule.

CFTC Press Release 7476-16 (November 1, 2016) – The CFTC's Division of Market Oversight further extended the time-limited no-action relief for swaps executed as part of a package transaction in the categories that currently receive relief under CFTC Letter 15-55. This extension, announced in CFTC Letter 16-76, will enable the Division to continue assessing the appropriate response for applying the trade execution requirement to swaps in certain types of package transactions. The summary of the relief provided is intended to be used for reference only and does not represent any grant of no-action relief from the Commodity Exchange Act or the CFTC's regulations.

CFTC Press Release 7475-16 (October 31, 2016) – The CFTC issued Orders of Registration to the following Foreign Boards of Trade: CME Europe Limited; ICE Futures Europe; The London Metal Exchange; and London Stock Exchange plc. Under the Orders, each of the FBOTs is permitted to provide identified members or other participants located in the U.S. with direct access to its electronic order entry and trade matching system. Eurex, IFE and LME previously offered direct access to U.S. participants in accordance with CFTC Letters 99-48; 99-69; and 01-11. According to CFTC regulation 48.6, these no-action letters are automatically withdrawn with the issuance of Registration Orders for Eurex, IFE and LME.

FINRA Regulatory Notice 16-41 (October 26, 2016) – The SEC has approved amendments to FINRA rules governing communications with the public; effective January 9, 2017. The amendments revise the filing requirements in FINRA Rule 2210 (Communications with the Public) and FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) and the content and disclosure requirements in FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings).

SEC Press Release 2016-226 (October 26, 2016) – The SEC adopted final rules that modernize how companies can raise money to fund their businesses through intrastate and small offerings while maintaining investor protections. Amended Rule 147 and new Rule 147A will be effective 150 days after publication in the *Federal Register*. Amended Rule 504 will be effective 60 days after publication in the *Federal Register*. The repeal of Rule 505 will be effective 180 days after publication in the *Federal Register*.

Federal Reserve Press Release (October 25, 2016) – The 160-member task force convened by the Federal Reserve to advance the safety, security and resiliency of the national payment system is asking the industry for comments on its efforts to enhance payment identity management, data protection, and information sharing related to payments risk and fraud. The Secure Payments Task Force has been working across payment industry segments to define challenges and develop potential solutions. An online survey has been created to gather comments on how the task force is addressing challenges related to the three focus areas. The goal is to help ensure that the solutions being pursued will meet industry needs. The survey will be open for comment through November 8.

(Continued on Page 20)

Watch For *(Continued from page 19)*

FINRA Regulatory Notice 16-40 (October 24, 2016) – The SEC approved FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) to establish "pay-to-play" and related rules regulating the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers. The rules become effective August 20, 2017.

Federal Reserve Press Release (October 21, 2016) – The Federal Reserve Board announced that it plans to collect data from banks for secondary market transactions in U.S. Treasury securities and will enter into negotiations with FINRA to potentially act as the Board's collection agent for the data. The Board will seek public comment on its proposal. The Board's data collection would complement the work of the SEC, which recently approved a rule change by FINRA to require its broker-dealer members to report secondary market transactions in U.S. Treasury securities.

Federal Reserve Press Release (October 19, 2016) – The three federal banking regulatory agencies approved an advance notice of proposed rulemaking inviting comment on a set of potential enhanced cybersecurity risk-management and resilience standards that would apply to large and interconnected entities under their supervision. The standards would apply as well to services provided by third parties to these firms. To benefit from comments on all aspects of the potential enhanced standards, the agencies are issuing an ANPR before developing a more detailed proposal for consideration. The agencies are also asking for comments on potential methodologies that could be used to quantify cyber risk and to compare cyber risk at entities across the financial sector. Comments on the ANPR are due January 17, 2017.

FINRA Regulatory Notice 16-39 (October 19, 2016) – Beginning July 10, 2017, FINRA member firms must begin reporting transactions in U.S. Treasury Securities to FINRA via TRACE. This Notice describes the scope of the term "U.S. Treasury securities" for purposes of the new reporting requirement; the specific transactions in U.S. Treasury securities that are reportable and those that are exempt from the reporting requirement; and the information that must be reported to TRACE when reporting transactions in U.S. Treasury securities, including a new trade indicator and two new modifiers. FINRA is publishing technical specifications concurrently with this Notice, which are available on FINRA's website. At this time, FINRA will not disseminate information on transactions in U.S. Treasury securities and will not charge transaction-level fees on transactions in U.S. Treasury securities reported to TRACE. The new rule text is available in the online FINRA Manual on FINRA's website.

FINRA Regulatory Notice 16-38 (October 17, 2016) – The SEC approved amendments to the Trade Reporting and Compliance Engine rules and dissemination protocols to provide for dissemination of transactions in collateralized mortgage obligations, to reduce the time frame for reporting transactions in CMOs executed after issuance, and to simplify the reporting requirements for transactions in CMOs executed prior to issuance. These amendments will become effective on March 20, 2017.

FINRA Regulatory Notice 16-37 (October 17, 2016) – The SEC approved FINRA's rule set for firms that meet the definition of "capital acquisition broker" and that elect to be governed under this rule set. CABs are firms that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions. The CAB rules become effective on April 14, 2017. In order to provide new CAB applicants with lead time to apply for FINRA membership and obtain the necessary qualifications and registrations, CAB Rules 101-125 will become effective on January 3, 2017. FINRA will begin accepting applications for firms that are not broker-dealers but wish to register as CABs, for existing member firms requesting to elect CAB status, and for CAB associated person registration and qualification, on January 3, 2017.

OCC Bulletin 2016-34 (October 17, 2016) – On June 30, 2015, the FFIEC, on behalf of its members, issued a Cybersecurity Assessment Tool that financial institutions may use to evaluate their risks and cybersecurity preparedness. At the same time, the OCC announced that examiners will gradually incorporate the Assessment into examinations of national banks, federal savings associations, and federal branches and agencies of all sizes. This bulletin contains answers to frequently asked questions that bankers have posed to OCC examiners and policy staff members. Separately, this bulletin includes additional answers to FAQs that the FFIEC recently issued on behalf of its members.

(Continued on Page 21)

Watch For *(Continued from page 20)*

CFTC Press Release 7471-16 (October 13, 2016) – The CFTC approved an Order establishing December 31, 2018 as the swap dealer registration *de minimis* threshold phase-in termination date. Commission Regulation 1.3(ggg)(4)(ii)(C)(1) provides that the Commission may terminate the December 31, 2017 phase-in termination date and establish a new phase-in termination date by Order. With this approval, the *de minimis* threshold will remain at $8 billion until December 31, 2018 instead of changing to $3 billion on December 31, 2017. Adopting this Order will provide additional time to consider this critical issue and will provide certainty to market participants. Absent further action by the Commission, the phase-in period would terminate on December 31, 2018, at which time the *de minimis* threshold will be $3 billion.

SEC Press Release 2016-215 (October 13, 2016) – The SEC voted to adopt changes to modernize and enhance the reporting and disclosure of information by registered investment companies and to enhance liquidity risk management by open-end funds, including mutual funds and exchange-traded funds. The new rules will enhance the quality of information available to investors and will allow the Commission to more effectively collect and use data reported by funds. They also will promote effective liquidity risk management across the open-end fund industry and will enhance disclosure regarding fund liquidity and redemption practices. The new rules and forms will be published on the Commission's website and in the *Federal Register*.

CFTC Press Release 7468-16 (October 11, 2016) – The CFTC voted unanimously to propose rules and interpretations addressing the application of certain swap provisions of the Commodity Exchange Act and Commission regulations to cross-border transactions. The proposal defines key terms for cross-border transactions and addresses the cross-border application of the registration thresholds and external business conduct standards for swap dealers and major swap participants. It also addresses whether and to what extent these thresholds and standards would apply to swap transactions that are arranged, negotiated, or executed using personnel located in the United States. In addition, the proposed rule addresses registration thresholds and external business conduct standards. The comment period ends 60 days after publication of the proposal in the *Federal Register*.

FINRA Trade Reporting Notice (October 7, 2016) – FINRA is enabling the automatic lock-in functionality on the ADF as of December 5, 2016. Firms that elect to submit clearing-eligible trades to the Alternative Display Facility using the Trade Match or Trade Acceptance functionality must identify only a contra party that is another ADF participant with access to the ADF and the ability to view and take action with respect to the submission. In addition, FINRA is announcing the disablement of the automatic lock-in functionality on the ADF as of Monday, October 24, 2016.

CFTC Press Release 7467-16 (October 7, 2016) – The CFTC's Division of Market Oversight extended time-limited no-action relief, subject to certain conditions, to Swap Execution Facilities from certain requirements in the definition of "block trade" in CFTC Regulations.

OCC News Release 2016-123 (October 5, 2016) – The OCC issued risk management guidance to national banks, federal savings associations, and federal branches and agencies that addresses periodic reevaluations of risks associated with foreign correspondent banking accounts. The guidance reiterates OCC's supervisory expectation that banks assess these risks as part of their on-going risk management and due diligence practices. The guidance shares a range of best practices for banks to consider when conducting these periodic reevaluations and making account retention or termination decisions.

Federal Reserve Press Release (October 4, 2016) – The Federal Reserve Board and the FDIC posted the public portions of the required "targeted submissions" for the eight systemically important, domestic banking institutions. To foster transparency, the agencies required all of the firms to file a public portion of their targeted submissions. The agencies are posting the public portions of the targeted submissions, as provided by the firms, on the FDIC and Board websites. Neither the confidential nor the public portions of the resolution plans have yet been reviewed by the agencies, which will now be initiating their process for review.

October 1, 2016 – An updated PDF version of the *MSRB Rule Book* is now available online *(http://www.msrb.org/msrb1/pdfs/MSRB-Rule-Book-PDF-Current-Quarter.pdf)*.

MSRB Press Release (September 30, 2016) – The MSRB is seeking comment on a draft rule amendment to establish continuing education requirements for municipal advisors. The CE requirements would

(Continued on Page 22)

Watch For *(Continued from page 21)*

complement the MSRB's professional qualification program for municipal advisors, including an examination for municipal advisor representatives and a forthcoming examination for municipal advisor principals at municipal advisor firms. Comments should be submitted no later than November 14, 2016.

OCC News Release 2016-118 (September 29, 2016) – The OCC released final guidelines for recovery planning by large insured OCC-regulated institutions. The guidelines establish enforceable standards for insured national banks, federal savings associations, and federal branches of foreign banks with $50 billion or more in average total consolidated assets.

SEC Press Release 2016-200 (September 28, 2016) – The SEC voted to propose a rule amendment to shorten the standard settlement cycle for most broker-dealer securities transactions from three business days after the trade date (T+3) to two business days after the trade date (T+2). The proposed amendment is designed to reduce the risks that arise from the value and number of unsettled securities transactions prior to the completion of settlement, including credit, market, and liquidity risk directly faced by U.S. market participants. The public comment period will remain open for 60 days following publication of the proposing release in the *Federal Register*.

SEC Press Release 2016-199 (September 28, 2016) – The SEC voted to adopt new rules to establish enhanced standards for the operation and governance of securities clearing agencies that are deemed systemically important or that are involved in complex transactions, such as security-based swaps. The Commission also voted to propose to apply the enhanced standards established by the new rules to other categories of securities clearing agencies, including all SEC-registered central counterparties. The adopted rules apply to SEC-registered securities clearing agencies that have been designated as systemically important by the Financial Stability Oversight Council or that are involved in more complex transactions. Securities clearing agencies covered by the new rules will be subject to new requirements regarding, among other things, their financial risk management, governance, recovery planning, operations, and disclosures to market participants and the public. The Commission's proposal would apply the newly-adopted rules to other categories of securities clearing agencies, including all SEC-registered securities clearing agencies that are central counterparties, central securities depositories, or securities settlement systems. The public will have 60 days to comment after publication in the *Federal Register*. The adopted rules will become effective 60 days after publication in the *Federal Register*. Affected securities clearing agencies must comply with the requirements 120 days after the effective date.

MSRB Press Release (September 27, 2016) – The MSRB is seeking comment on a draft proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination allowed in a bond offering document. The revised provisions would form a new stand-alone rule. Comments should be submitted no later than October 18, 2016.

Federal Reserve Press Release (September 26, 2016) – The Federal Reserve Board invited public comment on a proposed rule to modify its capital plan and stress testing rules for the 2017 cycle. Among other changes, the proposal would tailor the Federal Reserve's Comprehensive Capital Analysis and Review to remove certain large and noncomplex firms from the qualitative assessment of CCAR. The proposed rule would take effect for the 2017 CCAR. Comments on the proposal are due by November 25, 2016.

Federal Reserve Press Release (September 23, 2016) – The Federal Reserve Board invited public comment on a proposed rule that would strengthen existing requirements and limitations on the physical commodity activities of financial holding companies. The proposal would help reduce the catastrophic, legal, reputational, and financial risks that physical commodity activities pose to financial holding companies. Comments on the proposed rule will be accepted for 90 days after publication in the *Federal Register.*

MSRB Press Release (September 20, 2016) – In a letter to Congress on the implementation of the Dodd-Frank Act, the MSRB describes the completion of its core regulatory framework for municipal advisors and the complementary education and transparency initiatives aimed at protecting municipal entities. Among the MSRB's foundational rules for municipal advisors are Rule G-42, establishing core standards of conduct; Rule G-3, creating professional qualifications for municipal advisors; Rule-G-44 on supervision and compliance; and Rules G-20 and G-37, which target pay-to-play practices in municipal advisory business. The MSRB has also implemented the first professional qualifying examination for municipal advisor representatives.

(Continued on Page 23)

Watch For *(Continued from page 22)*

Available Publications

OCC Bulletin 2017-7 (January 24, 2017) – The OCC is issuing examination procedures to supplement OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," issued October 30, 2013. The supplemental procedures promote consistency when examining national banks and federal savings associations' risk management of third-party relationships. These procedures expand on the core assessment contained in the "Community Bank Supervision," "Large Bank Supervision," and "Federal Branches and Agencies Supervision" booklets of the *Comptroller's Handbook*. These procedures use the concepts and definitions contained in OCC Bulletin 2013-29, including appendix A. Appendix B of OCC Bulletin 2013-29 provides additional guidance about third-party risk management practices in specific areas.

MSRB Press Release (January 6, 2017) – The MSRB published its *2016 Annual Report*, which describes the organization's initiatives to increase fairness, transparency and efficiency in the municipal securities market.

OCC News Release 2017-4 (January 5, 2017) – The OCC reported strategic, credit, operational, and compliance risks remain top concerns in its *Semiannual Risk Perspective for Fall 2016*. The report covers risks facing national banks and federal savings associations based on data through June 30, 2016. It presents data in four main areas: the operating environment, bank performance, trends in key risks, and regulatory actions. It focuses on issues that pose threats to the safety and soundness of those financial institutions regulated by the OCC and is intended as a resource to the industry, examiners, and the public.

OCC Bulletin 2016-47 (December 30, 2016) – The OCC issued the "Internal and External Audits" booklet of the *Comptroller's Handbook*. This revised booklet replaces the "Internal and External Audits" booklet issued in April 2003. The revised booklet provides guidance to examiners assessing audit exposures, associated risks, and risk management practices.

Federal Reserve Press Release (November 30, 2016) – The Federal Reserve Board published a report on debit card transactions in 2015, including summary information on the volume and value, interchange fee revenue, certain issuer costs, and fraud losses. The report is the fourth in a series to be published every two years pursuant to section 920 of the Electronic Fund Transfer Act.

OCC Bulletin 2016-30 (September 29, 2016) – The OCC is publishing final guidelines that establish enforceable standards for recovery planning by insured national banks, federal savings associations, and federal branches of foreign banks with average total consolidated assets of $50 billion or more. The final guidelines are issued pursuant to a federal statute that authorizes the OCC to prescribe operational and managerial standards for national banks and federal savings associations. The final guidelines are enforceable under the terms of that statute.

Who's News

David Amster, formerly Director and Chief Compliance Officer at CRT Capital Group LLC, has joined Compliance Risk Concepts as Principal and Head of their Fund and Dealer Advisory practice group.

Seth Bender has been promoted to Associate General Counsel at HSBC.

Dan Casto, formerly Vice President, Associate General Counsel for American Public Education (APEI), is now a Principal in the Tyson's Corner, Virginia office of Offit Kurman, P.A.

Andrew J. Ceresney, Director of the SEC's Division of Enforcement, left the agency at the end of 2016. Upon Mr. Ceresney's departure, Stephanie Avakian, Deputy Director of the SEC's Enforcement Division, became the Acting Director.

Tom Christel, following a career in various roles at FINRA and self-employment, has joined E*TRADE as a Compliance Officer.

Sara P. Crovitz has been named Deputy Chief Counsel and Associate Director in the SEC's Division of Investment Management's Chief Counsel's Office.

(Continued on Page 29)

Program Update

2017 Securities Compliance Seminar

Registrations are now being accepted for FMA's 26th Securities Compliance Seminar taking place **April 26 – 28** at the (newly renovated) B Ocean Hotel 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.

The Planning Committee has been hard at work developing varied agenda topics and confirming noted industry leaders and regulators as speakers. Members include: **Keith Watson** *(Fifth Third Bank)*; **Michael Post** *(MSRB)*; **Dan Newman** *(Broad and Cassel)*; **Jeffrey Holik** *(Shulman, Rogers, Gandal, Pordy & Ecker, P.A.)*; **Harry Chaffee** *(Renaissance Regulatory Services)*; and **David Block** *(MUFG Union Bank)*.

An ebrochure, including the complete agenda, was distributed last week and is now available on the FMA website – *www.fmaweb.org*. Currently, the working agenda includes these general sessions and confirmed speakers:

Pre-Seminar *Interactive* Workshop

- Joy Aldridge ■ Compliance Counsel LLC
- Louis Dempsey ■ Renaissance Regulatory Services, Inc.
- Matthew Hardin ■ Hardin Compliance Consulting LLC

Key 2017 Legislative and Regulatory Initiatives

- Dr. Sharon Brown-Hruska ■ NERA Economic Consulting
- Carl Fornaris ■ Greenberg Traurig, P.A.
- Steven Greenbaum ■ TradeStation Securities, Inc.
- Joel Oswald ■ Williams & Jensen

Cybersecurity: Avoiding Pitfalls and Legal Exposure

- Leon Johnson ■ Securities America, Inc.
- Kevin Rosen ■ Shutts & Bowen LLP

First-timer, team, regulatory/ government/SRO and 2-for-1 (Florida in-state attendees only) registration discounts are available.

Internal Audit Hot Topics and Emerging Risks

- Ryan Dirks ■ Fifth Third Bank
- David Fehrenbacher ■ First Tennessee Bank, NA
- Charles McCallum III ■ SunTrust Bank
- Bao Nguyen ■ Kaufman, Rossin & Co.

AML/OFAC Compliance

- Rachel Dondarski ■ OFAC *(Invited)*
- Pamela Kwiatkoski ■ PNC Financial Services
- Daniel Tannebaum ■ PricewaterhouseCoopers LLP

Regulatory Forum—Banking

- James Gallagher ■ OCC
- Michael Orange ■ FDIC
- Jason Seiler ■ FRB-Atlanta

Senior Investors: Risk Management, Existing and Proposed Legislation and Rules

- Eric Bustillo ■ SEC
- Patricia Cowart ■ Wells Fargo & Co.
- Lee Kell ■ Florida Division of Securities
- William Reilly, Jr. ■ Oyster Consulting, LLC

Cross-Sell: What Banks and Broker-Dealers Need to Know

- Mitch Avnet ■ Compliance Risk Concepts
- Robert Jamieson ■ Wiand Guerra King P.A.
- Wesley Moore ■ Quarule, Inc.

Department of Labor Fiduciary Rule

- Mark Griffin ■ Baker Donelson
- James Rabenstine ■ Nationwide Financial Services

CCO Liability: Defining the True Standard of Care

- Joy Aldridge ■ Compliance Counsel LLC
- Matthew Hardin ■ Hardin Compliance Consulting LLC
- Roomy Khan ■ Roomyk, LLC
- Diane Novak ■ DPN Consulting Services

(Continued on page 25)

Program Update *(continued from page 24)*

Regulatory Forum—Securities

- Cynthia Friedlander ■ FINRA
- Lee Kell ■ Florida Division of Securities
- Donald Litteau ■ FINRA
- Michael Post ■ MSRB
- Representative ■ SEC *(Invited)*

Municipal Advisors – The Developing Framework

- Cynthia Friedlander ■ FINRA
- Jessica Kane ■ SEC *(Invited)*
- Saliha Olgun ■ MSRB

FinTech: Focus on Robo-Advisors

- Jared Shaw ■ Ernst & Young

Peer Groups

Peer group discussions (lead by facilitators) will take place Wednesday and Thursday afternoons. Possible topics include: *AML/OFAC; Ask the Regulators; Broker-Dealer Compliance Hot Topics; CCO Liability; Complex/Alternative Products Compliance Issues; Compliance Risk Management; Cross-Selling; Customer Due Diligence; Cybersecurity; DOL Fiduciary Rule; Evolving Role of Compliance; FinTech Compliance; Institutional Compliance Sales; Internal Audit Hot Topics; Key 2017 Legislative and Regulatory Initiatives; Managing Remote Offices and Employees; Municipal Advisors; Municipal Bond Pricing and Disclosure Issues; Registered Investment Advisers; Retail Sales Hot Topics; Senior Investor Protections; Social Media and Advertising; and Surviving a Regulatory Exam/Investigation.* If you would like to facilitate one of these discussions, please contact FMA.

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 B Ocean expires **April 4**. After that date, room rates will increase and there's a chance the block could sell out before then.

Click here to make a reservation – ***FMA 2017 Compliance Seminar*** or call 954/524-5551 (main hotel # - ask for Reservations); 866/990-6826 (call center) – mention "FMA 2017 Compliance Seminar" to get FMA's group rate of $209. Once the block is gone, contact Dorcas Pearce. FMA may have 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 – CPE / CLE accreditation and multiple registration discounts (team / first-timer / in-state / govt-regulatory-SRO) are available. Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 with questions and/or to register. Online registration is also available at *www.fmaweb.org*.

Pre-Seminar Workshop

What Are the Nightmares Keeping You Awake at Night?

Matt Hardin (Hardin Compliance Consulting LLC); **Joy Aldridge** (Compliance Counsel LLC); and **Louis Dempsey** (Renaissance Regulatory Services) will lead an optional pre-seminar interactive workshop, "**What Are the Nightmares Keeping You Awake at Night?**", on Wednesday, April 26 from 8:30–10:45 am. This workshop presents a unique opportunity to network with other compliance and audit professionals and discuss the matters that most concern *you*. Panelists will discuss a myriad of topics based on the needs and requests 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.

Although no additional registration fee will apply, **space is limited and pre-registration is required**. Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 for details and/or to register.

(Continued on page 26)

Program Update *(continued from page 25)*

FMA gratefully acknowledges these sponsors of FMA's 2017 Securities Compliance Seminar

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2016 Legal & Legislative Conference

FMA's 25th **Legal & Legislative Conference took place November 3 – 4** at the Hyatt Regency (on Capitol Hill) here in Washington, DC. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance officers/risk managers, internal auditors and regulators. The two-day event provided participants with an opportunity to share information on current legal and regulatory developments as well as network with peers in an intimate environment. And, **attendees were eligible for CLE and CPE accreditation (among others)**.

Congratulations to the Program Planning Committee for developing a timely agenda that included noted industry leaders and senior regulatory officials. Members included: ***Michael Halloran*** *(Halloran Farkas + Kittila LLP, formerly Pillsbury Winthrop Shaw Pittman LLP)*; ***Gail Bernstein*** *(WilmerHale)*; ***Anthony Cipiti, Jr.*** *(Nationwide Financial Legal)*; ***Jason Fincke*** *(U.S. Bank)*; and ***Ernesto Lanza*** *(Clark Hill PLC)*.

The agenda, which focused on current areas of regulatory and Congressional activity/scrutiny, included these sessions and noted speakers:

Banking General Counsels

- Laurie Schaffer ■ FRB
- Karen Solomon ■ OCC
- Charles Yi ■ FDIC

Capital and Liquidity

- Benjamin McDonough ■ FRB
- Coryann Stefansson ■ BlackRock
- Dafina Stewart ■ FRB
- Mark Welshimer ■ Sullivan & Cromwell LLP

(Continued on page 27)

Program Update *(continued from page 26)*

Developments in AML and Sanctions Regulation and Enforcement
- Alma Angotti ■ Navigant
- Sharon Cohen Lewis ■ WilmerHale
- Jaikumar Ramaswamy ■ Capital One, formerly Bank of America

The Evolving Cyber Landscape
- Luke Dembosky ■ Debevoise & Plimpton LLP
- Amit Khosla ■ U.S. Bank
- Steven Polansky ■ FINRA
- Jeffrey Ziesman ■ Bryan Cave LLP

Developments in Derivatives Regulation
- Cliffe Allen ■ National Futures Association
- Di Bruning ■ Barclays
- Brian Bussey ■ SEC
- David Mengle ■ National Futures Association

Department of Labor Conflicts of Interest Rulemaking
- Anthony Cipiti, Jr. ■ Nationwide Financial Legal
- Susan Krawczyk ■ Sutherland Asbill & Brennan LLP
- Alan Lebowitz ■ Evercore Trust Company
- Eric Marhoun ■ Fidelity & Guaranty Life

Securities General Counsels
- Robert Colby ■ FINRA
- Marie-Louise Huth ■ SEC
- Susan Milligan ■ CFTC
- Michael Post ■ MSRB

SEC Division Reports
- Marian Fowler ■ Investment Management
- Anthony Kelly ■ Enforcement
- Christina McGlosson-Wilson ■ Economic and Risk Analysis
- Elizabeth Murphy ■ Corporation Finance
- Carrie O'Brien ■ OCIE
- Heather Seidel ■ Trading and Markets

FinTech Regulatory Landscape
- Racquel Russell ■ FINRA
- Barbara Stettner ■ Allen & Overy LLP
- Julie Williams ■ Promontory Financial Group, LLC

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

2017 Legal and Legislative Issues Conference
October 25 – 26

Save these dates! FMA's 26th **Legal and Legislative Issues Conference** is scheduled to take place **October 25 – 26**, 2017 at the Hyatt Regency (on Capitol Hill) here in Washington, DC. Further information will appear in future issues of *Market Solutions*.

Contact Dorcas Pearce (*dp-fma@starpower.net* or 202/544-6327) to volunteer…as a committee member, moderator or speaker…or to offer topical and/or speaker suggestions.

(Continued on page 28)

Program Update *(continued from page 27)*

Thanks to all FMA 2016 Sponsors

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WELLS FARGO

Who's News (Continued from page 23)

Rachel (Raemore-Romijn) Dean, formerly SVP, Risk and Compliance Manager at Wells Fargo, has retired after more than 25 years in the financial services industry. She plans to travel to southeast Asia, South and Central American, New Zealand and the Middle East with her husband in his new position and also do volunteer work. Safe travels, Rachel!

Andrew J. "Buddy" Donohue, Chief of Staff at the SEC, is leaving the agency at the end of January.

Rachel Dondarski has been named Chief, Regulated Industries Oversight and Evaluation at the U.S. Department of the Treasury, Office of Foreign Assets Control.

Mark Flannery, the SEC's Chief Economist and Division of Economic and Risk Analysis Director, left the agency at the end of 2016. He will return to his position as a finance professor at the University of Florida's Graduate School of Business Administration.

Michael Gramz, formerly Chief Risk Officer and Board Director at Merchant e-Solutions, has joined YapStone as Chief Risk Officer.

Annie Hsu, formerly Managing Director, Head of Global Markets Compliance at BNP Paribas, has joined MUFG Securities as Chief Compliance Officer.

Kwangsoo Kim, formerly Compliance Consultant at Wells Fargo Securities, has joined Credit Suisse in their Equity Capital Markets Compliance group.

Brett Kitt has joined NASDAQ, Inc. as Senior Associate General Counsel. Previously, Brett was Of Counsel at Greenberg Traurig, LLP.

Gary Klein, formerly Chief Regulatory Officer at Raymond James, has joined Fifth Third Bank as VP in their Legal Dept.

Stephen Luparello, Director of the SEC's Division of Trading and Markets, left the agency earlier this month. He was named director of the office in February 2014.

Mike Mancusi, formerly Managing Director/Global Financial Services Practice at FTI Consulting, Inc. and a former FMA Board member, has retired. Congratulations and best of luck, Mike!

Timothy G. Massad tendered to President Obama his resignation as Chairman of the U.S. Commodity Futures Trading Commission, effective January 20, 2017.

Julia Paris has been named Senior Cross Border Specialist in the FDIC's Office of Complex Financial Institutions.

Kenneth Pegher has been appointed CCO at SFG Wealth Management. Ken continues his operational and compliance duties in the firm's brokerage division, Synergy Financial Group/LPL.

Jai Ramaswamy, formerly Managing Director, Global AML Compliance Risk Management Executive at Bank of America, has joined Capital One as Managing Vice President, Enterprise Risk Management.

Ravi Ramnarain, formerly Assistant Financial Reporting Manager - GAAP/SEC at Mercantil Commercebank, is the CEO and Founder of Ravi Ramnarain, CPA, LLC with offices in Fort Lauderdale, Florida and Bentonville, Arkansas.

Victor Shier, President of Broker Dealer Services, LLC, is retiring after 34 years in the financial services industry (24 of which were in Compliance). Best of luck, Vic!

Anne K. Small, General Counsel of the SEC, will leave the agency later this month.

Bala Subramaniam, formerly VP and Head of Internal Audit, Goldman Sachs, India, has joined the Royal Bank of Scotland as Chief Auditor, India.

Carol Van Cleef has joined BakerHostetler as a Partner in their Washington, DC office. She was formerly a Partner at Manatt, Phelps & Phillips, LLP in DC.

Ann Wilson has been named Manager of the Sales Practice Central Supervision Unit at JJB Hilliard, WL Lyons.

Directory Updates

The 2016 FMA Membership Directory was emailed to all current members on October 19. See below for additional updates/corrections received since its distribution.

If you are a current FMA member and did not receive (or perhaps misplaced) the Directory, contact Dorcas Pearce directly…202/544-6327 or *dp-fma@starpower.net*.

U.S. Department of the Treasury/
Bureau of the Fiscal Service
Government Securities Act (GSA)
Treasury auction/buyback rules and collateral programs
www.treasurydirect.gov
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