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MARKET SOLUTIONS

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Market Solutions is a quarterly newsletter about the activities of the Financial Markets Association as well as legislative/regulatory developments of interest to FMA members. The opinions expressed in this publication are those of the authors, not necessarily those of the Association and are not meant to constitute legal advice. *Market Solutions* is provided as a membership service of the **Financial Markets Association**, 333 2nd Street, NE - #104, Washington, DC 20002, *dp-fma@starpower.net*, 202/544-6327, *www.fmaweb.org*. Please let us have your suggestions on topics you would like to see addressed in future issues.

FINANCIAL MARKETS ASSOCIATION

BSA/AML Compliance and Enforcement: An Update for the Securities and Derivatives Industries

by Dr. Sharon Brown-Hruska
NERA Economic Consulting

While the political landscape is in flux, one thing remains constant regardless of changes in leadership at regulatory agencies: the importance of detecting and deterring financial crime before criminals cause irreparable harm to investors or leverage the financial system to further other illegal activity. Financial institutions are increasingly receiving large fines and penalties for failure to detect and report crimes or potential wrongdoing by others, as evidenced by more than $2 billion in penalties assessed against JP Morgan with respect to the Madoff Ponzi scheme, $97.4 million in penalties assessed against Citigroup with respect to remittances and transfers through its Banamex subsidiary, and $41 million in penalties assessed against Deutsche Bank for transaction monitoring deficiencies. The recent assessment of penalties against individual executives at Banamex, Western Union, and other financial institutions also evidences regulators' continued focus on creating incentives for individual accountability at financial firms in a post-Yates Memo landscape.

Since 2000, federal regulators have imposed more than $6.1 billion in civil money penalties, fines, and forfeitures ("monetary penalties")[1] against financial institutions and financial executives in connection with alleged violations of Bank Secrecy Act ("BSA")[2] and Anti-Money Laundering ("AML")[3] regulations.[4] Securities and derivatives firms in particular have paid approximately $60 million in BSA/AML penalties in that time, and have faced expanded compliance expectations from regulators over time.[5] The size of BSA/AML penalties against securities and derivatives firms has spiked substantially upward since 2014, as evidenced by the graphic on page 3.

Money laundering refers to activities in which individuals and criminal enterprises attempt to disguise the proceeds of and/or sources of funds for illicit activities by funneling them through banks or other legitimate financial institutions.[6] This article focuses on recent developments in the US BSA/AML regulatory landscape for securities and derivatives firms, including enforcement actions and new examination priorities announced by federal regulators such as the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"), as well as industry self-regulatory organizations ("SROs") such as the Financial Industry Regulatory Authority ("FINRA") and the

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

Legislative/Regulatory Actions

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

In this issue, we address selected updates from the banking regulators, the CFTC, and the CFPB, as well as a summary on the developments with regard to financial regulatory reform.

Financial Regulatory Reform

U.S. Treasury Department Releases Report on Core Principles for Regulating the United States Financial System

As required by the President's Executive Order 13772, the U.S. Treasury Department published on June 12, 2017, a report identifying regulations inconsistent with the seven core principles for financial regulation articulated in the order. The report is the first of a series of reports and addresses only the depository system. Over the coming months, Treasury intends to publish additional reports that will focus on other key areas, such as capital markets, liquidity, central clearing, financial products, asset management, insurance, and innovation. The report provides both recommendations and a general road map for implementing changes. Some of the highlights of the report are briefly described below:

Regulatory Structure. The report recommends that Congress take steps to reduce fragmentation, overlap and duplication in financial regulation and recommends changes to the Financial Stability Oversight Council and the Office of Financial Research.

Tailoring of Bank Capital and Liquidity Rules. The report concludes that existing regulations do not go far enough in tailoring capital and liquidity rules and suggests better tailoring of rules based on an institution's size and complexity.

Improving the Regulatory Engagement Model. The report suggests re-evaluating the requirements imposed on the boards of directors of depository institutions. According to the report, banking agencies should be subject to a uniform and more rigorous cost-benefit analysis requirement in order to improve the rulemaking process.

Living Will Requirements. The report suggests raising the threshold for living will requirements from $50 billion in total consolidated assets to a risk based approach, making the process subject to a two-year cycle, and improving the guidance provided by regulators.

Foreign Banking Organizations. The report recommends reassessing the regulations applicable to foreign banks. The report reviews various requirements applicable to foreign banking organizations, including enhanced prudential standards, the living will requirements, and the intermediate holding company and related requirements.

Volcker Rule. The report recommends exempting smaller institutions from the Volcker Rule (those banks with $10 billion or less in total consolidated assets) from all aspects of the rule, while banks with over $10 billion in total consolidated assets that have limited trading assets and liabilities would be exempt

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FMA Welcomes New Members!

Alvaro Amaya	BBVA Compass
Sugey Arias	Sabadell
Marcus Arneaud	Investacorp, Inc.
Tracy Bruner	PricewaterhouseCoopers LLP
Charles Callahan	U.S. Secret Service, Miami Field Office
Christian Caporaletti	Banco Santander International
Chan Casey	Citigroup
Jeff Cimbal	StateTrust
Rich Cutshall	Greenberg Traurig, LLP

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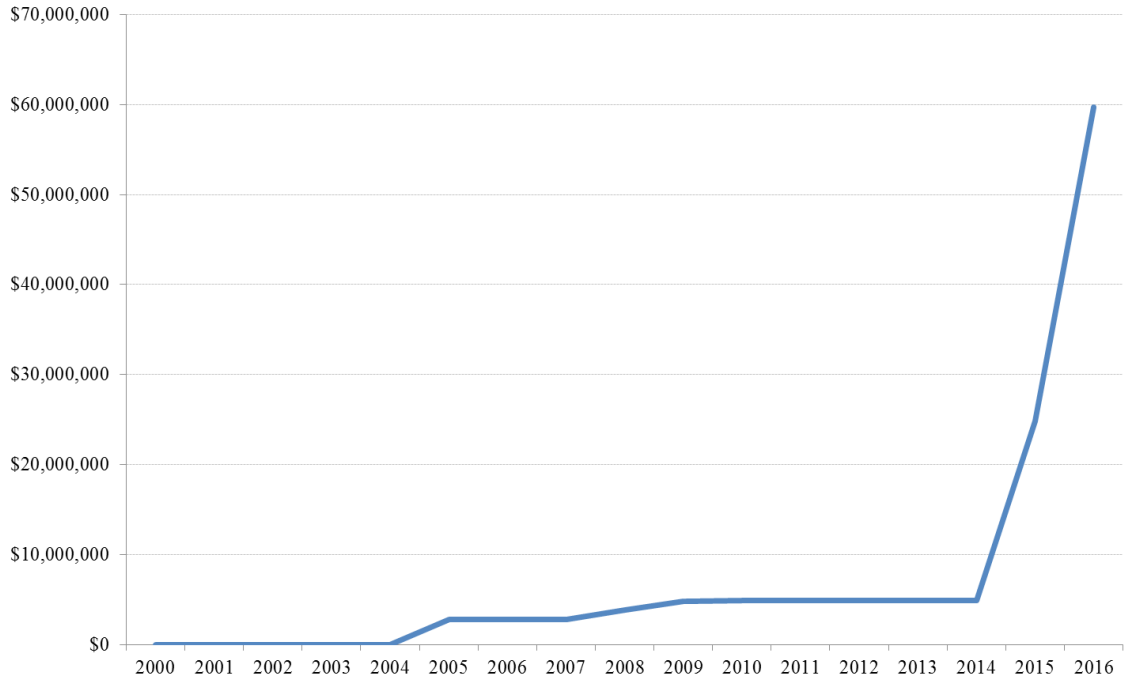
National Futures Association ("NFA"). This article also analyzes rules and advisories released by the Financial Crimes Enforcement Network ("FinCEN"), the federal regulator and financial intelligence unit responsible for enforcing BSA/AML compliance by all types of financial institutions active within the United States.

FinCEN regulations require that financial institutions file Suspicious Activity Reports ("SARs") when their BSA/AML compliance and monitoring programs identify suspicious activity and determine it warrants reporting under BSA/AML regulations and statutes. From 2003 through 2016, increases in regulatory investigations and enforcement actions against securities and derivatives firms have accompanied a roughly four-fold increase in the filing of SARs by such firms.[7] The growth in securities and derivatives firms' SAR filings is only partly explained by expansion in the types of financial entities subject to the SAR and AML reporting requirements, as SAR filings by banks also grew sharply even though they have been subject to the reporting requirements since 1996.[8]

> *"The recent assessment of penalties against individual executives at Banamex, Western Union, and other financial institutions also evidences regulators' continued focus on creating incentives for individual accountability at financial firms in a post-Yates Memo landscape."*

Given regulators' enhanced scrutiny over BSA/AML compliance, the data suggest that the number of regulatory enforcement actions will continue to grow, along with the size of fines and penalties. Financial institutions' expenditures on BSA/AML compliance have grown apace, and such compliance costs are also expected to continue to grow as enforcement actions propel firms to raise compliance standards to meet increasingly strict regulatory expectations.

Securities and Derivatives Industries' Cumulative Federal BSA/AML Penalties in the 21st Century



Source: Analysis of data from FinCEN, BankersOnline, SEC, CFTC, NFA, and FINRA.

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SEC Examination Priorities Focus on Risk Scoping, Independent Testing, and Applying Analytics to SAR Filings to Assess Compliance

The securities industry's primary federal regulator, the SEC, announces its annual examination priorities for BSA/AML covered securities firms such as broker-dealers at the beginning of each year. These priorities, while not exhaustive and subject to adjustment in light of market conditions, represent the SEC's signal to regulated firms of its expected supervisory focus for the coming year.[9] The SEC's examination priorities in 2016 and 2017 are noteworthy for their consistent emphasis on analytics regarding SAR filing quantity and quality, their repeated mentions of the importance of appropriate risk scoping to the design of AML compliance programs, and their exhortations to ensure the effectiveness of the required independent testing pillar of required AML programs.

In 2016, the SEC announced that it would analyze securities firms' SAR filings to identify firms that filed relatively few SARs or filed incomplete or late SARs. The SEC also indicated its intent to assess covered securities firms' AML programs, especially the independent testing obligation and risk scoping, e.g., the extent to which firms consider and adapt their AML programs to changing risk factors, such as changing business trends or evolving money laundering and terrorist financing trends.[10]

In 2017, the SEC again emphasized ensuring the effectiveness of independent testing, and particularly encouraged firms to ensure appropriate risk scoping, stating in part:

> "We will continue to examine broker-dealers to assess whether AML programs are tailored to the specific risks that a firm faces, including whether broker-dealers consider and adapt their programs, as appropriate, to current money laundering and terrorist financing risks. We will also review how broker-dealers are monitoring for suspicious activity at the firm, in light of the risks presented, and the effectiveness of independent testing. We will also continue to assess broker-dealers' compliance with suspicious activity report ("SAR") requirements and the timeliness and completeness of SARs filed."[11]

FINRA Examination Priorities Focus on Risk Scoping, Monitoring High-Risk Customers, Customer Due Diligence for Accounts Held by Nominee Companies, and Testing Internal Surveillance Systems for Alerts Tailored to AML Red Flags

The securities industry's SRO, FINRA, announces its regulatory and examination priorities in an annual letter. FINRA announced largely consistent priorities

Number of SARs Filed by Type of Securities/Derivatives Institution

Type of Securities/Derivatives Institution	2012	2013	2014	2015	2016
Clearing Broker in Securities	437	11,993	17,860	16,216	15,718
Futures Commission Merchant	53	1,237	1,840	1,484	1,242
Holding Company	0	730	796	1,325	1,344
Introducing Broker in Commodities	9	776	1,058	1,264	1,469
Introducing Broker in Securities	812	9,460	12,356	13,862	13,603
Investment Advisor	26	1,048	1,638	2,285	2,104
Investment Company	12	638	864	911	1,179
Retail Foreign Exchange Dealer	7	53	174	112	85
Subsidiary of Financial/Bank Holding Company	52	7,475	9,743	10,748	11,123
Other	47	2,308	3,229	3,334	4,225

Source: FinCEN. Some SARs may list multiple reporting institutions.

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in 2016 and 2017, with a focus on risk scoping and risk-tailored monitoring of customer activities, as well as appropriate customer due diligence. FINRA's 2017 letter particularly emphasized the attention it would pay to "gaps in firms' automated trading and money movement surveillance systems caused by data integrity problems, poorly set parameters or surveillance patterns that do not capture problematic behavior" and reminded securities firms that "surveillance must also include alerts tailored to the firm's anti-money laundering red flags."[12] FINRA has also indicated its intent to "assess the adequacy of firms' monitoring of high-risk customer accounts and transactions" and advised firms delegating AML monitoring or compliance functions to third parties to maintain "an open line of communication with the personnel conducting reviews."[13]

> *"Given regulators' enhanced scrutiny over BSA/AML compliance, the data suggest that the number of regulatory enforcement actions will continue to grow, along with the size of fines and penalties."*

FinCEN Adds New Customer Due Diligence Requirements as a "Fifth Pillar" of Required AML Programs

Although Know Your Customer ("KYC") and Customer Identification Program ("CIP") requirements have long been expected elements of most financial institutions' anti-money laundering programs, these requirements were primarily targeted at individual customers and did not always result in financial institutions identifying beneficial owners of legal entity customers. FinCEN first sought public comment on a proposed Customer Due Diligence ("CDD") requirement that would require that financial institutions obtain beneficial owner information from legal entity customers in March 2012.[14]

After several iterations of public comment and revision, FinCEN published a final rule in May 2016 that required covered financial institutions to collect beneficial owner information from legal entity customers, defining beneficial owner to mean a person with either at least a 25% equity interest in a legal entity customer or a significant ability to control or direct a legal entity customer. The *Federal Register* filing described the final CDD rule as a "fifth pillar" of an AML program, but downplayed the impact of the new rule on most covered institutions, stating that "FinCEN views the fifth pillar as nothing more than an explicit codification of existing expectations; as these expectations should already be taken into account in a bank's internal controls, FinCEN would expect the confusion caused by this codification, if any, to be minimal."[15]

Financial institutions covered by the CDD rule include federally regulated banks, federally insured credit unions, mutual funds, brokers or dealers in securities, futures commission merchants, and introducing brokers.[16] The final rule excludes from the definition of "legal entity customer" swap dealers, major swap participants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, SEC-registered investment advisers, and several other regulated entity types for which information about beneficial ownership is available from federal or state regulators.[17] As a result of these exceptions to the CDD rule, financial counterparties to such entities will not have to engage in costly beneficial owner searches for such firms, and instead can focus compliance efforts on acquiring beneficial owner information about more opaque legal entity customers.

FinCEN Proposes Redefining Broker-Dealer to Include Funding Portals

In April 2016, FinCEN published a proposed rule that would redefine the terms "broker or dealer in securities" and "broker-dealer" under BSA/AML regulations to include "funding portals that are involved in the offering or selling of crowdfunded securities pursuant to section 4(a)(6) of the Securities Act of 1933."[18] FinCEN's proposed rule is a response to the 2012 passage of the Jumpstart Our Business Startups Act ("JOBS Act") that created a regulatory exemption for crowdfunded securities, and the Securities and Exchange Commission's subsequent adoption of a JOBS Act implementing regulation, Regulation Crowdfunding ("Regulation

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CF"), which defined a new class of entity that could offer and sell securities in addition to broker-dealers: the funding portal.[19] If the proposed rule is adopted in its current form, funding portals will be considered a type of broker-dealer under BSA/AML regulations, and subject to the same compliance expectations as broker-dealers. It remains to be seen whether new leadership at the SEC and other financial regulators will continue to pursue the redefinition in its proposed form given the importance the administration has placed on increasing economic growth and reducing the cost of doing business in America.

> *"The SEC's examination priorities in 2016 and 2017 are noteworthy for their consistent emphasis on analytics regarding SAR filing quantity and quality, their repeated mentions of the importance of appropriate risk scoping to the design of AML compliance programs, and their exhortations to ensure the effectiveness of the required independent testing pillar of required AML programs."*

CFTC and NFA Prioritize Compliance with FinCEN's Rules and Advisories

The futures industry's primary federal regulator, the CFTC, and its SRO, the NFA, release issue-specific news releases and emphasize active enforcement priorities in news releases for enforcement actions. In 2016 and 2017, both the CFTC and the NFA primarily used BSA/AML news releases to inform futures firms of FinCEN's latest advisories and guidance, as well as the new CDD rule. For example, the CFTC made a point of issuing Staff Advisory No. 16-60 reminding futures commission merchants and introducing brokers that they are obligated to report suspicious activities to FinCEN via timely SARs and also obligated to comply with economic sanctions programs imposed by the Office of Foreign Assets Control ("OFAC").[20] The NFA's news releases in 2016 and 2017 informed members of FinCEN's new CDD Rule,[21] summarized a FinCEN advisory on SAR reporting of cyber-events and cyber-enabled crime,[22] and notified members of FinCEN advisories on jurisdictions with AML deficiencies and updated OFAC sanctions.[23]

The CFTC and the NFA have expressly required the collection of customer information along the lines of current customer due diligence and KYC strictures since 1986 when NFA Rule 2-30 was adopted.[24]

The CFTC has also long required periodic position reporting for beneficial owners, with the collection and transmission of futures position information largely resting with intermediaries such as Futures Commission Merchants (FCMs).[25]

Acceptance of Responsibility by Subjects of Enforcement Actions

In response to criticism that financial regulators were too lenient in settlement agreements with perpetrators of financial crime, FinCEN has stressed individual and corporate responsibility with respect to BSA/AML compliance. FinCEN's change in approach has paralleled a broader shift in the regulatory approach toward enforcement actions. Historically, financial institutions that were the subject of FinCEN or other regulators' enforcement actions could typically consent to a penalty without admitting or denying the alleged facts. Beginning in 2011, this practice was challenged by several US District Court judges.[26] By 2012, some regulators began to press firms to admit to allegations as part of settlements resolving enforcement actions. For instance, in a mid-December 2012 press release announcing HSBC's record monetary penalty for BSA/AML compliance failures, the Department of Justice ("DOJ") stated:

> "HSBC has waived federal indictment, agreed to the filing of the information, and has **accepted responsibility for its criminal conduct and that of its employees.**" [27]

In late 2016, FinCEN made it clear that the size of civil monetary penalty assessed in an enforcement action depended in part on whether or not the subject of an enforcement action displayed a willingness to accept responsibility for its

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compliance failures. As FinCEN Associate Director for Enforcement Thomas Ott explained,

> "FinCEN does not maintain a strict matrix for assessing penalties. Rather, FinCEN weighs a number of factors and considerations when determining CMPs. I believe that overall, this model promotes greater fairness and proportionality in our enforcement actions. At its broadest level, this approach allows FinCEN the flexibility to move beyond a "one-size fits all" approach to tailor penalties to appropriately reflect the nature of the violation. And, it works to provide parity with CMPs imposed in similar cases. As I mentioned earlier, we devote a tremendous amount of time to ensuring that our public enforcement assessments clearly explain the nature of the violations underlying our enforcement action. The rationale should, in most instances, be evident.
>
> […] a violator's decision to self-disclose the wrongdoing in a timely manner may indicate **a willingness to accept responsibility**; it may also suggest a stronger likelihood of future compliance. FinCEN may consider the degree to which a financial institution or individual has cooperated with FinCEN, examiners, or law enforcement. A strong level of cooperation may be a mitigating factor in determining a penalty. Such cooperation includes, but is not limited to, the subject's compliance with document requests, professionalism towards and cooperation with examiners, and being fully truthful and forthcoming during interviews."[28]

FinCEN has not been alone in forcing financial institutions that are found to be non-compliant with BSA/AML regulations to accept responsibility for their shortcomings; the DOJ has done so as well. Thus, in January 2014, when his office announced a deferred prosecution agreement with JPMorgan Chase for BSA/AML compliance failures related to the Bernard Madoff Ponzi scheme and imposed another record-breaking monetary penalty, then-US Attorney for the Southern District of New York Preet Bharara commented:

> "With today's resolution, the bank has **accepted responsibility** and agreed to continue reforming its anti-money laundering practices."[29]

Such admissions of corporate responsibility in future settlements could bolster evidence of liability for third-party plaintiffs in related legal actions (*e.g.*, civil claims). However, given the new administration's emphasis on reducing the cost of doing business in America, reforming penalty guidance and allowing firms to neither admit nor deny allegations in enforcement actions may be areas of potential regulatory review going forward.

Enforcement Actions Emphasize Individual Accountability for BSA/AML Compliance Failures

Self-regulatory organizations and federal regulators have also stepped up enforcement actions against the executives and directors of financial institutions, making it clear that AML compliance failures can result in personal liability.

In February 2014, the securities industry self-regulatory organization FINRA fined Brown Brothers Harriman & Co.'s former Global AML Compliance Officer Harold Crawford $25,000 and suspended him for one month for AML compliance program failures.[30] In May 2016, FINRA continued displaying an individual enforcement focus with an enforcement action against Raymond James & Associates, Inc.'s former AML compliance officer, Linda Busby, resulting in a $25,000 fine and a three month suspension for the firm's "failure to properly prevent or detect, investigate, and report suspicious activity for several years."[31]

In between FINRA's enforcement actions against individual executives of financial institutions, FinCEN and federal prosecutors initiated an aggressive enforcement action against an executive that sought much steeper penalties. In December 2014, FinCEN filed a complaint via the US Attorney for the Southern District of New York against Thomas Haider, the former Chief Compliance Officer for MoneyGram, for "willful failure" to ensure compliance with BSA/AML statutes and regulations.[32] The enforcement action aimed to secure a $1 million personal penalty and enjoin the defendant from participating in the management

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of any financial institution for "a term of years—to be determined at trial."[33] In January 2016, a federal judge upheld FinCEN's authority by denying Haider's motion to dismiss, finding that the BSA statutes "demonstrate[d] Congress' intent to subject individuals to liability in connection with a violation of any provision of the BSA or its regulations, excluding the specifically excepted provisions."[34] On May 4, 2017, FinCEN and the US Attorney's Office for the Southern District of New York announced a settlement with Haider in which he agreed to a $250,000 penalty and a three-year injunction barring Haider from performing a compliance function for any money transmitter. In addition, FinCEN emphasized that under the settlement, Haider "admitted, acknowledged, and accepted responsibility for" three categories of AML compliance failures.[35]

> *"In response to criticism that financial regulators were too lenient in settlement agreements with perpetrators of financial crime, FinCEN has stressed individual and corporate responsibility with respect to BSA/AML compliance."*

While FinCEN and other regulators had occasionally pursued personal liability claims against customer-facing financial institution employees for compliance violations,[36] the *Haider* case is the first FinCEN enforcement action against an executive of a nationwide financial institution for "willful failure" to ensure compliance with BSA/AML statutes and regulations.[37] The January 2016 ruling and the May 2017 settlement raised the specter of personal liability for chief compliance officers and designated BSA/AML compliance officers going forward.

In September 2015, the Department of Justice made FinCEN's personal accountability emphasis into federal government policy by issuing the so-called "Yates Memo," named after then-Deputy Attorney General, and later acting Attorney General, Sally Yates. Circulated to federal prosecutors under the subject "Individual Accountability for Corporate Wrongdoing,"[38] this widely-reported document articulated the DOJ's position that "one of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing."[39] Declaring that "civil enforcement efforts are designed […] to hold the wrongdoers accountable and to deter future wrongdoing," the Yates Memo expressed the government's intention to focus on "individual misconduct."[40] As of the writing of this article, there have been no indications that this policy will be rescinded under the Trump Administration.

Following the Yates Memo, regulators made a point of pursuing enforcement actions against individuals, including for alleged BSA/AML violations. For example, in March 2016, Charles Sanders, the former chief compliance officer at Gibraltar Private Bank and Trust, was fined $2,500 by the Office of the Comptroller of the Currency after his bank was fined $4 million for AML compliance failures.[41] Securities and futures industry regulators likewise followed suit. FINRA's aforementioned second individual AML enforcement action was announced in May 2016, and in October 2016, the SEC fined the former president and CEO of Miami brokerage firm E.S. Financial, Lia Yaffar-Pena, in the amount of $50,000 and issued a supervisory suspension for a year for allegedly aiding and abetting, as well as causing, violations of AML rules by allowing foreign entities to buy and sell securities without engaging in proper customer identification or due diligence. This individual enforcement action came several months after the SEC brought an enforcement action against the firm, which settled for $1 million.[42] Likewise, the CFTC and NFA have increasingly alleged failure to supervise and/or cited firm-wide AML compliance failures as they brought numerous enforcement actions against individual registrants.[43]

Taken together, these initiatives suggest an expanded scope for individual liability or prosecution regarding corporate AML compliance, with important implications. If individual directors, officers, and executives of financial institutions admit to regulator allegations in future settlements, as some financial institutions and corporations already have, such settlements' Statements of Facts could become central exhibits in related third-party plaintiffs' legal actions,

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including in director and officer liability cases and class action lawsuits. This should be of particular concern to settling firms and individuals because an increasing number of settlements have included clauses prohibiting the accused firms and individuals from denying the factual basis underlying findings or statements of facts in settlement documents. Both financial institution in-house counsel and white collar defense counsel should take note of this trend.

Conclusion

Recent enforcement trends suggest that securities and derivatives firms and individual executives at such firms will face increasingly strict regulatory scrutiny for broader categories of BSA/AML violations. Our analysis indicates that FinCEN, the SEC, FINRA, the CFTC, and the NFA have pursued penalties against alleged BSA/AML violators for a growing range of alleged compliance failures. Although the Trump Administration has suggested it will work to reduce the burdens imposed by costly financial regulations, regulators and policymakers have not announced plans to change tack on BSA/AML supervision or enforcement.

Both judges and regulators have emphasized not only individual accountability for executives at financial institutions, but also a preference for making the subjects of enforcement actions, both individual and corporate, take responsibility for alleged failure by admitting wrongdoing or otherwise acknowledging the accuracy of regulatory findings in enforcement actions. FinCEN and FINRA in particular have demonstrated their preference for making the subjects of enforcement actions agree to not deny the accuracy of some or all regulatory findings. If this practice continues, and especially if it becomes more widespread, it may provide third-party plaintiffs with acknowledgments relevant to their own lawsuits. ■

"Both judges and regulators have emphasized not only individual accountability for executives at financial institutions, but also a preference for making the subjects of enforcement actions, both individual and corporate, take responsibility for alleged failure by admitting wrongdoing or otherwise acknowledging the accuracy of regulatory findings in enforcement actions."

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[1]*Based on analysis of reported enforcement actions from FinCEN and the Bankers Online BSA/AML Penalties List. See http://www.fincen.gov/news_room/ea/. See also https://www.bankersonline.com/penalty/penalty-type/bsa-aml-civil-money-penalties.*

[2]*The Bank Secrecy Act is the name given to the Currency and Foreign Transactions Reporting Act of 1970 and successive amendments to the framework thereof. The BSA requires US financial institutions to assist US government agencies to detect and prevent money laundering. See Financial Crimes Enforcement Network, "FinCEN's Mandate from Congress: Bank Secrecy Act," available at http://www.fincen.gov/statutes_regs/bsa/index.html, accessed January 4, 2016.*

[3]*Anti-Money Laundering compliance refers to financial institution practices designed to identify, report, and ultimately prevent money laundering, defined as "the process of making illegally-gained proceeds (i.e. 'dirty money') appear legal (i.e. 'clean')." Several statutes are considered AML laws; all are connected to the BSA legislative framework that was created by the 1970 law. See Financial Crimes Enforcement Network, "History of Anti-Money Laundering Laws," available at http://www.fincen.gov/news_room/aml_history.html, accessed January 4, 2016.*

[4]*Government Printing Office, "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," 115 Stat. 272, Public Law 107-56, October 26, 2001, available at http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf, accessed January 4, 2016.*

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[5]*NERA analysis of reported enforcement actions from FinCEN and the Bankers Online BSA/AML Penalties List. See http://www.fincen.gov/news_room/ea/. See also https://www.bankersonline.com/penalty/penalty-type/bsa-aml-civil-money-penalties.*

[6]*US Department of the Treasury Resource Center, "Money Laundering," available at http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/Money-Laundering.aspx, accessed February 17, 2015.*

[7]*1,726,971 SARs were filed in 2014, and 916,709 were filed in the first half of 2015, for an annualized 2015 rate of 1,833,418 SARs, compared to 306,101 SARs filed in 2002. From NERA analysis of FinCEN's SAR Stats and SAR Activity Review – By the Numbers reports. See Financial Crimes Enforcement Network, SAR Stats, Issue 2 (October 2015) and SAR Activity Review – By the Numbers, Issue 1 (October 2003), available at http://www.fincen.gov/news_room/rp/sar_by_number.html, accessed January 18, 2016.*

[8]*Under BSA/AML regulations, the term "bank" is defined to include a broad range of financial institutions, including organizations chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state. 31 CFR 103.11(c), July 1, 2000 edition.*

[9]*SEC, https://www.sec.gov/news/pressrelease/2016-4.html; https://www.sec.gov/news/pressrelease/2017-7.html.*

[10]*SEC, "Examination Priorities for 2016," January 11, 2016, https://www.sec.gov/news/pressrelease/2016-4.html; https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf.*

[11]*SEC, "Examination Priorities for 2017," January 12, 2017, https://www.sec.gov/news/pressrelease/2017-7.html; https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf.*

[12]*FINRA, "2017 Regulatory and Examination Priorities Letter," http://www.finra.org/industry/2017-regulatory-and-examination-priorities-letter, http://www.finra.org/sites/default/files/2017-regulatory-and-examination-priorities-letter.pdf.*

[13]*FINRA, "2016 Regulatory and Examination Priorities Letter," http://www.finra.org/industry/2016-regulatory-and-examination-priorities-letter, http://www.finra.org/sites/default/files/2016-regulatory-and-examination-priorities-letter.pdf.*

[14]*77 FR 13046, March 5, 2012, https://www.federalregister.gov/documents/2012/03/05/2012-5187/customer-due-diligence-requirements-for-financial-institutions.*

[15]*81 FR 29397, May 11, 2016, https://www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions.*

[16]*FinCEN, "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions," FIN-2016-G003, July 19, 2016, https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_%287_15_16%29.pdf.*

[17]*FinCEN, "FIN-2016-G003 Frequently asked Questions regarding Customer Due Diligence Requirements for Financial Institutions," July 19, 2016, https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_%287_15_16%29.pdf.*

[18] *81 FR 19086, April 4, 2016, https://www.federalregister.gov/documents/2016/04/04/2016-07345/amendments-to-the-definition-of-broker-or-dealer-in-securities.*

[19]*FinCEN, "FinCEN Proposes to Amend Definition of Broker-Dealer in Securities to Include Funding Portals, April 4, 2016, https://www.fincen.gov/news/news-releases/fincen-proposes-amend-definition-broker-dealer-securities-include-funding; 80 FR 71387, November 16, 2015, https://www.federalregister.gov/documents/2015/11/16/2015-28220/crowdfunding.*

[20] *CFTC, "CFTC Staff Advisory No. 16-60, Compliance with Suspicious Activity Reporting Requirements and Office of Foreign Assets Control Economic Sanctions Programs," July 6, 2016, http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-60.pdf.*

[21]*NFA, "FinCEN issues final rules requiring identification and verification of the beneficial owners of legal entity customers and ongoing customer due diligence requirements," August 12, 2016, https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4734.*

[22]*NFA, "FinCEN issues and advisory and frequently asked questions to financial institutions on cyber events and cyber-enabled crime," October 31, 2016, https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4754.*

[23]*See, for instance, NFA, "FinCEN issues an advisory on the FATF-identified jurisdictions with AML/CFT deficiencies," April 10, 2017, https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4809.*

[24]*NFA, "Rule 2-30," https://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=RULE%202-30&Section=4.*

[25]*CFTC, "Large Trader Reporting Program," http://www.cftc.gov/IndustryOversight/MarketSurveillance/LargeTraderReportingProgram/ltrp.*

[26]*Judge Rakoff refused to approve a proposed consent agreement between the SEC and Citigroup because Citigroup was not required to either admit or deny the allegations against it. US—Securities and Exchange Commission v. Citigroup Global Markets Inc., 827 F. Supp. 2d 328 (S.D.N.Y.*

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BSA/AML Compliance and Enforcement…

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2011). Judge Rakoff's order was vacated by the Second Circuit Court of Appeals, USSEC v. Citigroup Global Markets, Inc., 752 F.3d 285 (2d Cir. 2014).

[27] Department of Justice, "HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement," December 11, 2012, available at http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html, accessed March 4, 2016 (emphasis added).

[28]FinCEN, "Prepared Remarks of FinCEN Associate Director for Enforcement Thomas Ott, delivered at the National Title 31 Suspicious Activity & Risk Assessment Conference and Expo," August 17, 2016, https://www.fincen.gov/news/speeches/prepared-remarks-fincen-associate-director-enforcement-thomas-ott-delivered-national.

[29]Preet Bharara, "Manhattan US Attorney And FBI Assistant Director-In-Charge Announce Filing Of Criminal Charges Against And Deferred Prosecution Agreement With JPMorgan Chase Bank, N.A., In Connection With Bernard L. Madoff's Multi-Billion Dollar Ponzi Scheme," US Attorney for the Southern District of New York, January 7, 2014, available at http://www.justice.gov/usao/nys/pressreleases/January14/JPMCDPAPR.php, accessed March 4, 2016 (emphasis added).

[30]FINRA, "FINRA Fines Brown Brothers Harriman a Record $8 Million for Substantial Anti-Money Laundering Compliance Failures: Highest Fine Levied by FINRA for AML-Related Violations; AML Compliance Officer Also Fined and Suspended," February 5, 2014, available at https://www.finra.org/newsroom/2014/finra-fines-brown-brothers-harriman-record-8-million-substantial-anti-money-laundering, accessed January 23, 2016.

[31]FINRA, "Financial Industry Regulatory Authority Letter of Acceptance, Waiver and Consent No. 2014043592001," May 18, 2016, http://www.finra.org/sites/default/files/RJFS_AWC_051816_0.pdf, See also news release at http://www.finra.org/newsroom/2016/finra-fines-raymond-james-17-million-systemic-anti-money-laundering-compliance.

[32]United States District Court Southern District of New York, "The United States Department of the Treasury v. Thomas E. Haider, Complaint," December 18, 2014, available at https://www.fincen.gov/news_room/ea/files/USAO_SDNY_Complaint.pdf, accessed February 3, 2016.

[33]United States District Court Southern District of New York, "The United States Department of the Treasury v. Thomas E. Haider, Complaint," December 18, 2014, available at https://www.fincen.gov/news_room/ea/files/USAO_SDNY_Complaint.pdf, accessed February 3, 2016.

[34]The January 2016 order did not rule on the merits of Haider. That case continues to be litigated. "The United States Department of the Treasury v. Thomas E. Haider, Order on Motion to Dismiss," January 8, 2016, available at http://www.buckleysandler.com/uploads/1082/doc/Treasury_v_Haider_Motion_to_Dismiss_January_8.pdf, accessed February 3, 2016.

[35] FinCEN, "FinCEN and Manhattan U.S. Attorney Annoucne Settlement with Former MoneyGram Executive Thomas E. Haider," May 4, 2017, https://www.fincen.gov/news/news-releases/fincen-and-manhattan-us-attorney-announce-settlement-former-moneygram-executive.

[36]For example, FinCEN imposed a civil money penalty against the VIP Services Manager at a casino in the Northern Mariana Islands for willfully causing the casino to fail to file CTRs and SARs. In the Matter of: George Que, Northern Mariana Islands, Assessment of Civil Money Penalty, August 20, 2014, available at https://www.fincen.gov/news_room/ea/files/GeorgeQue_Assessment_20140820.pdf.

[37]"The United States Department of the Treasury v. Thomas E. Haider, Order on Motion to Dismiss," January 8, 2016, available at http://www.buckleysandler.com/uploads/1082/doc/Treasury_v_Haider_Motion_to_Dismiss_January_8.pdf, accessed February 3, 2016.

[38]US Department of Justice, "Individual Accountability for Corporate Wrongdoing," September 9, 2015, available at http://www.justice.gov/dag/file/769036/download, accessed January 16, 2016.

[39]US Department of Justice, "Individual Accountability for Corporate Wrongdoing," September 9, 2015, available at http://www.justice.gov/dag/file/769036/download, accessed January 16, 2016.

[40]US Department of Justice, "Individual Accountability for Corporate Wrongdoing," September 9, 2015, available at http://www.justice.gov/dag/file/769036/download, accessed January 16, 2016.

[41]OCC, "In the Matter of George Sanders," #2016-038, March 15, 2016, https://www.occ.gov/static/enforcement-actions/ea2016-038.pdf.

[42]SEC, "Former Miami Brokerage Firm CEO Settles with SEC for Violating Anti-Money Laundering Protocols," October 19, 2016, https://www.sec.gov/litigation/admin/2016/34-79124-s.pdf.

[43]See, for example, NFA, "In the Matter of Zulutrade, Inc. and Leon Yohai Giochais," September 30, 2016, https://www.nfa.futures.org/basicnet/CaseDocument.aspx?seqnum=4355.

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from the proprietary trading restrictions of the rule (but subject to the covered funds provisions).

Leveraged Lending. The report cites a number of shortcomings with the banking agencies' leveraged lending guidance. The report also explains that the guidance lacks clear penalties for noncompliance. As a result of the ambiguity and confusion created by the guidance, the report recommends that the guidance be re-issued for public comment.

Small Business Lending. The report notes a number of impediments to small business lending and makes a series of recommendations to promote small business lending.

For further discussion of the report, please see our client alert: *https://media2.mofo.com/documents/170613-us-treasury-department-report.pdf*.

U.S. House of Representatives Passes the Financial CHOICE Act of 2017

On June 8, 2017, the Financial CHOICE Act of 2017 (the "CHOICE Act") was passed on a party line vote by the U.S. House of Representatives, with nearly all Republicans voting in support and nearly all Democrats voting against passage. The CHOICE Act was previously approved by the House Financial Services Committee ("Committee") on May 4, 2017, after two hearings were held on the bill (see our client alert available at https://media2.mofo.com/documents/170427-financial-choice-act-of-2017.pdf).

The CHOICE Act now moves to the U.S. Senate, where it faces an uphill battle. On June 13, 2017, the Senate referred the bill to the Committee on Banking, Housing and Urban Affairs. Senate passage would require a 60 vote majority, and Republicans control only 52 seats. There is no indication that any of the 46 Democrats, or the two independents who caucus with the Democrats, will support the measure as passed by the House. As a result, it is likely that fundamental changes to the CHOICE Act will be required in order for it, or portions of it, to pass the Senate, be reconciled with the House bill and become law.

In its current form, the CHOICE Act would make significant changes to the U.S. financial regulatory system mostly, through repealing and restructuring much of the post-financial crisis framework established by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Although the prospects for the CHOICE Act in its current form are uncertain, U.S. financial institutions, and foreign financial institutions with operations in the United States will want to keep abreast of the legislative process involving the CHOICE Act, as legislation, if any, that emerges is likely to impact their business.

Below is a list of some of the principal components of the CHOICE Act.

- Repeal of Orderly Liquidation Authority
- The Leverage Ratio "Off-Ramp"
- Repeal of the Volcker Rule
- Repeal of the DOL Fiduciary Rule
- Change to the Financial Stability Oversight Council
- Change to the Rulemaking Process for Federal Banking Agencies
- Change to the Standard of Review for Actions of the Federal Banking Agencies
- Change to the Consumer Financial Protection Bureau
- Brings Funding for Banking Agencies within Congressional Appropriations Process
- Attempts to Minimize of Duplicative Enforcement Efforts
- Requirements for Tailoring of Regulation

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FMA Welcomes *More* New Members!

Patrick Dennis	Oyster Consulting, LLC
Marcia Douglas	Mercantil Bank
Peter Foye	PricewaterhouseCoopers LLP
Yamil Gonzalez	Banco Santander International
Glenn Gordon	SEC, Miami Regional Office
Michael Gross	Ulmer & Berne LLP
Isabel Guell	Banco Santander International
John Gunther	Lumesis, Inc.

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As the CHOICE Act progresses through Congress, any legislation ultimately enacted into law will likely diverge significantly from the current bill. Nevertheless, we expect the CHOICE Act to play a part in framing the debate going forward. For our client alert discussing the House passage of the CHOICE Act and providing additional information regarding its principal components, please visit: *https://media2.mofo.com/documents/170609-financial-choice-act.pdf*.

Banking Regulators

OCC Guidance Signals Flexibility for Third-Party Risk Management

On June 7, 2017, the Office of the Comptroller of the Currency ("OCC") issued frequently asked questions ("FAQs") that supplement the OCC's 2013 guidance entitled "Third-Party Relationships: Risk Management Guidance" ("2013 Bulletin"). The 2013 Bulletin sets forth the OCC's expectation for banks' due diligence and ongoing monitoring of third-party service providers, including enhanced diligence and monitoring for third parties that support critical activities. While the FAQs confirm the broad scope of application of the 2013 Bulletin, they also provide for substantial flexibility for banks in managing third-party risk. For example, the FAQs state that "[n]ot all third-party relationships present the same level of risk," and "[b]ank management should determine the risks associated with each third-party relationship and then determine how to adjust risk management practices for each relationship" so that the "bank's risk management practices for each relationship [are] commensurate with the level of risk and complexity of the third-party relationship." The FAQs also signal flexibility in other meaningful ways, including by stating that banks may collaborate to manage third-party relationship risk and may engage in information sharing to better understand cyberthreats to the bank itself or to service providers. For more information about the FAQs, please visit *https://media2.mofo.com/documents/170612-occ-flexibility-third-party-risk-management.pdf*.

FDIC Assesses Civil Money Penalties Against Bank, Institution-Affiliated Parties

On May 11, 2017, the Federal Deposit Insurance Corporation ("FDIC") announced settlements with Bank of Lake Mills ("Bank") and two of the Bank's institution-affiliated parties: Freedom Stores, Inc. (FSI) and Military Credit Services, LLC (MCS). In its press release, the FDIC alleged that all three parties engaged in unfair and deceptive practices in violation of Section 5 of the Federal Trade Commission Act.

The FDIC orders required civil money penalties from each of the three parties (the Bank, FSI, and MCS) to pay civil money penalties of $151,000, $54,000 and $37,000, respectively, as well as the establishment and funding of a $3 million restitution account by the Bank.

The accompanying orders shine additional light on the underlying facts of the settlement, stating that FSI and MCS had each "engaged in deceptive marketing of loans on the Bank's behalf, as well as deceptive marketing of add-on products." The press release states that the unfair and deceptive practices included "[c]harging interest to consumers who paid off their loans within six months when the loans were promoted as six-month interest free; selling add-on products in conjunction with loans originated by the bank without clearly disclosing the terms of those products; and failing to provide consumers the opportunity to exercise the monthly premium payment option in conjunction with the purchase

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FMA Welcomes *More* New Members!

Michael Horn	PricewaterhouseCoopers LLP
Jerome Jordan	Renaissance Regulatory Services
Dan Kearney	WilmerHale
Howard Kirkham	Federal Reserve Bank of Chicago
Nicole Kukuy	Renaissance Regulatory Services
Stephen Lurie	PricewaterhouseCoopers LLP
Michael McCord	American Professional Associates

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of optional debt cancellation coverage on loans originated by the bank through the Freedom Stores and MCS channels."

The settlement offers a reminder that regulators remain focused on the effectiveness of bank oversight of third-party activities. In the same vein, in July 2016, the FDIC issued its proposed *Guidance for Third-Party Lending*, which noted that banks are "ultimately responsible for ensuring all aspects of third-party lending activities are in compliance with consumer protection and fair lending requirements to the same extent as if the activities were handled within the institution itself." Similarly, in the 2008 *Guidance for Managing Third-Party Risk*, which remains broadly applicable to all of a bank's third-party arrangements, the agency cautioned that "[a]n institution's board of directors and senior management are ultimately responsible for managing activities conducted through third-party relationships, and identifying and controlling the risks arising from such relationships, to the same extent as if the activity were handled within the institution."

The settlement also illustrates the potential legal risks to third parties entering into arrangements with financial institutions. Depending on the nature of the relationship and activities, third parties may be considered institution-affiliated parties falling within the enforcement jurisdiction of applicable federal banking agencies. The term "institution-affiliated party" includes any "agent for an insured depository institution" and "any independent contractor . . . who knowingly or recklessly participates in any violation of any law or regulation; any breach of fiduciary duty; or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution." Institution-affiliated parties are subject to the federal banking enforcement regime, which includes civil money penalties and cease and desist orders. Please see also our client alert at *https://media2.mofo.com/documents/170519-fdic-action-bank-partnerships.pdf*.

OCC Pursues Fintech Charter; State Regulators React

On March 15, 2017, the OCC released a Draft Supplement ("Draft Supplement") to the *Comptroller's Licensing Manual*. The Draft Supplement sets forth the OCC's framework for evaluating Fintech companies applying for a special purpose national bank charter. On the same date, the OCC also released its Summary of Comments and Explanatory Statement ("Summary of Comments"), in which the OCC responded to criticisms of its charter initiative.

In the Summary of Comments, the OCC described three "threshold principles" that will guide the agency in its decisions to grant special purpose national bank charters: (1) that the OCC would not allow "inappropriate commingling of banking and commerce", (2) that the OCC would not allow products with predatory features or allow unfair or deceptive acts or practices, and (3) there would be no "light-touch" supervision of special purpose national banks. The Draft Supplement suggests that Fintech companies applying for a special purpose national bank charter will be subject to bank-like requirements, including requirements related to business structure, risk management controls, and CAMELs ratings based on capital levels, asset quality, and other factors. The document also includes details on the OCC's expectations with respect to meeting the financial inclusion obligations. Comments on the Draft Supplement were due on April 14, 2017.

The OCC's decision to move forward with its vision of a national Fintech charter has been met with resistance from the Conference of State Bank Supervisors ("CSBS"), a national organization of state regulators, and the New York Department of Financial Services ("NYDFS"), among other stake-

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FMA Welcomes *More* New Members!

Bao Nguyen	Kaufman, Rossin & Co.
Mike Origlia	Wells Fargo Advisors
Carolina Palacios	Banco Santander International
Jose Vicente Restrepo	Mercantil Bank
Harlen Reyes Sandoval	BBVA Compass
Jason Rhoades	PricewaterhouseCoopers LLP

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holders. On April 26, 2017, the CSBS filed a lawsuit against the OCC in the U.S. District Court for the District of Columbia, arguing that "[b]y creating a national bank charter for nonbank companies like fintechs, however, the OCC has gone far beyond the limited authority granted to it by Congress under the National Bank Act ("NBA") and other federal banking laws." On May 12, 2017, the NYDFS filed its own complaint in the U.S. District Court for the Southern District of New York, challenging the OCC's decision to grant special purpose charters to Fintech companies. In its complaint, the NYDFS argued that the OCC's decision was "lawless, ill-conceived, and destabilizing of financial markets that are properly and most effectively regulated by New York State."

In a press release issued the same day, the CSBS offered its strong support for the NYDFS lawsuit. In the press release, the CSBS drew attention to "Vision 2020," which the organization describes as "a series of initiatives to modernize state regulation of non-banks, including financial technology firms." The initiative includes actions such as a redesign of the Nationwide Multistate Licensing System; creation of a common technology platform for state examinations; and formation of an industry advisory panel to focus on lending and money transmission and to "identify points of friction in licensing and multi-state regulation." More information is available in our client alert at *https://media2.mofo.com/documents/170320-occ-draft-supplement-fintech.pdf*.

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Job Bank

Position Available

https://www.usajobs.gov/GetJob/ViewDetails/469759600

The Assistant Commissioner, WSS, is the executive directly responsible for leading a national critical infrastructure system that supports borrowing funds needed to operate the federal government. Treasury's wholesale securities operations and book-entry programs includes auctioning approximately $8 trillion Treasury marketable securities (annually) and oversight of operations supporting the transfer of over $1 trillion (daily) in Treasury securities in the secondary market. The incumbent ensures the accuracy, reliability, integrity and efficiency of Treasury's auction operations, which is critical to Treasury achieving government financing at the lowest possible cost over time. The results of Treasury's auctions and Treasury securities' unique features have national and worldwide significance; investors worldwide purchase Treasury securities as the premier "safe haven" investment, Treasury yields are used as default risk-free pricing benchmarks worldwide, the Federal Reserve uses Treasury securities for its open market operations to execute U.S. monetary policy, and Treasury securities serve as indispensable collateral in the smooth functioning of financial markets.

The Assistant Commissioner works directly with key Treasury officials and debt management policy decision makers, and senior Federal Reserve System representatives. This position reports to the Deputy Commissioner for Financial Services & Operations, and serves as a critical member of the Fiscal Service executive leadership team.

FMA Welcomes *More* New Members!

Glorie Rodriguez	Sabadell
Rose Schindler	Greenspooon Marder P.A.
Elsa Solis	Banco Santander International
Curtis Tao	Citigroup
Joe Turnes	StateTrust
Vivian Velazquez	V&V Consulting Group
Viriato Villamil	Mercantil Bank
Patrick Villoldo	Sabadell

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NYDFS Issues Guidance Regarding Acquisitions and Changes of Control

On May 22, 2017, the NYDFS issued an interpretative guidance (the "Guidance") concerning the New York Banking Law requirement of prior approval for an acquisition or change of control of a banking institution. According to the accompanying press release from NYDFS, the Guidance was issued in response to a request from the New York Bankers Association, and "due to a concern that some investors have been developing non-transparent methods of acquiring and controlling banking institutions without obtaining prior regulatory review and approval by DFS."

The Guidance concerns section 143-b of the New York Banking Law, which requires prior approval "for any company to acquire control of any banking institution," and section 141(2) of the New York Banking Law, which defines the term "company" in part to mean certain parties "acting in concert."

The Guidance clarifies that NYDFS interprets the term "acting in concert" as that term is used in section 141(2) to include either:

i Knowing participation in a joint activity or in parallel action toward a common goal of acquiring control whether or not pursuant to an express agreement; or

ii combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or oral.

The Guidance notes that this interpretation is "consistent with the interpretation of the term under the federal Change in Bank Control Act."

The Guidance also clarifies that "[u]nless the specific facts dictate otherwise, the phrase 'owns, controls or holds with the power to vote' as used in Section 143-b includes holding of proxies to vote shares for the election of directors of a banking institution." The full text of the guidance is available at *http://www.dfs.ny.gov/legal/industry/il170522.pdf.*

CFTC UPDATE

CFTC Amends Recordkeeping Rule

On May 23, 2017, the Commodity Futures Trading Commission ("CFTC") finalized rule amendments to its recordkeeping rule, CFTC Reg. 1.31, as well as related technical amendments to CFTC Reg. 1.35 and 23.203. CFTC Reg. 1.31 specifies the form and manner in which records required by CFTC regulations are required to be kept by entities required to keep such records, referred to in the rule as "records entities." In general, the amendments to CFTC Reg. 1.31 modernize and make technology neutral the form and manner in which regulatory records must be kept. Among other things, the rule amendments eliminate current requirements that records entities keep electronic regulatory records in their native file format; retain any electronic record in a non-rewritable, non-erasable format; and engage a third-party technical consultant and for the consultant to file certain representations with the CFTC. The amendments become effective on August 28, 2017 and have been published in the Federal Register, available at http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-11014a.pdf.

CFTC Proposes to Amend Chief Compliance Officer Duties and Annual Report Requirements

On May 3, 2017, the CFTC approved for publication in the Federal Register proposed amendments to its rules regarding the duties of Chief Compliance Officers ("CCOs") for swap dealers, major swap participants, and futures commission merchants (collectively, "Registrants") and content and submission requirements for annual reports ("Proposal"). The overarching goals of the Proposal are (i) to make certain clarifications regarding the rules based on CFTC experience and input from CCOs; (ii) to harmonize the CFTC's rules with similar rules of the Securities and Exchange Commission applicable to security-based swap dealers; and (iii) to reduce regulatory burden for Registrants. The comment period for the proposed rules closes on July 7, 2017. For further information regarding the Proposal, please see our client alert available at *https://media2.mofo.com/documents/170519-cftc-proposed-amend.pdf.*

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CFPB UPDATE

Tribal-Affiliated Lenders Sued Under CFPB's UDAAP Authority

On April 27, 2017, the Consumer Financial Protection Bureau ("CFPB") filed a complaint in a federal district court seeking injunctive relief and damages for alleged unfair, deceptive, or abusive acts or practices ("UDAAP") and violations of the Truth in Lending Act ("TILA") by four online tribal-affiliated lenders. The CFPB alleged that, despite claiming affiliation with a tribe and originating loans under the federal tribal laws, the lenders' relationship with the tribe was factually questionable, and they originated loans that violated state licensing and usury laws. Accordingly, the CFPB brought a "true lender"-style challenge against the lenders for alleged misrepresentations regarding the borrowers' obligations with respect to the loans and the alleged failure to disclose the annual percentage rates of the loans, as required by TILA.

For our client alert on the complaint, please visit *https://media2.mofo.com/documents/170502-cfpb-tribal-affiliated-lenders.pdf.*

Federal Court Dismisses CFPB Case Against Payment Processor

On March 17, 2017, the United States District Court for the District of North Dakota dismissed the CFPB's complaint against payment processor Intercept Corporation and its senior executives (collectively, "Intercept") following Intercept's motion to dismiss for failure to state a claim. Specifically, the court dismissed the case because it found that the CFPB did not sufficiently allege facts to show a violation of the Consumer Financial Protection Act ("CFPA") or to show that the defendants engaged in "unfair, deceptive, or abusive acts or practices." The court held that the allegations in the complaint were based on conclusory statements regarding Intercept's allegedly unlawful acts or omissions. Notably, the court did not reject the CFPB's somewhat novel characterization of Intercept as a "covered person" under the CFPA, even though Intercept provides services to its merchant-customers, rather than the consumers whose accounts are being debited. This approach would expand the reach of CFPA enforcement for unfair, deceptive, or abusive acts or practices to include within the definition of "covered person" entities that provide payment processing or "other financial data processing" services to businesses , rather than provide consumer financial products or services, which could have broad practical consequences in future cases.

For our client alert on the decision, please visit *https://media2.mofo.com/documents/170320-court-finds-cfpb-case.pdf.*

CARD Act Review Underway

As required by the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act"), the CFPB surveys the consumer credit card market and publishes a report of its findings every other year. On March 10, 2017, the CFPB initiated the process for this year's reporting cycle by publishing a Request for Information ("RFI") seeking feedback from participants in the consumer credit card market, including consumers, credit card issuers, and consumer advocates. The 2017 RFI requests comment on specific topics required by the CARD Act, as well as other areas of interest to the CFPB. This year, the CFPB identified a number of areas of interest that were not part of the CARD Act mandate, including deferred-interest products, subprime specialist products, third-party comparison sites, and variable interest rates. Additional topics of interest include product innovation, secured credit cards, rewards products, debt collection, and online and mobile account servicing. Comments on the 2017 RFI were due by June 8, 2017.

For our client alert on the RFI, please visit *https://media2.mofo.com/documents/170315-cfpb-initiates-third-card-act-review.pdf.* ■

**Meghan E. Dwyer, Julian E. Hammar, Jeremy R. Mandell, Amanda J. Mollo, and Mark R. Sobin contributed to this column.*

Watch For

June 19, 2017 – The MSRB reminds regulated entities, which include brokers, dealers, municipal securities dealers and municipal advisors, of the October 13, 2017 effective date for amendments to rules related to customer and municipal advisory client complaints. The amendments require, in part, that regulated entities keep an electronic complaint log of all written complaints of customers or municipal advisory clients using a standard set of product and problem codes. The *MSRB Rule G-8 Customer and Municipal Advisory Client Complaint Problem and Product Codes Guide* is now available.

FINRA Trade Reporting Notice (June 12, 2017) – Effective Monday, July 10, 2017, FINRA member firms will be required to report transactions in U.S. Treasury Securities to TRACE as per the recent amendments to the TRACE rules discussed in Regulatory Notice 16-39.

OCC Bulletin 2017-22 (June 9, 2017) – The OCC issuing this bulletin to highlight actions that national banks and federal savings associations should take to prepare for the change in the regular securities settlement cycle for most U.S. securities transactions. The change becomes effective on September 5, 2017. For broad risk management guidance for implementing product changes, national banks should refer to OCC Bulletin 2004-20, "Risk Management of New, Expanded, or Modified Bank Products and Services," and federal savings associations should refer to "New Activities and Services," section 760 of the *Office of Thrift Supervision Examination Handbook*. For guidance on assessing and managing risks associated with third-party relationships, banks should refer to OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," October 30, 2013. Banks are also encouraged to refer to the comprehensive industry website, T+2 Settlement, at *ust2.com* for further guidance on how to prepare for this change.

FINRA Regulatory Notice 17-22 (June 7, 2017) – FINRA adopts rules on disruptive quoting and trading activity and expedited proceedings; effective date was December 15, 2016.

MSRB Press Release (June 1, 2017) – The MSRB is seeking additional public comment on draft amendments to MSRB Rule G-34, on obtaining CUSIP numbers. Consistent with its previous proposal, the MSRB's revised draft amendments clarify the obligations of municipal securities dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, and require all municipal advisors to obtain CUSIP numbers in competitive offerings. Comments on the revised draft amendments should be submitted no later than June 30, 2017.

FINRA Regulatory Notice 17-21 (May 31, 2017) – FINRA is adding a new Rule 4530 Problem Code to address changes the U.S. Department of Labor has made to its fiduciary rule. The DOL has stated that certain provisions of the fiduciary rule and the related exemptions will become applicable on June 9, 2017. FINRA is also adding new fields to the Rule 4530 Filing Application Form, amending the existing Rule 4530 Product and Problem Codes and adding a new Problem Code, to address changes made by the MSRB to extend the MSRB customer complaint and related recordkeeping rules to municipal advisors. The changes to the MSRB rules will become effective on October 13, 2017.

CFTC Press Release 7563-17 (May 30, 2017) – The CFTC's Division of Market Oversight and Division of Clearing and Risk issued a no-action letter extending the relief provided in CFTC Letter No. 16-58, which expires on June 15, 2017. That no-action letter provides relief from certain CFTC regulations to permit swap execution facilities and designated contract markets to correct clerical or operational errors that caused a swap to be rejected for clearing and thus become void. The no-action letter also permits SEFs and DCMs to correct clerical or operational errors discovered after a swap has been cleared. The letter extends the relief until the effective date of any revised CFTC regulations regarding methods of execution requirements and pre-arranged trading. The relief is subject to the terms and conditions in the letter.

May 26, 2017 – The MSRB filed with the SEC proposed amendments to MSRB Rule G-26, on customer account transfers. If approved by the SEC, the amendments to Rule G-26 would promote a uniform customer account transfer standard for all municipal securities dealers.

CFTC Press Release 7559-17 (May 22, 2017) – The CFTC unanimously approved amendments to the CFTC's Whistleblower Rules that will, among other things, strengthen the CFTC's anti-retaliation protections for whistleblowers and enhance the process for reviewing whistleblower claims.

MSRB Press Release (May 17, 2017) – The MSRB received approval from the SEC to establish continuing education (CE) requirements for municipal advisor firms to ensure that individuals providing municipal advisory services to municipal entities and obligated persons remain current in their industry knowledge. The

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requirements, part of the MSRB's regulatory framework for municipal advisors, will be implemented on January 1, 2018. Municipal advisor firms will have until December 31, 2018 to complete a needs analysis, develop a written training plan and deliver training to comply with the annual CE requirements that will be codified in amendments to MSRB Rule G-3, on professional qualification requirements, and MSRB Rule G-8, on recordkeeping. The MSRB plans to provide implementation guidance on how to conduct a needs analysis and develop a training plan and provide other resources to assist municipal advisor firms in developing a CE program. The implementation of CE program requirements by municipal advisors complements the baseline examination of competency for municipal advisor professionals, the Municipal Advisor Representative Qualification Examination (Series 50 exam), which municipal advisor professionals must take and pass by September 12, 2017 to continue to engage in municipal advisory activities.

FINRA Regulatory Notice 17-19 (May 11, 2017) – The SEC approved amendments to FINRA rules to conform to the SEC's amendment to Rule 15c6-1(a) under the Securities Exchange Act of 1934 to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date (T+3) to two business days after the trade date (T+2) and the industry-led initiative to shorten the settlement cycle from T+3 to T+2. The amendments revise settlement-related provisions in the following FINRA rules:
• Rule 2341 (Investment Company Securities);
• Rule 11140 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants");
• Rule 11150 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat");
• Rule 11210 (Sent by Each Party);
• Rule 11320 (Dates of Delivery);
• Rule 11620 (Computation of Interest);
• Rule 11810 (Buy-In Procedures and Requirements); and
• Rule 11860 (COD Orders).
The amendments to these rules become effective on September 5, 2017.

May 11, 2017 – *Federal Register* notice of withdrawal of proposed rule change to add new MSRB Rule G-49, on Transactions Below the Minimum Denomination of an Issue, to the rules of the MSRB, and to rescind paragraph (f), on minimum denominations, from MSRB Rule G-15

MSRB Press Release (May 4, 2017) – To promote understanding of the regulatory framework for municipal advisors acting as solicitors, the MSRB published guidance summarizing MSRB rules applicable to this category of municipal advisory activity. Solicitor municipal advisors, for compensation, solicit municipal entities, including public pension plans, and obligated persons for business on behalf of certain other financial professionals. The guidance also compiles and includes links to the numerous resources available from the MSRB and the Securities and Exchange Commission for additional information.

CFTC Press Release 7554-17 (May 3, 2017) – The CFTC announced that it will publish in the *Federal Register* proposed amendments to Part 3 of its regulations. The proposed amendments would: 1) define "senior officer" in Regulation 3.1; 2) clarify the duties of a Chief Compliance Officer of a futures commission merchant, swap dealer, or major swap participant; and 3) modify the CCO annual report's content and submission requirements. The CFTC is seeking comments on the proposed amendments. The comment period ends 60 days after the proposal's publication in the *Federal Register*.

CFTC Press Release 7551-17 (April 25, 2017) – The CFTC added 71 new names to its list of foreign entities that illegally solicit U.S. residents to trade binary options and forex. The Registration Deficient (RED) list on CFTC's website identifies entities operating illegally without being registered. These 71 new additions bring the total number of foreign entities on the RED List to over 110. The RED List can be found at *www.SmartCheck.gov/REDList*.

FINRA Regulatory Notice 17-18 (April 25, 2017) – This Notice provides guidance regarding the application of FINRA rules governing communications with the public to digital communications, in light of emerging technologies and communications innovations.

FINRA Regulatory Notice 17-17 (April 21, 2017) – FINRA has updated the form that firms must use to file offering documents and information pursuant to FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) (Filer Form). The updated Filer Form, which will be available in the FINRA Firm Gateway beginning May 22, 2017, includes new and updated questions that will facilitate review of the filed material and eliminates other questions.

CFTC Press Release 7548-17 (April 18, 2017) – The CFTC's Division of Swap Dealer and Intermediary

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Oversight issued an extension of the time-limited no-action relief provided in CFTC Staff Letter 17-05 from May 8, 2017 until November 7, 2017. The relief extended states that DSIO will not recommend an enforcement action against a swap dealer that is subject to, and in compliance with, the margin requirements for non-centrally cleared OTC derivatives in the European Union (EMIR RTS) for failure to comply with the CFTC's final margin rule.

FINRA Regulatory Notice 17-16 (April 12, 2017) – FINRA seeks comment on proposed amendments to FINRA Rule 2241 (Research Analysts and Research Reports) and FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) to create a limited safe harbor for specified brief, written analysis distributed to eligible institutional investors that comes from sales and trading or principal trading personnel but that may rise to the level of a research report (desk commentary). The comment period expires May 30, 2017. In a separate Regulatory Notice, FINRA is also requesting comment generally on its rules and programs governing the capital raising process and their effects on capital formation.

FINRA Regulatory Notice 17-15 (April 12, 2017) – FINRA seeks comment on proposed amendments to FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) to make substantive, organizational and terminology changes to the rule. The proposal is intended to modernize Rule 5110 and to simplify and clarify its provisions. The proposal would retain the primary principle of the rule that no member firm or person associated with a member firm may participate in a public offering for which the terms and conditions, including the aggregate amount of underwriting compensation, are unfair, unreasonable or inconsistent with any FINRA rule. The comment period expires May 30, 2017. In a separate Regulatory Notice, FINRA is also requesting comment generally on its rules and programs governing the capital raising process and their effects on capital formation.

FINRA Regulatory Notice 17-13 (April 10, 2017) – This Notice advises FINRA firms of revisions to FINRA's Sanction Guidelines. The revised Sanction Guidelines are effective immediately and available on FINRA's website at *www.finra.org/Industry/Enforcement/SanctionGuidelines*.

FINRA Regulatory Notice 17-12 (April 7, 2017) – FINRA is updating the Regulatory Extension (REX) system to enable firms to file extension of time requests under a shortened settlement cycle. The SEC has amended Rule 15c6-1(a) under the Securities Exchange Act of 1934 to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2. Firms may file such requests beginning September 11, 2017, via the batch file process and by completing the currently available online request form that is accessible by logging in to the REX system via the FINRA Firm Gateway.

SEC Press Release 2017-78 (April 5, 2017) – The SEC announced that it has adopted amendments to increase the amount of money companies can raise through crowdfunding to adjust for inflation. It also approved amendments that adjust for inflation a threshold used to determine eligibility for benefits offered to "emerging growth companies" under the JOBS Act. The SEC is required to make inflation adjustments to certain JOBS Act rules at least once every five years after it was enacted on April 5, 2012. In addition to the inflation adjustments, the SEC adopted technical amendments to conform several rules and forms to amendments made to the Securities Act of 1933 and the Securities Exchange Act of 1934 by Title I of the JOBS Act. The Commission approved the new thresholds March 31. They will become effective when they are published in the *Federal Register*.

FINRA Trade Reporting Notice (April 3, 2017) – FINRA member firms that have an obligation to report over-the-counter secondary market transactions in eligible equity and fixed income securities must submit their transaction reports to the appropriate FINRA facility and are required to complete a participant application agreement before they are given access to the facility. Facilities covered by the FINRA Transparency Services Participation Agreement (FPA) and documentation include: TRACE (Corporate and Agency; Securitized Products; and Treasuries); OTC Reporting Facility (ORF); and Alternative Display Facility (ADF).

FINRA Regulatory Notice 17-11 (March 30, 2017) – The SEC approved: (1) the adoption of new FINRA Rule 2165 (Financial Exploitation of Specified Adults) to permit members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers; and (2) amendments to FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person

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for a customer's account. New Rule 2165 and the amendments to Rule 4512 become effective February 5, 2018.

CFTC Press Release 7538-17 (March 24, 2017) – The CFTC's Division of Market Oversight issued a no-action letter extending relief associated with swap trade confirmation requirements that previously was provided in CFTC Staff Letter 16-25, which expires March 31, 2017. The letter extends the relief until the effective date of any revised CFTC regulations regarding trade confirmation requirements. The relief is subject to terms and conditions in the letter.

OCC News Release 2017-31 (March 15, 2017) – The OCC provided additional detail on evaluating national bank charter applications from financial technology (fintech) companies that engage in the business of banking. The detail came in a draft supplement to the agency's existing *Licensing Manual*. The OCC will accept comments on this document through April 14, 2017.

Available Publications

OCC Bulletin 2017-21 (June 7, 2017) – The OCC is issuing frequently asked questions to supplement OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," issued October 30, 2013.

OCC Bulletin 2017-18 (May 23, 2017) – The OCC updated its policies and procedures regarding violations of laws and regulations. This policy is effective on July 1, 2017. These updates are reflected in the "Bank Supervision Process," "Community Bank Supervision," "Federal Branches and Agencies," and "Large Bank Supervision" booklets and other sections of the *Comptroller's Handbook* and internal guidance. The OCC's updated policies and procedures on violations of laws and regulations address recommendations in "An International Review of OCC's Supervision of Large and Midsize Institutions" (International Peer Review report) and emphasize timely detection and correction of violations before they affect a bank's condition.

OCC Bulletin 2017-16 (May 8, 2017) – The OCC issued the "Fiduciary Powers" booklet of the *Comptroller's Licensing Manual*. This revised booklet replaces the booklet of the same title issued in June 2002. It incorporates updated procedures and requirements following the integration of the OTS into the OCC in 2011 and the issuance of revised regulations (12 CFR 5), effective July 1, 2015, that address applications for national banks and federal savings associations proposing to exercise fiduciary powers.

OCC Bulletin 2017-14 (April 7, 2017) – The OCC issued the "National Bank Director Waivers" booklet of the *Comptroller's Licensing Manual*. This revised booklet replaces the booklet titled "Director Waivers" issued in March 2008. It provides updated guidance on required filings when a national bank board of directors requests waivers of the citizenship and residency requirements for an individual or a group of individuals. These director requirements do not apply to directors of federal savings associations.

April 3, 2017 – A PDF version of the MSRB Rule Book updated through April 1, 2017 is available online – *http://www.msrb.org/msrb1/pdfs/MSRB-Rule-Book-PDF-Current-Quarter.pdf*.

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

Program Update

2017 Legal and Legislative Issues Conference

Registrations are now being accepted for FMA's 26th Legal & Legislative Conference set to take place **October 25–26** at the **Hyatt Regency Washington** on Capitol Hill (site of this program for the last few years) here in Washington, DC. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance officers/risk managers, internal auditors and regulators. The day and a half event provides participants with an opportunity to share information on current legal and regulatory developments as well as network with peers. **Be sure to ask for the 2-for-1 or first-timers registration discount!**

The program planning committee is currently developing an agenda focusing on current areas of regulatory and Congressional/agency scrutiny and activity. Members include: **Mark Carberry** *(J.P. Morgan)*; **Daniel Kearney** *(WilmerHale)*; **William Mack** *(Greenberg Traurig, LLP)*; **Barbara Mendelson** *(Morrison & Foerster LLP)*; Curtis Tao *(Citigroup)* and **Joseph Vitale** *(Schulte Roth & Zabel LLP)*.

The working agenda currently features these panels:

- General Counsel: FRB, OCC, FDIC, FINRA, CFTC, SEC, MSRB & NFA
- Regulatory Reform/Treasury Studies
- Legislative Update from Hill Staffers
- Derivatives
- Cybersecurity
- BSA / AML / OFAC
- Fintech
- SEC Division Reports: Enforcement, Corporation Finance, Investment Management, Trading and Markets & OCIE.

If you would like to volunteer to speak on any of these topics…or suggest other noted leaders in these fields as panelists…please contact Dorcas Pearce and she will advise the program planning committee of your interest/input. The complete e-brochure will be distributed mid- to late July and will also be featured on FMA's website – *www.fmaweb.org*.

CLE and CPE accreditation…as well as first timer, government/regulatory/SRO and 2-for-1 (BOGO) team discounts…will be available, so be sure to budget for (and plan to attend) the 2017 Legal & Legislative Issues Conference.

Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 if you have questions and/or wish to register. Online registration is also an option.

Thanks to everyone who took the time to respond to FMA's April survey asking for their most critical topical suggestions as well as speaker recommendations and volunteers.

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

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Program Update *(continued from page 22)*

2017 Securities Compliance Seminar

FMA's 26th **Securities Compliance Seminar** took place **April 26 – 28**, at the B Ocean Hotel (on the beach!) in Fort Lauderdale, Florida.This annual program was a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators.

Congratulations to the planning committee for developing varied agenda topics and securing noted industry leaders and regulators as speakers. Members included: **Keith Watson** *(Fifth Third Bank);* **Mike Post** *(MSRB);* **Dan Newman** *(Broad and Cassel);* **Jeff Holik** *(Shulman, Rogers, Gandal, Pordy & Ecker, P.A.);* **Harry Chaffee** *(Renaissance Regulatory Services); and* **David Block** *(MUFG Union Bank).*

The agenda featured these sessions and speakers:

Pre-Seminar Interactive Workshop: What Are the Nightmares Keeping You Awake at Night?

- 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.
- Joel Oswald ■ Williams & Jensen

Cybersecurity: Avoiding Pitfalls and Legal Exposure

- Charles Callahan ■ U.S. Secret Service, Miami Field Office
- Leon Johnson ■ Securities America, Inc.
- Kevin Rosen ■ Shutts & Bowen LLP

Internal Audit Hot Topics and Emerging Issues

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

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

AML / OFAC Compliance

- Rachel Dondarski ■ OFAC
- 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 Duty Rule

- Mark Griffin ■ Baker, Donelson
- Lisa Herrnson ■ PricewaterhouseCoopers LLP
- 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

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Regulatory Forum—Securities

- Cynthia Friedlander ■ FINRA
- Glenn Gordon ■ SEC
- Lee Kell ■ Florida Division of Securities
- Donald Litteau ■ FINRA
- Michael Post ■ MSRB

Municipal Advisors—The Developing Framework

- Cynthia Friedlander ■ FINRA
- Saliha Olgun ■ MSRB
- Dave Sanchez ■ Norton Rose Fulbright US LLP
- Mary Simpkins ■ SEC

FinTech: Focus on Robo-Advisors

- Charis Jones ■ LPL Financial
- Diane Novak ■ DPN Consulting Services
- Jared Shaw ■ Ernst & Young

Peer Groups

Peer group discussions (lead by facilitators) took place Wednesday and Thursday afternoons. Participants met in small groups to discuss topics more in-depth. The discussions included:

Broker-Dealer Compliance Hot Topics

- Bill Reilly ■ Oyster Consulting, LLC

Key 2017 Legislative/Regulatory Initiatives

- Sharon Brown-Hruska ■ NERA Economic Consulting
- Jeff Holik ■ Shulman, Rogers, Gandal, Pordy & Ecker, P.A.

DOL Fiduciary Rule

- Mark Griffin ■ Baker Donelson
- Lisa Herrnson ■ PricewaterhouseCoopers LLP

Compliance Risk Management

- Roomy Khan ■ Roomyk, LLC

Institutional Compliance Sales

- Wes Moore ■ Quarule, Inc.

Informal networking group dinners took place Wednesday and Thursday evenings. They provided a great opportunity for attendees to unwind and compare notes on sessions/speakers from earlier in the day. Dinner "captains" Sondra & Mike Bane and Robert Jacobs did a fantastic job organizing and hosting these events…thanks for a job very well done!

CLE / CPE

CLE & CPE accreditation (among others) was available. If you need CLE/CPE accreditation and have not yet received your CPE certificate or CLE approval notification (and/or certificate), please contact Dorcas Pearce right away at *dp-fma@starpower.net* or 202/544-6327.

Pre-Seminar Workshop

Matt Hardin *(Hardin Compliance Consulting LLC);* **Joy Aldridge** *(Compliance Counsel LLC); and* **Louis Dempsey** *(Renaissance Regulatory Services)* led an optional interactive pre-seminar workshop, "What Are the Nightmares Keeping You Awake at Night?", on Wednesday, April 26 from 8:30–10:45 am. This workshop presented a unique opportunity to network with other compliance and audit professionals and provided an interactive format to address the questions and concerns of the participants. A myriad of topics were discussed based on the needs and requests of the participants. This session was designed for persons new to the securities industry as well as seasoned compliance and audit personnel and provided an opportunity to get answers to specific questions about attendees' compliance and audit programs and for them to come away with new ideas and resources for making their jobs more manageable.

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

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Program Update *(continued from page 24)*

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

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2018 Securities Compliance Seminar

Save these dates: April 18 – 20, 2018!

FMA's 2018 **Securities Compliance Seminar** will take place at the **Sheraton Charlotte Hotel** in **Charlotte, North Carolina** next spring. 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 will begin work in the fall on program development. Contact Dorcas Pearce (*dp-fma@starpower.net* or 202/544-6327) to volunteer…as a committee member, a general session panelist, workshop facilitator or peer discussion leader…or to share topical and/or speaker suggestions. Please note…speakers receive a complimentary registration and are encouraged to attend as much of the seminar as possible.

FMA needs your input! A survey will be emailed in October asking for hot topic/best practice ideas and speaker recommendations…you may even choose to volunteer! Please email your thoughts to Dorcas Pearce by October 13.

CPE / CLE accreditation will be available, so be sure to budget for, and plan to attend, the 27th annual Securities Compliance Seminar next spring.

PHOTOS COURTESY OF CHARLOTTE CVB

Who's News

Barbara Alonso has joined Fox Rothschild LLP as a Partner in their Miami office where her practice will focus on corporate, securities and compliance matters. Previously, Barbara was a Partner at Squire Patton Boggs LLP.

Acting Director of the SEC's Division of Enforcement **Stephanie Avakian** and former federal prosecutor **Steven Peikin** have been named Co-Directors of the Division of Enforcement.

Arthur Baines has been promoted to Co-Leader/ Financial Economics Practice at Charles River Associates.

Gail Bernstein has joined the Investment Adviser Association as General Counsel. Gail was formerly Special Counsel in the Securities Group at WilmerHale.

Kara Novaco Brockmeyer, Chief of the SEC's Enforcement Division's Foreign Corrupt Practices Act Unit, left the agency in April. Since 2011, she led a national unit of 38 attorneys, accountants, and other specialists focusing on violations of the anti-bribery and accounting provisions of the federal securities laws.

Thomas J. Curry stepped down on May 5, 2017 as Comptroller of the Currency. Mr. Curry completed his five-year term on April 9, 2017, and plans to return home to Boston, Mass. Keith A. Noreika became Acting Comptroller of the Currency that same day. He was a partner at Simpson Thacher & Bartlett LLP and before that, a partner at Covington & Burling specializing in banking regulation.

Jeffrey Dinwoodie has joined the SEC as Senior Counsel to Chairman Jay Clayton. Previously, Jeff was as Associate in the Financial Institutions Group at Davis Polk & Wardwell LLP.

Colleen Fitzgerald has joined American Express Global Business Travel as Manager/Legal Affairs, General Counsel's Office. Colleen was formerly a Partner/Shareholder at GrayRobinson, P.A.

Marian Fowler has joined Kirkland & Ellis LLP as a Partner in the Investment Funds Group. Previously, Marian was a Senior Special Counsel in the SEC's Division of Investment Management.

Brian S. Fraser has joined Akerman LLP as a Partner in the firm's Litigation Practice Group. Mr. Fraser, formerly a litigation Partner at Richards Kibbe & Orbe LLP, represents high-profile hedge fund companies and investment banks in complex financial litigation with an emphasis on commodities, derivatives, securities, structured products, capital markets, and inter-shareholder disputes.

Jill Grenda has been promoted to Managing Director at Hardin Compliance Consulting LLC.

William H. Hinman has been named the new director of the SEC's Division of Corporation Finance. Mr. Hinman recently retired as a partner in the Silicon Valley office of Simpson Thacher & Bartlett LLP, where he was a recognized leader in advising public and private companies in corporate finance matters.

James McDonald has been appointed Director of the CFTC's Enforcement Division. Mr. McDonald, who was most recently a prosecutor in the Southern District of New York, brings to the agency a successful track record of pursuing white collar and other crimes.

Julian Nieto has joined Pioneer Wealth Management as a Portfolio Analyst. Previously, Julian was a Compliance Analyst at Banco Santander International.

Al Raymond has joined JPMorgan Chase as Executive Director - Consumer and Community Banking Privacy Lead. Previously, Al was Specialist Leader, Privacy and Data Protection at Deloitte & Touche, LLP.

Scott Schainost has been named OCC Deputy Comptroller for Midsize Bank Supervision and Troy Thornton OCC Deputy Comptroller for the Southern District.

Robert B. Stebbins has been named General Counsel of the SEC. The General Counsel is the chief legal officer of the agency, providing a variety of legal services to the Commission and staff. Previously, Mr. Stebbins practiced law at Willkie Farr & Gallagher LLP since 1993, first as an associate and beginning in 2001 as a partner.

Stephen Strombelline has joined Capital Forensics, Inc. as Managing Director. Previously, Steve was Head of Corporate Compliance & SVP at The Charles Schwab Corporation.