

MARKET SOLUTIONS

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Bank and Systemic Risk Regulation

By William J. Sweet, Jr.

In This Issue

2011 Securities Compliance Seminar	21
2011 Legal and Legislative Issues Conference.....	22
Legislative/Regulatory Actions	2
New Members	2, 5, 8, 11, 12
Program Update	21
Sponsor Acknowledgement.....	22
Watch For.....	16
Where Are They Now?	9
Who's News	4

MARKET SOLUTIONS

Editor

Dorcas Pearce

Contributing Editors

Marc-Alain Galeazzi

Barbara R. Mendelson

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FINANCIAL MARKETS ASSOCIATION

The United States has been a key participant in global efforts to develop regulatory systems to address the problems that contributed to the financial crisis, including, in particular, tools to deal with any financial institution that is deemed to be a Systemically Important Financial Institution (SIFI).

International Efforts to Address Systemic Risk

At a Washington, DC summit in November 2008, the Group of Twenty Finance Ministers and Central Bank Governors (the G-20), together with the leaders of the G-20 nations, initiated a process to develop a global consensus on measures to deal with SIFIs and problems that contributed to the financial crisis.

This effort on the part of the global regulators culminated with the endorsement by the G-20, meeting in Seoul, South Korea, on November 11, 2010, of a policy framework developed by the Financial Stability Board (FSB) to reduce the risks and externalities associated with domestic and global SIFIs. The policy framework is based on the FSB's November 2,

2010 report ("Intensity and Effectiveness of SIFI Supervision"), which was prepared in consultation with the International Monetary Fund, containing 32 recommendations based on an internationally coordinated assessment of lessons from the financial crisis on reducing moral hazard risk associated with SIFIs. The goal of the policy framework is to reduce the risks and externalities associated with domestic and global SIFIs by strengthening the intensity and effectiveness of supervision.

The G-20 endorsed FSB's SIFI policy framework, work processes and timelines for addressing the

systemic and moral hazard risks associated with SIFIs. The framework consists of five areas:

- a resolution framework and other measures to ensure that all financial institutions can be resolved safely, quickly and without destabilizing the financial system and exposing taxpayers to the risk of loss;
- a requirement that SIFIs and, in particular, global SIFIs (G-SIFIs) have higher loss-absorbency capacity to reflect the greater risks that these institutions pose to the global financial system;

(Continued on Page 3)

"The goal of the policy framework is to reduce the risks and externalities associated with domestic and global SIFIs by strengthening the intensity and effectiveness of supervision."

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 developments in connection with the **Dodd-Frank Act** (including developments relating to *Derivatives, Significant Financial Companies, Incentive-Based Compensation, the Volcker Rule, Asset-Backed Securities, Broker-Dealers, and Investment Advisers*), **Capital Markets**, and **GSE Reform**.

DODD-FRANK ACT

Derivatives

The CFTC and SEC continued to push forward with their Dodd-Frank Act rulemaking activities during the first two months of 2011, with the CFTC issuing nine sets of proposed rules, the SEC issuing two sets of proposed rules, and the CFTC and SEC jointly issuing one set of proposed rules. (A detailed summary of all CFTC and SEC derivative-related rulemakings until December 2010 can be found at <http://www.mofo.com/files/Uploads/Images/101230-Derivatives-Wrap-Up.pdf>.) Specifically, the proposed rules address the following areas: position limits on 28 core physical delivery agricultural, metal, and energy contracts and their economically equivalent derivatives; swap trading relationship documentation; trade acknowledgement and verification of security-based swaps; commodity options and agricultural swaps; amendments to commodity pool operators (“CPOs”) and commodity trading advisors (“CTAs”) compliance obligations and regulations; reporting by investment advisers (and CPOs and CTAs also registered as investment advisers) to private funds; registration and regulation of security-based swap execution facilities (“SB SEFs”); registration of intermediaries; and processing, clearing, and transfer of customer positions. The CFTC also issued a proposed interpretive order regarding its antidisruptive practices authority. Following are some selected highlights from these proposed rules and the interpretive order.

Swap Trading Relationship Documentation. The CFTC’s proposed rules would require swap dealers and major swap participants (“MSPs”) to maintain written policies and procedures reasonably designed to ensure that, prior to or contemporaneously with entering into a swap transaction with any counterparty (other than a derivatives clearing organization), the swap dealer or MSP executes written swap trading relationship documentation. As proposed, the documentation would have to include, among other things, credit support arrangements that contain, in accordance with applicable rules of the CFTC or any prudential regulators, initial and variation margin requirements, permissible types of collateral (including applicable haircuts), investment and rehypothecation terms for uncleared swaps, and custodial arrangements. The parties also would have to agree on the methods, procedures, rules, and inputs for determining the value of each swap at any time from execution to termination, expiration, or maturity, including alternative fallback valuation methods. To the maximum extent practicable, valuation would have to be based on objective criteria. Swap dealers and MSPs also would have to obtain documentation sufficient to provide a reasonable basis on which to believe that, to the extent that their counterparties rely on the end-user exception to the mandatory clearing requirement, the statutory conditions for the exception have been met. In a related set of proposed rules, the CFTC also would require swap trading relation-

(Continued on Page 5)

FMA Welcomes New Members!

Joseph Adamczyk	CME Group Inc.
Gina Adelpia	Northern Trust Corp.
David Amster	CRT Capital Group LLC
June Batcheller	E*TRADE Securities
Michael Brauneis	Protiviti
Jim Embersit	Ernst & Young LLP
Brent Fatticci	Wells Fargo

Risk Regulation...

Continued from Page 1

- more intensive supervisory oversight for financial institutions that may pose systemic risk;
- robust core financial market infrastructures to reduce contagion risk from the failure of individual institutions; and
- other supplementary prudential and other requirements as determined by the national authorities.

Additionally, under the framework, home jurisdictions for G-SIFIs should:

- enable a rigorous coordinated assessment of the risks G-SIFIs face through international supervisory colleges;
- make international recovery and resolution planning mandatory for G-SIFIs and negotiate institution-specific crisis cooperation agreements within cross-border crisis management groups; and
- subject their G-SIFI policy measures to review by the proposed Peer Review Council.

As part of this process, global regulators have been considering which companies should be classified as G-SIFIs. According to a report by the *Financial Times*, last year, regulators under the auspices of the FSB identified 30 cross-border financial institutions, most of which are not based in the United States, that were put on a preliminary nonpublic list for “cross-border supervision exercises” in order to check for systematic risk. According to the *Financial Times*, the list of institutions included five U.S. banks: Bank of America, Citigroup, Goldman Sachs, JP Morgan Chase and Morgan Stanley. The list of non-U.S. financial institutions included the Royal Bank of Canada, Barclays,

HSBC, Royal Bank of Scotland, Standard Chartered, Credit Suisse, UBS, BNP Paribas, Société Générale, BBVA, Santander, Mitsubishi UFJ, Mizuho, Nomura, Sumitomo Mitsui, Banca Intesa, UniCredit, Deutsche Bank and ING Groep. In addition, the FSB earmarked six insurance firms, including Aegon, Allianz, Aviva, Axa, Swiss Re and Zurich.

Recent reports have indicated, however, that Adair Turner, chairman of the U.K. Financial Services Authority and member of the FSB, signaled that individual insurance groups might escape inclusion on the global list of SIFIs. The *Financial Times* reported that Turner told international insurance regulators in Dubai, on October 27, 2010, that the FSB did not believe large individual insurers posed systemic risks in the way that banks did. The FSB and national authorities, in consultation with relevant standard setters, will determine by mid-2011 those institutions to which the FSB G-SIFI recommendations initially will apply.

U.S. Efforts to Address Systemic Risk

The Dodd-Frank Act addresses the concept of SIFIs by imposing heightened prudential requirements on nonbank financial companies, including non-U.S. nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) to be subject to Federal Reserve supervision, and by imposing the same heightened prudential requirements on bank holding companies (BHCs) and non-U.S. banking organizations treated as BHCs with at least \$50 billion in total consolidated assets. The term “systemically important financial institution” used by the FSB is not the term found in the Dodd-Frank Act, which,

(Continued on Page 4)



Happy
ST. PATRICK'S DAY!

Risk Regulation...

Continued from Page 3

as discussed above, covers BHCs with more than \$50 billion in total consolidated assets and certain non-bank financial companies designated by the FSOC. Thus, while the U.S. SIFI standards set forth in the Dodd-Frank Act will be used as the test for determining which companies qualify as SIFIs in the United States, Dodd-Frank's SIFI standards are distinct from the standards being developed by the national bank supervisors in other countries.

The FSOC issued an advance notice of public rulemaking at its inaugural meeting in October 2010 regarding considerations in the designation of SIFIs and another at its November 2010 meeting regarding the designation of systemically important payment, clearing and settlement systems. The FSOC will issue a proposed regulation for comment leading to the adoption of a regulatory framework for making such designations. The FSOC also will make proposed rec-

ommendations to the Federal Reserve Board for the implementation of special supervisory requirements for such institutions. This process will roll out over the next two years and presents a significant challenge to the competitiveness of institutions that are selected for designation. ■

¹See Patrick Jenkins and Paul J. Davies, "Thirty Financial Groups on Systemic Risk List," *Financial Times*, Nov. 30, 2009.

William J. Sweet, Jr. is a partner with Skadden, Arps, Slate, Meagher & Flom LLP. He heads the firm's Financial Institutions Regulatory and Enforcement Group.

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Who's News

Mitch Avnet, formerly SVP & Chief Compliance Officer/Broker Dealer and Asset Management Group Compliance at The PNC Financial Services Group, has joined Lincoln Financial Group as SVP & Head of Enterprise Compliance and Ethics.

Mike Brosnan has been named Senior Deputy Comptroller for Large Bank Supervision at the Office of the Comptroller of the Currency.

Amy Friend, formerly Chief Counsel on the Senate Banking Committee, has joined Promontory Financial Group as Managing Director in their Washington, DC office.

Charles Horn has joined the Financial Services group at Morrison & Foerster LLP as a Partner in their Washington, DC office.

Hal Johnson, Deputy Executive Director at the MSRB, has left the organization after 26 years of service. His future plans include honing his fishing skills, after which he may pursue other opportunities such as consulting.

Tim Keehan, formerly a financial regulatory partner at Latham & Watkins and at MayerBrown, has joined the American Bankers Association as Vice President & Senior Counsel in Washington, DC

David Kuhr, formerly Director of Compliance at the The Ancora Group, Inc. (and affiliated companies), has opened his own compliance consulting practice, Green Bar Consulting, Inc (www.greenbargroup.com). Green Bar Consulting provides consulting services to Broker Dealers, Investment Advisors and Investment Companies. He specializes in broker dealer FINRA New Member Applications and serves as an expert witness for arbitration, mediation and law suits. He can be contacted at 216/825-4008 or greenbarconsulting@gmail.com.

Carolyn Walsh, formerly Senior Associate General Counsel at the MSRB, has joined the public policy and financial institutions group at Patton Boggs LLP as Of Counsel in their Washington, DC office.

Legislative/Regulatory Actions

Continued from Page 2

ship documentation to include a provision where the parties agree to a one-day delay in terminating, liquidating, or netting any swap solely by reason of the appointment of the FDIC as receiver for a counterparty that is a covered financial company or an insured depository institution.

Security-Based Swap Execution Facilities. The SEC's approach to regulating SB SEFs diverges from that of the CFTC. In its proposed rules, the CFTC arbitrarily defines the request for quotation version of a SEF to be a trading system in which a market participant must transmit a request for a quote to buy or sell a specific instrument *to no less than five* market participants in the trading system. In contrast, the SEC chose to provide baseline principles for purposes of interpreting the definition of SB SEFs. Specifically, the SEC proposed that an SB SEF is a system or platform that allows more than one participant to interact with the trading interest of more than one other participant on the system or platform. The SEC reasons that single dealer platforms would not meet the "multiple participant to multiple participant" requirement of the Dodd-Frank Act. However, a system or platform would qualify as an SB SEF if it allows an individual participant (of which there must be more than one, but not necessarily acting at the same time) to send a request for quotation to all, or fewer than all or just one, other liquidity providing participants and view responses from those participants. An important factor under the SEC's proposed interpretation is that an SB SEF may not limit the number of liquidity providing participants from whom a participant could request a quote.

Significant Financial Companies

On February 8, 2011, the Federal Reserve issued a notice of proposed rulemaking and request for comment ("Proposed Rule") that would define the terms "predominantly engaged in financial activities," "significant nonbank financial company," and "significant bank holding company," as those terms are used in Title I of the Dodd-Frank Act. The Proposed Rule would amend the Federal Reserve's Regulation Y and comments on the Proposed Rule must be submitted by March 30, 2011.

Title I of the Dodd-Frank Act provides that a company is a "nonbank financial company" if it is

"predominantly engaged" in "financial activities." "Predominantly engaged" is broadly defined, and the Federal Reserve is required to prescribe by regulation the requirements for determining if a company is predominantly engaged in financial activities. Financial activities are defined by reference to section 4(k) of the BHC Act.

The Proposed Rule would provide that a company is "predominantly engaged" in financial activities if (1) annual gross revenues from financial activities in either of the two most recently completed fiscal years represent 85 percent or more of a company's consolidated annual gross revenues in that fiscal year, or (2) the total financial assets of the company as of the end of either of its two most recently completed fiscal years represent 85 percent or more of the company's consolidated total assets. Therefore, if, based on the nonbank financial company's consolidated financial statements, the company exceeds 85 percent for either measure in either of the last two fiscal years, it would be predominantly engaged in financial activities. The Proposed Rule would also provide the Federal Reserve flexibility to make a case-by-case determination of whether the nonbank financial company is predominantly engaged in financial activities, for example, if the company's mix of activities changes as a result of a merger or acquisition.

(Continued on Page 6)

FMA Welcomes More New Members!

Sean Gray	The PNC Financial Services Group
Glenn Green	Alternative Regulatory Solutions, LLC
Ryan Hale	Wells Fargo
Tyanika Hawkins	JPMorgan Chase Bank, NA
Chuck Hester	Oracle Financial Services Software
Jaqueline Hummel	Hardin Compliance Consulting LLC

Legislative/Regulatory Actions

Continued from Page 5

If a company is predominantly engaged in financial activities—and thus the company is a nonbank financial company—or the company is a bank holding company, the Proposed Rule would provide a threshold test to determine whether the nonbank financial holding company or banking holding company is “significant.” A nonbank financial company would be significant if it (1) is supervised by the Federal Reserve or (2) has \$50 billion or more in total consolidated assets as of the end of its most recently completed fiscal year. A bank holding company would be significant if it has \$50 billion or more in total consolidated assets as of the end of the most recently completed calendar year.

Critically, significant nonbank financial companies and significant bank holding companies (collectively, “Significant Financial Companies”) are only invoked in two limited aspects of Title I of the Dodd-Frank Act. First, the FSOC is directed to consider interdependencies with other Significant Financial Companies in determining whether a U.S. or foreign nonbank financial company is a systemically important financial institution (“SIFI”), subject to supervision and regulation by the Federal Reserve. Second, Significant Financial Companies are used to determine the scope of a SIFI’s credit exposures report, under rules that have not yet been promulgated by the Federal Reserve and the FDIC.

Early media reports regarding the Federal Reserve’s proposed rule suggested that “significant” nonbank financial companies represent the pool of potential

SIFIs. The Proposed Rule, however, would not make this connection. At this stage, the better reading of the Proposed Rule is confined to the two discrete aspects of Title I identified above.

Nevertheless, it seems unlikely that the FSOC would subject a nonbank financial company to Federal Reserve supervision and regulation (i.e., designate the nonbank financial company *systemically important*), if the nonbank financial company does not at least meet the proposed threshold for *significance*. Moreover, other textual clues suggest that determining a nonbank financial company’s significance is the first step in determining whether the company should be subject to Federal Reserve supervision. For example, where the Dodd-Frank Act requires the FSOC to consider interdependencies, the Act provides that the FSOC must consider “the extent and nature of the transactions and relationships of the company with *other* significant nonbank financial companies and significant bank holding companies.” (Emphasis added.) This language implies that the nonbank financial company being considered for designation is already considered “significant.”

The FDIC’s Proposed Rulemaking on Incentive-Based Compensation

On February 7, 2011, the FDIC issued a proposed rule implementing Section 956 of the Dodd-Frank Act, which authorizes the Federal Reserve, FDIC,

(Continued on Page 7)

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Legislative/Regulatory Actions

Continued from Page 6

OCC, OTS, NCUA, FHFA, and SEC to issue rules that restrict incentive-based compensation plans, or any related feature of such plans, that create inappropriate risk resulting in excessive compensation or material financial loss to “covered financial institutions.” The proposal defines “covered financial institutions” as entities including banks, savings associations, credit unions, and broker-dealers, with total consolidated assets of at least \$1 billion that maintain incentive-based compensation plans. “Incentive-based compensation” is broadly defined as variable compensation that serves as an incentive for performance. Compensation in the form of base salary, dividends paid on stocks, and retirement plan contributions, among others, do not fall within the parameters of the definition. The proposal focuses on incentive-based compensation awarded to “covered persons,” including executive officers, employees, and directors. If enacted, the proposed rule would supplement existing rules and guidance concerning compensation and incentive-based compensation.

To comply with the proposal’s requirements, covered financial institutions must ensure that their incentive-based compensation plans (i) balance risk and financial rewards; (ii) align with effective controls and risk management; and (iii) are supported by strong corporate governance. To achieve the aforementioned objectives, covered financial institutions must submit annual reports (which would remain confidential to the extent permitted by law) to the appropriate federal regulator disclosing the structures of their incentive-based compensation plans, including disclosure of whether the structure would provide excessive compensation to certain employees at the

institution or cause the institution to experience material financial loss. The appropriate federal regulator would then determine whether the incentive-based compensation plan conforms to the requirements of the proposed rule. Moreover, covered financial institutions would need to develop and maintain policies and procedures regarding the incentive-based compensation plans consistent with the size and complexity of the institution. The proposal prohibits covered financial institutions from taking any actions for the purpose of evading the rule.

The proposal imposes heightened requirements for “larger covered financial institutions,” which, subject to certain exceptions, have total consolidated assets that equal or exceed \$50 billion. The proposal mandates the deferral of 50% of incentive-based compensation paid to “executive officers,” defined to include persons who hold titles such as president, CEO, executive chairman or CFO at larger covered financial institutions, over a period of at least three years. The deferred compensation would be subject to adjustment or forfeiture during the deferral period if the larger covered financial institution suffers losses or if some aspect of the executive officer’s performance justifies the adjustment or forfeiture. Further, the board of directors or compensation committee of a larger covered financial institution would be required to (i) identify individuals other than executive officers who might expose the covered financial institution to substantial risk and (ii) approve the incentive-based compensation of an identified individual, after considering factors that balance the potential reward to the employee and risk to the institution.

As required by Section 956 of the Dodd-Frank Act, the SEC and the NCUA have approved and adopted proposals that are substantially similar to the FDIC’s proposal. Upon receipt of approval from the remaining federal regulators, the proposed rule will be published in the *Federal Register*. A 45-day comment period will follow the publication of the proposed rule in the *Federal Register*. For more information on the FDIC’s proposal as well as a summary of how the United States’ proposal compares to the rules governing incentive-based compensation in the European Union and the United Kingdom, please see <http://www.mofo.com/files/Uploads/Images/110216-Regulatory-Developments-Affecting-Compensation-at-Financial-Institutions.pdf>.

(Continued on Page 8)

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Legislative/Regulatory Actions

Continued from Page 7

The FSOC's Volcker Rule Study

On January 18, 2011, the FSOC released its study that sets forth recommendations for the regulatory agencies (the Federal Reserve, OCC, FDIC, SEC, and CFTC) tasked with developing the rules to implement the Volcker Rule. The FSOC identifies two central objectives of the study: (i) reducing risk resulting from, among other things, material conflicts of interest between "banking entities" (as defined by the Volcker Rule and possibly clarified by later rule-making) and their customers, material exposure to high-risk assets, and high-risk trading strategies and (ii) promoting the safety and soundness of banking entities and certain non-bank financial companies. The study focuses on proprietary trading and hedge fund and private equity fund investment restrictions (the two components of the Volcker Rule) as well as issues related to the "business of insurance." While the study offers useful insights, banking entities will have to rely on agency rulemaking for more explicit guidance on how to comply with the Volcker Rule.

With respect to rulemaking related to proprietary trading, the FSOC advises the agencies to: (i) prohibit proprietary trading; (ii) be dynamic and flexible; (iii) apply a consistent regulatory and supervisory framework; (iv) distinguish between prohibited and permitted activities (including market making, hedging, and underwriting, which may constitute proprietary trading under certain circumstances despite their permissibility under the Volcker Rule); and (v) accommodate differences in asset classes (e.g., cash and derivatives markets). Additionally, the FSOC recommends that the rulemaking agencies clearly describe what constitutes "bright line" proprietary trading. The FSOC proposes a compliance framework for banking entities to address proprietary trading that includes: (i) the establishment of a compliance program; (ii) the analysis and reporting of important quantitative metrics to assist with identifying impermissible activities; (iii) agency review and oversight of banking entities' trading operations; and (iv) the implementation of enforcement procedures for violations discovered during a Volcker Rule compliance investigation.

As the agencies develop rules for banking entities that sponsor or invest in hedge funds and private equity funds, the FSOC recommends that they adhere to the following principles: (i) reduce the

risk to banking entities by limiting their ability to invest in hedge funds and private equity funds; (ii) permit banking entities to organize, offer, or invest in a hedge fund or private equity fund if the transaction involves bona fide trust, fiduciary, or investment advisory services to customers; and (iii) ensure that the relationship between the banking entities and the hedge funds and private equity funds that they organize and offer does not result in proprietary trading. The FSOC also advises the agencies to clarify the meaning of "funds," "customers," and "clients." Moreover, the FSOC recommends that each banking entity's compliance program incorporate strong investment and risk oversight of permissible hedge fund and private equity fund activities.

The study also addresses issues related to the "business of insurance" as applicable to (i) insurance companies that are affiliates of insured banks or thrifts and (ii) non-bank financial companies supervised by the Federal Reserve. The FSOC advises the agencies to clearly define terms associated with such companies, including "regulated insurance company," "directly engaged in the business of insurance," and "general account." Further, the FSOC advises the agencies to consider how insurance companies invest separately for their customers. The FSOC also urges the agencies to carefully examine the fund flows

(Continued on Page 9)

FMA Welcomes More New Members!

Barbara Jones	Greenberg Traurig, LLP
Jennifer Kendrick	Wells Fargo
Kimberly McManus	Alternative Regulatory Solutions, LLC
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Legislative/Regulatory Actions

Continued from Page 8

between insurance companies and banking entities to ensure proper compliance with the Volcker Rule.

In accordance with the Dodd-Frank Act, the final rules implementing the Volcker Rule must be issued by October 18, 2011, or nine months after the publication of the study. The rulemaking agencies are expected to consider the FSOC's findings as they develop the final rules. For more on the study, please see http://www.mofo.com/files/Uploads/Images/110214_Review_of_FSOC_Volcker_Rule_Study.pdf.

Volcker Rule: Conformance Period + Extended Transition Period

On February 9, 2011, the Federal Reserve published a final rule ("Final Rule") implementing the provisions of the Dodd-Frank Act that give banking entities a defined period of time to conform their proprietary trading and hedge fund and private equity fund ("Covered Private Fund") activities to the Volcker Rule. Such entities have a conformance period of two years after the Volcker Rule takes effect, with the possibility of three one-year extensions. The Federal Reserve, by rule or by order, may extend the two-year conformance period by up to three additional one-year periods if it determines that an extension

is consistent with the purposes of the Volcker Rule and would not be detrimental to the public interest. The Final Rule clarifies (i) that the Federal Reserve may only grant three separate one-year extensions and may not grant all three one-year extensions at one time and (ii) that a company becoming a banking entity after the enactment of the Dodd-Frank Act would be provided with the same two-year conformance period, starting from the day such company becomes a banking entity. In addition, the Volcker Rule provides banking entities with the ability to apply for an extension of the conformance period of up to five years in order to meet any contractual obligations in place as of May 1, 2010, to a Covered Private Fund that qualifies as an "illiquid fund." The Final Rule clarifies that an extended transition period for illiquid funds would be in addition to the general conformance period. In the discussion of the Final Rule, the Federal Reserve states that if a banking entity has the contractual right to terminate its investments or commitments to an illiquid fund because such investments or commitments would be prohibited by the Volcker Rule (e.g., a "regulatory-out" provision) after the expiration of the general conformance period and any extension thereof, then an extended transition period would not be granted, because the banking

(Continued on Page 10)

Where Are They Now?

From Bank Audit Vice President to Alpaca Breeding & Fiber Farm Entrepreneur

After 30 years in Banking, with the last 14 years as Vice President/Audit Manager for Commerce Bank, now part of TD Bank; I retired to run my own Alpaca Breeding and Fiber Farm business. As an entrepreneur, the breeding business involves all aspects of the operation from alpaca sales to breeding and purchase decisions, show and sale events, herd main-



tenance and health-care, trailer transporting and, yes, manure clean up!

The fiber business starts with annual shearing, includes processing the fiber into handmade and manufactured yarn and products, purchasing wholesale products, then selling at Farm Markets, Fairs and Farm Open House events. I now spend evenings spinning, knitting and weaving!

I'm having a lot of fun at Windy Farm Alpacas!

—Jackie Armiger



Legislative/Regulatory Actions

Continued from Page 9

entity could legally withdraw from its investments or commitments without violating its contractual obligations.

A banking entity seeking an extension of the conformance period or applying for an extended transition period for illiquid funds must (i) submit a request to the Federal Reserve in writing at least 180 days prior to the expiration of the applicable time period, (ii) provide reasons why the banking entity believes the extension should be granted, and (iii) provide a detailed explanation of the banking entity's plan for divesting or conforming the activity or investment. The Final Rule lists a variety of facts and circumstances that the Federal Reserve may consider when reviewing an application for extension.

Also, the Final Rule clarifies that the same two-year conformance period, available extensions, and associated procedures governing extension requests discussed above will apply to nonbank financial companies supervised by the Federal Reserve, generally measured from the date the FSOC designates a nonbank financial company for supervision by the Federal Reserve. The Final Rule will become effective on April 1, 2011. A more detailed summary of the Final Rule can be found at <http://www.mofo.com/files/Uploads/Images/110214-Federal-Reserve-Publishes-Final-Rule-Conformance-Volcker.pdf>.

Asset-Backed Securities

On January 20, 2011, the SEC adopted two final rules implementing Sections 943 and 945 of the Dodd-Frank Act. The rules aim to provide additional transparency and disclosure to asset-backed securities ("ABS") investors, and enable investors to compare information across ABS issuers and offerings. A more detailed discussion of the rules and their effective dates can be found at <http://www.mofo.com/files/Uploads/Images/110204-Securitization-Update-Feb-2011.pdf>. In addition, on January 12, 2011, the SEC proposed a rule revising ongoing Exchange Act reporting requirements for ABS due to the elimination of the automatic suspension of reporting requirements for ABS under

Section 15(d) pursuant to Section 942(a) of the Dodd-Frank Act.

Reps and Warranties Rule. To implement Section 943 of the Dodd-Frank Act, the SEC amended the Exchange Act to incorporate Rules 15Ga-1 and 17g-7 and Form ABS-15G, and amended Items 1104 and 1121 of Regulation AB under the Securities Act (the "Reps and Warranties Rule"). The Reps and Warranties Rule generally applies to registered and unregistered "asset-backed securities" as such term is broadly defined under the Exchange Act.

NRSRO Reports. Rule 17g-7 requires each NRSRO issuing a credit rating on an ABS to provide a description of the representations and warranties and enforcement mechanisms in any report it issues accompanying an ABS credit rating, and compare the representations and warranties in the transaction being rated to those in other issuances of similar securities.

Repurchase Disclosures. Rule 15Ga-1 requires any securitizer who has issued ABS during the three-year period ending December 31, 2011 that includes a covenant to repurchase or replace an underlying asset for breach of a representation or warranty to file Form ABS-15G by February 14, 2012. Rule 15Ga-1 creates an ongoing disclosure obligation that must be updated on a quarterly basis. If no repurchase demands have been made or no subsequent repurchase or replacement activity has occurred during the applicable time period, the securitizer may simply "check-the-box" on Form ABS-15G to confirm that no repurchase activity has occurred. Municipal issuers do not need to begin filing Form ABS-15G until February 14, 2015. Rule 15Ga-1 requires a securitizer to disclose any repurchase activity relating to applicable outstanding ABS, including (i) the assets that were subject to a repurchase demand, including investor repurchase demands upon a trustee; (ii) the assets that were repurchased or replaced; (iii) the assets that were not repurchased or replaced because the demand was withdrawn or rejected; (iv) the assets that are pending repurchase or

tizer to disclose any repurchase activity relating to applicable outstanding ABS, including (i) the assets that were subject to a repurchase demand, including investor repurchase demands upon a trustee; (ii) the assets that were repurchased or replaced; (iii) the assets that were not repurchased or replaced because the demand was withdrawn or rejected; (iv) the assets that are pending repurchase or

(Continued on Page 11)

**Happy
20th
Anniversary,
FMA!**

Legislative/Regulatory Actions

Continued from Page 10

replacement due to a cure period or dispute; (v) the name of the originator; (vi) whether the issuance was registered; and (vii) the number, outstanding principal balance, and percentage by principal balance of the assets originated by each originator in the pool at the time of securitization. For historical information that may not be available using reasonable effort or expense, securitizers must explain why certain information is not available and what steps they took to try to obtain such information.

Items 1104 and 1121 of Regulation AB were amended to require similar information required under Rule 15Ga-1 to be disclosed in prospectuses and Form 10-D investor reports. The repurchase history to be filed on Form 10-D is limited to repurchases involving related pool assets.

Issuer Review Rule. To implement Section 945 of the Dodd-Frank Act, the SEC amended the Securities Act to include Rule 193 and amended Item 1111 of Regulation AB (the “Issuer Review Rule”). The Issuer Review Rule requires an issuer or independent third party to perform a review of the assets underlying an ABS in a registered transaction and to disclose the result of such review in the prospectus for all new registered offerings commencing with an initial bona fide offer after December 31, 2011.

Issuer Review. Rule 193 requires an issuer to perform a review of the assets that is designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus is accurate in all material respects. Rule 193 does not specify a particular type of review that is required; instead, the type of review may vary depending on the circumstances, including the type of assets being securitized and the sponsor’s continued involvement in the securitization. Sampling of assets may be appropriate for the review, depending on the facts and circumstances. If sampling is used, the issuer should disclose the sampling size, the criteria for choosing the sample, and whether any assets deviate from the underwriting standards disclosed in the prospectus. Rule 193 permits the issuer to use an independent third party to perform the required asset review, provided that (i) the third party is named in the registration statement and consents to being named an “expert” pursuant to Section 7 and Rule 436 of the Securities Act, subjecting the third party to expert liability under Section 11 of the Securities Act; or (ii) the issuer attributes to

itself the findings and conclusions of the independent third-party review.

Review Disclosure. Item 1111 of Regulation AB requires an issuer to disclose in the prospectus the nature and findings of the asset review conducted under Rule 193. The requirements include the disclosure of (i) the identity of the party that performed the asset review, or whether that party is the issuer or an independent third party; (ii) whether sampling was used, and if so, what sampling technique was employed; (iii) the findings and conclusions of the review, including the criteria against which the assets were evaluated and how the assets compared to such criteria; and (iv) whether any assets in the pool deviate from underwriting criteria, and if so, the amount and characteristics of those assets and who made the decision to include such assets in the pool. In addition, if compensating or other factors were used, issuers will be required to provide data on the amount of assets in the pool or in the pool sample that are represented as meeting each factor and the amount of assets that do not meet those factors.

Section 15(d) Reporting Obligations. Prior to the enactment of the Dodd-Frank Act, Section 15(d) of the Exchange Act suspended reporting requirements for ABS issuers of registered offerings for any fiscal year, other than the fiscal year within which the registration statement for a class of ABS became effective, if, at the beginning of the fiscal year, there are no longer ABS of the class that was sold in a registered transaction held by non-affiliates of the depositor.

(Continued on Page 12)

FMA Welcomes More New Members!

Michael Sefton Henderson & Lyman

Allen Sellars RegEd.com

Judy Skinner J.P. Morgan

Phillip Stern Neal, Gerber & Eisenberg LLP

Michael Sullivan Wells Fargo Securities

Heather Summers Commerce Bank

Legislative/Regulatory Actions

Continued from Page 11

Section 942(a) of the Dodd-Frank Act eliminated this automatic suspension of reporting obligations and granted the SEC the authority to issue rules for the suspension or termination of such duty. Industry participants reacted strongly to Section 942(a) because most ABS transaction documents do not contain provisions necessary to support an ongoing reporting obligation, or provide funds necessary to cover the costs of such obligations. In addition, ABS transaction documents typically require issuers to make information available to investors on a periodic basis for the life of the securitization. On January 6, 2011, the SEC issued a no-action letter stating that the SEC would not recommend enforcement action if an ABS issuer continues to determine its reporting obligations based on the standards set forth in Section 15(d) of the Exchange Act, provided that certain conditions were met (see <http://www.sec.gov/divisions/corpfin/cf-noaction/2011/asf010611-15d.htm>). Proposed new Exchange Act Rule 15d-22(b) would effectively re-instate the automatic suspension of reporting previously provided under Section 15(d). In addition, the SEC has proposed an amendment to Form 15 so that ABS issuers may “check a box” to indicate they are relying on the proposed new rule to suspend their reporting obligation.

Study on Fiduciary Standard for Broker-Dealers and Investment Advisers

On January 21, 2011, the SEC released a study on the effectiveness of current legal and regulatory standards for broker-dealers and investment advisers (the “Study”). The Study was required by the Dodd-Frank Act and is part of a broader legislative mandate to address perceived regulatory gaps in the protection of retail investors. A more detailed summary of the Study can be found at <http://www.mofo.com/files/Uploads/Images/110128-Fiduciary-duty.pdf>.

Historically, investment advisers are considered “fiduciaries” who must act in the best interest of their customers. Broker-dealers, on the other hand, are generally not deemed “fiduciaries” and are currently excluded from the definition of “investment adviser” unless they charge separately for their investment advice. While broker-dealers are generally not considered “fiduciaries,” they do owe various duties to their customers, such as the duty to recommend “suitable”

investments, obtain “best execution” when effecting trades, and charge fair commissions or mark-ups for their services. However, these duties fall short of a fiduciary’s requirement to act in the best interests of the client and to avoid placing the interests of the fiduciary ahead of those of the client.

Principal Conclusion of the Study: Adopt a Uniform Fiduciary Standard. The principal conclusion of the Study is that the SEC should establish a uniform fiduciary standard for broker-dealers and investment advisers when providing personalized investment advice to retail customers. Under this standard, both broker-dealers and investment advisers must act in the best interest of their customers. A broker or adviser would be prohibited from putting its interests ahead of the customer and would be required to disclose any conflicts of interest. In addition, a broker or adviser would be held to minimum standards of review and analysis when making investment recommendations or otherwise providing personalized investment advice to retail customers.

The Study discusses a number of issues that would need to be addressed if the uniform fiduciary standard is adopted and recommends that the SEC clarify how the standard would be applied through rulemaking and/or interpretive guidance. Unfortunately, the Study is short on specifics as to how the fiduciary

(Continued on Page 13)

FMA Welcomes More New Members!

Vaughn Swartz	The PNC Financial Services Group
Timothy Thompson	Chicago Board Options Exchange
Steven Tomasic	JPMorgan Chase Bank, NA
James Van De Graaff	Katten Muchin Rosenman LLP
Martin Williams	Interactive Data Pricing and Reference Data
Meg Zucker	Morgan Stanley

Legislative/Regulatory Actions

Continued from Page 12

standard would be implemented and how key terms should be defined. Nonetheless, the Study suggests that broker-dealers would continue to be permitted to trade in a principal capacity with their retail customers, notwithstanding the obvious conflict. While conflicts of interest would have to be disclosed, disclosure and consent on a transaction by transaction basis may not be required.

Harmonization of Regulation. In addition to recommending a uniform fiduciary standard, the Study recommends that the SEC consider harmonizing the regulation of broker-dealers and investment advisers in other areas. The SEC staff notes that investment professionals performing the same or substantially similar functions should be subject to substantially similar regulations.

Once again, the Study identifies broad areas for potential action by the SEC without providing detailed or specific recommendations as to how harmonization should be effected.

Next Steps. While the Study continues the process initiated by the Dodd-Frank Act, there is still a long way to go before any new fiduciary standard is finalized. The Commission split three to two in voting to release the Study, which may portend lengthy and contentious debate before the SEC takes any action based on the Study. Moreover, the Study may face challenges from Congress, where several members have already expressed doubts about the recommendations set forth in the Study.

Investment Advisers

Form PF. On January 26, 2011, the SEC proposed Rule 204(b)-1 under the Investment Advisers Act of 1940 to implement the reporting requirements imposed on private fund advisers directed under Sections 404 and 406 of the Dodd-Frank Act. See “Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF,” Release No. IA-3145 (Jan. 26, 2011). (On the same day, the CFTC also proposed new Form CPO-PQR and Form CTA-PR, which would solicit from commodity pool operators and commodity trading advisors that are registered with the CFTC, but not the SEC, information generally identical to that sought through Form PF.) These

new reporting requirements mandated by Congress were intended to provide critical data regarding private funds to the FSOC, so that the FSOC can assess and monitor systemic risk in the U.S. financial system. Proposed Advisers Act Rule 204(b)-1 sets forth the filing requirements on new Form PF, applicable to investment advisers that are registered with the SEC under the Advisers Act and that advise one or more “private funds” (defined as an issuer that relies on either of the exclusions from the definition of investment company provided in Sections 3(c)(1) or 3(c)(7) under the Investment Company Act of 1940). Proposed Form PF encompasses over 60 categories of questions and would collect from private fund managers information unprecedented in its scope and detail. Proposed Form PF imposes different reporting requirements for private fund advisers depending on an adviser’s assets under management (“AUM”) and the types of private funds the adviser manages. Certain large private fund advisers would need to file their initial Form PF by January 15, 2012, while smaller private fund advisers that are registered with the SEC are granted a transition period of 90 days after the end of their then-current fiscal year before they must file their initial Form PF.

Investment Adviser Registration Exemptions. At an open meeting on November 19, 2010, the SEC voted to propose rules that would implement registration exemptions and reporting requirements for certain advisers, as required by the Dodd-Frank Act. In its proposing release, the SEC sets forth proposals to adopt registration exemptions for private fund advisers and foreign private advisers (Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers, Advisers Act Rel. No. 3111 (Nov. 19, 2010), available at <http://www.sec.gov/rules/proposed/2010/ia-3111.pdf>). Comments on the proposal were due by January 24, 2011, and final rules are expected in the near future. A more complete overview of the principle aspects of the Dodd-Frank Act as it applies to the registration of private equity fund managers under the Investment Advisers Act of 1940 is available at <http://www.mofo.com/files/Uploads/Images/110300-Investment-Adviser-Registration.pdf> and <http://www.mofo.com/files/Uploads/Images/100719PrivateFunds.pdf>.

(Continued on Page 14)

Legislative/Regulatory Actions

Continued from Page 13

CFTC Revocation of CPO Registration Exemption. On January 26, 2011, the CFTC proposed revoking exemptions that allow private investment fund managers to trade commodity interests without registering with the CFTC. The CFTC's proposed rule, entitled Amendments to Compliance Obligations, can be accessed at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-2437a.pdf>. The proposed rule will require registration as a CPO for each pooled vehicle that a private investment fund manager operates. (A private investment fund will be considered a commodity pool if it buys or sells any commodity interests.) This change will have the effect of subjecting the CPOs to registration with and reporting to the CFTC, and examination by the National Futures Association ("NFA"), which is the self-regulatory organization for CFTC-regulated entities. The CFTC is soliciting public comments that are due by April 12, 2011.

CAPITAL MARKETS

Covered Bonds

The United States Covered Bond Act of 2011 (H.R. 940) was introduced in the House of Representatives by Rep. S. Garrett (R-NJ). Hearings were held on March 11, 2011, to consider the merits of covered bond legislation. In 2010, foreign banks, including a number of Canadian banks, issued approximately \$30 billion of covered bonds into the United States in reliance on Rule 144A. The market has remained active since the beginning of this year. As we contemplate the future of the GSEs, covered bonds may provide an additional tool to help finance mortgage loan originations. The newest incarnation of the legislation (this is the sixth attempt) is substantially consistent with the version of the bill that had been approved last year by the House Financial Services Committee. It does contain a broader range of "eligible assets" that may serve as collateral for the cover pools backing covered bonds. The bill comes just as foreign issuers are contemplating offering covered bonds into the United States through their U.S. branches in reliance on the exemption from registration provided by Section 3(a)(2).

Loss Absorbency and Contingent Capital

In January, the Basel Committee on Banking Supervision ("BCBS") announced the minimum require-

ments to ensure that all regulatory capital instruments are capable of fully absorbing losses at the point a bank becomes non-viable. The instruments must incorporate either a mandatory write-off (principal write-down feature), or a mandatory conversion to equity feature, or the bail-in discretion must be incorporated into national law. These criteria are in addition to the criteria for Tier 1 and Tier 2 capital instruments set out in the December 2010 papers. National regulators will have authority to declare a trigger event for these instruments. The trigger event is the decision either (i) to make a necessary write-off (or conversion) or (ii) to make a public sector injection of capital (or equivalent support), whichever is earlier. A few national regulators, including the Swiss, already have provided guidance regarding contingent capital. In mid-February of this year, Credit Suisse effected an exchange of hybrid instruments with certain existing security-holders and completed a public offering of contingent capital bonds, 7.875% Tier 2 Buffer Capital Notes. The contingent capital bonds contain a mandatory conversion provision that requires conversion into equity on the breach of a regulatory trigger. In the coming months, we anticipate additional discussion of "loss absorbent" capital instruments, including contingent capital, as the BCBS continues its discussions on this topic and national regulators provide guidance. In the United States, a number of the instruments that might fit the contingent capital rubric will require close analysis. Bank issuers in the United States may not be able to obtain tax deductibility for certain structures, which may put them at a competitive disadvantage vis-à-vis their European bank counterparts that enjoy a different tax regime.

GSE REFORM

The Proposal. Ending months of suspense, on February 11, 2011, the Department of the Treasury and the Department of Housing and Urban Development issued a report to Congress unveiling the Obama Administration's plans for the two giant GSEs, Fannie Mae and Freddie Mac, and for the future of the U.S. housing finance system generally (the "Proposal").

Three-Part Approach. The Proposal first sets forth a three-part plan for restructuring the U.S. housing finance system, employing measures that can be

(Continued on Page 15)

Legislative/Regulatory Actions

Continued from Page 14

accomplished under current law or with relatively straightforward legislation that will not require the resolution of the looming philosophical debate over the extent to which the federal government should guarantee investors against losses on mortgage loans made to U.S. homeowners.

The first part is to reduce government support for housing finance in general, including the gradual but deliberate wind-down of Fannie Mae and Freddie Mac over a period of years. This will be accomplished by a number of means, including increasing the GSEs' guarantee fees charged to sellers of loans sold to the GSEs; allowing the GSEs' "loan limits" to decline in accordance with current law from a maximum of \$729,750 in most markets to \$625,000, and thereafter possibly further; gradually increasing minimum required borrower down payments to at least 10%; encouraging the GSEs to pursue additional credit-loss protection from private insurers and other capital providers; and winding down the GSEs' investment portfolios at an annual pace of at least 10%.

The second part of the Proposal is to remedy "fundamental flaws" in the mortgage finance market identified by the Administration as significant contributors to the financial crisis, by reforming loan origination and securitization practices as already provided for by the Dodd-Frank Act, and by reforming mortgage servicing and foreclosure processes, as has been widely debated in recent weeks but, as of this writing, not yet formalized into a regulatory or statutory proposal.

The third part of the Proposal is to better target the government's support for affordable housing by reforming and strengthening the Federal Housing Administration (the "FHA"), rebalancing national housing policy to provide additional support for rental properties, and ensuring that housing capital reaches non-mainstream communities, including rural areas, economically distressed regions, and low-income communities.

Long-Term Structural Options. The Proposal then sets forth three "options for the long-term structure of housing finance." The three options reflect the current discussion about the appropriate role of the government in supporting housing, ranging from an extremely limited guarantee and insurance program focused on only the more needy elements of society extending to the provision of a federal guarantee that

would ultimately backstop the entire U.S. securitized mortgage market. In "Option 1," the government's role in insuring or guaranteeing mortgage loans would be strictly limited to targeted disadvantaged groups currently served by the FHA, the Department of Agriculture, and the Department of Veterans Affairs. At the other end of the spectrum, in "Option 3," the government would provide catastrophic reinsurance to holders of mortgage-backed securities ("MBS") meeting specified qualifications, which would buttress a first protection level of private mortgage insurance—in effect insuring the entire private MBS market, and thereby arguably reinstating an aspect of the GSEs' role highly criticized for fostering "moral hazard." An intermediate "Option 2" would provide for limited insurance or guarantees to be provided by the government that would normally operate at a minimal level, but would be ramped up to provide support for housing finance during periods of economic stress.

A Long Road Ahead. Although the Proposal is a major step forward in restructuring the nation's housing finance system, the completion of the restructuring is many years away. Winding down Fannie Mae and Freddie Mac and dispersing their immense portfolios without major disruptions to the housing and mortgage markets will likely take from five to ten years once a plan is agreed upon. Moreover, as evidenced by the fact that the Administration has not taken a position on the fundamental philosophical and political question on the degree to which the government should stand behind the mortgage and finance markets, reaching a political census on a definitive plan to restructure the housing finance system itself is probably several years away. Although Senate and House Committees have already begun to consider the Proposal in earnest, many seasoned observers of the political process doubt that a consensus can be reached before Congress tables controversial topics next summer in anticipation of the 2012 Presidential election, and believe that it is unrealistic to expect final housing finance legislation to be enacted before 2013. ■

Hillel T. Cohn, Thomas M. Devaney, Kenneth E. Kohler, Anna T. Pinedo, David A. Trapani, Melissa D. Beck, Jeremy R. Mandell, and Taureen H.A. Newland contributed to this column.

Watch For

FDIC Press Release 56-2011 (March 15, 2011) – The FDIC Board approved a proposed rule to set the claims process under the Dodd-Frank Act's Orderly Liquidation Authority provisions. The proposed rule establishes a comprehensive framework for the priority payment of creditors and for the procedures for filing a claim with the receiver and, if dissatisfied, pursuing the claim in court.

FINRA Regulatory Notice 11-11 (March 11, 2011) – FINRA requested comment on a concept proposal to identify and manage conflicts involving the preparation and distribution of debt research reports. The comment period expires April 25, 2011.

FINRA Regulatory Notice 11-10 (March 4, 2011) – FINRA reminded firms of their obligation to electronically report specified events and quarterly customer complaint information. The notice also provided additional guidance on automated reporting under FINRA Rule 4530.

OCC Bulletin 2011-8 (March 3, 2011) – Regulators issued an interagency statement on the reorganization of Bank Secrecy Act regulations.

SEC Press Release 2011-59 (March 2, 2011) – The SEC proposed rule amendments to remove credit rating references in certain Investment Company Act rules and forms, including rule 2a-7 governing the operations of money market funds.

SEC Press Release 2011-58 (March 2, 2011) – The SEC proposed clearing agency standards for operations and governance. They also voted to reopen the public comment period for rules proposed in October to mitigate conflicts of interest for security-based swap clearing agencies, security-based swap execution facilities, and national securities exchanges that post or make available for trading security-based swaps.

SEC Press Release 2011-57 (March 2, 2011) – The SEC proposed rules on disclosure of incentive-based compensation arrangements at financial institutions. The SEC-regulated financial institutions affected by the rulemaking include broker-dealers and investment advisers with \$1 billion or more in assets.

February 28, 2011 – The MSRB requested comment on draft Rule G-36 concerning the fiduciary duty of municipal advisors, and a draft interpretive notice under Rule G-36. The MSRB also requested comment on a draft interpretive notice concerning the application of MSRB Rule G-17 to municipal advisors providing advice to obligated persons or soliciting business from municipal entities on behalf of others.

MSRB Notice 2011-18 (February 24, 2011) – The MSRB requested comment on draft Rule G-43 (on broker's brokers), as well as associated draft amendments to Rule G-8 (on books and records), G-9 (on records preservation), and G-18 (on execution of transactions). Comments should be submitted no later than April 21, 2011.

February 23, 2011 – The MSRB filed a comment letter with the SEC regarding their proposed permanent registration rules for municipal advisors – <http://www.msrb.org/News-and-Events/Press-Releases/2011/MSRB-Comments-on-Proposed-SEC-Final-Municipal-Advisor-Registration-Rules.aspx>.

MSRB Notice 2011-17 (February 23, 2011) – The MSRB published a notice with additional information about the upcoming document submission requirements related to MSRB Rule G-34(c), on variable rate security market information. On May 16, 2011 dealers will be required to submit to the MSRB Short-term Obligation Rate Transparency ("SHORT") System certain documents associated with municipal Auction Rate Securities and Variable Rate Demand Obligations – <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-17.aspx>.

(Continued on Page 17)

Watch For *(Continued from page 16)*

FINRA Regulatory Notice 11-09 (February 22, 2011) – As of March 14, 2011, issuers, ADR depositary banks and other parties that provide notice of company-related actions to FINRA under Rule 6490 must use a new electronic system to provide such notice to FINRA. As of that effective date, FINRA will no longer accept paper copies of the Company-Related Action Notification Forms. The new electronic Company-Related Action Forms are available at www.finra.org/upc/forms.

MSRB Notice 2011-16 (February 22, 2011) – The MSRB requested comment on draft amendments to MSRB Rule G-20 (on gifts and gratuities), which would apply the rule to municipal advisors, as well as associated draft amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). Comments should be submitted no later than April 5, 2011.

FDIC Press Release 37-2011 (February 16, 2011) – The FFIEC announced the launch of its redesigned IT Examination Handbook InfoBase – <http://ithandbook.ffiec.gov>.

February 15, 2011 – The MSRB announced that investors can now get information about the expected timing of continuing disclosures made by municipal bond issuers and easily identify the most recent disclosures on the MSRB's EMMA website.

MSRB Notice 2011-15 (February 14, 2011) – The MSRB filed with the SEC amendments to Rule A-15, on notice of termination of municipal securities activities, to extend the coverage of the rule to municipal advisors and to expand the circumstances under which notification must be provided to the MSRB. The amendments became operative March 17, 2011.

February 14, 2011 – The MSRB requested comment on draft Rule G-36 concerning the fiduciary duty of municipal advisors, and a draft interpretive notice under Rule G-36.

MSRB Notice 2011-15 (February 14, 2011) – The MSRB filed amendments to Rule A-15 requiring notice to the Board of a change in status or a change in name and address. The amendment becomes operative on March 17, 2011.

MSRB Notice 2011-14 (February 14, 2011) – The MSRB requested comment on draft Rule G-36 concerning the fiduciary duty of municipal advisors and draft interpretive notice. Comments should be submitted no later than April 11, 2011.

MSRB Notice 2011-13 (February 14, 2011) – The MSRB requested comment on a draft interpretive notice concerning the application of MSRB Rule G-17 to municipal advisors providing advice to obligated persons or soliciting business from municipal entities on behalf of others. Comments should be submitted no later than April 11, 2011.

MSRB Notice 2011-12 (February 14, 2011) – The MSRB requested comment on a draft interpretive notice concerning the application of MSRB Rule G-17 to underwriters of municipal securities. Comments should be submitted no later than April 11, 2011.

February 10, 2011 – The MSRB published its *2010 Annual Review*, which outlines accomplishments for the year and includes audited financial statements for fiscal year 2010. The MSRB also published a new *MSRB Rule Book* describing rules for municipal securities dealers and municipal advisors in effect as of January 1, 2011. *2010 MSRB Annual Review* – <http://www.msrb.org/msrb1/pdfs/MSRB-2010-Annual-Review.pdf>. *2011 MSRB Rule Book* – <http://www.msrb.org/msrb1/pdfs/MSRBRulebook.pdf>.

FINRA Regulatory Notice 11-08 (February 10, 2011) – FINRA requested comment on proposed consolidated FINRA rules governing markups, commissions and fees. The comment period expires March 28, 2011.

(Continued on Page 18)

Watch For *(Continued from page 17)*

SEC Press Release 2011-41 (February 9, 2011)
– The SEC proposed the first in a series of rule amendments to remove references to credit ratings.

MSRB Notice 2011-10 (February 9, 2011) – The MSRB filed proposed rule amendments and interpretive notice regarding Rule G-23 on activities of financial advisors.

FINRA Regulatory Notice 11-07 (February 9, 2011) – FINRA revised the *Sanctions Guidelines* reflecting the experience of FINRA's Departments of Market Regulation and Enforcement in settling and litigating cases, and incorporate the teachings of federal appellate court and SEC precedent in recent FINRA disciplinary cases. The revised *Sanction Guidelines* became effective immediately and are available on FINRA's website – www.finra.org.

Federal Reserve Press Release (February 9, 2011)
– The Federal Reserve issued a final rule, effective April 1, 2011, to implement the Volcker Rule conformance period.

MSRB Notice 2011-09 (February 8, 2011) – Amendments to Rules G-8 and G-34 to increase the transparency of municipal variable rate securities become effective May 16, 2011.

Federal Reserve Press Release (February 8, 2011)
– The Federal Reserve issued, and requested comment on, proposals related to the designation of systemically important nonbank financial companies. Comments must be submitted by March 30, 2011.

MSRB Notice 2011-08 (February 7, 2011) – Reminder of February 14, 2011 effective date for amendments to Rule G-32 related to submission of information about continuing disclosure undertakings under Exchange Act Rule 15c2-12. An updated version of the *Primary Market Submission Manual* has been posted to the MSRB web site reflecting the changes to Rule G-32.

FINRA Information Notice (February 7, 2011) – The SEC approved a supplement to the *Options Disclosure Document* which contains general disclosures on the characteristics and risks of trading standardized options.

FINRA Regulatory Notice 11-06 (February 3, 2011) – The SEC approved a consolidated FINRA rule governing reporting requirements which takes effect on July 1, 2011.

Joint News Release 2011-11 (February 3, 2011)
– The federal bank and thrift regulatory agencies proposed changes in reporting requirements for OTS-regulated savings associations and savings and loan holding companies.

February 2, 2011 – The MSRB requested comment on a draft proposal to establish “pay to play” and related rules relating to municipal advisors and to make certain conforming changes to existing pay to play rules for brokers, dealers, and municipal securities dealers.

SEC Press Release 2011-35 (February 2, 2011) – The SEC proposed rules defining security-based swap execution facilities (SEFs) and establishing their registration requirements, as well as their duties and core principles.

FINRA Regulatory Notice 11-05 (February 1, 2011) – Effective immediately, customers in FINRA arbitration with claims over \$100,000 have the option to choose an all public arbitration panel in all cases with three arbitrators.

SEC Press Release 2011-32 (January 31, 2011) – The SEC released money market fund portfolio and “shadow NAV” information to the public. The information is available on the SEC's website and will be updated monthly.

(Continued on Page 19)

Watch For *(Continued from page 18)*

January 31, 2011 – The MSRB approved numerous draft rulemaking proposals for municipal advisors and dealers, among other actions.

SEC Press Release 2011-28 (January 27, 2011) – The SEC published a staff study on investor access to information about investment professionals.

SEC Press Release 2011-25 (January 25, 2011) – The SEC adopted rules for say-on-pay and golden parachute compensation as required under the Dodd-Frank Act.

SEC Press Release 2011-24 (January 25, 2011) – The SEC proposed a net worth standard for accredited investors under the Dodd-Frank Act.

SEC Press Release 2011-23 (January 25, 2011) – The SEC proposed a private fund systemic risk reporting rule.

SEC Press Release 2011-20 (January 22, 2011) – The SEC released a staff study recommending a uniform fiduciary standard of conduct for broker-dealers and investment advisers.

SEC Press Release 2011-18 (January 20, 2011) – The SEC approved new rules regulating asset-backed securities.

MSRB Notice 2011-04 (January 14, 2011) – The MSRB requested comment on a “pay to play” rule for municipal advisors.

SEC Press Release 2011-13 (January 14, 2011) – The SEC proposed a rule for the timely acknowledgment and verification of security-based swap transactions.

OCC Bulletin 2011-3 (January 12, 2011) – Regulators are seeking comment on proposed revisions to market risk capital rules which would broaden their scope to better capture the risk inherent

in trading positions. Comments are due on or before April 11, 2011.

FINRA Regulatory Notice 11-04 (January 11, 2011) – FINRA requested comment on proposed amendments to FINRA Rule 5122 to address member firm participation in private placements. The comment period expired March 14, 2011.

FINRA Regulatory Notice 11-03 (January 11, 2011) – FINRA expanded the Order Audit Trail System to all NMS stocks. The effective date is July 11, 2011.

FINRA Regulatory Notice 11-02 (January 10, 2011) – The SEC approved consolidated FINRA rules governing Know-Your-Customer and suitability obligations. The rules take effect on October 7, 2011.

FINRA Regulatory Notice 11-01 (January 4, 2011) – FINRA issued this Notice to help firms review, reconcile and respond to their Final Renewal Statements and reports that are currently available in Web CRD/IARD for the annual registration renewal process. The payment deadline was February 4, 2011.

MSRB Press Release (December 30, 2010) – The MSRB made changes to municipal securities transaction fees which went into effect January 1, 2011.

MSRB Notice 2010-59 (December 23, 2010) – The SEC approved the MSRB's fair dealing rule for municipal advisors consisting of amendments to MSRB Rule G-17, the MSRB's basic fair practice rule, and MSRB Rule G-5, on disciplinary actions by appropriate regulatory agencies, to apply the rules to municipal advisors.

(Continued on Page 20)

Watch For *(Continued from page 19)*

SEC Press Release 2010-256 (December 23, 2010) – The Senior Supervisors Group issued a report on risk appetite frameworks and IT infrastructure – *Observations on Developments in Risk Appetite Frameworks and IT Infrastructures*.

SEC Press Release 2010-253 (December 20, 2010) – The SEC proposed a permanent rule requiring municipal advisors to register with the SEC.

MSRB Notice 2010-57 (December 17, 2010) – Reminder that interpretive guidance on dealer-controlled political action committees under Rule G-37 became effective on December 12, 2010.

OCC Bulletin 2010-43 (December 16, 2010) – Suspicious Activity Reports (SARs): Final Rules. Part 21 final rule revised OCC regulations that implement the Bank Secrecy Act governing the confidentiality of a suspicious activity report. Part 4 final rule revised OCC regulations governing the release of nonpublic OCC information.

MSRB Notice 2010-56 (December 16, 2010) – Amendments to Rule G-32 related to the submission of information about continuing disclosure undertakings became effective February 14, 2011.

FINRA Regulatory Notice 10-62 (December 15, 2010) – The SEC approved new consolidated FINRA Rule 2232 (Customer Confirmation) effective June 17, 2011.

SEC Press Release 2010-244 (December 15, 2010) – The SEC proposed end-user requirements under the Dodd-Frank Act for security-based swaps exempt from mandatory clearing.

SEC Press Release 2010-243 (December 15, 2010) – The SEC proposed a review process for mandatory clearing of security-based swaps under the Dodd-Frank Act.

Joint News Release 2010-142 (December 15, 2010) – Three federal bank regulatory agencies sought comment on a notice of proposed rulemaking that would revise the market risk capital rules for banking organizations with significant trading activity.

Available Publication

March 9, 2011 – The MSRB released its *2010 Fact Book*, an annual sourcebook that analyzes trading data and other statistics for the \$2.9 trillion municipal bond market – <http://www.msrb.org/msrb1/pdfs/MSRB2010FactBook.pdf>.

SECURITIES COMPLIANCE SEMINAR

April 27–29

CHICAGO



Program Update

2011 Securities Compliance Seminar

Registrations are still being accepted for FMA's 20th **Securities Compliance Seminar** set to take place April 27 – 29, 2011 at the Doubletree Hotel (on the Magnificent Mile) in Chicago, Illinois. This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators. This year's seminar is particularly timely—in addition to focusing on current compliance topics, new rules or interpretations and regulatory developments, the agenda features a **Dodd-Frank regulatory reform update**. And, CPE and CLE accreditation will be available.

The Program Planning Committee has been hard at work developing varied agenda topics and confirming noted industry leaders and regulators as speakers. Members include: Mitchell Avnet (*Lincoln Financial Group*); James Connors (*Wells Fargo Audit Services*); Earl Humphrey (*Consultant*); Marie Jordan (*JPMorgan Chase Bank, NA*); Barbara Lane (*GE Capital Americas*); and Christopher Pedersen (*Consultant*).

The current agenda (which can be viewed in its entirety at www.fmaweb.org) includes these general sessions, concurrent workshops and confirmed speakers:

Key 2011 Legislative and Regulatory Initiatives

- › James Kaplan ■ DLA Piper US LLP
- › Julius Loeser ■ Winston & Strawn LLP
- › Saverio Mirarchi ■ Northern Trust Corporation

Control Room 101

- › Michael Sullivan ■ Wells Fargo Securities
- › Vaughn Swartz ■ The PNC Financial Services Group
- › Eric Young ■ GE Capital Corporation

The Municipal Industry in the Wake of Dodd-Frank

- › Sara Grohl ■ FINRA
- › Jaqueline Hummel, IACCP ■ Hardin Compliance Consulting LLC
- › Ernesto Lanza ■ MSRB
- › Kimberly McManus ■ Alternative Regulatory Solutions, LLC

The Role of Technology in a Robust Compliance / Risk Management Program

- › Chuck Hester ■ Oracle Financial Services Software
- › Allen Sellars ■ RegEd.com
- › Martin Williams ■ Interactive Data Pricing and Reference Data
- › Mitchell Avnet ■ Lincoln Financial Group

Regulatory Forum

- › Judith Foster ■ OCC
- › Merri Jo Gillette ■ SEC
- › Ernesto Lanza ■ MSRB
- › Malcolm Northam ■ FINRA
- › Timothy Thompson ■ CBOE

Internal Auditor Hot Topics

- › Gina Adelpia ■ Northern Trust Corporation
- › Michael Brauneis, CRCM ■ Protiviti
- › Don Temple ■ KPMG LLP

Private Funds

- › Fadi Samman ■ Akin Gump Strauss Hauer & Feld LLP
- › Michael Sefton ■ Henderson & Lyman
- › John Sikora, Jr. ■ SEC

A New Fiduciary Standard for Broker-Dealers?

- › Sean Gray ■ The PNC Financial Services Group
- › Steven Malina ■ Greenberg Traurig, LLP

Workshop: Retail Compliance

- › Christine Kaufman ■ Impact Consultants, Inc.

Workshop: Institutional Compliance

- › Matthew Hardin ■ Hardin Compliance Consulting LLC
- › James Rabenstine ■ Nationwide Financial Services

Anti-Money Laundering / Bank Secrecy Act

- › David Amster ■ CRT Capital Group LLC
- › James Van De Graaff ■ Katten Muchin Rosenman LLP
- › Meg Zucker ■ Morgan Stanley

Surviving Increased Regulatory Oversight

- › Joseph Adamczyk ■ CME Group Inc.
- › Daniel Gregus ■ SEC
- › Phillip Stern ■ Neal, Gerber & Eisenberg LLP

The Dodd-Frank Whistleblower Provisions

- › Anthony Cavallaro ■ FINRA
- › Barbara Jones ■ Greenberg Traurig, LLP
- › Anne McKinley ■ SEC

(Continued on Page 22)

Program Update

(Continued from Page 21)

In addition, peer group discussions (lead by facilitators) will take place on Wednesday and Thursday afternoon. Tentative topics include: AML/BSA; *Ask the Regulators*; *Broker-Dealer Compliance Hot Topics*; *Building Metrics Around Compliance Activities*; *Communicating with the Public (Advertising/Marketing)*; *Compliance & Technology*; *Control Room 101*; *Current Investment Adviser Issues*; *Customer Complaints*; *Fixed Income Pricing & Valuation*; *Insider Trading/Conflicts of Interest*; *Internal Audit Hot Topics*; *Legislative & Regulatory Update/Regulatory Reform*; *Managing Remote Offices & Employees*; *Municipal Industry & DFA*; *Mutual Funds & Annuities*; *New Fiduciary Standard*; *Privacy & Protection of Information*; *Private Funds*; *Regulation R*; *How to Survive a Regulatory Exam & Increased Regulatory Oversight*; and *Whistleblower Provisions/DFA*.

If you would like to facilitate one of these discussions, please contact FMA (see below).

The hotel may sell out any day...make your reservations (and register!) today. Team discounts are still available and **additional discounts are available to Chicago "locals"**. Contact Dorcas Pearce at dp-fma@starpower.net or 202/544-6327 with questions or to register. Or, online registration is available at www.fmaweb.org.

FMA gratefully acknowledges these sponsors of FMA's 2011 Securities Compliance Seminar:

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2011 Legal & Legislative Conference

All dates and DC hotels are currently being considered for FMA's 20th **Legal & Legislative Issues Conference**. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance officers and regulators. The day and a half program provides participants with an opportunity to share information on current legal and regulatory developments as well as network with peers.

FMA will assemble a Program Planning Committee in the coming weeks to develop an agenda focusing on current areas of regulatory and Congressional scrutiny/activity. **If you would like to volunteer for the committee (or serve as a speaker), contact Dorcas Pearce at dp-fma@starpower.net or 202/544-6327.**

FMA requests your input! An e-survey will be sent out in April to a sampling of past conference attendees and colleagues asking for topical as well

as speaker suggestions for the agenda. The Planning Committee will particularly rely on these responses when formulating the program...so please respond quickly and share your thoughts and ideas...even if you do not receive the survey. Help us make this the best conference ever.

CLE and CPE accreditation...as well as team discounts...will be available, so be sure to budget for (and plan to attend) the 2011 Legal & Legislative Issues Conference. Contact Dorcas Pearce at dp-fma@starpower.net or 202/544-6327 with questions and/or to volunteer.

ATTENTION SPONSORS!

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