MARKET SOLUTIONS

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In This Issue

2018 Securities Compliance Seminar 26
2018 Legal and Legislative Issues Conference 25
2017 Legal and Legislative Issues Conference 28
Directory Updates 7
FINRA Exam Priorities for 2018 7
FINRA Examinations Findings 7
Legislative/Regulatory Actions 2
New Members 2,8,9,10,11
Program Update 26
Sponsor Acknowledgements 29
Watch For 16
Who's News 30

MARKET SOLUTIONS

Editor
Dorcas Pearce

Contributing Editors*
Marc-Alain Galeazzi
Barbara R. Mendelson

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

FINANCIAL MARKETS ASSOCIATION

Regulators Weigh in on Digital Assets, Tokens, Securities, and Derivative Instruments Used in ICOs

by Douglas E. Arend, Rebecca G. DiStefano,Carl A. Fornaris, Barbara A. Jones, Marvin A. Kirsner, William B. Mack, and Maria Sendra
Greenberg Traurig, LLP

The rise of blockchain technology ventures raising money preternaturally through initial coin offerings and token generation events (collectively, ICOs) is a capital formation disruptor, one which has and will continue to spawn considerable futures, fortunes, failures -- and frauds. Blockchain-based ICOs have, through 121 offerings closed during January-August 2017, raised over $1.78 billion, with an expected amount at year-end 2017 of over $3 billion according to publicly-available estimates. While IPOs raised about $12 billion (and startups $22 billion) thus far in 2017,[1] the amount raised through ICOs is impressive for a new asset class. By some sources ICOs have exceeded angel, venture capital, and seed funding reported during some months of 2017.[2] The shrouded world of blockchain technology and range of offerings masks identities and sourcing of investors in ICOs. It is speculated that funds have been primarily sourced from early investors profiting in cryptocurrency technologies.

Regulators Weigh In

Many ICOs are creating significant funding for the blockchain technology startup market, mirroring the dotcom boom of the late 1990s with its "paper millionaires." However, critics and financial regulators such as the Securities and Exchange Commission (SEC), Commodities Futures and Trading Commission (CFTC), and Internal Revenue Service (IRS) have begun to weigh in. On July 25, 2017, the SEC issued a Report of Investigation (Investigative Report), warning market participants to exercise caution in fundraising and investments involving The DAO, a "decentralized autonomous organization" described by the SEC as a "virtual" organization embodied in computer code and executed on a distributed ledger or blockchain.[3] In the Investigative Report, issuers of DAO tokens were both an unincorporated organization, The DAO and a German-based corporation, Slock-It (which then effectively controlled The DAO), which sold tokens to fund "projects." The tokens could later purportedly be monetized by re-selling on web-based secondary trading platforms. The Investigative Report made clear that the sale of tokens could constitute an investment contract or security under the Howey test and its progeny,[4]

(Continued on Page 3)

Legislative/Regulatory Actions

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

In this issue, we address certain developments from the federal banking agencies, the CFTC, and the CFPB, and provide selected summaries related to derivatives, investment companies, and investment managers from the Treasury's second and third report on the president's Core Principles to regulate the U.S. financial system.

Federal Banking Regulators

Federal Reserve Board Issues Final Rules Imposing Restrictions on Qualified Financial Contracts of Global Systemically Important Banking Organizations

On September 12, 2017, the Board of Governors of the Federal Reserve System ("Federal Reserve Board") published final rules ("Final Rules") imposing restrictions on certain non-cleared financial contracts entered into by certain global systemically important banking organizations (GSIBs) and their subsidiaries that will significantly limit counterparty default rights. The Final Rules became effective on November 13, 2017. The OCC and the FDIC also have finalized parallel rules for entities subject to their supervision.

The Final Rules apply to "covered QFCs," that is, qualified financial contracts (QFCs) to which a "covered entity" is a party. Subject to certain exclusions, a QFC is defined in accordance with section 210(c)(8)(D) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and includes many swaps, repurchase (and reverse repurchase) transactions, forward contracts, commodity contracts and securities sale, lending and borrowing transactions, and generally includes any master agreement that governs QFCs between relevant parties. Centrally cleared QFCs are expressly excluded from the scope of the Final Rules. Subject to certain exemptions, a "covered entity" is any U.S. GSIB and its subsidiaries as well as the U.S. subsidiaries, branches, or agencies of a non-U.S. GSIB.

The Final Rules seek to achieve two primary goals aimed at facilitating the orderly liquidation of GSIBs under the special resolution regimes (the "U.S. special resolution regimes") contained in Title II of Dodd-Frank Act and the Federal Deposit Insurance Act. The first goal is to assure the application of the U.S. special resolution regimes to certain cross-border transactions between covered entities and their counterparties outside the United States. The second goal is to facilitate the resolution of a GSIB by ensuring its operating subsidiaries are not parties to contracts containing cross-default rights that may be exercised by a counterparty based on the entry into resolution of an affiliate of such operating subsidiaries.

To achieve those goals, the Final Rules contain the following requirements, which are subject to certain exceptions:

- Each covered QFC must expressly provide that, if the covered entity or an affiliate of the covered entity becomes subject to a proceeding under a U.S. special resolution regime, "default rights" under the covered QFC "that may be exercised against the covered entity are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the covered QFC were governed by the laws of the United States or a state of the United States."

(Continued on Page 8)

FMA Welcomes New Members!

Karen Aavik	KeyBank
Miriam Aguiar	FDIC
Conni Allen	Federal Reserve Board
Barbara Alonso	Credit Agricole Indosuez, Miami Agency
Paul Bassler	Regions Financial Corporation
Sarah Bessin	Investment Company Institute
Natalee Binkholder	Santander US
Joseph Brady	NASAA

Regulators Weigh in on Digital Assets…

Continued from Page 1

and "stress[ed] the obligation to comply with the registration provisions of the federal securities laws with respect to products and platforms involving emerging technologies and new investor interfaces."[5]

On Oct. 4, 2017, the CFTC released a primer on virtual currencies[6] which sought to reconcile the SEC position in the Investigative Report with the CFTC's approach. The primer continues the CFTC's position, first expressed in 2015, that virtual currencies are commodities, and therefore, the CFTC has jurisdiction when a virtual currency is used in a derivatives contract or in the case of fraud or manipulation in a transaction involving interstate commerce. The CFTC concludes in the primer that "there is no inconsistency between the SEC's analysis and the CFTC's determination that virtual currencies are commodities and that virtual tokens may be commodities or derivatives contracts depending on the particular facts and circumstances." At an industry event on Oct. 18, recently-appointed CFTC Commissioner Brian Quintenz elaborated further on the regulatory relationship between the SEC and the CFTC in the area of ICOs. While acknowledging that much regulatory work still remains, Commissioner Quintenz said that ICOs "may start their life as a security from a capital-raising perspective but then at some point – maybe possibly quickly or even immediately – turn into a commodity."[7]

> *"Many ICOs are creating significant funding for the blockchain technology startup market, mirroring the dotcom boom of the late 1990s with its 'paper millionaires.'"*

Many platforms/exchanges for digital assets exist worldwide, some unregulated and some regulated based upon the location of the physical or virtual exchange or the location of those wishing to buy or sell tokens through an exchange. Within the last several weeks, financial regulators have banned the sale of ICOs in China and, now, South Korea, with China also banning cryptocurrency exchanges (though not in Hong Kong and some other venues it controls). Given the movements and statements of various central banks and governmental officials, international regulatory organizations, and regulated financial institutions, it is likely that permissive regulation for both ICOs and exchanges will be adopted worldwide in the future.

The number of digital cryptocurrencies and other assets now exceeds over 1,000[8] and the legal classification of these assets is blurred given that business and technological innovation in practice has outpaced legal theories and regulatory structures.

This article explores coins, tokens, and other digital assets currently being used in offerings including virtual currencies, utility tokens, and tokenized securities.

The Digital Asset Spectrum

No one template currently exists for tokens and coins offered digitally for capital formation activities. In light of the varieties and features of digital assets currently traded,
purchased, and bartered, as well as the continuing evolution and development within this sector, clearly defined classifications and terminologies for the assets are premature.

However, the following classes of cryptocurrency assets have emerged based on their uses and features:

- virtual currencies (which may act as a substitute for legal or fiat currency),
- utility tokens (which may not fall within the definition of a "security" in certain circumstances, such as for the purchase of services or products), and
- tokenized securities.

Virtual Currencies (e.g., Bitcoin, Ether, and Ripple)

The first category of coin or asset distribution includes digital coins used as currencies such as Bitcoin, Ether, and Ripple, the most widely recognized digital currencies. Cryptocurrencies are digital alternative currencies that are not issued by any country's government. Japan has recently recognized Bitcoin as a legal currency, boosting demand for the virtual coins. Cryptocurrencies are not printed or minted, but are created and

(Continued on Page 4)

Regulators Weigh in on Digital Assets…

Continued from Page 3

memorialized in digital ledger systems on blockchains and used by some vendors for trading goods and services. The phenomenal growth of the most well-known cryptocurrency, Bitcoin (the blocks for which cannot exceed one megabyte until late November 2017, when new applicable technology will permit up to two megabytes), has raised awareness of uses for blockchain technology and fueled its growth.[9]

Although fiat currency may be used to purchase other cryptocurrencies, and despite sometimes substantial volatility and fluctuation in value, Bitcoin, Ether, and other similar "virtual currencies" are, in light of their wide acceptance and use today, generally not considered a security as defined under U.S. federal securities laws given their primary purpose for use as alternative currency rather than as an investment in a common enterprise.[10]

"The CFTC concludes…that 'there is no inconsistency between the SEC's analysis and the CFTC's determination that virtual currencies are commodities and that virtual tokens may be commodities or derivatives contracts depending on the particular facts and circumstances.'"

The IRS refers to a virtual currency, such as Bitcoin, that has an equivalent value in real currency, or that acts as a substitute for real currency, as a "convertible" virtual currency. The IRS has additionally stated that virtual currency is not treated as currency that could generate foreign currency gain or loss for U.S. federal tax purposes.[11] Rather, for federal tax purposes, virtual currency is treated as property. General tax principles applicable to property transactions apply to transactions using virtual currency.[12] This income tax classification of virtual currency as property raises significant tax reporting challenges for users of cryptocurrencies, because each time virtual currency is used to purchase goods or services, it is treated as a taxable transaction, where the currency is exchanged for the goods or services, triggering a taxable gain or loss. The IRS has not issued any further guidance since the 2014 notice, leaving many unanswered questions on the proper tax treatment of the use of virtual currencies.[13]

Utility Tokens

Utility tokens are frequently sold in ICOs. These tokens are sometimes services or units of services that can be purchased but may also resemble investment contracts. Under the traditional Howey test, an investment contract involves the investment of money, in a common enterprise, with an expectation of profits from the efforts of management or other third party.[14] Although there is not yet a bright line test other than the Howey test, securities practitioners are, at this juncture, generally of the view that utility tokens purchased without profit motive are not investment contracts and thus not securities. Under current market practice, utility tokens are generally offered for sale once the platform or infrastructure is complete and are not sold to provide initial development funds. The Howey test does, of course, apply to each analysis as to whether a utility token is a security, and to avoid any such treatment, the issuer must ensure that a definable amount of a specific service (or combination of product and service) is the sole value to be received and does not include a profit participation arising from the managerial efforts of others. Secondary markets can evolve for utility tokens, with increases in value principally resulting from market forces (principally supply and demand).

Tokenized Security Investments

Some digital assets used in a blockchain-based technology are considered to be securities. Utilizing the Howey test, if the investor has an expectation of profits from efforts of the managers and developers of the network, the coin, tokens, or other instruments are investment contracts, and thus, securities. This is commonly the case for "pre-sales" of tokens, where funds from token sales are used for development of the platform, infrastructure, and services prior to commercialization or product launch. Careful analysis of the rights, including profit participation,

(Continued on Page 5)

Regulators Weigh in on Digital Assets…

Continued from Page 4

attaching to these tokens is key to a determination of whether compliance with federal and state securities laws is required. In the case of a security, most issuers rely on various exemptions from the applicable securities and broker-dealer registration requirements under federal and state securities laws. Where the tokens are offered and sold in a private placement, issuers may limit sales to accredited investors and rely on the covered security safe harbor for the transactional exemption under Regulation D of the Securities Act of 1933, as amended, and Rule 506 promulgated thereunder. However, such tokens have not been defined as "covered securities" for purposes of federal securities laws and, therefore, they are not preempted from state securities registration. Currently, the states generally consider the tokens as "securities" and consider such offerings as offerings of securities but not "covered securities" under National Securities Market Improvement Act (NSMIA). Consequently, compliance with state securities or "blue sky" laws is required in those states where the tokens are to be offered and sold, which may or may not subject the offerings to registration should an exemption for transactions in such "securities" be available. Compliance is also required with applicable non-U.S. securities laws if the tokens are offered and sold outside the United States. In addition, consideration must be paid to the resale market and any effort to sell such securities in secondary transactions would subject these to the applicable state blue sky laws and the applicable "non-issuer" exemptions.

> *"Many platforms/exchanges for digital assets exist worldwide, some unregulated and some regulated based upon the location of the physical or virtual exchange or the location of those wishing to buy or sell tokens through an exchange."*

A derivative instrument called a Simple Agreement for Future Tokens (or Equity) (SAFTE)[15] is being used by some issuers in certain pre-sale contexts. The SAFTE, which constitutes a security, has been described as an instrument effectuating the issuance of tokens to fund a technology product or system prior to its development or commercial launch, and may represent a promise for future tokens at a fixed price. The SAFTE agreement may be structured so that investors receive tokens once the network launches.

Federal Income Tax Considerations

Tokenized Securities in an ICO

Since the IRS classifies virtual currency as property, the issuer will likely be treated as selling the tokens for the proceeds of the offering, resulting in a large taxable gain. In these circumstances, it is probable that the issuer would recognize the income in the tax year of the offering. This is unlike the issuer of shares of stock of a corporation, which would be allowed tax-free treatment for money or property received in exchange for shares of stock in the corporation.[16] Consequently, unless the offering is structured in a manner to characterize the tokens as "stock" in the issuer, an issuer may have a substantial income tax burden if the issuer is subject to U.S. income taxation.[17] It is unlikely that an ICO for a utility token would be eligible for such tax-free treatment, and the issuer must be prepared to deal with the U.S. income tax consequences of an ICO.

Considerations for use of a SAFTE.

The SAFTE is structured to allow the issuer to take a tax reporting position that it is not required to recognize the income from the proceeds of the offering until the tokens are actually delivered to the ICO investors.[18] By delaying the time for the recognition of the offering proceeds until the year the tokens are delivered to the investors, the issuer would defer the tax consequences until the tax year the tokens are delivered to investors, assuming the IRS does not challenge such "forward contract" treatment. In such a case, it would extend the time that net-operating loss deductions can be utilized to offset income tax due on future profits. However, such a reporting position using the forward contract theory is untested, and until the IRS publishes guidance, it should be assumed for tax modeling purposes that the issuer will recognize the income from the proceeds of the ICO in the year of the offering for U.S. income tax purposes.[19]

(Continued on Page 6)

Regulators Weigh in on Digital Assets…

Continued from Page 5

Broker-Dealer Involvement in ICOs

Financial intermediaries have yet to fully insert themselves into the ICO process. As they do, they must proceed with caution. Several businesses have publicly announced the development of alternative trading platforms in partnership with broker-dealers and investment banks; however, the Financial Industry Regulatory Authority (FINRA) has yet to provide any guidance on its member firms' participation in ICOs.[20] Unresolved issues include: whether ICOs comprise a new business line for purposes of FINRA Rule 1017; what registrations an associated person would need to transact in ICOs; whether ICOs should be best efforts offerings or firm commitments; how to determine suitability for an investor purchasing ICOs through a broker-dealer; and whether ICO white papers are subject to FINRA advertising standards when distributed by a broker-dealer. Until there has been some guidance from FINRA, member firms are advised to obtain advice of counsel before engaging in ICO transactions.

Designing the Digital Asset

Digital assets may be classified as virtual currencies, utility tokens, or tokenized securities. These assets often contain a blend of features and characteristics making the correct legal classification and approach to regulatory compliance, without guidance, more complex. Cryptocurrency assets will continue to evolve throughout 2017 and beyond. An informed multidisciplinary approach is critical to the design of the cryptocurrency asset and the development of a credible blockchain technology white paper and key to a potentially successful ICO (or other funding) and a viable product poised for commercial growth. ■

This article was prepared by Douglas E. Arend, Rebecca G. DiStefano, Carl A. Fornaris, Barbara A. Jones, Marvin A. Kirsner, William B. Mack, and Maria Sendra. Questions about this information can be directed to:

- Douglas E. Arend | +1 312.476.5029 | *arendd@gtlaw.com*
- Rebecca G. DiStefano | +1 561.955.7654 | *distefanor@gtlaw.com*
- Carl A. Fornaris | +1 305.579.0626 | *fornarisc@gtlaw.com*
- Barbara A. Jones | +1 310.586.7700 | *jonesb@gtlaw.com*
- Marvin A. Kirsner | +1 561.955.7630 | *kirsnerm@gtlaw.com*
- William B. Mack | +1 212.801.2230 | *mackw@gtlaw.com*
- Maria Sendra | +1 650.289.7814 | *sendram@gtlaw.com*

[1] *http://www.renaissancecapital.com/review/2Q17USReview.pdf?inf_contact_key=bcc17dd75b4d3fef1c8fe8f5f81fd73cbdd9764cc99467f926462f518a62e6a6.*

[2] *https://www.cnbc.com/2017/08/09/initial-coin-offerings-surpass-early-stage-venture-capital-funding.html.*

[3] *https://www.sec.gov/litigation/investreport/34-81207.pdf. Securities and Exchange Commission, Release No. 81207/ July 25, 2017 ("SEC July 2017 Release").*

[4] *See SEC v. W.J. Howey Co., 328. U.S. 293 (1946); see also SEC v. Edwards, 540 U.S. 389 (2004).*

[5] *SEC July 2017 Release, at p. 2.*

[6] *LabCFTC, A CFTC Primer on Virtual Currencies, available at http://www.cftc.gov/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf.*

[7] *https://www.newsmax.com/finance/streettalk/bitcoin-etf-exchanges-invest/2017/10/19/id/820843/.*

[8] *Bank of America Merrill Lynch Industry Overview, Introducing cryptocurrencies – what are they good for? October 16, 2017.*

[9] *By most accounts, the first Bitcoin transaction occurred in January 2009 on the heels of the 2008 financial crisis and was steeped in anti-commercial and anti-establishment backlash. Bitcoin, one of the best-known cryptocurrencies, was initiated in 2009 by a computer developer using the pseudonym Satoshi Nakamoto.*

[10] *Security is broadly defined under Section 2 (a)(1) of the Securities Act of 1933, as amended, to include investment contracts whereby a person is led to expect profits from the efforts of a third party. Note that embodied in the SEC July 2017 Release analysis of whether DAO tokens were securities seems to be a concept that the "managerial efforts of others" prong of its analysis is too attenuated for those cryptocurrencies for which an established market, value, and, perhaps, number of holders has been achieved, such as with Bitcoin and Ether, provided that the managerial efforts of those which may exert any control or affect profits becomes too diffuse to ascribe significant managerial efforts*

(Continued on Page 7)

Regulators Weigh in on Digital Assets…

Continued from Page 6

to any identifiable group. Successfully addressing design and operational challenges posed by, "managerial efforts of others" will be key for all blockchain offering issuers and counsel in both the structure of ICOs and for any trading of them.

[11] *https://www.irs.gov/newsroom/irs-virtual-currency-guidance; see also IRS Notice 2014-21.*

[12] *Id.*

[13] *See the letter from American Institute of CPA's to the IRS dated June 10, 2016, asking the IRS to publish additional guidance on various open questions regarding the tax treatment of virtual currencies. https://www.aicpa.org/advocacy/tax/downloadabledocuments/aicpa-comment-letter-on-notice-2014-21-virtual-currency-6-10-16.pdf.*

[14] *Supra, n. 4.*

[15] *At least one Form D/A amendment filed with the SEC Aug. 25, 2017 reported the SAFTE as "Other" in the type of security check-box with a description of "Sale and issuance to receive Filecoin tokens in the future via a Simple Agreement for Future Tokens (SAFTE). The report noted a date of first sale as July 21, 2017, with 154 investors and $51.658 million sold.*

[16] *Section 1032 Internal Revenue Code of 1986.*

[17] *There is some support for the position that the issuer of a token could be treated in a manner analogous to that of an issuer of a "personal seat license" (a "PSL"), even if the token is not treated as stock for federal income tax purposes. A PSL is a license issued by a professional sports team that grants the holder, inter alia, the right to buy season tickets. In certain cases, the rights granted to the holder of a PSL may be similar to those granted to the holder of a token used to gain access to, say, an insurance exchange. In private guidance issued this year, the Service has held that the issuer of a PSL is not required to recognize income upon issuance so long as the PSL is redeemable by the issuer. P.L.R. 201722004, Jun. 2, 2017 (the "PSL guidance"). Note, however, that the PSL guidance did not address certain issues, such as the treatment of imputed interest on below-market loans, and, since it was issued privately, it may not be relied upon by taxpayers other than the taxpayer to whom it was issued.*

[18] *The SAFTE is designed to treat the ICO as a "forward contract." Income on a forward contract is not recognized until the transaction is closed. Under this theory of the SAFTE, the forward contract would not be closed until the utility tokens are delivered to the investors.*

[19] *Id.*

[20] *FINRA provided a general warning to investors. http://www.finra.org/newsroom/2017/initial-coin-offerings-know-risks-you-buy.*

2018 FINRA
Examination Priorities
http://www.finra.org/newsroom/2018/finra-releases-2018-regulatory-and-exam-priorities

December, 2017
Report on FINRA Examination Findings
http://www.finra.org/sites/default/files/2017-Report-FINRA-Examination-Findings.pdf

Directory

The **2017 FMA Membership Directory** was emailed to all current members on September 27. Here are additional updates/corrections received since its distribution.
If you are a current FMA member and did not receive (or perhaps misplaced) the Directory, contact Dorcas Pearce directly…202/544-6327 or *dp-fma@starpower.net*.

Beaumier, Carol M.
Senior Managing Director
Protiviti Inc.
888 Seventh Avenue, 13th FL
New York, NY 10106
212/603-8337
917/856-7300 cell
carol.beaumier@protiviti.com
www.protiviti.com

Appel, Renée (Kramer)
Attorney
Seyfarth Shaw LLP
975 F Street, NW
Washington, DC 20004
202/828-5371
rappel@seyfarth.com
www.seyfarth.com

Legislative/Regulatory Actions

Continued from Page 2

- Each covered QFC must permit transfers of such QFC to bridge entities as contemplated by the U.S. special resolution regimes.
- A covered QFC may not prohibit the transfer of a credit enhancement supporting such QFC provided by an affiliate of a covered entity upon an affiliate of the covered entity becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding.
- A covered QFC may not permit the exercise of any default right with respect to the covered QFC that is related, directly or indirectly, to an affiliate of the covered entity that is a party to the QFC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding.

The Final Rules provide that, unless the Federal Reserve Board determines otherwise, a covered QFC will comply with the requirements of the Final Rules if it is amended by the ISDA 2015 Universal Resolution Stay Protocol. In addition, a covered QFC may comply through adherence to the "U.S. protocol," a protocol not yet created by ISDA, which must conform to certain requirements set out in the Final Rules.

The Final Rules contain a phased-in compliance schedule based on the types of counterparty that the covered entity faces in a covered QFC. The first compliance date will be January 1, 2019 and full compliance is required by January 1, 2020.

For more information regarding the purpose, compliance schedule, requirements, and exceptions to the general requirements of the Final Rules, please see our client alert, available at: *https://media2.mofo.com/documents/171002-frb-rules-qualified-financial-contracts.pdf*. The *Federal Register* publication of the Final Rules is available at *https://www.gpo.gov/fdsys/pkg/FR-2017-09-12/pdf/2017-19053.pdf*.

Federal Banking Agencies Propose New Approach to Capital Treatment for Acquisition, Development, and Construction Loans On October 27, 2017, the three federal banking agencies (the "Agencies") published a Notice of Proposed Rulemaking (NPR), which proposes changes to certain aspects of the bank capital rules under the "standardized approach." Of keen interest to many banks will be the proposal to modify the approach to the capital treatment of acquisition, development, and construction (ADC) loans characterized under the current capital rules as high volatility commercial real estate (HVCRE) exposures. Under current rules, banks are required to apply a 150% risk-weight to HVCRE exposures under the standardized approach. The proposed modifications are described as a simplification of the capital treatment of ADC loans. The proposal generally broadens the ADC loans subject to a higher capital charge, under a new term—HVADC exposure—while reducing the size of the capital charge for covered loans from 150% to 130%.

The comment period, during which the Agencies solicited comments on whether the new approach is workable and appropriate, ended on December 26, 2017.

Under the proposal, subject to four exemptions discussed below, an HVADC exposure will be defined as a credit facility (whether or not real-estate-secured) that primarily finances or refinances (i) the acquisition of vacant or developed land; (ii) the development of land to prepare for new structures; or (iii) the construction of buildings or other improvements, including additions or alteration to existing structures.

(Continued on Page 9)

FMA Welcomes *More* New Members!

Sandrea Brooks	SS&C Technologies, Inc.
Brad Busscher	Incapital LLC
Katrina Carroll	LPL Financial
Sharon Cherry	Federal Reserve Board
Joe Ciampo	Citizens Securities
Paul Clark	Seward & Kissel LLP
Hugh Conroy, Jr.	Cleary Gottlieb Steen & Hamilton LLP
Nancy Contrastano	CIBC World Markets Corp.
Shellie Creson	Fifth Third Bank
Matt De Les Dernier	SEC
Josh Denney	BBVA Compass

Legislative/Regulatory Actions

Continued from Page 8

Unlike the existing HVCRE definition, a credit facility will be an HVADC exposure regardless of the amount of capital contributed to the project or the distribution of internally generated capital to sponsors or developers.

HVADC exposures are those "primarily" financing or refinancing the ADC activities described in the rule. A credit facility would be deemed to be primarily financing ADC activities if more than half of the loan proceeds are used for the ADC activities.

As mentioned, the NPR includes four exemptions from the definition of an HVADC exposure:

- ADC loans for residential properties;
- Community development projects;
- Financing for the purchase or development of agricultural land; and
- Permanent Loans, as such term is defined in the NPR.

The HVADC category and associated 130% risk weight would take effect with respect to any loans originated on or after the effective date of the proposal when it is adopted. Loans originated before that date would be subject to the current HVCRE regime, including the 150% risk weight.

Advanced approaches banks currently calculate their risk-weight capital ratios under two regimes: (i) the advanced approach of Basel II (under which, generally speaking, the banks risk-weigh assets under the internal ratings-based approach and the advanced measurement approach) and (ii) the standardized approach of Basel III (which pre-determines risk weights for various categories of assets). They are then required to maintain risk-based capital ratios based on whichever method results in the greater amount of risk-weighted assets.

In the NPR, the Agencies have not proposed to change the HVCRE definition embedded in the advanced approaches regime. This would mean that advanced approaches banks would, under the proposal, continue to use the HVCRE definition for the advanced approaches calculation, while converting over to the HVADC definition for the standardized approach calculation.

For further analysis and discussion of the NPR, please see our client alert, available at: *https://media2.mofo.com/documents/170928-capital-treatment-adc-loans.pdf.*

OCC Updates Policies and Procedures for Bank Enforcement Actions On October 31, 2017, the OCC issued a revised Policies and Procedures Manual 5310-3 (PPM), updating its internal policies and procedures regarding bank enforcement actions and related matters. According to the OCC, these updates were issued in order to, among other things, ensure agency-wide consistency of the enforcement action process, adopt consistent terminology, and reinforce the importance of timely and thorough follow-up and tracking of bank management's corrective actions and milestones to those actions.

The PPM contains a number of additions and changes, including the following:

Deficient practices. The PPM states that "the OCC uses enforcement actions to require a bank's board of directors (board) and management to take timely actions to correct a bank's deficient practices or violations." The PPM defines the term "deficient

(Continued on Page 10)

FMA Welcomes *More* New Members!

Andrew "Buddy" Donohue	Shearman & Sterling LLP
Cantrell Dumas	CFTC
Brian Edwards	BlackArch Partners / BlackArch Securities LLC
Tom Embrogno	Tom Tech Consulting
Emily Farmer	WilmerHale
Elyse Galvan	SS&C Technologies, Inc.
Melissa Goldstein	Schulte Roth & Zabel LLP
Thomas Grygiel	ACA Compliance Group
Julian Hammar	Morrison & Foerster LLP
Starla Hendricks	Thomson Reuters
Takahiro Hirakawa	Bank of Japan
Jennifer Kay	Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
Paul Khareyn	HSBC

Legislative/Regulatory Actions

Continued from Page 9

practices" as "practices or lack of practices that deviate from sound governance, internal control, or risk management principles and have the potential to adversely affect the bank's condition, including financial performance or risk profile, if not addressed," or that "result in substantive noncompliance with laws or regulations, enforcement actions, or conditions imposed in writing in connection with the approval of any applications or other requests by banks."

Informal enforcement actions. The PPM adds operating agreements, conditions imposed in writing within the meaning of 12 USC 1818 outside of a bank's licensing filing, and individual minimum capital ratios to the list of informal enforcement actions.

Formal enforcement actions. The PPM adds "Gramm-Leach-Bliley Act Agreements" to the list of formal enforcement actions. The PPM also establishes a presumption for the imposition of a formal enforcement action for 3-rated banks.

Board and management. The PPM adds additional focus on the role of board and management by adding an introductory passage stressing the role of board and management in correcting deficiencies in a timely manner and ensuring compliance with enforcement actions within applicable time frames.

Appropriate response. In determining the appropriate enforcement response to bank deficiencies, the PPM suggests that examiners consider a number of enumerated factors, including the "potential adverse impact to bank customers, the Deposit Insurance Fund, or the public."

Supervision review committee. The PPM describes the role of an OCC supervision review committee, the "Major Matters Supervision Review Committee," which "makes enforcement decisions on cases that are of heightened importance because of their visibility, policy sensitivity, involvement of multiple agencies, nature of the issues, or potential systemic impact." This committee was not referenced in the previous version of PPM 5310-3.

OCC processes. The PPM states that enforcement actions should be presented within 180 days from the start of the supervisory activity resulting in a formal written communication identifying the applicable deficiencies.

The OCC Bulletin 2017-48, "Updated Guidance: Bank Enforcement Actions and Related Matters," including a link to the 35-page PPM, is available at *https://www.occ.gov/news-issuances/bulletins/2017/bulletin-2017-48.html.*

Presidential Order 137772: The Treasury's Second and Third Report

In October 2017, the U.S. Department of the Treasury ("Treasury") issued its second and third reports (of four) that address the president's Executive Order 137772 from February 2017, on Core Principles for regulating the U.S. financial system. The two reports follow the initial report, which focused on the regulation of depository institutions and was published in June 2017. The second report ("Second Report"), titled "A Financial System that Creates Economic Opportunities, Capital Markets," addresses various elements of the capital markets, including the equity and debt markets, the U.S. Treasury securities

(Continued on Page 11)

Legislative/Regulatory Actions

Continued from Page 10

markets, and derivatives and securitization. The third report ("Third Report"), titled "A Financial System That Creates Economic Opportunities, Asset Management and Insurance," addresses asset management- and insurance-related matters. Below are selected summaries of the Treasury's recommendations with regard to derivatives (Second Report) and investment companies and investment managers (Third Report).

Second Report: Derivatives

With respect to derivatives regulation, the Second Report recommends a lighter touch than that contained in the current framework implemented under Title VII of the Dodd-Frank Act ("Title VII"). The derivatives-related issues that the Second Report identifies relate generally to regulatory harmonization, cross-border matters, capital treatment of derivatives, end-user issues, and market infrastructure.

Regulatory coordination and harmonization. The Second Report recommends that the U.S. Commodity Futures Trading Commission (CFTC) and the U.S. Securities and Exchange Commission (SEC) give priority to a joint effort to review their respective derivatives-related rulemakings with the goal of achieving greater harmonization. In addition, the Second Report recommends harmonizing U.S. margin rules with those implemented in foreign jurisdictions. Specifically, the Second Report recommends adjustments in the following areas of margin regulations: (1) sizing of initial margin requirements; (2) timing of margin transfers; (3) scope of end users subject to margin requirements; and (4) inter-affiliate transactions. The Second Report further recommends that the SEC re-propose its margin rules to align them with the CFTC's rules and those of the prudential banking regulators.

Cross-border issues. The Second Report recommends that the U.S. regulatory agencies should reconsider their approach to regulating transactions involving counterparties located outside of the United States. Specifically, the Second Report recommends that the SEC and CFTC clarify the cross-border reach of their regulations and harmonize their rules with those of non-U.S. jurisdictions, where possible, to avoid market fragmentation, redundancies, undue complexity, and conflicts of law. The Second Report also recommends that the SEC and CFTC implement in a somewhat more relaxed manner than has been seen to date the doctrine of "substituted compliance" under which market participants are permitted to comply with relevant non-U.S. rules in lieu of complying with applicable U.S. rules. The Second Report further recommends, with respect to so-called ANE transactions, trades between non-U.S. entities but "**a**rranged, **n**egotiated or **e**xecuted" by personnel located in the United States, that the CFTC and SEC reconsider any U.S. personnel test as a basis to apply U.S. transaction-based requirements.

Capital treatment in support of central clearing. The Second Report notes several issues relating to capital treatment and central clearing. These include the imposition of significant capital requirements on initial margin for centrally cleared derivatives by means of the supplementary leverage ratio (SLR) and the resulting higher capital charges incurred by futures commission merchants (FCMs), which discourage FCMs from clearing derivatives transactions for clients. Further, the Second Report

(Continued on Page12)

FMA Welcomes *More* New Members!

Joe Reece	Commerce Bank
Ann Robinson	RegEd
Evan Rosser	Oyster Consulting, LLC
Brian Rubin	Eversheds Sutherland (US) LLP
Rich Saltz	Wells Fargo
Alison Shanahan	Promontory, an IBM Company
Andrew Smith	Covington & Burling LLP
Phillip Spinella	Akerman LLP
Leigh Thompson	The PNC Financial Services Group, Inc.
Amber Unwala	Eversheds Sutherland (US) LLP

Legislative/Regulatory Actions

Continued from Page 11

states, the SLR, because it employs the current exposure method to measure derivatives exposures, does not correctly gauge risks and results in higher leverage ratio capital requirements for certain derivatives products, relative to other measures.

End-user issues. The Second Report identifies several issues and makes recommendations with respect to the impact of the derivatives regulations on end users. Specifically, the Second Report makes recommendations regarding: (1) the *de minimis* threshold for registration as a swap dealer; (2) the definition of "financial entity," which determines which entities may be eligible for the end-user exemption to mandatory clearing; and (3) position limits, which, when the CFTC's position limit rules are finalized, could limit the ability of end-users to engage in hedging transactions relating to certain commodities.

Market infrastructure. The Second Report contains recommendations regarding the trade execution requirement, which requires many swaps to be executed on a swap execution facility (SEF) or designated contract market (DCM) by means of an "order book" method or a "request for quote" method in which requests for quotes must be transmitted to at least three market participants in the SEF. Market participants, the Second Report states, have expressed concern that limiting trading to the order book and request for quote methods is overly restrictive, undermines Congressional intent, discourages trading swaps on SEFs, and harms pre-trade price transparency. The Second Report also notes concerns that the SEF-driven process by which swaps are determined to be made available to trade may not require sufficient liquidity before a swap must be executed on an SEF or DCM.

For a more detailed discussion of the Second Report's recommendations regarding derivatives regulation reforms, please see our client alert, available at: *https://media2.mofo.com/documents/171026-treasury-report-derivatives.pdf.* The entire Second Report is available at *https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.*

Third Report: Investment Companies and Investment Managers

Recommendations from the Third Report that directly affect regulation of investment companies and investment managers include the following:

Risks of money managers. Rather than focus on entity-based systemic risk evaluations for money managers, Treasury recommends that primary federal regulators focus on potential risks arising from asset management products and activities, and on implementing regulations that strengthen the asset management industry as a whole. Although the Financial Stability Oversight Counsel (FSOC) maintains primary responsibility for identifying, evaluating, and addressing systemic risks in the U.S. financial system, Treasury recommends that FSOC look to the SEC to address risks through regulation within and across the asset management industry in the United States.

Stress testing of money managers. The Third Report recommends that Congress repeal the prudential stress testing requirement for investment advisers and investment companies, as required by the Dodd-Frank Act. In the alternative, Treasury suggests that the stress testing provisions of Rule 2a-7 for money market mutual funds and Rule 22e-4 on liquidity risk management programs satisfy the spirit of Dodd-Frank Act's stress testing requirements.

Liquidity risk management. According to the Third Report, Treasury supports the 15 percent limit on illiquid investments by mutual funds, and recommends that the SEC delay implementation of the Rule 22e-4 bucketing requirement, which is now scheduled for implementation in December 2018.

Derivatives use by investment companies. Treasury generally supports the SEC's December 2015 proposed rule that would require funds to manage the risks of their derivatives activities (calling the proposed rule "an improvement from the current piecemeal approach"), but expressed concerns about the rule's approach. With these concerns in mind, Treasury recommends that the SEC:

(Continued on Page 13)

Legislative/Regulatory Actions

Continued from Page 12

- Reconsider what portfolio limits should be part of the rule and, if any such limits are adopted, base them on significantly more risk-adjusted measures of a fund's derivatives than does the proposed rule.
- Reconsider the scope of assets that funds should consider to be qualifying coverage assets for purposes of the asset segregation requirement.
- Examine the derivatives data that funds will report beginning next year under new rules adopted by the SEC in October 2016, and publish an analysis based on empirical data regarding funds' use of derivatives.

Exchange-traded funds. Treasury recommends that the SEC adopt a "plain vanilla" ETF rule, rather than continue to rely on time consuming and costly individual exemptive relief orders. The SEC should also consider establishing a single process for ETF and related approvals.

Business continuity and transition planning. While Treasury strongly supports "robust business continuity planning," Treasury recommends that the SEC withdraw its June 2016 proposed rules, and instead rely on existing principles-based rules now in place.

Dual SEC/CFTC registration. The Third Report targets dual regulation by the SEC and the CFTC of investment companies and investment advisers as unnecessary and duplicative regulation and makes several recommendations, including (i) that the CFTC and SEC together identify a "single regulator" to regulate SEC-registered mutual funds that resemble commodity pools; (ii) that the CFTC exempt private funds and their advisers from the requirement to register as commodity pool operators (CPOs) when fund advisers are registered with the SEC; and (iii) that the CFTC review and determine what exemptions should be made available for SEC-exempt reporting advisers.

Prospectus delivery. Treasury encourages the SEC to finalize its proposed rule to modernize its shareholder report disclosure requirements and to permit the use of implied consent for electronic delivery of registered fund disclosures. Investors, however, should retain the choice to opt out of electronic delivery.

Asset manager reporting and disclosure requirements. Treasury states that "regulators should work together to rationalize and harmonize the reporting regimes."

Department of Labor (DOL) fiduciary rule. Treasury supports the current efforts at the DOL to re-examine the implications of the fiduciary rule, and recommends that the DOL delay full implementation of the rule pending further study. The Third Report recommends participation by the SEC and other regulators in crafting a comprehensive rule.

Money market funds. Treasury sidestepped any recommendations on regulations of money market funds, and simply summarized the history of recent rule changes.

For more information about this topic, please visit our client alert at *https://media2.mofo.com/documents/171031-treasury-dept-regulation-money-managers.pdf.* Further, the entire Third Report is available at *https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf.*

CFTC UPDATE

On October 26, 2017, the CFTC issued an order (the "De Minimis Order") that pushes back by one year the date on which the CFTC may lower its swap dealer de minimis threshold, the amount of swap dealing activity in a 12-month period that may require a swap market participant to register as a swap dealer. The De Minimis Order has the effect of preserving the *de minimis* threshold at its current level, $8 billion in aggregate gross notional amount, until December 31, 2019. The order means that, at least until the end of 2019, no swap dealing entities will likely be required to register as regulated swap dealers on the basis of dealing activity of less than $8 billion in notional amount over a 12-month period.

For additional information about the De Minimis Order please visit our client alert at *https://media2.mofo.com/documents/171102-cftc-de-minimis-threshold.pdf.* Also, the Federal Register publication of the De Minimis Order ("Order Establishing a New De Minimis Threshold Phase-in Termination Date") is

(Continued on Page 14)

Legislative/Regulatory Actions

Continued from Page 13

available at *http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-23660a.pdf.*

CFPB UPDATE

CFPB Issues Its First No-Action Letter In September 2017, the CFPB announced its first no-action letter, which was issued to California-based online lending platform Upstart Network, Inc. Upstart provides a platform for borrowers to obtain unsecured, fixed-rate personal loans based on a credit underwriting model designed to underwrite risk for, and identify credit-worthy individuals among, "thin file" applicants by using non-traditional criteria such as an applicant's school, area of study, academic performance, and employment history. Despite previous indications that the CFPB was concerned about potential fair lending issues associated with the correlation of some non-traditional factors with race, ethnicity, and/or gender, the CFPB's no-action letter signifies that the CFPB has no present intention to recommend an enforcement or supervisory action against Upstart for violation of the Equal Credit Opportunity Act. It appears that this decision is in line with previous CFPB inquiries into the impact of alternative data on credit access for consumers who are so-called "credit invisible."

Under the terms of the no-action letter, the CFPB reserves the right to conduct supervisory activities or engage in an enforcement investigation to enforce Upstart's compliance with the no-action letter. The letter is valid for three years from the date of issuance, provided that Upstart regularly reports lending and compliance information to the CFPB to aid in the agency's understanding of the impact of using alternative data on protected populations of credit applicants.

For our client alert on the no-action letter, please visit: *https://media2.mofo.com/documents/170920-cfpb-no-action-letter.pdf.*

CFPB Releases Final Payday Lending Rule On October 5, 2017, the CFPB released its final rule for short-term loans, which generally followed the Bureau's June 2, 2016 proposed rule, with a few notable exceptions. The rule includes requirements pertaining to underwriting, applicable to short-term loans (i.e., loans with terms of 45 days or less) and longer-term balloon-payment loans (i.e., loans with terms longer than 45 days that have a balloon payment). Other portions of this CFPB rule (including the payment restrictions) also apply to longer-term loans with an APR over 36% that include authorization for the lender to access the borrower's checking or prepaid account, in addition to the types of loans noted above. However, the rule specifically excludes several types of loans.

Among the final rule's most notable provisions are requirements with respect to making an ability-to-repay determination before lending, reporting requirements, and payment restrictions. Significantly, the CFPB did not establish underwriting criteria applicable to longer-term loans that would have been covered under the June 2016 proposed version of the rule. The CFPB indicated that it is conducting further study of longer-term loans and may a finalize rule for longer-term loans in the future.

For our client alert on the final rule, please visit: *https://media2.mofo.com/documents/171006-cfpb-payday-lending-rule.pdf.*

CFPB's Nine Principles for Consumer-Authorized Financial Data Sharing and Aggregation Following its November 2016 Request for Information regarding access to consumer financial account data, on October 18, 2017, the CFPB released a set of nine guiding principles for participants in the financial data sharing and aggregation industry, and a 12-page summary of issues raised by stakeholders that informed the development of the principles. The principles do not establish binding requirements on firms, banks, and other financial institutions involved in data aggregation. However, they offer insight into the CFPB's view of what should be best practices and indicate the lens through which the CFPB will monitor developments in the data aggregation market.

The CFPB's nine principles for financial data sharing and aggregation center around: 1) access, 2) data scope and usability, 3) control and informed consent, 4) authorizing payments, 5) security, 6) access transparency, 7) accuracy, 8) ability to dispute and resolve unauthorized access, and 9) efficient and

(Continued on Page 15)

Legislative/Regulatory Actions

Continued from Page 14

effective accountability mechanisms. These principles represent an attempt to strike a balance between access and innovation on one side and consumer protection and choice on the other. According to the CFPB, stakeholders agreed that consumer data security is a top priority and should not be sacrificed to realize the benefits of the aggregation services market.

For our client alert on the data sharing principles, please visit: *https://media2.mofo.com/documents/171019-cfpb-data-sharing.pdf*.

Departing Director Urges More Consumer Controls
Shortly before his departure from the CFPB in November 2017, Director Richard Cordray sent "the CEO's of several banks, credit unions, and financial companies" a letter asking that they consider "enabl[ing] consumers to exert greater control over their credit cards, debit cards, and other payment methods." Possibly referring to a number of high-profile security breaches that have occurred over the past few years, including the recent Equifax breach, Director Cordray stated that the CFPB believes the issue of consumer control over payment methods "is especially timely and important for American consumers." To provide such control, Director Cordray noted that new technology has the potential to enhance security "by establishing controls that will make it more difficult for unauthorized transactions to occur." Such controls may include customer-set spending limits by merchant, transaction channel, or spending category; transaction alerts; and other money management tools available on institutions' online and mobile platforms.

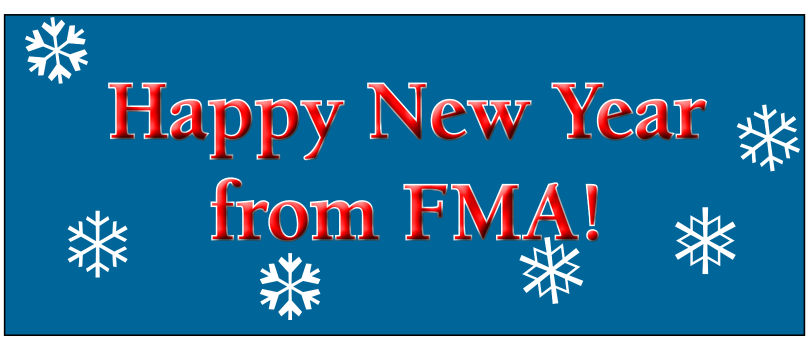
For our client alert on the letter, please visit: *https://media2.mofo.com/documents/171121-cfpb-payment-methods.pdf*.

Post-Cordray CFPB Releases Credit Card Market Report
On December 27, 2017, the CFPB released its biennial report summarizing the Bureau's views on the state of the consumer credit card market, as required by Section 502(a) of the CARD Act. This report is the first such publication from the CFPB since the resignation of former Director Richard Cordray and thus may provide some insights into the CFPB's current perspective with respect to the state of the consumer credit card market. For example, the new report is more neutral in tone than previous reports and does not identify supervisory or enforcement priorities, specify CFPB policy, or list "areas of potential concern," as previous reports had done.

Based on information received in response to the March 2017 request for information, data from the Bureau's Consumer Credit Panel, and de-identified data collected by the Federal Reserve Board from bank holding companies, as well as other data sources, the report states that "quantitative and qualitative indicators . . . generally suggest a positive picture for consumers in the credit card market." The report also addresses two new topics affecting the credit card market: products developed for consumers with "non-prime" credit scores and third-party credit card comparison websites.

For our preliminary client alert on the report, please visit: *https://media2.mofo.com/documents/171228-cfpb-card-act-report.pdf*. ■

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



Watch For

CFTC

CFTC Press Release 7670-18 (January 9, 2018) – The CFTC unanimously approved final rules that update Parts 3 and 9 to integrate existing advisory guidance, incorporate swap execution facilities, and update provisions currently applicable to designated contract markets.

CFTC Press Release 7665-17 (December 15, 2017) – The CFTC launched a virtual currency resource Web page, *cftc.gov/bitcoin*. This dedicated page is a central repository for Commission-produced resources about virtual currency, and is designed to educate and inform the public about these commodities, including the possible risks associated with investing or speculating in virtual currencies or recently launched Bitcoin futures and options. The newly launched Web page provides quick access to the CFTC's virtual currency primer; CFTCTalks podcast episode featuring CFTC staff discussing virtual currencies; LabCFTC, the Commission's FinTech effort; and a fact sheet explaining the CFTC's role in oversight of virtual currencies. Additionally, the CFTC today released a Customer Advisory, titled "Understand the Risks of Virtual Currency Trading." This advisory details the risks of purchasing virtual currencies in the cash market, in addition to those risks present in virtual currency futures and options. Bitcoin and other virtual currencies have been determined to be commodities under the Commodity Exchange Act. The Commission primarily regulates commodity derivatives contracts that are based on underlying commodities. While its regulatory oversight authority over commodity cash markets is limited, the CFTC maintains general anti-fraud and manipulation enforcement authority over virtual currency cash markets as a commodity in interstate commerce.

CFTC Press Release 7664-17 (December 15, 2017) – The CFTC announced a Proposed Interpretation concerning its authority over retail commodity transactions involving virtual currency, such as bitcoin. Specifically, the Proposed Interpretation sets out the CFTC's view regarding the "actual delivery" exception that may apply to virtual currency transactions. The Proposed Interpretation is open for public comment for 90 days from publication in the *Federal Register*.

CFTC Press Release 7663-17 (December 15, 2017) – The CFTC added 21 new names to the Registration Deficient List (RED List). These 21 new additions bring the total number of foreign entities on the RED List to 125. The RED List, launched in September 2015 identifies unregistered foreign entities that the CFTC has reason to believe are soliciting and accepting funds from U.S. residents at a retail level for, among other things, trading in binary options or foreign currency (forex) and are required to register with the CFTC but, are not registered. Registration with the CFTC is no guarantee against fraud or mismanagement by an otherwise unscrupulous firm; however, registration does bring a higher level of security and accountability to the public. The RED List complements registration information available to the public on the National Futures Association website. (*https://www.nfa.futures.org/basicnet/*)

CFTC Press Release 7648-17 (November 20, 2017) – The CFTC's Division of Market Oversight issues no-action relief from certain timing requirements regarding swap execution facilities chief compliance officer annual compliance reports and fourth quarter financial reports. The no-action relief shall commence on the date of the issuance of this letter and expire on November 30, 2020 at 11:59 pm (EST).

CFTC Press Release 7645-17 (November 14, 2017) – The CFTC's Division of Market Oversight extends time-limited no-action relief until November 15, 2020 at 11:59 pm (EST) for swap execution facilities from certain block trade requirements in CFTC regulation 43.2, subject to certain conditions.

CFTC Press Release 7632-17 (October 26, 2017) – The CFTC issued an Order that will keep the swap dealer *de minimis* threshold at $8 billion until December 2019. The one-year extension provides the CFTC additional time to complete the current data analysis and for the CFTC to consider appropriate further action. The Order establishes a new swap dealer *de minimis* threshold phase-in termination date of December 31, 2019. Because of this action, the de *de minimis* threshold will remain at $8 billion until December 31, 2019 instead of decreasing to $3 billion on December 31, 2018. As described in the Order, significant progress is being made in analyzing additional swap data that will be useful for the Commission to assess appropriate amendments to the *de minimis* exception rule. However, any such modifications, if implemented, would not become effective until some point in 2018, after the CFTC completes the proposal, public comment, and final rule amendment process as required by the Administrative Procedure Act.

(Continued on Page 17)

Watch For *(Continued from page 16)*

CFTC Press Release 7631-17 (October 17, 2017) – The CFTC's LabCFTC released, "*A CFTC Primer on Virtual Currencies*." This primer is the first of a series that LabCFTC will release to provide fundamental, and essential, information about financial technology (FinTech) innovation. This first primer provides an overview of virtual currencies and their potential use-cases, helps outline the CFTC's role and oversight of virtual currencies, and cautions investors and users of the potential risks involved with virtual currencies.

CFTC Press Release 7630-17 (October 16, 2017) – CFTC staff issued a report detailing the results of an evaluation of settlement liquidity at clearinghouses. The purpose of the analysis was to assess the impact of a hypothetical extreme but plausible market scenario on the ability of three clearinghouses to meet their settlement obligations on time. It is the second systemic stress testing report issued by CFTC, following its Supervisory Stress Test of Clearinghouses published in November 2016.

CFTC Press Release 7629-17 (October 13, 2017) – CFTC Chairman J. Christopher Giancarlo announced determinations by the CFTC and the European Commission on comparability and equivalence of margin requirements for uncleared swaps, as well as a common approach regarding certain CFTC and European Union authorized derivatives trading venues. These announcements follow extensive cooperation between the staffs of the CFTC and the EC and reflect the CFTC's ongoing commitment to international collaboration and comity.

CFTC Press Release 7612-17 (September 19, 2017) – The CFTC's Office of Data and Technology announced that it has launched an improved online filing portal for submitting CFTC Form 40 that addresses some industry concerns. The updated online filing portal for submitting CFTC Form 40 improves the functionality of the form and adds new, more user-friendly features, while collecting essentially the same information as before.

FDIC

FDIC Press Release (September 27, 2017) – The FDIC adopted a final rule to enhance the resilience and safety and soundness of state savings associations and banks supervised by the FDIC that are affiliated with systemically important U.S. and foreign banking organizations. Under the final rule, covered FDIC-supervised institutions are required to ensure that their qualified financial contracts do not allow for immediate cancellation or termination under certain circumstances. The final rule also amends the definitions of "qualifying master netting agreement" and related terms in the FDIC's capital and liquidity rules to account for the final rule.

Federal Reserve Board

Federal Reserve Press Release (January 12, 2018) – The Federal Reserve Board announced that it has finalized a rule adjusting the Board's maximum civil money penalties, as required by law. The final rule increases the maximum civil money penalty limits for 2018. The new penalty amounts have been published in the Federal Register and apply as of January 10, 2018.

Federal Reserve Press Release (January 4, 2018) – The Federal Reserve Board requested comment on proposed guidance that would clarify the Board's supervisory expectations related to risk management for large financial institutions. Comments on this proposal will be accepted until March 15, 2018. The Board previously extended the comment periods for the rating system and board effectiveness guidance until February 15, 2018, so that the public could comment on and understand these components together.

Federal Reserve Press Release (December 12, 2017) – The Federal Reserve Board requested public comment on proposed policy changes to procedures governing the provision of intraday credit to U.S. branches and agencies of foreign banking organizations. The changes are intended to refine the methods for determining the level of intraday credit that these branches and agencies can receive from the Federal Reserve Banks. Comments on the proposed changes to the Payment System Risk policy are requested within 60 days of publication in the *Federal Register*.

Federal Reserve Press Release (December 7, 2017) – The Federal Reserve Board announced final plans for the production of three new reference rates based on overnight repurchase agreement (repo) transactions secured by Treasury securities. The three reference rates will be produced by the Federal Reserve Bank of New York, in cooperation with the U.S. Office of Financial Research. Because these rates are based on transactions secured by Treasury securities, they are essentially risk-free rates, providing a valuable benchmark for market participants to use in financial transactions.

(Continued on Page 18)

Watch For *(Continued from page 17)*

Federal Reserve Press Release (December 7, 2017) – The federal banking agencies announced their support for the conclusion of efforts to reform the international bank capital standards initiated in response to the global financial crisis. The Basel III agreement, which was designed for internationally active banks, was introduced in 2010 and was instrumental in establishing revised minimum standards that increased both the quality and quantity of regulatory capital. The finalized reforms are intended to improve risk sensitivity, reduce regulatory capital variability, and level the playing field among internationally active banks. The agencies will consider how to appropriately apply these revisions to the Basel III reform package in the U.S. and any proposed changes based on this agreement will be made through the standard notice-and-comment rulemaking process.

Federal Reserve Press Release (December 1, 2017) – The Federal Reserve Board requested public comment on a proposal to amend its Regulation A, which governs extensions of credit by Federal Reserve Banks, to make certain technical adjustments including to reflect the expiration of the Term Asset Backed Securities Loan Facility program. The proposed amendments would revise the provisions regarding the establishment of the primary credit rate at the discount window in a financial emergency, and would delete obsolete provisions relating to the use of credit ratings for collateral for extensions of credit under the former TALF program. Comments on the proposal are requested within 30 days of publication in the *Federal Register*.

Federal Reserve Press Release (November 17, 2017) – The Federal Reserve Board extended the comment periods for two related proposals until February 15, 2018. One would enhance the effectiveness of boards of directors. The other would implement a new ratings system for large financial institutions that would be aligned with the post-crisis supervisory program. The Board extended the comment periods to allow interested persons more time to analyze the issues and prepare their comments. Comments on both proposals had been due November 30, 2017.

Federal Reserve Press Release (November 13, 2017) – The Federal Reserve Board announced the approval of fee schedules, effective January 2, 2018, for payment services the Federal Reserve Banks provide to depository institutions (priced services).

Federal Reserve Press Release (November 3, 2017) – The Federal Reserve Board on announced the annual indexing of two amounts used in determining reserve requirements of depository institutions. These amounts are the reserve requirement exemption amount and the low reserve tranche for 2018. The Board also announced changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency with which depository institutions must submit deposit reports.

Federal Reserve Press Release (October 13, 2017) – The Federal Reserve, on behalf of the Governance Framework Formation Team, announced the 27 members of the collaborative industry short-term work group that will focus on developing a governance framework for faster payments in the United States. The formation team will initially focus on the structure, decision-making and processes of a governance framework, and is committed to keeping industry stakeholders abreast of progress by seeking comment on its recommendations in the spring of next year, with the goal of concluding its work in the second half of 2018.

Federal Reserve Press Release (September 28, 2017) – The FRB and FDIC extended the next resolution plan filing deadline for eight large domestic banks by one year to July 1, 2019. The extension will provide the time needed for firms to remediate any weaknesses identified in their July 2017 submissions and to prepare and improve their next resolution plan submissions. The agencies continue to explore ways to improve the resolution planning process and believe it is worthwhile to consider extending the cycle for living will submissions from annual to once every two years. The agencies' review of the July 1, 2017, resolution plan submissions is ongoing. This extension does not affect any actions the agencies may take concerning those plans. The agencies are also extending by one year, to December 31, 2018, the next resolution plan submission deadline for 82 foreign banks with limited U.S. operations.

Federal Reserve Press Release (September 27, 2017) – The federal banking agencies proposed a rule intended to reduce regulatory burden by simplifying several requirements in the agencies' regulatory capital rule. Most aspects of the proposed rule would apply only to banking organizations that are not subject to the

(Continued on Page 19)

Watch For *(Continued from page 18)*

"advanced approaches" in the capital rule, which are generally firms with less than $250 billion in total consolidated assets and less than $10 billion in total foreign exposure. Specifically, the proposed rule simplifies the capital treatment for certain acquisition, development, and construction loans, mortgage servicing assets, certain deferred tax assets, investments in the capital instruments of unconsolidated financial institutions, and minority interest. Comments on this proposal will be accepted for 60 days after publication in the *Federal Register*.

FINRA

FINRA Regulatory Notice 18-03 (January 10, 2018) – FINRA announced updates of the Interpretations of Financial and Operational Rules. The updated interpretations relate to amendments that the SEC adopted to Securities Exchange Act (SEA) Rule 15c6-1 in connection with the standard settlement cycle.

FINRA Regulatory Notice 18-02 (January 8, 2018) – FINRA is requesting comment on proposed amendments to FINRA Rule 4521 (Notifications, Questionnaires and Reports) and the new Supplemental Liquidity Schedule. The comment period expires March 8, 2018.

FINRA Regulatory Notice 18-01 (January 2, 2018) – FINRA is issuing this Notice to help firms review, reconcile and respond to their Final Statements in E-Bill as well as view the reports that are currently available in Web CRD/IARD for the annual registration renewal process. The payment deadline is January 22, 2018.

FINRA Information Notice (December 21, 2017) – FINRA released the 2018 holiday trade date, settlement date and margin extensions schedule.

FINRA Regulatory Notice 17-43 (December 6, 2017) – FINRA provides guidance on reporting short interest positions held in master/sub-accounts or parent/child accounts.

FINRA Regulatory Notice 17-42 (December 6, 2017) – FINRA requests comment on proposed amendments to the codes of arbitration procedure relating to requests to expunge customer dispute information. The comment period expires February 5, 2018.

FINRA Information Notice (November 30, 2017) – FINRA reminds firms of their Annual Audit, Financial and Operational Combined Uniform Single (FOCUS), Form Custody, and supplemental FOCUS Report filing obligations. This Notice provides the due dates for filings that are due in 2018 or in the first quarter of 2019. All filings submitted to FINRA must be made electronically though FINRA's Firm Gateway.

FINRA Regulatory Notice 17-41 (November 28, 2017) – FINRA is conducting a retrospective review of the rule governing payments for market making to assess its effectiveness and efficiency. This Notice outlines the general retrospective rule review process and seeks responses to several questions related to firms' experiences with this specific rule. The comment period expires January 29, 2018.

FINRA Regulatory Notice 17-40 (November 21, 2017) – FINRA provides guidance to firms regarding anti-money laundering program requirements under FINRA Rule 3310 following the adoption of FinCEN's final rule to enhance customer due diligence requirements for financial institutions. FinCEN's CDD Rule became effective July 11, 2016. Member firms must be in compliance with its provisions by May 11, 2018.

FINRA Regulatory Notice 17-39 (November 15, 2017) – The SEC approves the CAT Fee Dispute Resolution Process. The rule implementation date is December 1, 2017. (Note: the process will not be in effect until CAT fees are operative.)

FINRA Regulatory Notice 17-38 (November 13, 2017) – FINRA requests comment on a proposal to amend Rule 3110 (Supervision) to provide firms the option to conduct remote inspections of offices and locations that meet specified criteria. The comment period expires January 12, 2018.

FINRA Regulatory Notice 17-37 (November 6, 2017) – The SEC approved Capital Acquisition Broker Rule 203 (Engaging in Distribution and Solicitation Activities with Government Entities) and CAB Rule 458 (Books and Records Requirements for Government Distribution and Solicitation Activities). These rules apply established "pay-to-play" and related recordkeeping rules to the activities of member firms that have elected to be governed by the CAB Rules. The rules will allow CABs to engage in distribution or solicitation activities for compensation with government entities on behalf of registered investment advisers. The rules become effective on December 6, 2017.

FINRA Regulatory Notice 17-36 (November 3, 2017) – A new End-of-Day TRACE Transaction File and TRACE Security Activity Report will be made available

(Continued on Page 20)

Watch For *(Continued from page 19)*

to subscribers, each for a fee, beginning on February 1, 2018. The rule text is available in the online FINRA Manual.

FINRA Regulatory Notice 17-35 (October 31, 2017) – The 2018 Renewal Program begins on November 13, 2017, when FINRA makes the Preliminary Statements available to all firms in E-Bill. Preliminary Statements are not mailed to firms. Firms should note the following key dates in the renewal process:
October 23, 2017—Firms may begin submitting post-dated Form U5 and BR Closing/Withdrawal filings via Web CRD/IARD.
November 1, 2017—Firms may begin submitting post-dated Form BDW and ADV-W filings via Web CRD/IARD.
Please Note: Registrations terminated by post-dated filings submitted by 11 p.m., Eastern Time (ET), November 10, 2017, do not appear on the firm's Preliminary Statement. The only allowed date for post-dated filings is December 31, 2017.
November 13, 2017—Preliminary Statements are available in E-Bill.
December 18, 2017—Full payment of Preliminary Statements is due.
January 2, 2018—Final Statements are available in E-Bill.
January 22, 2018—Full payment of Final Statements is due.
FINRA advises FINRA-registered firms that failure to remit full payment of their Preliminary Statements to FINRA by December 18, 2017, may cause the firm to become ineligible to do business in the jurisdictions where it is registered, effective January 1, 2018. FINRA-registered firms will also be subject to a late fee if payment is not received by December 18, 2017.

FINRA Regulatory Notice 17-33 (October 18, 2017) – When respondents are no longer in business, recovery of arbitration awards against them often is unavailing. Accordingly, FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes to expand a customer's options to withdraw an arbitration claim if a firm or an associated person becomes inactive before a claim is filed or during a pending arbitration. In addition, the proposed amendments would allow customers to amend pleadings, postpone hearings and receive a refund of filing fees under these situations. The text of the proposed amendments can be found at *www.finra.org/industry/notices/17-33*. The comment period expires December 18, 2017.

FINRA Regulatory Notice 17-32 (October 16, 2017) – FINRA reminds firms of their sales practice obligations in connection with volatility-linked ETPs as discussed more generally in Regulatory Notice 12-03, including, without limitation, that recommendations to customers must be based on a full understanding of the terms, features and risks of the product recommended, sales materials must be fair and accurate, and firms must have reasonable supervisory procedures in place to ensure that these obligations are met.

FINRA Regulatory Notice 17-31 (October 5, 2017) – FINRA has filed for immediate effectiveness amendments to Section 13 of Schedule A to the FINRA By-Laws governing the review charge for communications filed with or submitted to FINRA's Advertising Regulation Department. The amendments do not increase the filing fees for the review of communications. The amendments establish charges for a new option to submit websites and web pages in their native format in anticipation of the impending upgrade to the Advertising Regulation Electronic Files System. The amendments do not change the current filing requirements under FINRA Rules 2210 (Communications with the Public) or 2220 (Options Communications). The implementation date is October 5, 2017.

FINRA Regulatory Notice 17-30 (October 5, 2017) – The SEC approved a proposed rule change to: (1) adopt consolidated FINRA registration rules; (2) restructure the representative-level qualification examinations by creating a general knowledge examination called the Securities Industry Essentials and transforming the representative-level examinations into specialized knowledge examinations; and (3) amend the Continuing Education (CE) requirements. These changes become effective October 1, 2018.

FINRA Regulatory Notice 17-29 (October 4, 2017) – FINRA's proposed amendments to the definition of non-public arbitrator in the Customer and Industry Codes of Arbitration Procedure have been approved by the SEC. The amended definition provides that a non-public arbitrator is a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under the Codes. The amendments are effective on October 9, 2017.

FINRA Regulatory Notice 17-28 (September 29, 2017) – In June 2016 the SEC approved FINRA's rule change amending FINRA Rule 4210 to establish margin requirements for Covered Agency Transactions. To assist members in complying with the rule change, FINRA has made available a set of frequently asked questions and guidance. In addition, FINRA is extending, to June 25, 2018, the effective date of

(Continued on Page 21)

Watch For

(Continued from page 20)

the requirements pursuant to the rule change that otherwise would have become effective on December 15, 2017.

MSRB

MSRB Press Release (January 18, 2018) – The MSRB filed with the SEC a proposed new rule, MSRB Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities dealers. The MSRB has requested an effective date of nine months for the proposed changes, if approved by the SEC following its public notice and comment process.

MSRB Press Release (January 3, 2018) – The MSRB reminded municipal securities dealers about their regulatory responsibilities related to filtering out bids on an ATS and offers from certain dealers when they transact municipal securities. This regulatory reminder is intended to serve as a compliance resource to assist dealers in assessing their policies and procedures governing when and how to use, review and change filters to ensure compliance with existing regulatory obligations. This reminder does not create new legal or regulatory requirements, but rather summarizes existing guidance for dealers issued in 2012 on MSRB Rule G-43, on broker's brokers, and MSRB Rule G-30, on prices and commissions, as well as implementation guidance provided in 2015 about MSRB Rule G-18, on best execution, that addressed filtering.

MSRB Press Release (December 15, 2017) – The MSRB received approval from the SEC to amend MSRB Rule G-34, on obtaining CUSIP numbers. The amended rule, effective June 14, 2018, reflects the MSRB's long-standing interpretation that municipal securities dealers acting as placement agents in private placements of municipal securities, including direct purchase transactions, must obtain a CUSIP number. Additionally, the amendments extend to non-dealer municipal advisors the requirement that a municipal advisor obtain a CUSIP number when advising on a competitive transaction in municipal securities.

December 14, 2017 – The MSRB reminds municipal securities dealers and municipal advisors that the annual notice required by MSRB Rule G-10, on investor and municipal advisory client education and protection, must be provided to their existing customers and municipal advisory clients by December 31, 2017. Specifically, Rule G-10, which became effective October 13, 2017, requires municipal securities dealers and municipal advisors to provide in writing, which may be electronic, the following information to customers and municipal advisory clients once each calendar year: 1) A statement that the firm is registered with the MSRB and the Securities and Exchange Commission; 2) The MSRB's website address; and 3) A statement as to the availability of the "Information for Municipal Securities Investors and/or Information for Municipal Advisory Clients" on the MSRB's website describing the protections that may be provided by the MSRB's rules and how to file a compliant with an appropriate regulatory authority.

MSRB Notice 2017-24 (December 8, 2017) – The MSRB received approval from the SEC to amend Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities. The MSRB amended Form G-45 to collect data about transactional fees primarily assessed by programs established to implement ABLE programs. In addition, amended Form G-45 will require an underwriter to disclose any variance in the account maintenance fee due to the residency of the account owner. The amendments, effective June 30, 2018, will help the MSRB receive more reliable, complete and accurate information about ABLE programs and 529 college savings plans. To facilitate compliance with these changes, the MSRB will be making both amended Form G-45 and an updated Form G-45 manual available, and will make future announcements regarding those materials.

MSRB Press Release (November 16, 2017) – The MSRB is seeking public comment on its approach to enhancing compliance support. The MSRB's request for comment invites regulated entities, other market stakeholders and the public to share their perspectives on how the MSRB can most effectively support understanding of its rules. Comments should be submitted to the MSRB by February 9, 2018 (extended from original deadline of December 22, 2017).

November 8, 2017 – The MSRB filed with the SEC an amendment to its filing on proposed changes to MSRB Rule G-34, on obtaining CUSIP numbers, to modify the proposed principles-based exception for certain sales of municipal securities. The amendment seeks to more accurately reflect that direct purchases of municipal securities by banks may be held to maturity, or may be subject to earlier redemption or mandatory tender. In addition, the amendment, if approved, will extend the principles-based exception to apply to purchases of new issue municipal securities by municipal entities that are not established for the purpose of secondary market trading, such as state revolving funds and bond banks.

(Continued on Page 22)

Watch For *(Continued from page 21)*

MSRB Notice 2017-21 (November 8, 2017) – The MSRB is publishing this notice to announce that it plans to revise the MSRB Examination (Series 52) into a specialized knowledge exam in advance of the October 1, 2018 release of the (FINRA Securities Industry Essentials™ examination. The MSRB worked collaboratively with FINRA during development of the SIE examination to streamline duplicative testing of general knowledge that has traditionally been covered across several representative-level examinations. The MSRB anticipates filing a proposed rule change with the SEC in early 2018 to require the SIE as a prerequisite to registration as a Municipal Securities Representative, Municipal Securities Sales Limited Representative and Limited Representative-Investment Company and Variable Contracts Product Representative.

November 7, 2017 – The MSRB is providing a new compliance resource for municipal advisors about continuing education program requirements established by MSRB Rule G-3, on professional qualifications. These answers to frequently asked questions and additional compliance resources for all regulated entities are available in the MSRB's online Compliance Center.

MSRB Press Release (October 18, 2017) – In a letter to the SEC's Office of the Investor Advocate this week, the MSRB emphasized its concerns about municipal market practices that pose risks for retail investors, and reiterated its commitment to enhancing transparency and fairness in the municipal market through a continued focus on pricing and disclosure.

October 13, 2017 – The MSRB filed with the SEC a proposed rule change to amend MSRB Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities. The MSRB seeks to collect additional information about the transactional fees primarily assessed by programs established under the ABLE Act, as well as any variance in account maintenance fee based on the residency of the account owner. The proposed rule change would require underwriters to ABLE programs as well as underwriters to 529 college savings plans to submit additional fee information, as applicable, beginning with the reporting period ending June 30, 2018. The reporting period ending June 30, 2018 is the first reporting period that underwriters to ABLE programs are required to submit data to the MSRB on Form G-45.

MSRB Press Release (October 5, 2017) – The MSRB expanded the availability of municipal market yield curves and indices on its EMMA® website. The addition of Bloomberg's BVAL Municipal AAA Curve to EMMA gives investors another tool intended to help monitor the level and direction of municipal bond interest rates, and compare relative yields of specific municipal securities.

October 2, 2017 – To assist municipal advisor firms in complying with continuing education requirements, the MSRB is providing a sample needs analysis checklist and training plan template. The fillable checklist and template is intended to help municipal advisor firms evaluate and prioritize their firm's specific training needs and develop a plan for delivering appropriate training. CE requirements for municipal advisor firms are outlined in MSRB Rule G-3 and effective January 1, 2018.

MSRB Notice 2017-20 (September 29, 2017) – On September 29, 2017, the MSRB filed a proposed rule change with the SEC to modify the fee charged under MSRB Rule A-11, on assessments for municipal advisor professionals. The amendments to Rule A-11 increase the annual municipal advisor professional fee to $500 from $300 and is effective immediately, although the first payment at the new rate is not due until April 30, 2018. The proposed rule change also includes several technical amendments, including a clarification regarding the rule's late fee provision, Rule A-11(b).

September 25, 2017 – The MSRB published this "Compliance Advisory for Brokers, Dealers and Municipal Securities Dealers." The compliance advisory serves as a reference tool for municipal securities dealers seeking to proactively address compliance risks and assess the effectiveness of their compliance programs. In June, the MSRB published a similar compliance advisory for municipal advisors to support their efforts to comply with new and existing standards of conduct.

September 18, 2017 – The MSRB reminds municipal securities dealers and municipal advisors that amendments to its investor and municipal advisory client education and protection rules will become effective on October 13, 2017.

OCC

OCC News Release 2018-4 (January 18, 2018) – The OCC reported credit, operational, and compliance risks are key concerns for the federal banking system in its *Semiannual Risk Perspective for Fall 2017*.

(Continued on Page 23)

Watch For *(Continued from page 22)*

OCC Bulletin 2018-2 (January 18, 2018) – The OCC, Federal Reserve Board and FDIC issued an interagency statement for supervised financial institutions on accounting and reporting implications of the new tax law and certain related matters. Changes required as a result of the new law, which was enacted on December 22, 2017, are relevant to December 31, 2017, financial statements and regulatory reports.

OCC Bulletin 2017-57 (November 29, 2017) – The OCC published a final rule in the *Federal Register* that will enhance the resilience and the safety and soundness of federally chartered and licensed financial institutions. The final rule addresses concerns relating to the exercise of default rights of certain financial contracts that could interfere with the orderly resolution of certain systemically important financial firms. Under this final rule, a covered bank is required to ensure that all covered qualified financial contracts (1) contain a contractual stay-and-transfer provision analogous to the statutory stay-and-transfer provision imposed under title II of the Dodd–Frank Act of 2010 and in the FDIC Act and (2) limit the exercise of default rights based on the insolvency of an affiliate of the covered bank. In addition, this final rule makes conforming amendments to the OCC's capital adequacy standards in 12 CFR 3 and the liquidity risk measurement standards in 12 CFR 50. The OCC worked closely with the Federal Reserve Board and the FDIC to ensure that the requirements of this final rule are substantively identical to those contained in final rules issued by the board on September 12, 2017, and the FDIC on October 30, 2017.

OCC Bulletin 2017-56 (November 22, 2017) – The OCC, FRB and the FDIC are issuing a final rule, applicable to non-advanced approaches national banks and federal savings associations, that will maintain the capital rules' 2017 transition provisions for several regulatory capital deductions and certain other requirements that are subject to multi-year phase-in schedules in the regulatory capital rules. The effective date of this final rule is January 1, 2018.

OCC Bulletin 2017-48 (October 31, 2017) – The OCC updated its policies and procedures regarding bank enforcement actions and related matters. This policy is effective on December 1, 2017. The updates are reflected in the "Bank Supervision Process," "Community Bank Supervision," "Federal Branches and Agencies Supervision," and "Large Bank Supervision" booklets of the *Comptroller's Handbook*. The updates provide the agency with guidelines on consistent terminology, communication, format, follow-up, analysis, documentation, and reporting of bank enforcement actions. This bulletin rescinds OCC Bulletin 2011-37, "Bank and Federal Savings Association Supervision Operation: Enforcement Action Policy," issued September 9, 2011.

OCC Bulletin 2017-47 (October 30, 2017) – The OCC, FRB and FDIC (collectively, the agencies) are seeking comment on a proposed rule that would simplify certain aspects of the capital rule. The majority of the proposed simplifications would apply solely to banking organizations that are not subject to the advanced approaches capital rule (the advanced approaches capital rule generally applies to banks that are part of banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total consolidated foreign financial exposure). Specifically, this proposed rule would (1) replace the complex treatment of high-volatility commercial real estate exposures with a more straightforward treatment for most acquisition, development, or construction loans; (2) simplify the current regulatory capital treatment for mortgage servicing assets, temporary difference deferred tax assets, and holdings of regulatory capital instruments issued by other financial institutions; and (3) simplify the current limitations on minority interest includable in regulatory capital. In addition, the proposed rule would make certain technical amendments that would apply to all banks.

OCC Bulletin 2017-46 (October 27, 2017) – The OCC issued the following guidance:
1) The OCC's Approach to Federal Branch and Agency Supervision. The revised paper replaces the paper of the same title issued on October 8, 2014. The revision incorporates changes in supervision processes relative to large and complex federal branches and agencies.
2) The "Federal Branches and Agencies" booklet of the *Comptroller's Licensing Manual*. This updated booklet replaces the booklet of the same title issued in July 2015. The updated booklet clarifies processes for reviewing and evaluating conversion applications.

OCC Bulletin 2017-45 (October 27, 2017) – The OCC proposes to implement several technical and conforming changes to the OCC's Annual Stress Test rule (12 CFR 46). The proposed rule would change the range of possible "as-of" dates used in the global market shock component to conform to changes recently made by the Federal Reserve Board to its stress testing regulations. The proposed rule would also change the transition period for an institution that becomes an over $50 billion covered institution.

(Continued on Page 24)

Watch For *(Continued from page 23)*

Finally, the proposed rule would make certain technical changes to clarify the requirements of the OCC's stress testing regulation. The notice of proposed rulemaking was issued in the *Federal Register* on October 27, 2017, with a 60-day comment period.

OCC Bulletin 2017-44 (October 23, 2017) – The OCC, along with the FRB and FDIC (collectively, the agencies), are releasing answers to frequently asked questions regarding the liquidity coverage ratio rule. These FAQs are the agencies' staffs' interpretations of the rule based on the facts and circumstances presented. These FAQs are not official rules or regulations. The OCC plans to compile additional FAQs related to the LCR rule, as needed, and will post updated FAQs on the OCC's LCR page.

OCC Bulletin 2017-43 (October 20, 2017) – This bulletin informs national banks, federal savings associations, and federal branches and agencies of foreign banks (collectively, banks) of the principles they should follow to prudently manage the risks associated with offering new, modified, or expanded products and services (collectively, new activities). New activities should be developed and implemented consistently with sound risk management practices and should align with banks' overall business plans and strategies. New activities should encourage fair access to financial services and fair treatment of consumers and should be in compliance with applicable laws and regulations. This bulletin is consistent with the OCC's support of responsible innovation by banks to meet the evolving needs of consumers, businesses, and communities.

OCC News Release 2017-121 (October 13, 2017) – The OCC released an updated list of permissible activities for national banks and federal savings associations. The publication titled, "Activities Permissible for National Banks and Federal Savings Associations, Cumulative," updates the list of permissible activities to reflect applicable precedent for national banks, streamlines certain entries for readability, and includes applicable interpretive letters and corporate decisions issued by the OCC affecting federal savings associations. OCC precedent remains applicable until rescinded, superseded, or revised.

OCC Bulletin 2017-39 (October 6, 2017) – The OCC is requesting comment on a proposed rule to shorten the standard settlement cycle for securities purchased or sold by national banks or federal savings associations (collectively, banks). The proposal was issued jointly with the FDIC. The OCC initially posted the proposal to its website on September 1, 2017. It was published in the *Federal Register* on September 11, 2017. The comment period for the proposed rule ends on October 11, 2017.

OCC News Release 2017-113 (September 28, 2017) – The OCC released its bank supervision operating plan for fiscal year (FY) 2018. The plan provides the foundation for policy initiatives and for supervisory strategies as applied to individual banks. OCC staff members use this plan to guide their supervisory priorities, planning, and resource allocations. Supervisory strategies for FY 2018 focus on: 1) Cybersecurity and operational resiliency; 2) Commercial and retail credit loan underwriting, concentration risk management, and the allowance for loan and lease losses; 3) Business model sustainability and viability and strategy changes; 4) Bank Secrecy Act/anti-money laundering (BSA/AML) compliance management; and 5) Change management to address new regulatory requirements. The OCC will provide periodic updates about supervisory priorities through the "Semiannual Risk Perspective" in the fall and spring.

SEC

SEC Press Release 2017-210 (November 15, 2017) – The SEC's Enforcement Division issued a report highlighting its priorities for the coming year as well as a review of enforcement actions that took place during FY 2017.

SEC Press Release 2017-200 (October 26, 2017) – Following consultation with European authorities, and in response to concerns that investors could lose access to valuable research, the staff of the SEC issued three related no-action letters. These letters are designed to provide market participants with greater certainty regarding their U.S. regulated activities as they engage in efforts to comply with the European Union's Markets in Financial Instruments Directive (MiFID II) in advance of the Jan. 3, 2018, implementation date. The no-action relief provides a path for market participants to comply with the research requirements of MiFID II in a manner that is consistent with the U.S. federal securities laws. More specifically, and subject to various terms and conditions: (1) broker-dealers, on a temporary basis, may receive research payments from money managers in hard dollars or from advisory clients' research payment accounts; (2) money managers may continue to aggregate orders for mutual funds and other clients; and (3) money managers may continue to rely on an existing safe harbor when paying broker-dealers for research and brokerage. The temporary no-action relief facilitates compliance with the new MiFID II research provisions while respecting the existing U.S. regulatory structure. It also is intended to provide

(Continued on Page 25)

Watch For (Continued from page 24)

the staff with sufficient time to better understand the evolution of business practices after implementation of the MiFID II research provisions. During the period of the temporary relief, the staff will monitor and assess the impact of MiFID II's research provisions on the research marketplace and affected participants in order to determine whether more tailored or different action, including rulemaking, is necessary and appropriate in the public interest.

SEC Press Release 2017-176 (September 25, 2017) – The SEC announced two new initiatives that will build on its Enforcement Division's ongoing efforts to address cyber-based threats and protect retail investors. The creation of a Cyber Unit that will focus on targeting cyber-related misconduct and the establishment of a retail strategy task force that will implement initiatives that directly affect retail investors reflect SEC Chairman Jay Clayton's priorities in these important areas.

SEC Press Release 2017-172 (September 21, 2017) – The SEC has approved interpretive guidance to assist companies in their efforts to comply with the pay ratio disclosure requirement mandated by Section 953(b) of the Dodd-Frank Act. Under the Commission's rule implementing the pay ratio requirement, companies are required to begin making pay ratio disclosures in early 2018. The Commission's staff is also providing guidance separately about the pay ratio rule.

Available Publications

FDIC Press Release (January 10, 2018) – The FDIC issued the Winter 2017 issue of Supervisory Insights, which includes articles on credit Management Information Systems and recent results from the FDIC's Credit and Consumer Products/Services Survey. Supervisory Insights also includes a "Regulatory and Supervisory Roundup" section, which provides an overview of recently released regulations and supervisory guidance.

FDIC Press Release (January 10, 2018) – The FDIC issued the Winter 2017 issue of *Supervisory Insights*, which includes articles on credit Management Information Systems and recent results from the *FDIC's Credit and Consumer Products/Services Survey.*

OCC Bulletin 2017-61 (December 15, 2017) – The OCC and the other federal financial institutions regulatory agencies, in consultation with the Conference of State Bank Supervisors, are issuing guidance to their respective examiners regarding supervisory practices to be followed when assessing the financial condition of financial institutions directly affected by a disaster that results in a Presidential declaration of a major disaster. The guidance also applies to institutions that may be located outside the area declared a major disaster, but have loans to or investments in individuals or entities located in the area declared a major disaster.

OCC Bulletin 2017-59 (November 30, 2017) – The OCC issued the "Capital and Dividends" booklet of the *Comptroller's Licensing Manual*. This revised booklet replaces the booklet of the same name issued in November 2007. The revised booklet incorporates updated capital and dividends procedures and requirements following the integration of the functions of the Office of Thrift Supervision into the OCC in 2011 and the issuance of revised regulations (12 CFR 5) that became effective July 1, 2015, addressing capital and dividend transactions for both national banks and federal savings associations.

Program Update (continued from page 29)

2018 Legal and Legislative Issues Conference

FMA's 27th **Legal and Legislative Issues Conference** will take place next fall here in Washington, DC. Dates and hotel are now being finalized. Further information will appear in future issues of *Market Solutions*.

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

CPE / CLE accreditation (among others) will be available, so be sure to budget for, and plan to attend, the 27th annual Legal and Legislative Issues Conference next fall.

Program Update

2018 Securities Compliance Seminar

Registrations are now being accepted for FMA's 27th Securities Compliance Seminar taking place **April 18 – 20** at the Sheraton Charlotte Hotel (on South McDowell Street) in **Charlotte, North Carolina**. This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators.

The Planning Committee has been hard at work developing varied agenda topics and confirming noted industry leaders and regulators as speakers. Members include: **Michelle Dávila** *(Franklin Templeton Investments)*; **Charis Jones** *(LPL Financial)*; **Anna Pinedo** *(Morrison & Foerster LLP.)*; **Ann Robinson** *(RegEd)* **and Rich Saltz** *(Wells Fargo)*.

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

2-for-1, (NC in-state attendees only, first-timer, and regulatory/ government/SRO registration discounts are available.

Pre-Seminar Interactive Workshop
- Joy Aldridge ■ Compliance Counsel LLC
- Wesley Moore ■ Quarule, Inc.

Key 2018 Legislative and Regulatory Initiatives
- Thomas Grygiel ■ ACA Compliance Group
- Edward O'Keefe ■ Moore & Van Allen PLLC

BCP, Data Security and Cybersecurity: Avoiding Pitfalls and Mitigating Risk
- Tom Embrogno ■ Tom Tech Consulting
- Diane Novak ■ HomeStreet Bank
- Matthew White ■ Baker Donelson

Internal Audit Hot Topics and Emerging Risks
- Paul Bassler ■ Regions Financial Corporation
- Shellie Creson ■ Fifth Third Bank
- Daniel New ■ EY

BSA / AML / OFAC Compliance – Developments and Enforcement Trends
- Barbara Alonso ■ Credit Agricole Indosuez, Miami Agency
- Katrina Carroll ■ LPL Financial
- Daniel Tannebaum ■ PricewaterhouseCoopers LLP
- Representative ■ OFAC *(Invited)*

Emerging Technology: Digital Advice
- Wesley Moore ■ Quarule, Inc.
- Jared Shaw ■ EY

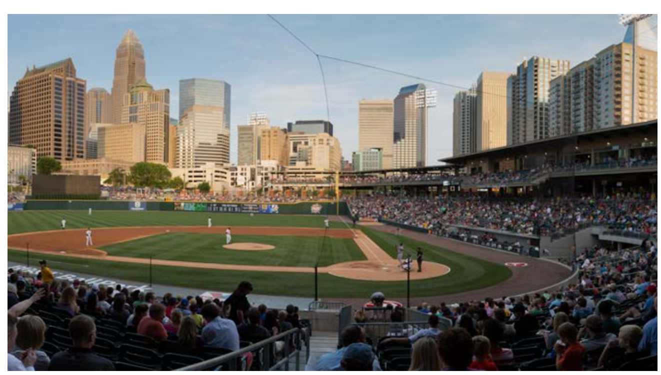
Fiduciary Standard Rulemaking
- Brad Busscher ■ Incapital LLC
- Evan Rosser ■ Oyster Consulting, LLC
- Leigh Thompson ■ The PNC Financial Services Group, Inc.

Regulatory Forum—Banking
- James Gallagher ■ OCC
- Howard Kirkham ■ FRB-Chicago
- Michael Orange ■ FDIC

SEC / OCIE Enforcement Hot Topics for Advisors
- Andrew "Buddy" Donohue ■ Shearman & Sterling LLP
- Brian Rubin ■ Eversheds Sutherland (US) LLP

Conflicts of Interest
- Louis Dempsey ■ Renaissance Regulatory Services, Inc.
- James Rabenstine ■ Nationwide Financial Services

Bank Products and Bank Networking Arrangements
- Paul Clark ■ Seward & Kissel LLP
- Jeffrey Holik ■ Shulman, Rogers, Gandal, Pordy & Ecker, P.A.



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(Continued on page 27)

Program Update *(continued from page 26)*

CCO Liability: Minimizing Your Exposure Without Compromising Your Effectiveness

- Karen Aavik ■ KeyBank
- Mark Carberry ■ J.P. Morgan
- Daniel Nathan ■ Orrick, Herrington & Sutcliffe LLP

Regulatory Forum—Securities

- Donna Esau ■ SEC
- Cynthia Friedlander ■ FINRA
- Kevin Harrington ■ NC Division of Securities
- Donald Litteau ■ FINRA
- Saliha Olgun ■ MSRB

Senior Investor Protections

- Joseph Brady ■ NASAA
- Gary Klein ■ Fifth Third Bank
- Miriam Lefkowitz ■ Summit Financial Resources, Inc. / Summit Equities, Inc.

Peer Groups

Peer group discussions (lead by facilitators) will take place Thursday afternoon. Participants will meet in small groups to discuss more in-depth a variety of issues and teach each other current best practices. If you plan to participate in these discussions, please suggest 4 potential topics below and send in to FMA:

1. ______________________________
2. ______________________________
3. ______________________________
4. ______________________________

ATTENTION VOLUNTEERS – If you would like to facilitate one of these discussions, please contact FMA.

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

FMA's room block at the Sheraton Charlotte expires March 27. After that date, room rates will increase and there's a chance the block could sell out before then. Click here to make a reservation – *FMA 2018 Compliance Seminar* (OR copy and paste this link into a web browser – *https://www.starwoodmeeting.com/events/start.action?id=1710128042&key=31029266.* You can also call 704/372-4100 (main hotel #) or 877/822-3224 (reservations call center) — mention "FMA 2018" or "Financial Markets Association" when making your reservation to get FMA's low group rate of $194. Once the block is gone, contact Dorcas Pearce. FMA may have a few rooms in reserve at the group rate that will be given out on a first-come, first-served basis.

Register today for this important spring conference – CPE / CLE accreditation and multiple registration discounts (team / first-timer / in-state / govt-regulatory-SRO) are available. Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 with questions and/or to register. Online registration is also available at *www.fmaweb.org.*

Pre-Seminar Workshop

Is Your Firm Scandal-Proof?

Joy Aldridge (Compliance Counsel LLC); and **Wesley Moore** (Quarule, Inc.) will lead an optional pre-seminar interactive workshop, "Is Your Firm Scandal-Proof?", on Wednesday, April 18 from 8:30–10:45 am. This workshop will focus on the intersection where Risk Management, Compliance, Audit and Legal meet. The discussion leaders will offer suggestions on what a firm can do to better scandal-proof itself. Although no additional registration fee will apply, **space is limited and pre-registration is required.** Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 for details and/or to register.

FMA gratefully acknowledges these sponsors of FMA's 2018 Securities Compliance Seminar

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(Continued on Page 28)

Program Update *(continued from page 27)*

2017 Legal and Legislative Issues Conference

FMA's 26th **Legal & Legislative Conference** took place **October 25–26** at the Hyatt Regency Washington (on Capitol Hill) here in Washington, DC. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance/officers/risk managers, internal auditors and regulators. The two-day event provided participants with a unique opportunity to share information on current legal and regulatory developments as well as network with peers in an intimate environment. And, **attendees were eligible for CLE and CPE accreditation** (among others).

Congratulations to the Program Planning Committee for developing a timely agenda that included noted industry leaders and senior regulatory officials. Members included: **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, which focused on current areas of regulatory and Congressional activity/scrutiny, included these sessions and noted speakers:

Banking General Counsel

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

Legislative Update

- Brandon Beall ■ Senate Banking Committee
- Chris Brown ■ Office of Rep. Blaine Luetkemeyer (R–MO)

Recent Developments in BSA / AML / OFAC Regulation and Enforcement

- Frank Boudra ■ OFAC, U.S. Department of the Treasury
- Paul Khareyn ■ HSBC
- Malcolm Rowe ■ PricewaterhouseCoopers LLP

Regulatory Reform and the Treasury Studies

- John Court ■ The Clearing House
- Bimal Patel ■ U.S. Department of the Treasury
- 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
- Hugh Conroy, Jr. ■ Cleary Gottlieb Steen & Hamilton LLP
- Amir Zaidi ■ CFTC

Fintech: Do New Technologies Require New Regulatory Approaches?

- Richard Foster ■ Financial Services Roundtable
- Margaret Liu ■ Conference of State Bank Supervisors
- Barak Sanford ■ Promontory Financial Group, LLC
- Andrew Smith ■ Covington & Burling LLP

Securities General Counsel

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

SEC Division Reports

- Melissa Hodgman ■ Enforcement
- Daniel Kahl ■ OCIE
- 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 (now at Citadel)
- Cuyler Robinson ■ Charles River Associates

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

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

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(Continued on page 29)

Program Update *(continued from page 28)*

Thanks to all FMA 2017 Sponsors

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CRA Charles River Associates

Hardin Compliance Consulting LLC

BC
Broad and Cassel
Attorneys at Law

W|G|K
Wiand Guerra King

pwc

WilmerHale WH

Morrison | Foerster

(Continued on page 25)

Who's News

Renée Appel has joined Seyfarth Shaw LLP where she counsels clients on regulatory compliance issues and defends clients in investigations and litigation involving commercial, financial services, and securities related matters. Previously, Renée was an Associate at Shulman, Rogers, Gandal, Pordy & Ecker, P.A.

Susan F. Axelrod left FINRA on January 5 for other opportunities in the private sector after 28 years of service at the organization and its predecessor, NYSE Regulation. After January 5, she assumed the role of senior advisor to Robert Cook, President and CEO of FINRA, through the end of April.

Alyssa Ballis has joined Advantus Capital Management as Compliance Program Manager. Previously, Alyssa was a Senior Compliance Analyst at Thrivent Financial.

Gary Barnett, formerly SEC Deputy Director in the Division of Trading and Markets, retired from the agency at the end of 2017.

Michael Burwick has joined Trust Advisory Group, Ltd. / Advisory Group Equity Services, Ltd. as General Counsel & Chief Compliance Officer. Previously, he served in a number of roles in the financial services and legal arenas that included positions as a compliance consultant, a due diligence officer and as a big firm attorney serving broker-dealers, investment advisors, various funds and other entities that are participants in the capital markets.

Brian A. Bussey has joined the CFTC as Director of the Division of Clearing and Risk (DCR). The Division oversees derivatives clearing organizations and other market participants in the clearing process, including futures commission merchants, swap dealers, major swap participants, and large traders. Previously, Brian was the Associate Director for Derivatives Policy at the SEC. **John C. Lawton**, who served as Acting Director for the division from January to mid-October 2017, is now a Special Advisor to the DCR Division Director.

Charles E. Cain has been named Chief of the SEC's Enforcement Division's national specialized Foreign Corrupt Practices Act Unit. Since April 2017, Mr. Cain has served as Acting Chief of the FCPA Unit leading all aspects of the Enforcement Division's national enforcement of the FCPA. Prior to being appointed Acting Chief of the FCPA Unit, Mr. Cain served as the Deputy Chief of the Unit since 2011.

Daniel Casto has joined VOR Technology as CFO and General Counsel. Previously, Dan was a Principal at Offit Kurman, P.A.

Xiomara Corral has joined Pershing LLC as Director, Managing Counsel. Previously, Xiomara was Counsel at K&L Gates LLP.

Leigh Davis-Schmidt has joined Smith Correll LLP as a Specialist. Previously, Leigh was CCO at Zions Direct, Inc.

Jim Downing has joined Aon Hewitt Global Investment Management as Chief Compliance Officer. Previously, Jim was CCO at BMO Harris Financial Advisors.

Peter B. Driscoll has been named Director of the SEC's Office of Compliance Inspections and Examinations (OCIE). Mr. Driscoll has served as OCIE's Acting Director since January 2017.

Brian Edwards has joined BlackArch Partners as Chief Compliance Officer. Previously, Brian held multiple supervisory roles at Wells Fargo Securities that included managing their Anti-Bribery & Corruption Program and their Surveillance & Monitoring team.

Askari Foy has joined ACA Compliance Group as a Managing Director overseeing ACA Aponix's Global Regulatory Cybersecurity practice. Askari was most recently at the SEC where he was an Associate Director and Head of the National Technology Controls Program in their Office of Compliance Inspections and Examinations.

Amy Friend, Senior Deputy Comptroller and Chief Counsel at the Office of the Comptroller of the Currency, retired from federal service and stepped down from her position on November 11, 2017.

David Glockner has joined Citadel as CCO. Previously, David was Director of the SEC's Chicago Regional Office.

Emily Gordy has joined McGuireWoods as a Partner in their Commercial Litigation Practice. Most recently, Emily was Executive Vice President, Deputy General Counsel at LPL Financial LLC, heading up the regulatory investigations, examinations, and inquiries group, as well as regulatory counseling. Previously,

(Continued on page 31)

Who's News

(Continued from page 30)

Emily held a number of senior executive positions at FINRA, including SVP, Deputy/Enforcement, Head of Regional Enforcement, and a number of senior policy roles.

Stephen Heifetz has joined Wilson Sonsini Goodrich & Rosati as a Partner in the firm's national security/CFIUS practice, located in the Washington, DC office. Previously, Stephen was a Partner at Steptoe & Johnson LLP, where he was co-chair of the international regulations and compliance practice.

Camillus Hughes, formerly SVP/Regulatory Compliance Risk Strategy at HSBC Bank USA, has retired after 40 years in the financial services industry. Congratulations and best of luck, Cam.

Carmina Hughes, formerly SVP & Head of AML at TD Bank, has retired after a long legal career, nearly half of which was spent in the financial services sector. Congratulations and best of luck, Carmina!

Nancy Johnson Jones has joined HD Vest Financial Services as Head of Advisory Compliance. Previously, Nancy was CCO at BOKF Securities.

Eugene Katz, Senior Regulatory Counsel at Wells Fargo & Company, has retired after 34 years of service in the financial industry. Congratulations and best of luck, Gene!

Kaitlin Lemmo has joined Citibank in Ireland as a Senior Vice President. Previously, Kaitlin was a consultant at Protiviti.

Catherine McGuire, Counsel in the SEC's Division of Trading and Markets, has retired after 44 years with the agency. Ms. McGuire received more than a dozen awards for her service, including the Distinguished Service Award, the SEC's highest award, and the Presidential Meritorious Executive Award. Congratulations and best of luck, Caite!

Michelle Neufeld has joined Wells Fargo as EVP, Head of Compliance and Operational Risk Financial Institutions Group. Previously, Michelle was EVP, Chief AML/BSA Officer at Bank of California.

Pete Newman has joined BondWave as Vice President of Sales. Previously, Pete was Director, Enterprise Sales at Private Client Resources.

Diane Novak has joined HomeStreet Bank as SVP & Chief Compliance Officer. Diane was previously Senior Director of Compliance, Corporate Compliance at Silicon Valley Bank.

Saliha Olgun, Assistant General Counsel at the MSRB, has been named a "Rising Star" of 2017 by *The Bond Buyer*. Now in its second year, the Rising Stars program showcases the brightest young minds in the municipal finance industry.

Christopher Pedersen has joined Wintrust Financial Corporation as SVP & Head of Enterprise Third-Party Vendor Risk Management. Previously, Chris was a Senior Manager, Financial Services Advisory at Ernst & Young.

Mark Pinocci has joined Transamerica as Head of Distribution Compliance. Previously, Mark was SVP & CCO, Wealth Management at Citizens Bank.

Gianna Ravenscroft has joined BofI Federal Bank as Associate General Counsel at their headquarters in San Diego, CA. Previously, Gianna was Managing Counsel at Toyota Financial Services.

Brandon Reddington has been promoted to Director, Global Head of Sanctions Advisory at Credit Suisse.

Brett Redfearn has been named Director of the SEC's Division of Trading and Markets.

Wesley L. Ringo has founded Ringo and Associates where he will be advising Broker-Dealer/Advisor Firms on Compliance and Regulatory matters and will be providing litigation support. Previously, Wes was CCO at Hilliard Lyons.

Gonzalo Sanchez has joined Banco Popular de Puerto Rico as Financial Crimes Compliance Division Head. Gonzalo was previously Director/Global Investigations and Compliance at Navigant.

Curtis Tao has been promoted to Deputy General Counsel - Bank Regulatory at Citi.

Liisa Thomas has joined Sheppard, Mullin, Richter & Hampton LLP as Partner and Co-Chair of their Privacy and Cybersecurity practice. Previously, Liisa was Partner and Chair, Privacy and Data Security at Winston & Strawn LLP.