Market Solutions

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Market Solutions

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

FINANCIAL MARKETS ASSOCIATION

SEC Examinations: Comparing Exam Priorities to Results

by Jaqueline M. Hummel, IACCP®
Hardin Compliance Consulting

The SEC's Office of Compliance Inspections and Examinations ("OCIE") is upfront about the areas it will be testing during its examinations of investment advisers. In January, OCIE publishes its Examination Priorities for the National Examination Program ("NEP"). Every year there are new areas of focus, as well as the standard priorities such as conflicts of interest (e.g., dual registrants, compensation arrangements, allocation of investment opportunities, recommending higher-paying products or strategies), performance advertising, custody, supervision of branch offices, fraud detection, and fees charged to clients. Additionally, OCIE has expanded its examinations to review to cybersecurity controls, allocation of fees and expenses by private equity funds, protections for retirement investors, and sales practices for investment products that OCIE feels pose greater risks to retail investors, such as variable annuities, ETFs, illiquid or high risk alternative investment funds.

Advisers have a good idea what OCIE is looking for, but the more burning question for most is what does OCIE find? Post-Dodd Frank, OCIE has made a concerted effort to provide more information to registrants about its findings and concerns by issuing 26 Risk Alerts discussing deficiencies found during the examination process. One of most illuminating was a Risk Alert[1] published in February 2017, where OCIE identified the five most common compliance issues found during exams.

Not surprisingly, the big five deficiencies included problems with Custody Rule (Rule 206(4)-2) compliance, inaccurate and late regulatory filings, Code of Ethics rule (Rule 204A-1) violations, incomplete and inadequate recordkeeping (Rule 204-2), and violations of the Compliance Rule (Rule 206(4)-7).

To prepare for an exam, it is important to know where OCIE has found weaknesses. It is also helpful to understand how the general issues might play out during an actual SEC examination. Over the past six years, Hardin Compliance Consulting has been involved in at least 32 different SEC investment adviser examinations, with SEC branch offices in Philadelphia, Chicago, New York, Los Angeles and Washington, D.C. The purpose of this article is to provide an in-depth view of how the general categories of issues translate into specific deficiencies.

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Legislative/Regulatory Actions

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

In this issue, we address selected developments with regard to the Volcker Rule, cybersecurity, fintech, and updates from the CFPB.

Volcker Rule

Federal Banking Agencies Announce No-action Position on Certain Foreign Excluded Funds under the Volcker Rule

On July 21, 2017, the Board of Governors of the Federal Reserve System (the "Board"), the OCC, and the Federal Deposit Insurance Corporation (the "FDIC" and, together with the Board and the OCC, the "Banking Agencies") jointly released a Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (the "Statement"). Section 13 of the Bank Holding Company Act is commonly referred to as the "Volcker Rule."

In short, the Banking Agencies announced that they will not enforce the prohibitions and restrictions of the Volcker Rule with respect to the activities of certain "qualifying foreign excluded funds" controlled by "foreign banking entities" for a one-year period through July 21, 2018.

A "qualifying foreign excluded fund" means an entity that:

1. Is organized or established outside the United States, and whose ownership interests are offered and sold solely outside the United States;
2. Would be a covered fund were the entity organized or established in the United States, or is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;
3. Would not otherwise be a banking entity except by virtue of the foreign banking entity's acquisition or retention of an ownership interest in, or sponsorship of, the entity;
4. established and operates as part of a bona fide asset management business; and
5. Is not operated in a manner that enables the foreign banking entity to evade the requirements of the Volcker Rule.

For this no-action relief to apply, the foreign banking entity's investment in or sponsorship of the qualifying foreign excluded fund must meet the requirements under the exemption for covered funds activities solely outside the United States (i.e., the "SOTUS Exemption") as if the qualifying foreign excluded fund were a "covered fund." The SOTUS Exemption imposes certain geographic restrictions on fund activity to make sure that material fund activity and sponsorship take place solely outside of the United States.

The no-action relief announced by the Banking Agencies in the Statement is designed to provide a temporary solution while other action is considered, including possible amendment to the regulation and/or congressional action.

A copy of the Statement is available at: *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170721a1.pdf*. For our client alert discussing

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FMA Welcomes New Members!

Jennifer Archie	Latham & Watkins LLP
Seth Bender	HSBC
John Court	The Clearing House
Mykaila De Les Dernier	SEC
Matthew Foster	Pepper Hamilton LLP
Richard Foster	Financial Services Roundtable
Maureen Johansen	SEC

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The most common deficiencies cited during the exams fell into eight categories:

1. Custody Rule Violations
2. Form ADV and Disclosure Issues
3. Code of Ethics Rule Violations
4. Compliance Rule Issues
5. Fees and Billing Procedures
6. Advertising and Marketing Issues
7. Best Execution Concerns

Our experience is consistent, for the most part, with OCIE's findings. Mistakes will continue to be made as regulations get more complex and compliance burdens increase. Disclosures are a prime example. The Form ADV might include a statement that clients who terminate the advisory relationship will promptly receive pre-paid advisory fees, where in practice it takes a couple of months to determine that a client has terminated the relationship and process the refund. Another example can occur where the firm has a trading error policy that states that clients retain any gains that result as a correction of an error. The custodian, however, may deal with trade errors differently, and donate gains to charity. These are situations where aspirational policies do not reflect the operational realities.

"Advisers have a good idea what OCIE is looking for, but the more burning question for most is what does OCIE find?"

The more troubling aspect of our exam participation, however, is the way OCIE uses its examination findings to create new compliance obligations for advisers. This is especially true in areas like the Custody Rule and the Compliance Program Rule. With the custody rule, there seems to be a lot of confusion about what constitutes "custody" that could be alleviated by the Commission providing additional guidance under the rule itself. For example, in 2016, a number of examiners started citing advisers for failing to comply with the Custody Rule as a result of common arrangements between custodians and investment advisers that allow advisers to transfer funds among a client's accounts. Many custodians have provisions in their agreements with advisory clients that give investment advisers the authority to transfer funds between same-registered accounts at different custodians. In 2016, the SEC started examining these arrangements, and began citing advisers for failing to comply with the Custody Rule's "surprise examination" requirement.

In February 2017, the SEC issued a no-action letter[2] to the Investment Advisers Association (the "IAA No-Action Letter") clarifying the requirements, and custodians are working on changes to their operations and procedures to help advisers avoid having custody, per the SEC's requirements as set forth in the IAA No-Action letter.

Another example is OCIE's widespread findings of inadequacies in advisers' compliance programs in violation of Rule 206(4)-7. In a number of situations, the staff appears to be imposing a strict liability standard. The logic seems to be that since the firm did not discover a weakness in the compliance program, missed a deadline or failed to perform a required review, the program is inadequate. SEC staff does not discuss whether the policies and procedures were reasonable. Instead, the analysis is perfunctory - your firm did not catch the issue, therefore your program must be inadequate.

Aside from these bigger picture issues, one of the goals of this article is to provide some context to the general categories of issues. The following is a summary of more specific findings from examinations we've participated in over the past five years.

Custody Rule Violations

Common findings in the more recent exams reflected the SEC's concern with "Standing Letters of Authorization" ("SLOA"), requesting that advisers either (i) comply with the independent verification requirements of Rule 206(4)-2 for assets subject to the SLOAs or (ii) require specific client instruction before transferring any funds.

The SEC also cited advisers for failure to comply with the surprise examination requirements for situations of the Custody Rule where the adviser had user names and passwords to client's 401(k)

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accounts. Another common deficiency resulted from firms receiving checks from clients and then forwarding them to the appropriate custodian. The SEC had made it clear that the advisers that forward clients' funds and securities have custody.[3] The checks should have been returned to the client, per the Rule and per firm policy.

Form ADV and Disclosure Issues

The Form ADV is a constant source of deficiencies. Many of the following examples are based on a firm's specific business and operations, but may help advisers re-think their current disclosures.

1. Failure to include disclosures regarding the disadvantages of directed brokerage, as set forth in the Matter of Mark Bailey & Co[4]. The adviser should have disclosed in Form ADV Part 2A that directed brokerage arrangements can have a detrimental effect on the amount a client pays for commission, since the adviser does not negotiate commissions on directed trades, and is not in a position to negotiate commissions in bunched transactions for non-directed trades.
2. Inaccurate disclosure regarding reimbursement of prepaid fees. Form ADV stated that clients who terminate the advisory relationship will promptly receive pre-paid advisory fees. In practice, however, it took a couple of months to determine that a client has terminated the relationship and process the refund.
3. Failure to disclose conflict of interests.
   a. Affiliated broker dealer: Firm failed to disclose in Form ADV Part 2A that its affiliated broker dealer received a portion of the ticket charge for each trade. The SEC found that although clients were made aware that they paid a specific ticket charge, there should have been disclosure stating that a specific portion of that charge went to the affiliated broker-dealer.
   b. Firm used a broker dealer to execute transactions that also provided research on the securities. Firm had a conflict since it might otherwise have had to pay for that research.
4. Failure to disclose mark-ups/downs on fixed income transactions: Firm failed to disclose that there was an additional fee charged on fixed income securities transactions (the markup and/or mark down), and that the custodian charged an additional fee for "trading away."
5. Failure to disclose how gains were distributed as a result of a trading error. Adviser had a trade error policy that stated clients would get to keep any gains as a result of trading error corrections, however, the custodian had a different policy. The custodian actually donated gains to charity in these situations. SEC required the firm to disclose this practice in the Form ADV Part 2A.
6. Failure to accurately count assets under management. A number of firms were cited for counting non-discretionary assets as assets under management. The SEC stated that the non-discretionary assets count not be included in Regulatory Assets Under Management since the firm was not responsible for "arranging or effecting securities transactions" with respect to the accounts at issue.

Code of Ethics Rule Violations

Common violations cited include failure to enforce the firm's code of ethics, including:

- Failure to request quarterly transaction reports, initial and annual holdings reports;
- Failure to review personal securities transaction reporting;
- Failure to enforce the Code of Ethics by not taking action against Access Persons who fail to submit required reports or submit reports late;
- Failure to maintain records showing that personal securities transaction reports were reviewed as required under the Code;
- Failure to include definitions and deadlines specified in the Code of Ethics Rule[5] in the code itself;
- Failure to specify who is responsible for reviewing the Chief Compliance Officer's trading activity and personal securities transaction reports;
- Failure to update the "Access Persons" list in a timely manner;

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SEC Examinations...*Continued from Page 4*

- Failure to report material violations of the Code of Ethics to the mutual fund board; and
- Failure to disclose a relative in the securities industry, as required under the Firm's conflict of interest questionnaire.

Code of Ethics rule violations are one of the most common deficiencies cited by the SEC.

Compliance Rule Issues

This is another incredibly common deficiency noted by OCIE. These types of deficiencies are often very specific to the firm's business and operations. The lesson learned is to review the compliance manual critically, and engage all areas of the firm in the review process. The SEC does not grant any slack for firms that do not follow their policies and procedures, or fail to address the firm's core business activities. A few examples are included below.

A private equity firm was required to expand on its portfolio management procedures, including the investment selection process, the allocation of investment opportunities among the funds it advised, and due diligence reviews to ensure compliance with fund offering documents.

A firm that served ERISA clients was required to develop procedures for monitor its compliance with ERISA, including reporting gifts on DOL's Form LM-10.

Another firm had a fairly extensive compliance manual, but was cited for various failures to implement the policies and procedures, including those related to annual review of the compliance program, advertising and marketing procedures, oversight of solicitor arrangements, email review, trade reconciliation and best execution.

A firm that served retail clients using asset allocation models was cited for failure to develop portfolio management procedures addressing model creation and oversight, assignment of clients to models, and monitoring of client accounts to ensure that they are properly managed and assigned to an appropriate model. The staff also recommended that the firm adopt policies and procedures to regarding uninvested cash to set thresholds and document any deviations from such thresholds.

> *"To prepare for an exam, it is important to know where OCIE has found weaknesses."*

Fees and Billing Procedures

The SEC is laser focused on fee billing. As discussed in some of the previous sections, SEC examiners are going to closely scrutinize the process for valuing assets, billing clients and providing refunds. Examples of deficiencies in this area include:

- Failure to include in the compliance manual the processes used to value client holdings and assess fees based on those valuations;
- Failure to refund prepaid fees promptly as promised in Form ADV; and
- Failure to verify whether disclosures related to fees are accurate, such as the statement that the highest asset-based fee tier is X.X% without confirming that this is true.

The SEC always asks about the process for valuing assets in order to determine what to bill clients, so make sure that the firm has policies and procedures describing this process.

Advertising and Marketing Issues

The staff's War on Adjectives continues. Here are a few examples from actual exams:

1. Firm cited for using a third-party ranking because it failed to disclose the criteria on which the rating was based, the category for which the rating was calculated, the number of advisers surveyed in that category and the percentage of advisers that received the rating or designation, and for failing to state that ranking is not indicative of future performance.
2. Firm cited for claiming a third-party, independent certification, because it failed to provide meaningful disclosures about the minimum qualifications for the certification and more specifics about the "best practices" used by the third party.

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SEC Examinations... *Continued from Page 5*

3. SEC staff extended the requirements of the testimonial rule in a situation where an adviser had included industry references for its employees.
4. SEC staff objected to the following adjectives used in adviser marketing materials: "leading advisors", "deep and extensive" experience, and "best in class."

Best Execution Concerns

For advisers dealing with retail clients, SEC staff is going to look closely at how the firm determines the appropriate share class when purchasing mutual funds for its clients. There should be a process for selecting the appropriate share classes for the client, and testing after-the-fact to ensure that the right share classes are in client accounts.

Another issue cited by SEC staff is the requirement to perform periodic due diligence on custodians that provide execution services. For example, a retail adviser was cited for failing to negotiate commission transaction rates since the relationship with its custodian was entered into a number of years ago. SEC staff expects advisers to conduct periodic due diligence of other service providers to ensure that the fees being paid are competitive.

> *"The more troubling aspect of our exam participation, however, is the way OCIE uses its examination findings to create new compliance obligations for advisers."*

Lessons Learned

Hopefully the examples provided can give you some insight into what an SEC examiner might look for at your firm. The best strategy to deal with an SEC exam is to be prepared. Review the firm's compliance manual critically, and make sure that all areas of the firm have read the procedures that apply to their duties. Make sure the manual does not contain any promises that cannot be kept or policies that are not being followed. The same goes for the Form ADV. Have other members of the firm read it and confirm its accuracy.

It is important to be truthful with the SEC. In preparing for an exam, many firms discover problems. Generally it's best to discuss your findings with the SEC, along with a proposal for addressing the issue. By being upfront, you will establish credibility with the staff. This is important because if the SEC believes you are being open and honest, they will be more willing to work with you on a solution.

Be prepared for the staff to find deficiencies. Although we have seen a few situations where an adviser received a "no deficiency" letter, this is not the norm. Prepare firm management by providing updates regarding exam progress, especially areas where the staff is taking a deeper dive. This usually signals potential issues.

When responding to a deficiency letter, address the SEC's findings point by point. It is good practice to copy the issue cited directly from the SEC's letter, and include the firm response. Provide specifics so the staff understands that the firm has a plan to address the issue. If an issue cannot be resolved quickly, include a timeline outlining the steps being taken and the expected completion date. Finally, keep track of promises made to the SEC. Firms with more significant deficiencies generally experience a follow up examination within two years. ■

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[1] *See https://www.sec.gov/ocie/Article/risk-alert-5-most-frequent-ia-compliance-topics.pdf*
[2] *See https://www.sec.gov/divisions/investment/noaction/2017/investment-adviser-association-022117-206-4.htm*
[3] *See Final Rule: Custody of Funds of Securities of Clients by Investment Advisers at https://www.sec.gov/rules/final/ia-2176.htm.*
[4] *See https://www.sec.gov/litigation/admin/ia-1105.pdf*
[5] *See Rule 204A-1 at https://www.law.cornell.edu/cfr/text/17/275.204A-1.*

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the Statement, please see: *https://media2.mofo.com/documents/170724-federal-agencies-foreign-funds-volcker.pdf.*

OCC Seeks Public Comment on the Volcker Rule

On August 7, 2017, the OCC published in the Federal Register a notice requesting public comment on how the regulations implementing Section 13 of the Bank Holding Company Act of 1956, i.e., the Volcker Rule, should be revised to better accomplish the purposes of the Volcker Rule while decreasing the compliance burden on banking entities and fostering economic growth (the "Notice"). The Notice also requests input concerning "how the existing rule could be implemented more effectively without revising the regulation." Comments must be submitted by September 21, 2017.

The OCC is seeking public input on all aspects of the Volcker Rule, but specifically requested comment on four topics: the scope of entities subject to the Volcker Rule; the proprietary trading prohibition; the covered funds prohibition; and the compliance program and metric reporting requirements. The following is a more detailed description of the comments sought by the OCC.

Specific Comments Sought on the Scope of the Volcker Rule

The Notice solicits input on, among other things: (i) evidence that the scope of entities subject to the Volcker Rule is too broad; (ii) suggestions on revisions to the Volcker Rule to narrow its application and reduce any unnecessary compliance burden; and (iii) ways to carve out foreign excluded funds controlled by banking entities from the Volcker Rule's restrictions.

Specific Comments Sought on the Proprietary Trading Restrictions

The Notice solicits input on, among other things: (i) whether the rebuttable presumption that trading a financial instrument is for a trading account if the banking entity holds the financial instrument for fewer than 60 days, or substantially transfers the risk within that period, should be revised or eliminated or replaced with a reverse presumption; (ii) whether additional activities should be permitted under the proprietary trading provisions; and (iii) ways to simplify and streamline the existing exclusions and exemptions.

Specific Comments Sought on the Covered Funds Provisions

The Notice solicits input on, among other things: (i) whether the covered fund definition is too broad; (ii) ways to narrow the covered fund definition; (iii) information regarding the effectiveness of the Super 23A provision; and (iv) whether there are any categories of transactions and relationships that should be permitted under the Super 23A provision.

Specific Comments Sought on the Compliance Program Requirements

The Notice solicits input on, among other things: (i) evidence that the compliance program and metrics reporting requirements present a disproportionate or undue burden on banking entities; (ii) ways to revise the implementing regulations to reduce the burden associated with the compliance program and reporting requirements; and (iii) whether there are categories of entities for which compliance program requirements should be reduced or eliminated.

A copy of the Notice as published in the *Federal Register* is available here: *https://www.gpo.gov/fdsys/pkg/FR-2017-08-07/pdf/2017-16556.pdf.* For our client alert discussing the Notice, please see: *https://media2.mofo.com/documents/170803-occ-volcker-rule.pdf.*

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FMA Welcomes *More* New Members!

Margaret Liu	Conference of State Bank Supervisors
Will Mack	Greenberg Traurig, LLP
Annette Nazareth	Davis Polk & Wardwell LLP
Malcolm Rowe	PricewaterhouseCoopers LLP
Debra Stone	J.P. Morgan Chase & Co.
Trevor Wagener	NERA Economic Consulting
George Wilder	CFTC
Carol Wooding	National Futures Association

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Cybersecurity

New York Cybersecurity Requirements Begin to Go into Effect

On August 28, 2017, the first transitional period for the New York Department of Financial Institutions ("NYDFS") cybersecurity rule (the "Rule") ended. Covered entities are now expected to satisfy a number of requirements established by the Rule, including those relating to the implementation of a cybersecurity program and cybersecurity policy, as well as to the designation of a chief information security officer.

The next deadline for the Rule is September 27, 2017. Covered entities that have determined that they qualify for a limited exemption under 23 N.Y.C.R.R. 500.19(a)-(d) are required to file a notice of exemption with NYDFS on or before this date.

For more information about the Rule's requirements and the transitional compliance deadlines, please see our previous Client Alert at *https://media2.mofo.com/documents/170323-ny-cybersecurity-regulations.pdf*. In addition, you can visit the NYDFS website at *http://www.dfs.ny.gov/about/cybersecurity.htm* for more information about the Rule, including FAQs on the Rule provided by NYDFS.

Fintech

Acting Comptroller Endorses Fintech Charters

In July 19, 2017 remarks prepared for delivery to the Exchequer Club in Washington, D.C., Acting Comptroller of the Currency Keith Noreika expressed his support for the OCC's efforts to establish national bank charters for financial technology ("fintech") companies. In endorsing the OCC's so-called fintech charter, he noted that the business of banking has evolved, and stated that the OCC's approach to innovation brings fintech companies "out of the shadows and into a well-established supervisory and regulatory regime that will promote their safety and soundness." Our respective client alert is available at *https://media2.mofo.com/documents/170720-comptroller-fintech-charters.pdf*.

CFPB Update

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, which was first introduced by Committee Chairman Jeb Hensarling (R-Texas) in 2016, was reintroduced on April 19, 2017, into a markedly different political landscape from that of the original and now moves to the U.S. Senate where it faces an uphill battle. The supermajority voting requirement for legislation in the Senate could result in significant changes because the legislation cannot pass Congress without the support of at least some Democrats. It is also anticipated that the Trump administration will begin to weigh in on financial regulatory reform before a final bill is enacted. The CHOICE Act, as currently drafted, would repeal and make fundamental changes to many components of the Dodd-Frank Act.

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Directory

FMA will distribute the **2017 Membership Directory soon.** The Directory will include each member's full name, accreditation(s), title/department, mailing address (including floor/suite # or mail sort/code), phone number, cell number (if used for business), email and firm web site (if provided).

Supplementary sections will include a calendar of upcoming FMA events and a listing of various regulatory contacts.

Members were emailed early in August and given 72 hours to correct their information on file and/or provide missing data. A "last chance" email went out on September 11 to non-responders with an immediate response request. If you missed this extension, there's still a limited window of opportunity—respond ASAP by email (*dp-fma@starpower.net* – easiest!) or phone (202/544-6327).

FMA wants your directory to be as accurate as possible...so be sure to submit your information right away.

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For our client alerts on the CHOICE Act, please visit: *https://media2.mofo.com/documents/170609-financial-choice-act.pdf, https://media2.mofo.com/documents/170427-financial-choice-act-of-2017.pdf, and https://media2.mofo.com/documents/161121-whither-the-bureau.pdf.*

CFPB Proposes Changes to Prepaid Accounts Rule

On June 15, 2017, the CFPB proposed revisions to its final Prepaid Accounts Rule, which was published in November 2016 ("Final Rule"). The CFPB also delayed the general effective date. In response to input from industry participants, the CFPB has proposed revisions with respect to error resolution on unverified accounts, exempting credit card accounts that are already subject to Regulation Z from hybrid prepaid-credit card provisions of the final rule that may otherwise apply to digital wallets, and the exclusion of loyalty, award and promotional cards from the Final Rule. The revisions also cover unsolicited issuance provisions, changes to the short-form and long-form disclosure requirements, and the requirement to submit prepaid account agreements to the CFPB. In addition, the CFPB requested comment on whether an additional extension of the effective date is necessary and appropriate in light of the specific proposed revisions. The CFPB also requested comment on whether there are any conflicts between the Final Rule and existing regulations governing prepaid accounts and, to the extent such a conflict exists, whether a safe harbor for early compliance is necessary and appropriate.

For our client alert on the revisions to the Prepaid Accounts Rule, please visit: *https://media2.mofo.com/documents/170619-cfpb-prepaid-accounts-rule.pdf.*

CFPB Issues Final Arbitration Rule

On July 10, 2017, the CFPB issued a final rule regarding the use of arbitration agreements in specified consumer financial contracts ("Final Arbitration Rule"); it was published in the Federal Register on July 19, 2017. The Final Arbitration Rule covers a broad range of consumer financial contracts governing lending money, moving money, storing money, or transferring money.

The Final Arbitration Rule bars class action waivers and imposes reporting requirements for individual arbitrations conducted pursuant to pre-dispute arbitration agreements. For example, for each filed arbitration, covered entities that include pre-dispute arbitration agreements in their contracts must submit to the CFPB details regarding claims, counterclaims, the pre-dispute arbitration agreement and the details of any awards. In addition, all arbitration agreements in contracts of covered providers are required to contain the following language: "We agree that neither we nor anyone else will rely on this agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action filed by someone else."

Barring a successful court challenge or invocation of the CRA, the Final Arbitration Rule's effective date is September 18, 2017, but the rule only applies to those agreements entered into on or after March 19, 2018.

For our client alert on the Final Arbitration Rule, please visit: *https://media2.mofo.com/documents/170717-cfpb-arbitration-rule.pdf.*

ECOA Action Demonstrate CFPB's Concerns for Consumers in U.S. Territories

On August 23, 2017, the CFPB announced that it had resolved an administrative action against two credit card issuers: American Express Centurion Bank and American Express Bank, FSB. The CFPB alleged that these issuers had violated the Equal Credit Opportunity Act and its implementing regulation, Regulation B (collectively, "ECOA") in two ways. First, the CFPB alleged that the issuers had differences in their products and services for consumers residing in U.S. territories that were less favorable than those provided for consumers residing

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in U.S. states. Second, consumers who had expressed a preference for Spanish language communications were not provided with offers and programs comparable to the offers and programs made available to cardholders without Spanish language preferences. Specifically, the CFPB identified statistical discrepancies between cards offered in Puerto Rico and the U.S. Virgin Islands with respect to (i) pricing, rebates, and promotions; (ii) underwriting and credit line assignment; (iii) customer service and account management; and (iv) debt collection and mitigation.

This administrative action is a reminder that the application of U.S. consumer financial laws and regulations and the jurisdiction of U.S. financial regulators are not limited to the 50 U.S. states and the District of Columbia. Territories outside the states may be particularly prone to fair lending concerns, as U.S. census data shows that Puerto Rico's population is 99% of either Hispanic or Latino origin, while the U.S. Virgin Islands' population is 76% black or African-American, and the Pacific Territories have a majority population of Asian Pacific Islanders. Though precise theories of liability were not articulated in the Consent Order evidencing the settlement of the administrative action, the CFPB appeared to build its ECOA allegations upon both disparate treatment and disparate impact theories.

Nevertheless, the CFPB made positive note of the issuers' cooperation with the CFPB's investigation, self-reporting, and voluntary provision of approximately $95 million in remediation to affected consumers. The action was resolved through monetary redress to affected consumers and planned enhancements the issuers' compliance management systems to better control the risk of similar fair lending violations in the future. In light of the issuers' cooperation, self-reporting, and voluntary remediation, the CFPB did not levy a civil money penalty or lodge allegations of unfair, deceptive, or abusive acts and practices.

For our client alert on the administrative action, please visit: *https://media2.mofo.com/documents/170831-cfpb-ecoa-action.pdf.*

Federal Court Dismisses CFPB Case Against Payment Processor

On August 25, 2017, the United States District Court for the Northern District of Georgia dismissed the CFPB's complaint against several payment processors as part of discover sanctions following the CFPB's conduct during discovery. Specifically, the court dismissed the case because it found that, in court-ordered depositions under Rule 30(b)(6) of the Federal Rules of Civil Procedure, the CFPB imposed what the court found to be improper objections as to matters of fact as opposed to privileged materials and attempted to bury opposing counsel in copious information to obscure its answers to questions. The defendants maintained that the CFPB did not sufficiently allege facts to show a violation of the Consumer Financial Protection Act ("CFPA"). The court held that the CFPB's actions demonstrated a willful disregard of the court's instructions. Notably, the outcome in this case depended on a specific procedural posture that may be difficult for future litigants to achieve and use to their benefit. However, this approach and other recent attempts to push against the CFPB in discovery and in motions to dismiss to hold the CFPB accountable to detail the substantive bases for its demands and claims signify a change in litigation against the CFPB.

For our client alert on the decision, please visit: *https://media2.mofo.com/documents/170830-cfpb-case-dismissed.pdf.* ■

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

Watch For

CFTC

CFTC Press Release 7600-17 (August 10, 2017) – The CFTC's Division of Market Oversight granted relief to market participants in complying with certain position aggregation requirements. This relief is being provided until August 12, 2019. Previous relief was set to expire on August 14, 2017. During the period of the time-limited no-action relief issued this day, DMO will not recommend that the CFTC take enforcement action for a market participant's failure to comply with certain position aggregation requirements under CFTC Regulation 150.4, provided the market participant complies with the terms of the relief.

CFTC Press Release 7599-17 (August 7, 2017) – At the request of CME Clearing Europe Ltd., the U.S. CFTC issued an order that vacates the registration of CMECE as a derivatives clearing organization effective August 8, 2017. The CFTC registered CMECE as a DCO by order dated November 29, 2016. On May 10, 2017, CMECE requested that the CFTC vacate its registration. With CMECE's vacation of its registration order, there are now 16 DCOs that are registered with the CFTC, including six that are based outside of the United States.

CFTC Press Release 7585-17 (July 10, 2017) – The CFTC's Division of Market Oversight announced it is launching a comprehensive review of the swap data reporting regulations found in Parts 43, 45, and 49 of the CFTC's Regulations. As part of this review, the Division has opened a 40-day comment period to solicit input on this effort from all entities involved in swaps reporting. Comments must be received by August 21, 2017.

Federal Reserve Board

Federal Reserve Press Release (September 1, 2017) – The Federal Reserve Board adopted a final rule to enhance financial stability by requiring U.S. global systemically important banking institutions and the U.S. operations of foreign GSIBs to amend qualified financial contracts to prevent their immediate cancellation or termination if the firm enters bankruptcy or a resolution process. GSIBs may comply with the final rule by using the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol or a similar resolution stay protocol described in the final regulation to amend their QFCs. Compliance will phase in beginning on January 1, 2019.

Federal Reserve Press Release (August 22, 2017) – In preparation for a forthcoming proposal that would simplify regulatory capital requirements, federal banking regulators proposed a rule that would extend the existing transitional capital treatment for certain regulatory capital deductions and risk weights. The extension would apply to banking organizations that are not subject to the agencies' advanced approaches capital rules.

Federal Reserve Press Release (July 24, 2017) – The Federal Reserve Board announced guidelines for banking entities seeking an extension to conform certain "seeding" investments in hedge funds or private equity funds ("covered funds") to the requirements of section 619 of the Dodd-Frank Act (the Volcker Rule). Seeding refers to the period during which a banking entity provides a new fund with initial equity to permit the fund to attract investors.

Federal Reserve Press Release (July 5, 2017) – The Federal Reserve Board and the FDIC posted the public portions of annual resolution plans (living wills) for eight large financial firms. Also, they announced that American International Group, Inc., and Prudential Financial, Inc., will be required to submit their next resolution plans by December 31, 2018. Previously, the firms were required to submit their next plans by December 31, 2017. The extensions will allow the firms time to incorporate any guidance from the agencies into their next resolution plans.

Federal Reserve Press Release (June 29, 2017) – The Federal Reserve Board released its annual determination of the aggregate consolidated liabilities of financial companies as required by section 622 of the Dodd-Frank Act. The act prohibits a financial company from combining with another company if the resulting company's liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies.

FINRA

FINRA Regulatory Notice 17-26 (August 24, 2017) – FINRA has adopted a new electronic Form 211 for purposes of compliance with FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11). Firms must begin using the electronic Form 211 in place of the current paper form beginning on October 23, 2017, but may voluntarily begin using the electronic Form 211 beginning on September 11, 2017.

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Watch For *(Continued from page 11)*

FINRA Regulatory Notice 17-25 (August 18, 2017) – The SEC approved amendments to FINRA customer and industry arbitration rules to provide that the Director of FINRA's Office of Dispute Resolution will send lists of arbitrators to all parties at the same time, within approximately 30 days after the last answer is due, regardless of the parties' agreement to extend any answer due date. The amendments are effective for cases filed on or after September 18, 2017.

FINRA Regulatory Notice 17-24 (July 12, 2017) – FINRA is issuing this Notice to announce publication on its website of Frequently Asked Questions relating to enhanced confirmation disclosure requirements for corporate and agency debt securities pursuant to FINRA Rule 2232. The new requirements are scheduled to take effect May 14, 2018.

FINRA Regulatory Notice 17-23 (July 11, 2017) – Effective October 2, 2017, FINRA is reducing the delay period applicable to Historic TRACE Data for corporate bonds and agency debt, including Rule 144A transactions in such securities, from 18 months to six months. The text of the amendments is available in the online FINRA Manual.

MSRB

MSRB Press Release (September 13, 2017) – The MSRB published a concept proposal to solicit input from market participants on potential updates to MSRB rules on primary offering practices. Comments on the concept proposal should be submitted no later than November 13, 2017.

MSRB Press Release (September 13, 2017) – The MSRB published a market advisory to increase awareness among issuers of the importance of disclosing material information fairly, equitably and in the public domain. The practice of "selective disclosure" creates an information imbalance that favors a limited group of bondholders, which may include analysts for investment banking firms, investment advisers or institutional investors, who are given access to material information that others do not have.

MSRB Press Release (September 7, 2017) – The MSRB unveiled market-wide trading statistics on its EMMA that have not previously been publicly available. The new data include a daily state-by-state view of municipal bond trading activity and the most actively traded municipal securities and bond issuers.

September 5, 2017 – As of September 5, 2017, the length of the settlement cycle for municipal securities transactions—the time it takes to transfer the securities to the buyer's account and the cash to the seller's account—is shortened to a maximum of two business days from the date of the transaction. This "T+2" settlement cycle applies to municipal bonds and corporate and equity securities.

August 30, 2017 – The MSRB filed with the SEC proposed amendments to MSRB Rule G-34, on obtaining CUSIP numbers, which aim to clarify existing requirements and improve market consistency. If approved, the rule would codify the MSRB's longstanding interpretation that municipal securities dealers are required to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases. Additionally, if approved, non-dealer municipal advisors advising on competitive offerings would be required, like dealer municipal advisors under the current rule, to apply for CUSIP numbers. The proposed amendments take into consideration feedback received from the industry and public in response to two requests for comment in March 2017 and June 2017. The MSRB's proposal includes a principles-based exception from the requirement to obtain CUSIP numbers for direct purchases of municipal securities by banks – as well as their non-dealer control affiliates – that are intended to be held to maturity.

MSRB Press Release (August 22, 2017) – The MSRB is seeking comment on a draft plan to refine data elements the MSRB collects relating to the investment options offered in 529 college savings plans and ABLE programs. Comments on the MSRB's draft changes to Form G-45 should be submitted no later than September 21, 2017.

MSRB Press Release (August 21, 2017) – The MSRB received approval from the SEC on Friday, August 18, 2017 to amend MSRB Rule G-21(e), on municipal fund security product advertisements by municipal securities dealers. The amendments will be effective on November 18, 2017. The approved amendments reflect changes to SEC rules governing money market fund advertisements and improve regulatory consistency of disclosure requirements for those municipal fund securities that invest in money market funds.

MSRB Press Release (July 31, 2017) – The MSRB received approval from the SEC to amend MSRB Rule G-26, on customer account transfers, to modernize the rule and promote a uniform customer account transfer

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Watch For *(Continued from page 12)*

standard for all municipal securities dealers. The amendments will be effective on January 29, 2018.

MSRB Notice 2017-14 (July 27, 2017) – The MSRB published a market advisory addressing the practice of municipal securities issuers designating the counsel of their underwriters, or influencing the underwriter's selection of counsel.

MSRB Press Release (July 24, 2017) – The MSRB announced that a free municipal market yield curve and multiple indices are available on the MSRB's EMMA website. The new tools can help investors and others assess the general level and direction of municipal bond interest rates, and compare relative yields of specific municipal securities.

July 19, 2017 – The MSRB filed with the SEC amendments to MSRB Rule A-13, on underwriting and transaction assessments for brokers, dealers and municipal securities dealers, to assess a new annual fee on dealers acting as underwriters to 529 college savings plans. The amendments are effective immediately. The new fee is based on a percentage of total aggregate plan assets as of December 31 each year, as required to be reported by an underwriter on MSRB Form G-45. The MSRB will invoice for the new underwriting fee beginning in May 2018.

MSRB Press Release (July 14, 2017) – The United States Court of Appeals for the Sixth Circuit dismissed a legal challenge filed last year against the MSRB and the SEC to recent amendments to the MSRB's pay-to-play rule, MSRB Rule G-37, which extended the rule to cover municipal advisors.

MSRB Notice 2017-13 (July 13, 2017) – To facilitate compliance with its Rule G-42, on duties of non-solicitor municipal advisors, the MSRB provided interpretive guidance addressing the applicability of the rule in several scenarios that may arise in connection with the issuance of municipal securities for a conduit borrower. The MSRB's guidance discusses a municipal advisor's relationship(s) with, and duties and obligations owed to, a municipal entity issuer, an obligated person that is a conduit borrower, or both, in these scenarios.

MSRB Press Release (July 12, 2017) – In advance of the May 2018 implementation of new regulations that enhance the transparency of costs associated with municipal securities transactions for retail investors, the MSRB is providing guidance to assist municipal securities dealers in preparing to comply. Amendments to MSRB Rule G-15 require dealers to disclose additional information on retail customer confirmations for a specified class of principal transactions, including the dealer's mark-up or mark-down as determined from the prevailing market price of the security. The guidance, provided in a clear question-and-answer format, addresses the new confirmation disclosure requirements, determination of the prevailing market price and disclosure to customers of the time of execution of trades and link to more security information on the EMMA website. The mark-up disclosure requirements were approved by the SEC on November 29, 2016 and take effect on May 14, 2018, affording dealers approximately 18 months from the adoption of the amendments to develop appropriate processes and systems.

OCC

OCC Bulletin 2017-27 (August 14, 2017) – The FRB, FDIC and OCC issued interagency guidance on the regulatory capital treatment of certain centrally cleared derivative contracts in light of recent changes to the rulebooks of certain central counterparties. The variation margin for certain centrally cleared derivative contracts and netting sets of centrally cleared derivative contracts is considered a settlement payment for the exposure that arises from marking the cleared derivative contracts to fair value (settled-to-market contracts).

OCC News Release 2017-89 (August 2, 2017) – The OCC is seeking public input on revising the final regulation implementing section 619 of the Dodd–Frank Act of 2010 (commonly known as the Volcker Rule). The agency sent to the *Federal Register* for publication a notice that solicits public input on whether certain aspects of the implementing regulation should be revised to better accomplish the purposes of section 619 while decreasing the compliance burden on banking entities and fostering economic growth. In particular, the OCC invites input on ways to tailor the rule's requirements and clarify key provisions that define prohibited and permissible activities. The agency also seeks input on how the federal regulatory agencies could implement the existing rule more effectively without revising the regulation. The public is invited to provide supporting data that can inform specific changes to the regulation, and help assess the effectiveness of implementation efforts to date. The OCC requests that respondents provide any comments within 45 days of publication in the *Federal Register.*

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Watch For *(Continued from page 13)*

SEC

SEC Press Release 2017-131 (July 25, 2017) – The SEC issued an investigative report cautioning market participants that offers and sales of digital assets by "virtual" organizations are subject to the requirements of the federal securities laws. Such offers and sales, conducted by organizations using distributed ledger or blockchain technology, have been referred to, among other things, as "Initial Coin Offerings" or "Token Sales." Whether a particular investment transaction involves the offer or sale of a security – regardless of the terminology or technology used – will depend on the facts and circumstances, including the economic realities of the transaction.

SEC Press Release 2017-128 (July 21, 2017) – Five federal financial regulatory agencies announced that they are coordinating their respective reviews of the treatment of certain foreign funds under section 619 of the Dodd-Frank Act, commonly known as the Volcker Rule, and the agencies' implementing regulations. The staff of the agencies are considering ways in which the implementing regulations may be amended, or other appropriate action may be taken. It may also be the case that congressional action is necessary to fully address the issue. To aid full consideration, the federal banking regulators, which generally oversee foreign banks, announced that they would not take action under section 619 for qualifying foreign excluded funds, subject to certain conditions, for a period of one year.

SEC Press Release 2017-121 (June 29, 2017) – The SEC announced that the Division of Corporation Finance will permit all companies to submit draft registration statements relating to initial public offerings for review on a non-public basis. This process will be available for IPOs as well as most offerings made in the first year after a company has entered the public reporting system. It will take effect on July 10, 2017.

Available Publications

Federal Reserve Press Release (September 6, 2017) – The Federal Reserve published Strategies for Improving the U.S. Payment System: Federal Reserve Next Steps in the Payments Improvement Journey, a paper identifying updated tactics it will pursue to help improve the speed, safety and efficiency of the U.S. payment system. The paper is a follow up to the Fed's strategic vision, Strategies for Improving the U.S. Payment System, published in January of 2015, which called for the commitment of all payment industry stakeholders to achieve five desired outcomes focused on speed, security, efficiency, international payments, and collaboration. It presents refreshed strategies and nine new tactics the Federal Reserve will employ, in collaboration with payment system stakeholders, to help achieve payment system improvements. In addition to the tactics described in this paper, the Federal Reserve will continue working to enhance its existing services and to advance ongoing initiatives.

OCC Bulletin 2017-30 (August 23, 2017) – The OCC issued the "Substantial Asset Changes, Including Changes in Charter Purpose" booklet of the Comptroller's Licensing Manual. This is a new booklet incorporating procedures and requirements after the Office of Thrift Supervision's integration into the OCC in 2011 and the issuance of revised regulations (under 12 CFR 5) that became effective April 1, 2017. The revised regulations address substantial changes in assets and changes in charter purpose for national banks and federal savings associations.

OCC News Release 2017-91 (August 15, 2017) – The OCC released an update to the Bank Accounting Advisory Series. The BAAS covers a variety of topics and promotes consistent application of accounting standards among national banks and federal savings associations. This edition of the BAAS reflects accounting standards issued by the Financial Accounting Standards Board on topics such as the recognition and measurement of financial instruments, leases, and revenue recognition. Additionally, this edition includes recent answers to frequently asked questions from the industry and examiners. The OCC updates the BAAS annually.

OCC Bulletin 2017-26 (August 3, 2017) – The OCC issued the "Failure Acquisitions" booklet of the Comptroller's Licensing Manual. This revised booklet replaces the "Failure Acquisitions" booklet issued in April 1998. The booklet sets forth the OCC's policies and procedures for national banks and federal savings associations seeking to participate in the FDIC's process for resolving a failing insured depository institution.

June 29, 2017 – The MSRB is providing a Compliance Advisory for Municipal Advisors to aid municipal advisor firms with understanding recently implemented MSRB rules and identifying potential compliance risks. The advisory addresses applicable MSRB rules implemented since the publication of the MSRB's first compliance advisory for municipal advisors. This updated advisory describes factors a municipal advisor firm should consider when evaluating the effectiveness of its compliance controls and the need to implement measures to mitigate its exposure to compliance risks. The next annual Compliance Advisory for Municipal Advisors, as well as one for municipal securities dealers, will be published in early 2018.

Program Update

2017 Legal and Legislative Issues Conference

Register today! FMA's 26th **Legal & Legislative Conference** will 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. Participants are provided with a unique opportunity to share information on current legal and regulatory developments as well as network with peers and regulators in an intimate environment. And, **attendees are eligible for CLE and CPE accreditation (among others).**

The program planning committee has devised a timely agenda including noted industry leaders and senior regulatory officials. 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 agenda, focusing on current areas of regulatory and Congressional activity/scrutiny, includes these sessions and confirmed speakers:

Banking General Counsel

- Stuart Feldstein ■ OCC
- Laurie Schaffer ■ FRB
- Charles Yi ■ FDIC

Legislative Update

- Speakers to be Announced

Recent Developments in BSA/AML/OFAC Regulation and Enforcement

- Frank Boudra ■ U.S. Department of the Treasury
- Malcolm Rowe ■ PricewaterhouseCoopers LLP

Regulatory Reform and the Treasury Studies

- John Court ■ The Clearing House
- Bimal Patel ■ U.S. Department of the Treasury

2-for-1, first-timer, and regulatory/ government/SRO registration discounts are available.

- Laurie Schaffer ■ FRB
- Debra Stone ■ J.P. Morgan Chase & Co.

Derivatives: The Current Regulatory Landscape

- Seth Bender ■ HSBC
- Dr. Sharon Brown-Hruska ■ NERA Economic Consulting
- Amir Zaidi ■ CFTC

Fintech: Do New Technologies Require New Regulatory Approaches?

- Richard Foster ■ Financial Services Roundtable
- Margaret Liu ■ Conference of State Bank Supervisors

Securities General Counsel

- Robert Colby ■ FINRA
- Daniel Davis ■ CFTC
- Marie-Louise Huth ■ SEC
- Carol Wooding ■ National Futures Association
- Sharon Zackula ■ MSRB

SEC Division Reports

- Peter Driscoll ■ OCIE
- Melissa Hodgman ■ Enforcement
- Dietrich King ■ Corporation Finance
- Joanne Rutkowski ■ Trading and Markets
- Douglas Scheidt ■ Investment Management

Understanding and Managing Your Evolving Cybersecurity Risks—The State of Play

- Jennifer Archie ■ Latham & Watkins LLP
- David Glockner ■ SEC
- Kristofer Swanson ■ Charles River Associates

To view the complete program, go to *www.fmaweb.org* and click on the pdf. Online registration is also available.

Please alert your colleagues to this annual fall conference (someone may need CLE or CPE by year-end). And, contact Dorcas Pearce (*dp-fma@starpower.net* or 202/544-6327) if you have questions or wish to register.

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Program Update *(continued from page 15)*

FMA's room block at the Hyatt Regency expires September 29. If there's a chance you might need overnight accommodation, please contact the hotel before that date to book a room at FMA's group rate of $289. After September 29, room rates may increase dramatically or even become unavailable. If the hotel is sold out, FMA has a few rooms in reserve that will be given out on a first-come, first-served basis. Contact Dorcas Pearce right away if you need assistance.

FMA gratefully acknowledges these sponsors of FMA's 2017 Legal and Legislative Issues Conference

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2018 Securities Compliance Seminar

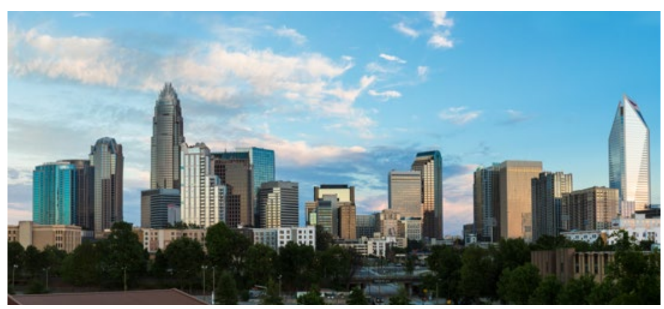
Save these dates: April 18 – 20, 2018!

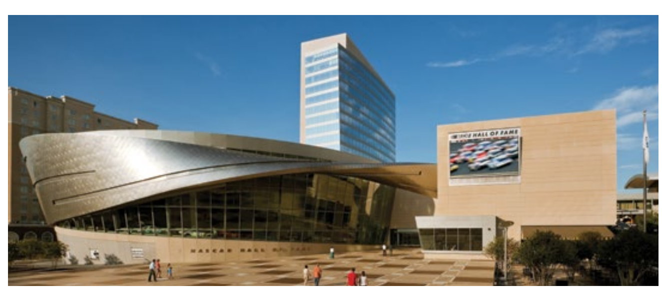
FMA's 2018 Securities Compliance Seminar will take place at the **Sheraton Charlotte Hotel** in **Charlotte, North Carolina** next spring. This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators.

The Planning Committee will soon begin work 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 shortly asking for hot topic/best practice ideas and speaker recommendations…*you may even choose to volunteer! Please email your suggestions to Dorcas Pearce by October 10.*

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





Photos courtesy of Charlottesgotalot

Who's News

Bob Axelrod has formed his own company, Robert M. Axelrod Consulting. Formerly, Bob was a Managing Director at Deloitte.

Alexandra Steinberg Barrage has been promoted to Associate Director, Resolution Strategy & Policy Analysis Branch at the FDIC.

Nicholas Benvenuto has joined CPE Interactive, Inc. as a Senior Fellow in their New York City office. Previously, Nick was Global IT & Change Audit Director at Old Mutual Group in London.

Dalia Blass has been named Director of the SEC's Division of Investment Management.

Cory Claussen has joined FINRA's Office of Government Affairs as Director of Public Policy. Previously, Cory was the Director of the Office of Legislative Affairs at the CFTC.

Fabrice Coles has joined the Congressional Black Caucus as Executive Director. Fabrice was previously Associate Program Manager for Legislative and External Affairs, CDFI Fund at the U.S. Department of the Treasury.

Jeffrey Dinwoodie has been named to the executive staff of SEC Chairman Jay Clayton. Previously, Jeff was an Associate in the Financial Institutions Group at Davis Polk & Wardwell.

David W. Grim, Director of the SEC's Division of Investment Management, has left the agency after more than 20 years of public service.

Dr. Jeffrey H. Harris has been named Director of the SEC's Division of Economic and Risk Analysis (DERA). He replaces former director **Mark Flannery** who left the agency to return to teaching.

Christopher R. Hetner will continue to serve as Senior Advisor to SEC Chairman Jay Clayton for Cybersecurity Policy, having previously served in this role under Chair Mary Jo White and Acting Chairman Michael Piwowar.

Casey Jennings has joined Seward & Kissel LLP as an Associate in their Financial Services Regulatory Group. Casey was previously Counsel, Office of Regulations at the Consumer Financial Protection Bureau.

Robert LaPorte is now an Advisory Board Member for the Juris Master Program in Financial Services Compliance at Florida State University College of Law. Robert is Senior Vice President - Global AML Compliance - Global Economic Sanctions at The Northern Trust Company.

Lisa Lintecum, formerly Supervisory Examiner at the Federal Housing Finance Agency, has retired after 33+ years in the financial services industry. Lisa is also a former Board member of the Financial Markets Association. Congratulations and best of luck, Lisa!

Matthew McDonald has joined T. Rowe Price as a Business Line Risk Officer, Distribution & Product. Previously, Matt was Director/Emerging Regulatory Issues at FINRA.

Gail Marshall has been named Chief Compliance Officer at the MSRB. Gail has served as Associate General Counsel – Enforcement Coordination since 2015.

Ernie Patrikis has joined the Industrial and Commercial Bank of China as General Counsel of its US Regional Committee which oversees ICBC operations in the United States. Previously, Ernie was a Partner at White & Case LLP.

Michael Phillips has joined Parker Infrastructure Partners as General Counsel & COO. Previously, Mike was Managing Director & Associate General Counsel at TIAA Global Asset Management.

Michael L. Post has been promoted to serve as the General Counsel at the MSRB. In this role, he will serve as senior legal counsel and policy advisor to the Board of Directors, and will oversee Board governance, rulemaking for municipal securities dealers and municipal advisors, regulatory relationships and legislative affairs.

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Who's News *(Continued from page 17)*

William A. Rowe has been named as the OCC's Chief Risk Officer, effective immediately. Mr. Rowe fills the position vacated by Linda Cunningham in April 2017 when she retired. As Chief Risk Officer, Mr. Rowe will lead the agency's Office of Enterprise Risk Management and the agency's Enterprise Risk Committee.

Dave Sapenaro has been named as the Federal Reserve Board's Payments Strategy Director with responsibility for leading payment system improvement initiatives described in its "Strategies for Improving the U.S. Payment System" paper published in January 2015. Sapenaro, first vice president and chief operating officer of the Federal Reserve Bank of St. Louis, will succeed **Gordon Werkema**, whose retirement was recently announced. Sapenaro will assume this new responsibility and continue to serve as first vice president and chief operating officer of the St. Louis Fed.

Susan Schroeder has been promoted to Executive Vice President and Head of Enforcement at FINRA.

Susan DeMando Scott, Associate Vice President in FINRA's Financial Operations Policy Group, has retired after 25 years of service. Best of luck, Susan!

Mark E. Van Der Weide has been appointed General Counsel of the Federal Reserve Board. Mr. Van Der Weide succeeds Scott G. Alvarez, who announced in February his intention to retire after nearly 36 years of service to the Federal Reserve Board, including more than 12 years as head of the Legal Division.

Kevin Warmack has joined Banker's Life Securities, Inc. as a Senior Compliance Analyst. Previously, Kevin was a Compliance Specialist at Unlimited Freedom Compliance Consulting.

Aaron Weller has joined eBay as Senior Privacy Program Lead. Previously, Aaron was Managing Director, Cybersecurity & Privacy Practice at PricewaterhouseCoopers.

Bryan Wood has been named Director of the SEC's Office of Legislative and Intergovernmental Affairs. Mr. Wood will advise the Chairman, Commissioners, and SEC staff on legislative matters, provide technical assistance on securities-related legislation to congressional committees and staff, assist in preparing SEC testimony for congressional hearings, and coordinate with other government entities.

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

Job Bank

Position Sought

Results oriented Chief Compliance Officer with progressively responsible leadership experience supporting banks, broker dealers, and investment advisers seeks new opportunity. Open to relocation. Please contact Diane Novak at 206/915-0170 or via email at *diane.novak611@yahoo.com.*