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MARKET SOLUTIONS

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MARKET SOLUTIONS

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Market Solutions is a quarterly newsletter about the activities of the Financial Markets Association as well as legislative/regulatory developments of interest to FMA members. The opinions expressed in this publication are those of the authors, not necessarily those of the Association and are not meant to constitute legal advice. *Market Solutions* is provided as a membership service of the **Financial Markets Association**, 111 W. College Street / Franklinton, NC 27525, ***dp-fma@starpower.net***, 919/494-7479, ***www.fmaweb.org.***
Please let us have your suggestions on topics you would like to see addressed in future issues.

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SEC Adopts New Requirements for US Treasuries Clearing and Risk Management

By Bruce Newman, Andre Owens, Stephanie Nicolas, Amy Doberman and Kyle Swan.
WilmerHale

On December 13, 2023, the Securities and Exchange Commission (SEC) voted (4-1) to adopt new requirements under the Securities Exchange Act of 1934 (Exchange Act), which will restructure the clearance and settlement of secondary market transactions involving the purchase and sale of US Treasury securities (cash transactions) and repurchase agreements and reverse repurchase agreements of US Treasury securities (repo transactions).[1]

Today, most US Treasury securities transactions are settled and cleared bilaterally—without a central counterparty to act as a guarantor of each transaction by standing in as a buyer to every seller and as a seller to every buyer. In adopting the new requirements, the SEC cited potential risks in the US Treasury securities market caused by the lack of uniformity and transparency in the clearance and settlement of US Treasury securities.[2] To address these risks, the amended rules will effectively mandate central clearing and settlement of certain eligible cash transactions and repo transactions through covered clearing agencies (CCAs).[3] Currently, the Fixed Income Clearing Corporation (FICC) is the only CCA for US Treasury securities transactions.

To enable this transformation, the SEC amended Rule 17ad-22(e) under the Exchange Act to require that FICC and any other future CCAs for US Treasury securities adopt policies and procedures to (i) require that their direct participants centrally clear eligible secondary market transactions, (ii) address separation of direct participant and customer margin, and (iii) facilitate broad access to clearing and settlement services for US Treasury securities. The amendments also modify Rule 15c3-3a under the Exchange Act by changing how broker-dealers treat US Treasury securities and certain other assets posted as margin and held at a CCA for purposes of the "Customer Protection Rule"[4] reserve formula, to reduce the burden of the margin requirements associated with mandatory central clearing of US Treasury securities transactions.

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

Legislative/Regulatory Actions

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

In this issue, we address selected developments from the federal banking regulators, the Financial Crimes Enforcement Network ("FinCEN"), the Office of Foreign Assets Control (OFAC), and the Consumer Financial Protection Bureau (CFPB or "Bureau").

FEDERAL BANKING REGULATORS

Proposed Rule to Amend Regulation II: Debit Card Interchange Fees and Routing

On November 14, 2023, the Federal Reserve Board (Board) published a proposed rule to reduce the maximum interchange fee that a large debit card issuer can receive for a debit card transaction under Regulation II. The Board promulgates Regulation II pursuant to its authority under the Dodd-Frank Act, which requires the Board to establish standards for assessing whether the amount of any interchange transaction fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Currently, the interchange fee charged on a debit card transaction that does not qualify for an exemption can be no more than the sum of: (i) 21 cents ("base component"); (ii) 5 basis points multiplied by the value of the transaction ("ad valorem component"); and (iii) for a debit card issuer that meets certain fraud-prevention standards, a "fraud-prevention adjustment" of 1 cent per transaction.

The proposed rule would update the three components of the interchange fee cap based on the 2021 data reported to the Board by covered debit card issuers: (i) the base component would decrease to 14.4 cents from 21.0 cents; (ii) the ad valorem component would decrease to 4 basis points (multiplied by the value of the transaction) from 5 basis points (multiplied by the value of the transaction); and (iii) the fraud-prevention adjustment would increase to 1.3 cents from 1.0 cents. The FRB also proposes to codify an approach for automatically updating the interchange fee cap every other year going forward, based on the latest data reported to the Board by covered issuers. Such adjustments would not be subject to the notice-and-comment rulemaking process. Comments are due February 12, 2024.

Final Rule to Strengthen and Modernize Community Reinvestment Act Regulations

On October 24, 2023, the Board, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the "agencies") jointly issued a final rule to strengthen and modernize the regulations implementing the 1977 Community Reinvestment Act (CRA). The CRA is designed to encourage banks to help meet the credit needs of their entire communities, especially in low- and moderate-income (LMI) neighborhoods. The final rule, which has been under development for some time, updates the CRA regulations to (i) encourage banks to expand access to credit, investment, and banking services in LMI communities; (ii) adapt to changes in the banking industry, including internet and mobile banking; (iii) provide greater clarity and consistency in the application of the CRA regulations; and (iv) tailor CRA evaluations and data collection to bank size and type.

Under the final rule, the agencies will evaluate bank performance across the activities they conduct and communities in which they operate. The final rule will update the CRA regulations to evaluate lending outside traditional assessment areas generated by the growth of non-branch delivery systems, such as online and mobile banking, branchless banking, and hybrid models. The final rule adopts a new metrics-based approach to evaluating bank retail lending and community development financing, using benchmarks based on peer and demographic data. The rule also exempts small and intermediate banks from new data requirements that apply to banks with assets of at least $2 billion and limits certain new data requirements to large banks with assets greater than $10 billion. The final rule has yet to be published in the Federal Register as of this writing. Most of the rule's requirements will be applicable on January 1, 2026; others, including the data reporting requirements, will be applicable on January 1, 2027.

Principles on Climate-Related Financial Risk Management for Large Financial Institutions

On October 30, 2023, the Board, the OCC, and the FDIC (the "agencies") jointly published final principles that provide a high-level framework for the safe and sound management of exposures to climate-related financial risks for large financial institutions. The principles apply to U.S. banking organizations with more than $100 billion in total consolidated assets. The principles also apply to (i) foreign banking organizations (FBOs) with combined U.S. operations of more than $100 billion in total consolidated assets, and (ii) any U.S. branch or agency of an FBO that individually has total assets greater than $100 billion. Even though only large banking organizations are in the principles' scope, the agencies acknowledge that banking

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SEC Adopts New Requirements…

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The new requirements will have a two-and-a-half-year phased implementation schedule (described more fully below). Below, we discuss (i) the policies and procedures that FICC and any other CCAs for US Treasury securities will need to adopt under amended Rule 17ad-22(e), and (ii) the effects of the new requirements on broker-dealers, hedge funds and other US Treasury market participants.

Application to CCAs for US Treasury Securities: New Policies and Procedures

The amended rules establish several policy- and procedure-based requirements for FICC and any future CCAs for US Treasury securities. Specifically, CCAs will be required to establish, implement, maintain and enforce policies and procedures reasonably designed to:

- require direct participants to submit for clearance and settlement all the eligible secondary market transactions to which they are a counterparty ("Mandatory Central Clearing");
- calculate, collect and hold separately margin amounts of a direct participant and indirect participant ("Separation of House and Customer Margin"); and
- ensure that the CCA has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions ("Facilitating Access").

CCAs are self-regulatory organizations (SROs) under the Exchange Act and are required to submit proposed rule filings, including rules that would adopt or amend the CCA's policies and procedures, to the SEC for approval under Section 19(b) of the Exchange Act. The new policies and procedures to be adopted by CCAs will apply to firms that are CCA members or direct participants (generally, banks and broker-dealers), which in turn provide access to the CCA's payment, clearing or settlement facilities to indirect participants (e.g., customers and clients of the banks and broker-dealers, including funds, asset managers, and other, smaller banks and broker-dealers).

Mandatory Central Clearing

Rule 17ad-22(e)(18)(iv)(A) will require CCAs providing central counterparty services for US Treasury securities transactions to adopt policies and procedures to require direct participants to submit for clearance and settlement each "eligible secondary market transaction" to which they are a counterparty.

"Eligible secondary market transaction" refers to a secondary market transaction in US Treasury securities of a type accepted for clearing by a CCA that includes:

- repo transactions in which one of the counterparties is a direct participant; and
- cash transactions between a direct participant and (1) any counterparty where the direct participant brings together multiple buyers and sellers using a trading facility and is a counterparty to both the buyer and seller in two separate transactions (e.g., certain inter-dealer broker transactions); or (2) a registered broker-dealer or government securities broker-dealer.

"Eligible secondary market transaction" does not include:

- cash or repo transactions where one counterparty is a central bank, a sovereign entity, an international financial institution or a natural person;
- repo transactions where one counterparty is a CCA providing central counterparty services, a derivatives clearing organization, an entity regulated as a central counterparty in its home jurisdiction, or a state or local government (but not public pension or retirement plans); and
- repo transactions between a direct participant and an "affiliated counterparty,"[5] provided that the affiliated counterparty submits for clearing and settlement all other repo transactions to which it is a party (either by submitting transactions through an agency clearing model or by becoming a direct participant).[6]

The definition of "eligible secondary market transaction" includes when-issued trades that occur the day after an auction but does not include when-issued trades before and on the day of the auction.

Notably, triparty repo transactions (i.e., transactions that involve a third-party agent that manages margin and collateral on behalf of the two transacting parties and provides back-office support) are subject to mandatory central clearing. In rejecting an exclusion for triparty repo transactions, the SEC noted that a triparty agent—even though it is subject to heightened prudential regulation—does not novate the transaction and insert itself as a central counterparty between the buyer and seller like a CCA and is not subject to regulation as a central counterparty, so the parties to the transaction are subject to counterparty credit risk in the event of a default (and contagion risk in the event of large, unsettled trading volumes) that could be managed by a CCA in a centrally cleared transaction.[7]

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Similarly, the SEC specifically identified "hybrid" clearing arrangements often used in cash transactions as potential sources for contagion risk that would be addressed by the mandatory clearing requirement.[8] Hybrid clearing refers to transactions that are executed on an interdealer broker platform in which one counterparty is a member of a CCA and submits its transaction with the interdealer broker for central clearing, while the other counterparty is not a member of a CCA and bilaterally clears its transaction with the interdealer broker. As a result, FICC does not have information about the FICC member interdealer broker's offsetting trade and the potential exposures arising from it, which the SEC believes could impair FICC's ability to manage counterparty risk and lead to systemic risk.[9]

To enforce mandatory central clearing, Rule 17ad-22(e)(18)(iv) also requires a CCA to identify and monitor its direct participants' required submission of transactions for clearing, including, at a minimum, addressing a direct participant's failure to submit transactions. The SEC does not prescribe a manner in which this requirement should be enforced but provided several examples of how this obligation could be met, including by obtaining attestations from direct participants and reviewing publicly available information or other information made available to the CCA regarding direct participants' transactions, such as TRACE reporting data.[10]

Separation of House and Customer Margin

Rule 17ad-22(e)(6)(i) will require a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, calculate, collect and hold margin amounts from a direct participant for its proprietary US Treasury securities positions separately and independently from margin calculated and collected from that direct participant in connection with US Treasury securities transactions by an indirect participant. Effectively, this segregation requirement would prohibit a CCA from netting customer and proprietary positions. However, the rules do not prescribe a specific margin requirement; instead, CCAs remain responsible for establishing a margin methodology subject to SEC approval. Additionally, the SEC would permit a CCA to use an omnibus account structure, where all collateral belonging to all indirect participant customers of a particular direct participant can be commingled and held in a single account segregated from that of the direct participant.

Facilitating Access

Rule 17ad-22(e)(18)(iv)(C) will require a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, ensure that the CCA has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in US Treasury securities, including those of indirect participants.

The SEC did not prescribe specific methods for market participants to obtain indirect access to a CCA but noted that access to clearance and settlement services should be in a manner suited to the needs and regulatory requirements of market participants. The SEC provided guidance on how a CCA should comply with the new access requirements, including that the CCA should:

- conduct and document an initial review of its access models and related policies and procedures;
- seek to provide access in as flexible a means as possible, consistent with its responsibility to provide sound risk management and comply with other provisions of the Exchange Act, the CCA Standards and other applicable regulatory requirements;
- consider a wide variety of appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in US Treasury securities in consultation with a wide range of stakeholders;
- review and document any instance in which its policies and procedures treat transactions differently based on the identity of the participant submitting the transaction, the fact that an indirect participant is a party to the transaction, or the method of execution or in any other way, and confirm that any variation in the treatment of such transactions is necessary and appropriate to meet the minimum standards regarding, among other things, operations, governance and risk management identified in the CCA Standards; and
- require its policies and procedures regarding access to be reviewed by the CCA's board of directors annually.[11]

Application to Other Market Participants

Broker-Dealers: Amendments to Rule 15c3-3a

As noted above, the SEC also amended Rule 15c3-3a under the Exchange Act, which establishes the reserve formulae used for purposes of Rule 15c3-3, the Customer Protection Rule, which in turn requires broker-dealers to maintain special reserve bank accounts for the exclusive benefit of customers and for the proprietary accounts of broker-dealers (PABs) separate from each other and separate from the accounts of the broker-dealer itself. In those reserve accounts, the broker-dealer must maintain cash and/or certain qualified securities in amounts computed in accordance with the reserve formulae for those accounts under Rule 15c3-3a.

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Currently, the Customer Protection Rule does not permit broker-dealers to include a debit in the customer and PAB reserve formulae equal to the amount of margin required and on deposit at a CCA for US Treasury securities. This is because no US Treasury securities CCA has implemented rules and practices designed to segregate customer and PAB margin from broker-dealer margin and limit customer and PAB margin to being used solely to cover obligations of customers and other broker-dealers. Without changes to the reserve formula, mandatory central clearing of US Treasury securities would significantly increase the amount of margin a broker-dealer is required to post at a CCA resulting from having more customer and PAB US Treasury securities positions centrally cleared, increasing the broker-dealer's need to use its own assets to meet those requirements.

To reduce the amount of its own assets that a broker-dealer must post as margin to the CCA in connection with centrally cleared US Treasury transactions, the amended rules modify the reserve formulae to permit margin required and on deposit at CCAs providing central counterparty services for US Treasury securities to be included by broker-dealers as a debit in the customer and PAB reserve formulae, subject to four specified conditions. The margin on deposit at the CCA must be *required* to be included as a debit in the reserve formulae, meaning that any margin on deposit at the CCA in addition to the required amount may not be included as a debit. The conditions below for the customer reserve computation are also applicable to the PAB reserve computation, except that the conditions relate to other broker-dealers rather than to customers. The conditions are largely contained in Note H to Item 15 of the Reserve Formula Calculation. Broker-dealers would need to update their written policies and procedures related to compliance with Rule 15c3-3 to address these requirements:

(1) ***Permitted Margin***: Customer position margin must be in the form of cash, US Treasury securities or "qualified customer securities,"[12] and must be used to margin US Treasury securities positions of the customers of the broker-dealer that are cleared, settled and novated at the US Treasury securities CCA.

(2) ***Customer Position Margin***: The broker-dealer must (i) use customer assets exclusively to meet the customer position margin requirement; (ii) use a particular customer's assets exclusively to meet the amount of the customer position margin requirement resulting from that customer's cleared US Treasury securities positions; and (iii) have delivered the customer's assets to the US Treasury securities CCA. Under certain conditions, a broker-dealer may deliver US Treasury securities that it owns to meet a customer margin obligation.

(3) ***Rules of US Treasury Securities CCA***: Customer position margin must be treated in accordance with rules of the CCA designed to protect and segregate the customer position margin, including to (i) limit the CCA's use of such customer margin, (ii) require the use of a "Special Clearing Account for the Exclusive Benefit of Customers" of the broker or dealer, (iii) provide written notice from the CCA to the broker-dealer affirming that securities are held segregated for the benefit of customers, (iv) enter into a contract between the broker-dealer and the CCA containing "no lien" language, and (v) require the CCA to hold the customer margin securities in certain ways and subject to certain conditions that mirror the conditions to which the broker-dealer is subject.

(4) ***SEC Approval of Rules of US Treasury Securities CCA***: The SEC must approve rules of the CCA that meet the conditions discussed above and publish a notice that broker-dealers may include a debit in the customer reserve formula when depositing customer position margin to meet a margin requirement of the CCA resulting from positions in US Treasury securities of the customers of the broker-dealer.

Registered Funds

Funds registered under the Investment Company Act of 1940 (Investment Company Act), including money market funds and exchange-traded funds, are major US Treasury securities market participants that are indirect participants of CCAs (i.e., through FICC's Sponsored Service program).

Registered funds are subject to Section 17(f) of the Investment Company Act and the rules thereunder, which govern the safekeeping of investment company assets and require that such assets be maintained in the custody of certain specified entities (e.g., a bank, a national securities exchange or the fund itself). These safekeeping requirements also apply to fund assets required to be posted as margin, so posting fund assets as margin with FICC directly or through a member of a national securities exchange that provides the fund with sponsored access to the exchange could violate Section 17(f) because currently there is no existing framework for managing assets deposited with FICC in accordance with Section 17(f). As a result, currently, registered funds engaged in centrally cleared US Treasury securities transactions pay fees to a direct participant to post the participant's assets as margin with FICC on their behalf. However, costs associated with having direct participants post margin on a fund's behalf will increase if more transactions are required to be centrally cleared.

To mitigate these costs, the SEC stated in the Adopting Release that it would permit, but not require, a registered fund to post fund assets as margin with FICC, either directly or through a third party, rather than pay a direct participant to post assets as margin on its behalf.[13] This alternative could reduce

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costs for registered funds and free up direct participants' capital that otherwise would be required to be posted as margin. Because the framework for custody of fund assets held at FICC has not yet been developed, the SEC stated that, for a period of five years, registered funds using FICC's Sponsored Service program may post margin with FICC directly or through a member of a national securities exchange providing the fund with sponsored access to the exchange without facing enforcement under Section 17(f), provided that the arrangements meet certain conditions principally designed to segregate fund assets from FICC assets and direct participant assets and to limit FICC's ability to withdraw fund assets such that they can be withdrawn only upon the event of the fund's default.

The SEC indicated that the five-year no-enforcement positions are intended to provide sufficient time for FICC to develop and file any proposed rule changes under Section 19(b) of the Exchange Act that may be relevant to facilitate a registered fund's ability to post margin at FICC and for the SEC and market participants to consider the appropriateness of this framework or potential alternative frameworks.[14]

Hedge Funds and Leveraged Accounts

In a key departure from its proposal, the SEC did not include cash transactions between direct participants and hedge funds or leveraged accounts within the definition of "eligible secondary market transaction." The SEC had expressed concerns regarding the risks that these types of entities' trading strategies, which include the use of leverage, could pose to the health of the US Treasury securities markets.[15] However, the SEC narrowed in-scope transactions to remove transactions of hedge funds and leveraged accounts unless they are captured by another portion of the rule (e.g., cash transactions through interdealer broker platforms). Instead, the SEC adopted a "more incremental approach" to cash transactions in light of questions raised by commenters that the SEC believed "merit further consideration," and the SEC noted that it will continue to evaluate the issues raised to determine if any further action is appropriate with respect to transactions in the cash market.[16] There is no similar carve-out for repo transactions; the language defining repo transactions that fall within the definition of "eligible secondary market transaction" is more broadly drafted and would include a repo transaction between a direct participant and a hedge fund or leveraged account unless the transaction is otherwise excluded.

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Requirement(s)	Implementation Date
Filing deadline for proposed CCA rule changes regarding separation of house and customer margin; facilitating access; and the Customer Protection Rule.	60 days after publication in *Federal Register*
Effective date for CCA rule changes regarding separation of house and customer margin; facilitating access; and the Customer Protection Rule.	March 31, 2025
Filing deadline for proposed CCA rule changes regarding the requirement to centrally clear eligible secondary market transactions.	150 days after publication in *Federal Register*
Effective date for CCA rule changes regarding mandatory central clearing for cash transactions.	December 31, 2025
Effective date for CCA rule changes regarding mandatory central clearing for repo transactions.	June 30, 2026

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Futures Commission Merchants

The SEC considered and rejected an exclusion of repo transactions by futures commission merchants (FCMs) registered with the Commodities Futures Trading Commission (CFTC) from mandatory central clearing. Like broker-dealers, FCMs are market intermediaries that hold customer assets, and many FCMs are also registered with the SEC as broker-dealers. FCMs are permitted to invest customer funds in certain specified instruments, including US Treasury securities—through either cash or repo transactions.[17] However, FCMs are limited to certain counterparties for repo transactions, including a bank, broker-dealer or government securities broker-dealer.[18] Notably, CCAs are not permitted counterparties. Because the CCA would be stepping in as counterparty in any centrally cleared transaction, FCMs would not be able to centrally clear repo transactions involving FCM customer funds.

In rejecting the exclusion, the SEC stated that an exclusion for FCMs would be inconsistent with the purpose of requiring central clearing to reduce contagion risk and to bring any associated benefits.[19] The SEC recognized the tension with CFTC rules but pointed to the availability of alternative models—such as an agency clearing model under which the FCM could "give up" a transaction to a direct participant—that FCMs could use to settle US Treasury securities transactions.[20] The SEC encouraged interested parties to work with the CCA to identify any modifications to its client clearing models to better allow FCMs to access central clearing in the US Treasury market and suggested that, in the alternative, FCMs could enter into repo transactions with market participants that are not direct participants of a CCA for US Treasury securities.[21]

Implementation Schedule (see grid on page 6)

The amended rules have a phased implementation schedule that will be implemented over two and a half years.

Conclusion

The SEC has recently sought to introduce additional regulatory oversight into the US Treasury securities markets, [22] and the finalization of these amended rules is another step in seeking to further centralize and regulate trading in the US Treasury securities markets. Critics, such as SEC Commissioner Hester Peirce—the lone dissenter from the adoption of the amended rules—question whether the SEC has sufficiently justified the rules' central clearing mandate and have expressed concerns about the potential costs associated with central clearing as well as the risks relating to concentration of US Treasury securities trading through a single central counterparty.[23] Although the amended rules are primarily framed as policy- and procedure-based requirements for CCAs, the changes will have a significant impact on the market structure for US Treasury securities because the vast majority of transactions today are cleared and settled bilaterally rather than through FICC. While the new requirements will represent potentially significant changes from current practice, it remains to be seen how these requirements will be implemented by FICC given the flexibility provided to CCAs in crafting their policies and procedures or the overall impact those changes will have on the US Treasury securities markets. ■

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1 Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, https://www.sec.gov/files/rules/final/2023/34-99149.pdf (Adopting Release).

2 *See* Adopting Release at 12. ("[B]ecause bilateral clearing involves varying risk management practices that are less uniform and less transparent to the broader market and may be less efficient with regard to netting exposures and use of collateral as compared to central clearing. Therefore, the [SEC] proposed amendments … to help reduce contagion risk to the CCA and bring the benefits of central clearing to more transactions involving U.S. Treasury securities, thereby lowering overall systemic risk in the market.")

3 "Covered clearing agency" means a registered clearing agency that provides the services of a central counterparty or central securities depository. 17 C.F.R. § 240.17Ad-22.

4 17 C.F.R. § 240.15c3-3.

5 "Affiliated counterparty" generally refers to a bank, broker-dealer or futures commission merchant, or any entity regulated as such in its home jurisdiction that has majority ownership interest in the counterparty or is majority owned by or with the counterparty and meets certain financial reporting requirements. *See* 17 C.F.R. § 240.17ad-22(a).

6 17 C.F.R. § 240.17ad-22(a). The inter-affiliate exclusion for repos is intended to be consistent with the Commodity Futures Trading Commission's treatment of inter-affiliate swaps as well as existing FICC rules for inter-affiliate transactions.

7 *See* Adopting Release at 41.

8 *See* Adopting Release at 100-17.

9 *See* Adopting Release at 305-06.

10 *See* Adopting Release at 128.

11 *See* Adopting Release at 167-68.

12 "Qualified customer securities" are any securities that a broker-dealer holds in custody for a customer and that are eligible to be used to meet margin requirements of the CCA.

13 *See* Adopting Release at 47-70.

14 *See* Adopting Release at 54.

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15 *See* Adopting Release at 103-06.

16 Adopting Release at 120.

17 17 C.F.R. § 1.25.

18 17 C.F.R. § 1.25(d)(2).

19 *See* Adopting Release at 80.

20 *See* Adopting Release at 78.

21 *See* Adopting Release at 78.

22 *See, e.g.*, Amendments Regarding the Definition of "Exchange" and Alternative Trading Systems (ATSs) That Trade US Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities, 87 Fed. Reg. 15496 (Mar. 18, 2022) (proposing to bring additional US Treasury trading platforms within the definition of "exchange" and removing exemptions from the requirements of Regulation ATS for such platforms); Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer, 87 Fed. Reg. 23054 (Apr. 18, 2022) (proposing to clarify that certain firms that engage in significant trading activity in US Treasury securities are within the definition of "dealer" and therefore are required to register with the SEC).

23 *See*, *e.g.*, Comm'r Hester M. Peirce, *Careening Toward Clearing: Statement on Rules to Improve Risk Management in Clearance and Settlement and to Facilitate Additional Central Clearing for the US Treasury Market* (Dec. 13, 2023), https://www.sec.gov/news/statement/peirce-statement-rules-improve-risk-management-12-13-23.

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Who's News

Kimberly Bao has been promoted to Senior Compliance Principal at Commerce Bank.

Turner Benoist has been promoted to Legal Risk Manager, Assistant General Counsel, Senior Vice President at Regions Bank.

Jeffrey Boardman has joined Huntington National Bank as Compliance Group Manager. Previously, Jeff was a Senior Compliance Manager at PNC Investments.

Stacey Bolton has been promoted to EVP | Chief Risk Officer, Asset Servicing at Northern Trust Corporation.

Jason Cave, Deputy Director, Division of Conservatorship Oversight and Readiness/Chief Fintech Officer at FHFA, retired at the end of last year after a 30 year career at the FHFA and FDIC. Congratulations and best of luck, Jason.

Ryan Dirks has been promoted to Chief Compliance Officer at Fifth Third Bank.

Linda Filardi, Esq., has joined Flagstar Bank as SVP and Associate General Counsel-Lending: Commercial and Private Banking. Previously, Linda was Counsel at Cadwalader, Wickersham & Taft LLP.

In Memoriam

Don Litteau

It is with deep sadness I share that Don Litteau, long-time FMA member and frequent speaker at FMA's annual Securities Compliance Seminar, passed away on October 29, 2023 after a tough four month struggle with pancreatic cancer.

Previously working in FINRA's Chicago and Philadelphia offices, for the last decade Don was FINRA's Director/Member Supervision in Washington, DC.

He most recently participated at FMA's May 2023 spring event. FMA attendees always learned from Don's contributions and valued his expertise on Regulatory Forum panels. He will be deeply missed.

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Monica Fuentes Freas has been named a Deputy Comptroller for Large Bank Supervision at the OCC. She assumes responsibilities for a portfolio of banks from **Tanya Smith**, who has been appointed Examiner-in-Charge for Citibank following the retirement of **Roberta Caruso**.

Daniel R. Gregus, Director of the SEC's Chicago Regional Office, departed the agency at the end of December after more than 30 years of service. Dan led the SEC's second-largest regional office since November 2021. Under his leadership, the Chicago office developed expertise in broker-dealer sales practices, market structure issues and municipal securities, brought significant and impactful enforcement actions, and conducted hundreds of examinations of SEC-registered broker-dealers, advisers, swap dealers, and transfer agents. **Vanessa Horton** and **Kathryn Pyszka** became Acting Co-Directors upon his departure.

Chad Hendrix has been named SVP, Independent Testing Director – CIB Markets at Wells Fargo.

John Ivan has joined Oyster Consulting, LLC as a Managing Director. Previously, John was a Managing Director at J.S. Held LLC, formerly Capital Forensics, Inc.

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Legislative/Regulatory Actions

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organizations of all sizes may be exposed to climate-related financial risks. Therefore, smaller institutions may want to review their climate risk management program against the principles, especially given the potential "trickle down" supervisory expectations.

The high-level framework set out in the principles is intended to assist banking organizations in managing climate-related financial risks (*i.e.*, physical risk, such as hurricanes and wildfires, and transition risk, such as shifts in policy or consumer sentiment). The principles address the following six areas: (i) governance; (ii) policies, procedures, and limits; (iii) strategic planning; (iv) risk management; (v) data, risk measurement, and reporting; and (vii) scenario analysis. The principles also cover a range of specific risk areas (*e.g.*, credit, liquidity, interest rate, operational, legal and compliance, and certain types of nonfinancial risk).

FDIC Final Rule on Signs and Advertising

On December 20, 2023, the FDIC Board of Directors adopted a final rule to update the regulations governing use of the official FDIC sign and insured depository institutions' (IDI) advertising statements, including through digital and mobile channels. The final rule also clarifies the FDIC's regulations regarding misrepresentations of deposit insurance coverage, which apply to any person, including IDIs and non-bank entities. The final rule addresses specific scenarios where consumers may be misled as to whether they are conducting business with an IDI and whether their funds are protected by federal deposit insurance.

For IDIs, the rule: (i) modernizes the rules governing display of the FDIC official sign in branches and extends the application of sign requirements to other physical premises where consumers have access to, or transact with, deposits; (ii) establishes and requires display of the FDIC official digital sign on bank websites, mobile applications, and certain IDI ATMs and other like devices; (iii) requires use of signs that differentiate insured deposits from non-deposit products across banking channels and disclosure that certain financial products are not insured by the FDIC, are not deposits, and may lose value; (iv) requires a one-time per web session notification when a logged-in bank customer leaves the IDI's digital deposit-taking channel, such as through a hyperlink, to access non-deposit products on a non-bank third-party's website; (v) provides IDIs with additional flexibility for satisfying official sign and advertising statement requirements; and (vi) requires IDIs to establish and maintain written policies and procedures addressing compliance with the regulations, which must include, as appropriate, provisions related to monitoring and evaluating activities of certain third parties that provide services to IDIs or offer certain IDI products. The final rule has yet to be published in the Federal Register as of this writing. The amendments made by the final rule are effective on April 1, 2024, with a compliance deadline of January 1, 2025.

BSA / AML

FinCEN Beneficial Ownership Information Rules Update

After much anticipation, FinCEN began accepting beneficial ownership information (BOI) reports on January 1, 2024. Pursuant to the Corporate Transparency Act from 2021 and a final rule issued in September 2022, most companies created or registered to do business in the U.S. must report BOI to FinCEN, unless exempt. Reporting companies created or registered to do business in the U.S. before January 1, 2024 must file by the end of 2024. Reporting companies created or registered to do business in the U.S. in 2024 have 90 calendar days to file after receiving notice that their company's creation or registration is effective.

FinCEN released a final rule in November 2023 detailing when and how reporting companies may use another entity's FinCEN identifier in place of reporting information on individual beneficial owners and corporate applicants.

In December 2023, FinCEN enacted a final rule establishing a framework for accessing, using, and protecting BOI (the "Access Rule"). Effective February 20, 2024, the Access Rule addresses the parameters for accessing, re-disclosing, and protecting BOI, which will be maintained in FinCEN's secure Beneficial Ownership Information Technology (BOIT) database. Upon request, FinCEN may disclose BOI to certain government agencies, law enforcement agencies, and foreign entities. Upon request and with the reporting company's consent, FinCEN may also disclose BOI to a financial institution subject to customer due diligence (CDD) requirements, in order to facilitate CDD compliance. Financial institutions may redisclose BOI to certain people within the same company for a permissible purpose and subject to certain requirements, including geographic restrictions.

FinCEN and OFAC Settlements with Virtual Asset Exchange Company

On November 21, 2023, the U.S. Treasury Department ("Treasury") announced the largest ever FinCEN and OFAC settlements with a virtual asset exchange company and its affiliates for violations of U.S. anti-money laundering and sanctions laws. According to Treasury, the violations included the failure to implement programs to prevent and report suspicious transactions with terrorists, ransomware attackers, and money launderers, and matching trades between users in the U.S. and sanctioned jurisdictions.

FinCEN's settlement agreement assessed a $3.4 billion civil money penalty and mandated certain compliance undertakings,

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including a lookback for suspicious activity and ensuring the company's complete exit from the United States. FinCEN also imposed a five-year monitorship; the monitor is tasked with conducting periodic reviews and providing updates to FinCEN, OFAC, and the Commodity Futures and Trading Commission on the company's ongoing compliance with the settlement agreement. In the consent order, FinCEN noted countless violations, among the most heinous being that the company never filed a single suspicious activity report with FinCEN and failed to report over 100,000 suspicious transactions with ties to terrorist organizations and child sexual exploitation material.

The OFAC settlement imposed a $968 million civil money penalty on the company for executing over 1.67 million trades on its platform between users in the U.S. and sanctions jurisdictions and blocked persons. According to OFAC, company also advised its users to use virtual private networks to skirt the company's own geofencing controls. The settlement requires the company to abide by several sanctions compliance obligations. To ensure the company no longer offers services to U.S. persons, Treasury will retain access to the company's books, records, and systems for five years, through a monitor. Failure to comply may result in additional penalties to the company, up to billions of dollars.

FinCEN Alert Highlights Steps to Counter Financing to Hamas and Its Activities

On October 7, 2023, Hamas terrorists perpetrated a savage attack on the people of Israel, murdering over 1,000 innocent civilians and wounding and kidnapping many others, including U.S. citizens. In response to the terrorist attack, FinCEN issued an alert urging financial institutions to vigilantly detect, prevent, and report suspicious activity related to Hamas' terrorist financing activity.

In the alert, FinCEN notes that Hamas obtains funds through a variety of means, including through support from Iran, diverting aid from legitimate charities, fundraising through fictitious charities, and extortionary practices involving local populations. FinCEN reminds financial institutions that Hamas and many related individuals and entities are subject to extensive sanctions by the United States and urges financial institutions to report suspicious transactions associated with Hamas financing "as quickly as possible."

The alert contains numerous red flag indicators to assist financial institutions with meeting these obligations. One red flag includes a customer conducting transactions with a financial institution that offers virtual currency services, operates in higher-risk jurisdictions tied to Hamas terrorist activity, and has lax CDD requirements, opaque ownership, or weak anti-money laundering and counter-financing of terrorism controls. If a customer transacts with companies tied to Iran or Iran-supported terrorist groups, such as Hezbollah and Palestinian Islamic Jihad, that also constitutes a red flag. Other examples include customers that are charities but do not appear to provide any charitable services and openly support Hamas' terrorist activity.

FinCEN Issues Proposed Rule to Enhance Transparency in Convertible Virtual Currency Mixing

Section 311 of the USA PATRIOT Act allows Treasury to require domestic financial institutions to take certain special measures upon finding that a class of transactions is of primary money laundering concern. On October 19, 2023, in its first reliance on the Section 311 authority for this particular use, FinCEN announced the issuance of a proposed rule identifying international convertible virtual currency (CVC) mixing as a class of transactions of primary money laundering concern.

Section 311 establishes five special measures, or safeguards, that may be deployed to protect the U.S. financial system from money laundering and terrorism financing risks. Through special measure one, Treasury may require domestic financial institutions and domestic financial agencies to maintain records, file reports, or both. The proposed rule would, under special measure one, require covered financial institutions to implement certain recordkeeping and reporting requirements on transactions that covered financial institutions know, suspect, or have reason to suspect involve CVC mixing.

In the announcement, FinCEN noted that international CVC mixing activity presents a national security risk, as such activity promotes anonymity that facilitates terrorism, assists ransomware criminals in targeting victims, and aids in sanctions evasion. The proposed rule would increase transparency around CVC mixing to combat its use by malicious actors, including Hamas and Palestinian Islamic Jihad. The proposed rule represents Treasury-wide efforts to promote transparency for CVC mixing activities.

Written comments on the proposed rule are due by January 22, 2024.

OFAC

OFAC Settles with Binance Holdings Ltd. for $968,618,825 for Apparent Violations of Multiple U.S. Sanctions Programs as Part of Global Agreement with Other U.S. Agencies

On November 21, 2023, the U.S. Department of the Treasury's OFAC settled with the world's largest virtual currency exchange, Cayman Islands-based Binance Holdings Ltd. and its affiliates (collectively, "Binance"), for $968,618,825, in connection with apparent violations of multiple U.S. sanctions

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programs. Binance also settled with the Financial Crimes Enforcement Network ("FinCEN") for $3.4 billion for apparent violations of U.S. anti-money laundering laws. Both settlements—the largest in both OFAC's and FinCEN's history—are part of Binance's global agreement for related conduct with the U.S. Department of Justice and the Commodity Futures Trading Commission.

Binance allows users to transact in virtual currencies and financial products using fiat or virtual currency funds users have deposited into their Binance-hosted wallets. Binance uses algorithms to match buy/sell orders and apply credits/debits to users' accounts. OFAC found that Binance knew or had reason to know that its algorithm was matching U.S. users with sanctioned parties, which resulted in Binance facilitating 1,667,153 transactions worth approximately $706,068,127 between August 2017 and October 2022, in apparent violation of U.S. sanctions targeting Cuba, Iran, North Korea, Syria, and Ukraine/Russia.

OFAC determined that "the Apparent Violations were not voluntarily self-disclosed and that Binance's conduct was egregious," citing awareness Binance's "interest in feigning compliance rather than addressing the company's actual [sanctions] risk" and decision to make "deliberate choices" that "effectively ensured Binance's sanctions compliance program would primarily remain only a 'paper program.'" OFAC also pointed to Binance's inadequate attempts to offboard sanctioned users and misleading public statements to third parties about its compliance with U.S. sanctions.

This enforcement action demonstrates just how severe U.S. sanctions penalties can be, especially where OFAC deems the conduct "egregious."

The Binance enforcement action can be found at: https://ofac.treasury.gov/media/932351/download?inline.

OFAC Settles with Nasdaq, Inc. for Former Armenian Subsidiary's Apparent Violations of Iran Sanctions

On December 8, 2023, OFAC settled with New York-based financial services corporation Nasdaq, Inc. ("Nasdaq") for $4,040,923 for apparent violations of OFAC's Iran sanctions program. OFAC alleged that Nasdaq's former Armenian subsidiary, Nasdaq OMX Armenia OJSC ("Nasdaq Armenia"), facilitated trades and the settlement of foreign exchange transactions involving the Armenian subsidiary of U.S.-sanctioned Iranian bank, Bank Mellat. In 2008, Nasdaq acquired Nasdaq Armenia, which provided Armenian banks such as Bank Mellat's Armenian subsidiary ("Mellat Armenia") with access to overnight liquidity loans (*i.e.*, "credit resources") and foreign exchange on the Armenian Stock Exchange. Nasdaq Armenia matched counterparties based on bids and offers and provided directed settlement at the Central Bank of Armenia, collecting monthly participation fees, terminal fees, and transaction fees from Armenian banks as part of the process. Although Nasdaq Armenia and Nasdaq were aware during the relevant period that Mellat Armenia participated in credit resource and foreign exchange transactions overseen by Nasdaq Armenia and was owned by Bank Mellat, neither party appreciated that, beginning in late 2012, foreign entities owned or controlled by U.S. entities such as Nasdaq Armenia became prohibited from knowingly engaging in transactions with the government of Iran or persons subject to the jurisdiction of the government of Iran that would be prohibited if engaged in by the U.S. parent entity. Thus, between December 28, 2012, and September 3, 2014—and despite Nasdaq's October 2012 global business conduct policy requiring worldwide compliance with trade laws and regulations—Nasdaq Armenia engaged in 151 apparent violations of U.S. sanctions against Iran, valued at $227,915,023. Following submission of an initial voluntary self-disclosure in 2014, Nasdaq wound down its ownership in Nasdaq Armenia.

This enforcement action illustrates the importance of conducting due diligence and implementing commensurate sanctions compliance controls in the mergers and acquisitions context, especially when acquiring global operations abroad. It also reinforces the need to have qualified compliance personnel who understand the nuances of OFAC's Iran sanctions program and the applicability of U.S. sanctions prohibitions to majority-owned foreign subsidiaries.

The Nasdaq enforcement action is available at: https://ofac.treasury.gov/media/932386/download?inline.

OFAC Settles with CoinList Markets LLC for $1,207,830 for Apparent Violations of Ukraine-/Russia-Related Sanctions in the Virtual Currency Space

On December 13, 2023, OFAC settled with California-based virtual currency exchange CoinList Markets LLC (CLM) for $1,207,830 after CLM processed 989 transactions over a roughly two-year period on behalf of users in Crimea, which is embargoed under U.S. comprehensive sanctions. CLM allows users to buy, sell, and trade in cryptocurrencies and other crypto assets, with CLM acting mainly as an intermediary. During the relevant timeframe, CLM collected various pieces of information from its users at onboarding (*e.g.*, address, country of residence/incorporation, government-issued identification card) and had in place other sanctions compliance controls, including sanctions screening, transaction monitoring, and blockchain analytics tools. In February 2021, CLM implemented controls to prevent access to users with IP addresses in sanctioned

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jurisdictions, and in the spring of 2021, CLM incorporated a control designed to reject users who provided an address or government-issued identification card associated with a comprehensively sanctioned jurisdiction. Notwithstanding these sanctions compliance measures, CLM's controls failed to identify users who specified their country of residence as Russia (or another non-embargoed country) but provided an address within Crimea or containing the word "Crimea." Due to these deficiencies, between April 2020 and May 2022, CLM opened 89 accounts for users who provided addresses in Crimea but listed a non-sanctioned country as their country of residence (*i.e.*, Russia). CLM remediated the apparent violations by recalibrating its filter settings to deny prospective users who provide an address associated with Crimea, even if the country of residence is not targeted by U.S. comprehensive sanctions; implementing additional IP geo-blocking controls; hiring new vendors to assist with the onboarding and "Know Your Customer" (KYC) processes; and improving its training and hiring additional compliance resources.

This enforcement action highlights the importance of incorporating all available KYC and other relevant information into a company's compliance and screening process, especially for virtual currency and emergent technology companies that offer global financial services, even in the development and beta testing stages. This enforcement action also emphasizes the value in testing and auditing sanctions compliance controls and remediating any identified weaknesses.

The CLM enforcement release is available at: https://ofac.treasury.gov/media/932406/download?inline.

OFAC Settles with Privilege Underwriters Reciprocal Exchange for $466,200 for Providing Insurance Services in Apparent Violation of Ukraine-/Russia-Related Sanctions

On December 21, 2023, OFAC settled with New York-based Privilege Underwriters Reciprocal Exchange (PURE) for $466,200 in connection with PURE's provision of insurance-related services to Medallion, Inc. ("Medallion"), a Panamanian entity wholly owned by sanctioned Russian oligarch Viktor Vekselberg ("Vekselberg"). In 2010—years before OFAC sanctioned Vekselberg—PURE issued a private fleet auto insurance policy, a jewelry and art insurance policy, and two homeowner insurance policies to Medallion, which were renewed annually thereafter. During onboarding, PURE collected information indicating Medallion's ownership ties to Vekselberg, but PURE's underwriters neglected to transfer Medallion's ownership information into PURE's underwriting systems storing corporate ownership data. As a result, when OFAC designated Vekselberg on the Specially Designated Nationals and Blocked Persons List ("SDN List") on April 6, 2018, PURE failed to appreciate the implications of OFAC's Fifty Percent Rule, which automatically applies U.S. sanctions prohibitions to entities directly or indirectly owned fifty percent or more in the aggregate by one or more sanctioned persons, even if the entity itself is not listed on the SDN List. Conse quently, between May 2018 and July 2020, PURE continued to maintain the four insurance policies for Medallion, collected 38 premium payments totaling $308,391, and paid a $7,500 claim to Medallion in apparent violation of OFAC's Ukraine-/Russia-Related sanctions program. In its enforcement release, OFAC highlighted that Medallion's remediation included screening its entire customer base using third-party vendor solutions, requiring the transfer of corporate disclosure statement information into relevant PURE systems, and requiring escalation of any non-U.S. entity applications for review and sign off by PURE's management and compliance personnel.

This enforcement action demonstrates the importance of ensuring that all customer information is appropriately stored and considered at onboarding and when there are U.S. sanctions updates. It also highlights the ongoing need to take risk-based steps to diligence ownership information for prospective and existing customers in order to comply with OFAC's Fifty Percent Rule.

The PURE enforcement release is available at: https://ofac.treasury.gov/media/932486/download?inline.

CFPB Update

CFPB Issued Advisory Opinion on Account Information Requests from Large Banks

On October 11, 2023, the CFPB issued an advisory opinion on Consumer Information Requests to Large Banks and Credit Unions ("Advisory Opinion"). The Advisory Opinion interprets Section 1034(c) of the Consumer Financial Protection Act to require large banks and credit unions to provide basic financial account information to consumers, when requested, without imposing a fee. On its face, Section 1034(c) requires large banks and credit unions to comply in a timely manner with consumer requests for information concerning their accounts for consumer financial products and services. In its press release, the CFPB said that it does not plan to seek monetary relief for violations of Section 1034(c) that occur prior to February 1, 2024. The Advisory Opinion is applicable as of its October 16, 2023, publication in the *Federal Register*.

CFPB Issued Proposed Rule on Open Banking

On October 19, 2023, the CFPB issued its long-awaited proposed rule to facilitate "open banking." The proposed rule

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would implement Dodd-Frank Act Section 1033, imposing new requirements on financial institutions to provide certain customers (and their authorized third parties) with electronic access to account information. In a press release, the CFPB indicated that the proposed rule is intended to "supercharge competition, improve financial products and services, and discourage junk fees." The proposed rule would require financial institutions that provide covered products and services to make available to consumers (or authorized third parties) data that relates to the consumers' covered accounts. In addition to covered data provider obligations, the proposed rule also contains obligations for third parties accessing covered data on behalf of individual consumers. These obligations provide standards and restrictions on the collection, use, and retention of consumer information being accessed. Comments were due December 29, 2023.

CFPB Issued Proposed Rule on Providers of Digital Wallets and Payment Apps

On November 7, 2023, the CFPB issued a proposed rule regarding the supervision of large providers of digital wallets and payment apps. The proposed rule on Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications would extend the CFPB's supervisory authority to certain nonbank covered persons participating in the market for general-use digital consumer payment applications. Under the proposed rule, the CFPB would examine these larger participants for compliance with applicable federal consumer financial laws, including the Electronic Funds Transfer Act, and with implementing Regulation E, the privacy provisions of the Gramm-Leach-Bliley Act, and laws prohibiting unfair, deceptive, or abusive acts or practices. Comments on the proposed rule were due by January 8, 2024.

CFPB Released Comment Letter on Income-Based Advances

On December 1, 2023, the CFPB released a comment letter in response to a proposed rule from the California Department of Financial Protection and Innovation that would require registration and examination of companies offering income-based advances. The letter finds that income-based advances have long been a part of the consumer market and that states have offered oversight of the market. The CFPB offered support for California's designation of income-based advances as loans under the California Financing Law and stated that they plan to offer further guidance on the application of the Truth in Lending Act to income-based advances.

CFPB Ordered Bank to Pay Over $6 Million for Overdraft Practices

On December 7, 2023, the CFPB ordered a state member bank ("Bank") to refund its customers a minimum of $5 million in illegal overdraft fees and pay a $1.2 million penalty to the CFPB's victims relief fund. The CFPB's order is based on the Bureau's allegation that the Bank illegally enrolled its checking account customers in overdraft protection. Specifically, the CFPB alleged that the Bank allowed customers to sign up for overdraft protection before they received written disclosures. Moreover, the CFPB alleged that the Bank's employees made misleading statements about the terms of overdraft protection.

CFPB Proposed New Rule to Limit Overdraft Fees

On January 17, 2024, the CFPB issued a proposed rule to regulate overdraft fees charged by the largest financial institutions. The proposed rule would allow covered financial institutions to either charge fees that cover the costs incurred in providing overdraft services (i.e., the "breakeven" fee) or comply with a fee cap (i.e., the "benchmark" fee) to be determined by the Bureau. The proposed rule would apply to insured financial institutions with more than $10 billion in assets. However, the CFPB said that it plans to monitor the market's response to the rule before deciding whether to apply the rule to financial institutions with assets less than or equal to $10 billion. The CFPB said that it plans for the final rule to take effect October 1, 2025. Comments on the proposed rule will be due by April 1, 2024. ■

Olivia S. Chap, Jordan Hare, Nate Kurcab, Malka Levitin, and Rebecca Tesfaye contributed to this column.

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Watch For

CFTC

CFTC Press Release 8839-23 (December 18, 2023) – The CFTC's Divisions of Clearing and Risk, Market Oversight, and Market Participants issued a staff advisory on affiliations between a designated contract market, derivatives clearing organization, or swap execution facility and an intermediary, such as a futures commission merchant, or other market participant, such as a trading entity. The advisory reminds DCOs, DCMs, and SEFs that have an affiliated intermediary or trading entity, as well as the affiliated intermediary or trading entities themselves, of their obligations to ensure compliance with existing statutory and regulatory requirements with this affiliate relationship in mind. The advisory also informs market participants that CFTC staff closely scrutinizes how these types of affiliate relationships are addressed when reviewing applications for registration or designation; conducting examinations and rule reviews; and through other supervisory means.

CFTC Press Release 8838-23 (December 18, 2023) – The CFTC at its open meeting on December 13 approved two proposed rules – Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants and Protection of Clearing Member Funds Held by Derivatives Clearing Organizations – as well as a DCO application. The first rule proposal requires that futures commission merchants, swap dealers, and major swap participants establish, document, implement, and maintain an Operational Resilience Framework reasonably designed to identify, monitor, manage, and assess risks relating to information and technology security, third-party relationships, and emergencies or other significant disruptions to normal business operations. The comment period will be open for 75 days after publication on CFTC.gov, with a closing date of March 2, 2024. The second rule proposes regulations to provide protections for clearing member funds and assets held by a Derivatives Clearing Organization. The rule would require, among other things, that clearing member funds be segregated from the DCO's own funds and held in a depository that acknowledges, in writing, that the funds belong to clearing members, not the DCO. In addition, the Commission is proposing rules that would enable DCOs to hold customer and clearing member funds at certain foreign central banks subject to certain requirements. The Commission is also proposing to require DCOs to conduct a daily calculation and reconciliation of the amount of funds owed to customers and clearing members and the amount actually held for customers and clearing members. Lastly, the Commission approved an order granting Bitnomial Clearinghouse, LLC registration as a DCO under Section 5b of the Commodity Exchange Act.

CFTC Press Release 8836-23 (December 15, 2023) – The CFTC issued for public comment a proposed rule to amend the capital and financial reporting requirements of Swap Dealers and Major Swap Participants. The proposal would codify the staff interpretation in CFTC Staff Letter No. 21-15 relating to the tangible net worth capital approach for calculating capital under CFTC Regulation 23.101, as well as the no-action position in CFTC Staff Letter No. 21-18, as further extended by CFTC Staff Letter No. 23-11, regarding alternate financial reporting requirements for SDs subject to the capital requirements of a prudential regulator. The proposed amendments would also revise certain Part 23 regulations regarding the financial reporting requirements of SDs, including the required timing of certain notifications; the process for approval of subordinated debt for capital; and the information requested on financial reporting forms to conform to the rules. The proposed amendments are intended to make it easier for SDs and MSPs to comply with the CFTC's financial reporting obligations and demonstrate compliance with minimum capital requirements. The comment period will be open for 60 days after publication on CFTC.gov, and close on February 13, 2024.

CFTC Press Release 8835-23 (December 15, 2023) – The CFTC announced the approval of a proposed rule to revise CFTC regulations regarding real-time public reporting and swap data recordkeeping and reporting. The proposed amendments to Parts 43 and 45 would allow a unique product identifier and product classification system to be implemented for the Other Commodity asset class. On February 16, the CFTC issued an order designating a UPI to be used in swap recordkeeping and data reporting for the Interest Rate, Credit, Foreign Exchange, and Equity asset classes. [See CFTC Press Release No. 8659-23] Use of the UPI for these four asset classes is expected by no later than January 29, 2024. The proposed revisions allow the UPI to be extended to the Other Commodity asset class in the future, in accordance with CFTC regulations. Additionally, the proposed amendments would modify appendix A to Part 43 and appendix 1 to Part 45 to add certain data elements that will further international harmonization as well as increase data quality, accuracy, and standardization. This proposed rule has a 60-day comment period after publication in the *Federal Register*.

CFTC Press Release 8829-23 (December 4, 2023) – The CFTC has approved a proposed guidance and request for public comment regarding the listing for trading of voluntary carbon credit derivative contracts. The proposed guidance outlines certain factors a CFTC-regulated exchange, or designated contract market, should consider when addressing requirements of the Commodity Exchange Act and CFTC regulations that are relevant to the contract design and listing process. The comment period for the proposed guidance will be open for 75 days, and will end on February 16, 2024.

CFTC Press Release 8820-23 (November 6, 2023) – The Inter-Agency Working Group on Treasury Market Surveillance issued a staff progress report to provide an additional update on a wide range of significant steps its members have taken to enhance the resilience of the U.S. Treasury market.

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CFTC Press Release 8818-23 (November 3, 2023) – The CFTC issued, for public comment, a proposed rule on the Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations. The proposal would amend the Commission's regulations governing the safeguarding and investment by futures commission merchants and derivatives clearing organizations of funds held for the benefit of customers engaging in futures, foreign futures, and cleared swaps transactions. The proposed amendments would specifically revise the list of permitted investments in Regulation 1.25 and introduce certain related changes and specifications. The proposed amendments would also eliminate the requirement in the Commission's regulations that a depository holding customer funds must provide the Commission with read-only electronic access to such accounts for the FCM to treat the funds held in the accounts as customer segregated fund accounts. The comment period will be open for 75 days after publication on CFTC.gov, with a closing date of January 17, 2024.

CFTC Press Release 8809-23 (October 18, 2023) – The CFTC's Division of Market Oversight issued a letter extending the no-action position taken in CFTC Letter No. 22-03 regarding the compliance dates for certain amendments, adopted in November 2020, to the CFTC's swap data reporting rules concerning block trades and post-initial cap sizes. The letter states DMO will not recommend the CFTC take an enforcement action against an entity for failure to comply with the block and cap amendments before July 1, 2024, provided the entity complies with the CFTC's block trade and cap size requirements that were in effect on January 1, 2021.

CFTC Press Release 8808-23 (October 17, 2023) – The CFTC's Division of Enforcement issued an advisory designed to give enforcement staff guidance on future enforcement resolution recommendations to the Commission. In particular, the advisory provides guidance on determining whether proposed civil monetary penalties are sufficient; when the imposition of a corporate compliance monitor or consultant is appropriate; what the duties and responsibilities of monitors and consultants should be; and whether admissions should be recommended in a particular enforcement action.

CFTC Press Release 8802-23 (October 2, 2023) – The CFTC published a proposed rule that would amend CFTC Regulation 4.7, a provision that provides exemptions from certain compliance requirements for commodity pool operators with respect to commodity pool offerings to qualified eligible persons and for commodity trading advisors with respect to trading programs advising QEPs. The proposed rule would amend various provisions of CFTC Regulation 4.7 that have not been updated since the rule's original adoption in 1992. The comment period will be open for 60 days after publication in the *Federal Register*.

CFTC Press Release 8782-23 (September 22, 2023) – The CFTC's Division of Market Oversight issued a no-action letter that extends the current no-action position for reporting obligations under the ownership and control reports final rule (OCR Final Rule). The OCR Final Rule, approved in 2013, requires the electronic submission of trader identification and market participant data. DMO is extending its no-action position to address continuing compliance difficulties associated with certain OCR reporting obligations that were identified by reporting parties and market participants. The position announced today extends DMO's previously provided position under CFTC Letter No. 20-30, such that DMO will not recommend the CFTC commence an enforcement action in certain circumstances. The no-action position will remain in effect until the earlier of: (a) the later of the applicable effective date or compliance date of a Commission action, such as a rulemaking or order, addressing such obligations and (b) September 30, 2024. DMO plans to use the extended period to consider whether to recommend the CFTC pursue changes to the OCR Final Rule.

Federal Reserve Board

Federal Reserve Press Release (October 20, 2023) – The Federal Reserve Board launched a data collection to gather more information from the banks affected by the large bank capital proposal it announced earlier in 2023. When the proposal was announced, the Board indicated that it would undertake this supplemental data collection. The additional data will further clarify the estimated effects of the proposal and inform any final rule, with summaries to be made public. The submission deadline for the data collection is January 16, 2024. In July, the Board, along with the OCC and FDIC requested comment on the proposal, which is the last major bank regulatory plank designed to address failures from the global financial crisis of 2007-2008. The proposal only applies to banks with $100 billion or more in total assets and would strengthen the banking system to reduce the risk of costly financial crises.

FinCEN

FinCEN News Release (January 9, 2024) – FinCEN issued a Financial Trend Analysis on information linked to identity-related suspicious activity in Bank Secrecy Act reports filed in calendar year 2021. FinCEN's analysis found that approximately 1.6 million reports (42% of the reports filed that year) related to identity—indicating $212 billion in suspicious activity. The report examines suspicious activity tied to the exploitation of identity processes during account creation, account access, and transaction processing.

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FinCEN News Release (January 1, 2024) – The U.S. Department of the Treasury's Financial Crimes Enforcement Network began accepting beneficial ownership information reports. The bipartisan Corporate Transparency Act, enacted in 2021 to curb illicit finance, requires many companies doing business in the United States to report information about the individuals who ultimately own or control them. Filing is simple, secure, and free of charge. Companies that are required to comply must file their initial reports by the following deadlines: **Existing companies—**Reporting companies created or registered to do business in the United States *before* January 1, 2024 must file by January 1, 2025; and **Newly created or registered companies—**Reporting companies created or registered to do business in the United States in 2024 have 90 calendar days to file after receiving actual or public notice that their company's creation or registration is effective. Beneficial ownership information reporting is not an annual requirement. A report only needs to be submitted once, unless the filer needs to update or correct information. Generally, reporting companies must provide four pieces of information about each beneficial owner: name; date of birth; address; and the identifying number and issuer from either a non-expired U.S. driver's license, a non-expired U.S. passport, or a non-expired identification document issued by a State (including a U.S. territory or possession), local government, or Indian tribe. If none of those documents exist, a non-expired foreign passport can be used. An image of the document must also be submitted. The company must also submit certain information about itself, such as its name(s) and address. In addition, reporting companies created on or after January 1, 2024, are required to submit information about the individuals who formed the company.

FinCEN News Release (December 21, 2023) – FinCEN issued a final rule that establishes the framework for access to and protection of beneficial ownership information. Issued pursuant to the bipartisan Corporate Transparency Act, this final rule prescribes the circumstances under which BOI reported in compliance with FinCEN's September 30, 2022 final BOI Reporting Rule may be disclosed to Federal agencies; state, local, tribal, and foreign governments; and financial institutions, and how it must be protected. FinCEN will also issue two interagency statements to give banks and non-bank financial institutions guidance on the interplay between the final rule and FinCEN's existing Customer Due Diligence Rule. The final rule is the second of three key rulemakings planned to implement the CTA. The first of these rulemakings, the BOI Reporting Rule, requires certain corporations, limited liability companies, and other similar entities created or registered to do business in the United States to report information about their beneficial owners to FinCEN. Those reporting requirements take effect on January 1, 2024, the same day that FinCEN will launch its beneficial ownership information technology system to securely collect, process, and store that information. FinCEN will undertake a third rulemaking to revise FinCEN's Customer Due Diligence rule, as required by the CTA. The final rule regarding access to BOI is effective on February 20, 2024. Starting in 2024, FinCEN will begin to provide access to BOI in phases to authorized government agencies and financial institutions that meet the requirements of the final rule.

FinCEN News Release (November 29, 2023) – FinCEN issued a final rule that extends the deadline for certain reporting companies to file their initial beneficial ownership information reports with FinCEN. Reporting companies created or registered in 2024 will have 90 calendar days from the date of receiving actual or public notice of their creation or registration becoming effective to file their initial reports. FinCEN will not accept BOI reports from reporting companies until January 1, 2024—no reports should be submitted to FinCEN before that date. This extension will give reporting companies created or registered in 2024 more time to become familiar with the guidance and educational materials located at https://www.fincen.gov/boi, and to resolve questions that may arise in the process of completing their initial BOI reports. Reporting companies created or registered before January 1, 2024, will continue to have until January 1, 2025, to file their initial BOI reports with FinCEN, and reporting companies created or registered on or after January 1, 2025, will continue to have 30 calendar days to file their initial BOI reports with FinCEN.

FinCEN News Release (November 22, 2023) – FinCEN, in close coordination with the Internal Revenue Service Criminal Investigation, issued an alert to financial institutions on fraud schemes related to the COVID-19 Employee Retention Credit. The alert provides an overview of typologies associated with ERC fraud and scams, highlights select red flags to assist financial institutions in identifying and reporting suspicious activity and reminds financial institutions of their reporting requirements under the Bank Secrecy Act (BSA).

FinCEN News Release (November 7, 2023) – FinCEN is issuing a final rule that specifies the circumstances in which a reporting company may report an entity's FinCEN identifier in lieu of information about an individual beneficial owner. A FinCEN identifier is a unique number that FinCEN will issue upon request after receiving required information. Although there is no requirement to obtain a FinCEN identifier, doing so can simplify the reporting process and allows entities or individuals to provide the required identifying information directly to FinCEN. The final rule, which amends FinCEN's final Beneficial Ownership Information Reporting Rule, specifically responds to commenter concerns that the reporting of entity FinCEN identifiers could obscure the identities of beneficial owners in a manner that might result in greater secrecy or incomplete or misleading disclosures. The final rule provides clear criteria that must be met in order for a reporting

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company to report an intermediate entity's FinCEN identifier in lieu of information about the individual beneficial owner. The final rule will be effective January 1, 2024, to align with the effective date of the BOI Reporting Rule.

FinCEN News Release (October 19, 2023) – FinCEN announced a Notice of Proposed Rule Making that identifies international **Convertible Virtual Currency Mixing** as a class of transactions of primary money laundering concern. This NPRM highlights the risks posed by the extensive use of CVC mixing services by a variety of illicit actors throughout the world and proposes a rule to increase transparency around CVC mixing to combat its use by malicious actors including Hamas, Palestinian Islamic Jihad, and the Democratic People's Republic of Korea.

FINRA

FINRA Regulatory Notice 24-01 (January 2, 2024) – FINRA's Renewal Program supports the collection and disbursement of fees related to the renewal of broker-dealer and investment adviser registrations, exempt reporting and notice filings with participating self-regulatory organizations and jurisdictions. During this program, FINRA announces renewal fees BD and IA firms owe via Preliminary Statements issued in November and publishes Final Statements in January to confirm or reconcile the actual renewal fees BD and IA firms owe after Jan. 1, 2024. 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 the Central Registration Depository and Investment Adviser Registration Depository systems for the annual registration renewal process. **The deadline to remit payment for any additional amounts owed and to report any discrepancies to FINRA is Jan. 26, 2024.** Firms should also refer to the following web pages for additional information and resources: FINRA's Renewal Program page (for BDs) and IARD Renewal Program page (for IAs).

FINRA Regulatory Notice 23-20 (December 5, 2023) – This *Notice* discusses the guidance and other resources available to assist members with their compliance efforts in connection with the SEC's Regulation Best Interest. In particular, FINRA highlights the SEC's series of Staff Bulletins reiterating standards of conduct for broker-dealers and investment advisers (IAs): SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Account Recommendations for Retail Investors; SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest; and SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations. This *Notice* does not create new legal or regulatory requirements or new interpretations of existing requirements, nor does it relieve firms of any existing obligations under federal securities laws and regulations.

FINRA Regulatory Notice 23-19 (November 9, 2023) – FINRA has adopted a short-form membership application process for certain firms that must become FINRA members due to the recent amendments to Rule 15b9-1 of the Securities Exchange Act of 1934. Firms that are eligible for the short-form membership application process also must have been a member of a national securities exchange with which FINRA has had a regulatory services agreement for the 12-month period prior to August 23, 2023. FINRA has further adopted a partial waiver of the new membership application fee for those firms that apply for FINRA membership through the short-form membership application process. These rule changes became effective on October 30, 2023.

FINRA Information Notice (November 2, 2023) – This *Notice* reminds firms of the changes to FINRA's Continuing Education (CE) Firm Element requirement, specifically: extending the requirement to all registered persons; recognizing other required training toward satisfying an individual's annual Firm Element obligation; and revising the minimum Firm Element training criteria. FINRA and the Securities Industry/Regulatory Council on Continuing Education are also working on ways to expand and improve the guidance and resources available to firms to develop effective Firm Element training programs. To that end, FINRA is developing a catalog of CE content that will serve as an optional resource for firms to select relevant Firm Element content and use in creating learning plans for their registered persons.

FINRA Information Notice (November 1, 2023) – FINRA is issuing this *Notice* to provide the due dates for Annual Report, Financial and Operational Combined Uniform Single (FOCUS), Form Custody, and supplemental FOCUS Report filings that are due in 2024 or the first quarter of 2025. FINRA reminds members that all such filings they submit to FINRA must be made electronically through FINRA Gateway. See the full due dates list on the FINRA website (www.finra.org).

FINRA Regulatory Notice 23-17 (October 30, 2023) – FINRA is issuing this *Notice* to inform members that it is discontinuing collection of data under Rule 4540. The data collected under Rule 4540 is used in the Integrated National Surveillance and Information Technology Enhancements program. The decision to discontinue the collection of data under Rule 4540 at this time is based on the availability of alternative sources of data that were not available when INSITE was developed and that have enhanced FINRA's ability to assess risk. Effective November 30, 2023, FINRA will discontinue its collection of data under Rule 4540.

FINRA News Release (October 30, 2023) – FINRA released a new report, Quantum Computing and the Implications for the Securities Industry. While practical quantum computing

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remains nascent, the research examines how the emerging technology that relies on quantum mechanics to perform complex calculations could significantly alter the securities industry in the future. The report also looks at potential cybersecurity threats and regulatory considerations regarding the technology. The research was conducted by FINRA's Office of Financial Innovation, which is part of the recently formed Office of Regulatory, Economics and Market Analysis. The report provides an overview of quantum computing's potential ability to solve problems too large or complex for traditional computers and thereby reshape the securities industry by presenting newfound capabilities and challenges. Firms considering whether to incorporate quantum computers or contemplating the potential threat posed by quantum computing may consider four key regulatory issues, according to the report: cybersecurity, third-party vendor outsourcing, data governance and supervisory controls. Cybersecurity in particular may raise challenges for firms due to the technology's potential for challenging the encryption safeguards used today. The report does not provide an exhaustive list of all factors and regulatory issues associated with the use of quantum computing nor does it create new legal or regulatory requirements or new interpretations of existing requirements. FINRA is seeking comments from firms, market participants and others currently exploring quantum computing while maintaining investor protection and market integrity. Comments are requested by March 15, 2024.

FINRA Regulatory Notice 23-16 (October 18, 2023) – FINRA has amended its By-Laws to exempt from the Trading Activity Fee any transaction by a proprietary trading firm that occurs on an exchange of which the proprietary trading firm is a member. The amendment to FINRA's TAF will take effect on November 6, 2023.

FINRA News Release (October 3, 2023) – FINRA's Maintaining Qualifications Program is currently open for eligible individuals during a second enrollment period, until December 31, 2023. The second enrollment period is available to those who terminated their registration between March 15, 2020, and March 14, 2022. Eligible individuals can enroll in the MQP and monitor their CE requirements through their Financial Professional Gateway account. When an individual returns to a member firm, there is no need to retake qualification exams to become registered.

Joint Press Releases

Joint Press Release (November 22, 2023) – Federal bank regulatory agencies announced that they will extend until January 16, 2024, the comment period on their long-term debt proposed rule to improve the resolvability of large banks and enhance financial stability. The agencies extended the comment period to allow interested parties more time to analyze the issues and prepare their comments. Comments on the proposal were originally due by November 30.

Joint Press Release (October 24, 2023) – Federal bank regulatory agencies jointly finalized principles that provide a high–level framework for the safe and sound management of exposures to climate–related financial risks for large financial institutions. The principles are consistent with the risk management framework described in the agencies' existing rules and guidance. The principles are intended for the largest financial institutions, those with $100 billion or more in total assets, and address physical and transition risks associated with climate change. The principles are intended to support efforts by the largest financial institutions to focus on key aspects of climate–related financial risk management. General climate–related financial risk management principles are provided with respect to a financial institution's governance; policies, procedures, and limits; strategic planning; risk management; data, risk measurement, and reporting; and scenario analysis. Additionally, the principles describe how climate–related financial risks can be addressed in the management of traditional risk areas, including credit, market, liquidity, operational, and legal risks. These final principles are substantively similar to the agencies' draft principles, with clarifications based on commenter feedback.

Joint Press Release (October 20, 2023) – Federal bank regulatory agencies announced that they will extend until January 16, 2024, the comment period on their large bank capital proposal to increase the strength and resilience of the banking system. The agencies extended the comment period to allow interested parties more time to analyze the issues and prepare their comments. The Federal Reserve Board also extended the comment period until the same date for its proposal to modify the capital surcharge for the largest and most complex banks. Comments on both proposals were originally due by November 30.

MSRB

MSRB Press Release (January 12, 2024) – The MSRB filed with the SEC amendments to MSRB Rule G-14 to shorten the timeframe for trades to be reported to the MSRB. The amendments change the current 15-minute standard to as soon as practicable, but no later than one minute after the time of trade, subject to exceptions for manual trades and firms with limited municipal trading activity. The MSRB initially sought comment from stakeholders on its one-minute trade reporting proposal in August 2022, which resulted in a robust response from market participants.

January 4, 2024 – The MSRB published a notice to inform MSRB-registered entities of the criteria for designating participants for the MSRB's next mandatory functional and performance testing of the operation of its business continuity and disaster recovery plans. The SEC requires the MSRB, as an entity subject to Regulation Systems Compliance and Integrity, to, among other things, require certain brokers,

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dealers, municipal securities dealers and municipal advisors registered with the MSRB to participate in the testing of the operation of the MSRB's business continuity and disaster recovery plans. To facilitate compliance with Regulation SCI, the MSRB adopted Rule A-18, on Mandatory Participation in Business Continuity and Disaster Recovery Testing.

December 13, 2023 – FINRA has announced a second enrollment period for the Maintaining Qualifications Program. For individuals who had a registration terminate between March 15, 2020, and March 15, 2022, the MQP allows such individuals to maintain certain qualifications for up to five years by completing CE annually rather than having to requalify by examination. Specifically, with respect to persons who were qualified in a **municipal securities representative**, **municipal securities principal**, or a **limited principal capacity**, under MSRB Rule G-3, and whose qualification was subsequently terminated is eligible to enroll in the MQP in order to maintain their qualification(s). **The new enrollment period opened on March 15, 2023 and will end on December 31, 2023**.

MSRB Press Release (December 4, 2023) – The MSRB issued a request for information to solicit feedback from market participants and the public on the impact of municipal market regulation on small firms operating in the municipal securities market. The MSRB is soliciting responses and information on a range of topics, including: Factors that should be considered in identifying a firm as small versus mid-sized or large, such as revenue, market participation (i.e., trade and underwriting volume), number of employees or type of regulated entity; Rules or market practices that may have unintended and disproportionate impacts on the ability of small firms to compete in the municipal securities market; Rules or market practices that may unintentionally limit small firm participation in the municipal securities market; Potential revisions to rules or changes to administrative processes that could be made to better address specific challenges uniquely faced by small firms; and Compliance resources or guidance the MSRB could produce that would be useful for small firms. Comments are due to be submitted by February 26, 2024.

MSRB Press Release (November 30, 2023) – The MSRB filed its 2024 rate card for dealers and municipal advisors with the SEC. The 2024 rate card adjusts rates for the three market activity fees assessed on municipal securities dealers and the professional fee assessed on municipal advisors. The new rates will be effective as of January 1, 2024.

MSRB Press Release (September 28, 2023) – The MSRB issued a Request for Comment on draft amendments to MSRB Rule G-12, on uniform practice, to codify, retire and reorganize approximately 40 pieces of interpretive guidance related to interdealer confirmations, some of which date back more than 40 years. Rule G-12(c) sets forth the confirmation disclosure requirements for interdealer municipal securities transactions that are ineligible for automated comparison in a system operated by a registered clearing agency (*i.e.*, the Depository Trust & Clearing Corporation). Comments should be submitted no later than December 15, 2023.

MSRB Press Release (September 19, 2023) – The MSRB enhanced the free daily yield curves and indices available on its Electronic Municipal Market Access (EMMA®) website with hourly updates from Bloomberg's BVAL AAA Municipal Curve. The enhanced website now shows curve updates hourly between 9:00 a.m. and 4:00 p.m. Eastern Time. Tables displaying monthly data points from BVAL's AAA Municipal Curve have also been added, providing users with more information to guide their investment decisions.

MSRB Notice 2024-01 (September 12, 2023) – The MSRB published a notice to inform MSRB-registered entities of the criteria for designating participants for the MSRB's next mandatory functional and performance testing of the operation of its business continuity and disaster recovery plans. The MSRB will, at least 45 calendar days prior to a functional and performance test of an operation of the MSRB's Business Continuity/Disaster Recovery Plans, individually notify all Participants that are required to participate in such testing. The MSRB will also provide to Participants information regarding the manner of the testing and instructions for participation.

MSRB Notice 2023-07 (September 12, 2023) – **The compliance date for amendments to MSRB Rule G-3, whereby former representatives could avail themselves of a new requalification exemption, and the related amendments to MSRB Rule G-8 is October 12, 2023**. As of October 12, 2023, an individual who was previously qualified as a municipal advisor representative by having taken and passed the Municipal Advisor Representative Qualification Examination (Series 50 exam) is allowed to forego requalification by examination if certain conditions are met under a new, criteria-based exemption under amendments to MSRB Rule G-3.

OCC

OCC Bulletin 2023-39 (December 21, 2023) – The OCC, Fed, FDIC, FinCEN, NCUA, and state bank and credit union regulators issued the "Interagency Statement for Banks on the Issuance of the Access Rule." The interagency statement follows FinCEN's issuance of the final Access Rule regarding access by authorized recipients to beneficial ownership information (BOI) that will be reported to FinCEN[2] and is intended to provide additional clarity for banks[3] on the Access Rule. The interagency statement: explains that the Access Rule does not necessitate changes to banks' risk-based compliance programs designed to comply with the existing

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Customer Due Diligence Rule published in 2016; clarifies that banks' responsibilities under the CDD Rule and other Bank Secrecy Act requirements remain unchanged; highlights that banks that decide to access the FinCEN BOI database are not required at this time to incorporate BOI obtained from the database into their risk-based BSA compliance programs; and clarifies that the Access Rule does not create new regulatory requirements or supervisory expectations for banks.

OCC News Release 2023-136 (December 11, 2023) – The OCC published its 2023 Annual Report. The OCC Annual Report provides Congress with an overview of the condition of the federal banking system, discusses the OCC's strategic priorities and initiatives, and shares the agency's financial management and condition. The report highlights the OCC's work to advance its four priorities—guarding against complacency, reducing inequality, adapting to digitalization, and acting on climate-related financial risks.

OCC News Release 2023-131 (December 1, 2023) – The OCC is soliciting academic research papers on depositor behavior, bank liquidity, and run risk in the banking system for submission by January 15, 2024. Interested parties are invited to submit papers to EconomicsSymposium@occ.treas.gov. Submitted papers must represent original, unpublished research. Additional information about submitting a paper or research, and participating in the June meeting as a discussant, is available on the OCC's website.

SEC

SEC Press Release 2023-253 (December 15, 2023) – The SEC issued a staff report on the accredited investor definition. The Dodd-Frank Act directs the Commission to review the accredited investor definition as it relates to natural persons every four years to determine whether the definition should be modified or adjusted. The Staff previously reviewed the definition in 2015 and in 2019 (as part of the Concept Release on Harmonization of Securities Offering Exemptions). Staff from the Divisions of Corporation Finance and Economic and Risk Analysis prepared the report in connection with this third review of the definition. The report examines the current status of the accredited investor pool and concludes with a review of frequently suggested revisions to the accredited investor definition received from a variety of sources, including public commenters, the Investor Advisory Committee, and the Small Business Capital Formation Advisory Committee.

SEC Press Release 2023-247 (December 13, 2023) – The SEC adopted rule changes to enhance risk management practices for central counterparties in the U.S. Treasury market and facilitate additional clearing of U.S. Treasury securities transactions. The rule changes update the membership standards required of covered clearing agencies for the U.S. Treasury market with respect to a member's clearance and settlement of specified secondary market transactions. Additional rule changes are designed to reduce the risks faced by a clearing agency and incentivize and facilitate additional central clearing in the U.S. Treasury market. The amendments will go into effect in two phases, with the changes regarding the separation of house and customer margin, the broker-dealer customer protection rule, and access to central clearing required to be completed first, by March 31, 2025. After that time, the requirement to clear specific transactions would go into effect in two phases, with cash transactions being required to be cleared before repurchase transactions are required to be cleared. Compliance by the direct participants of a U.S. Treasury securities central clearing agencies with the requirement to clear eligible secondary market transactions would not be required until December 31, 2025, and June 30, 2026, respectively, for cash and repurchase transactions. The adopting release is published on SEC.gov and will be published in the *Federal Register*.

SEC Press Release 2023-240 (November 27, 2023) – The SEC adopted Securities Act Rule 192 to implement Section 27B of the Securities Act of 1933, a provision added by Section 621 of the Dodd-Frank Act. The rule is intended to prevent the sale of asset-backed securities that are tainted by material conflicts of interest. It prohibits a securitization participant, for a specified period of time, from engaging, directly or indirectly, in any transaction that would involve or result in any material conflict of interest between the securitization participant and an investor in the relevant ABS. Under new Rule 192, such transactions would be "conflicted transactions." Consistent with the statute, Rule 192 provides exceptions for risk-mitigating hedging activities, liquidity commitments, and bona fide market-making activities of a securitization participant. These exceptions permit certain market activities, subject to satisfaction of the specified conditions, which will allow securitization participants to continue important risk management, liquidity commitment, and market-making activities. Under new Rule 192, conflicted transactions include a short sale of the relevant ABS, the purchase of a credit default swap or other credit derivative that entitles the securitization participant to receive payments upon the occurrence of specified credit events in respect of the ABS, or a transaction that is substantially the economic equivalent of the aforementioned transactions, other than any transaction that only hedges general interest rate or currency exchange risk. The adopting release is published on SEC.gov and will be published in the *Federal Register*. Rule 192 will become effective 60 days after publication in the *Federal Register*. Compliance with Rule 192 will be required with respect to any ABS the first closing of the sale of which occurs 18 months after the date of publication in the *Federal Register*.

SEC Press Release 2023-236 (November 16, 2023) – The SEC has adopted new rules to improve the governance of all registered clearing agencies by reducing the likelihood that

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conflicts of interest may influence their boards of directors or equivalent governing bodies. The new rules establish governance requirements regarding board composition, independent directors, nominating committees, and risk management committees. The rules also require new policies and procedures regarding conflicts of interest, management of risks from relationships with service providers for core services, and a board obligation to consider stakeholder viewpoints. The rules are being adopted pursuant to, among other statutory provisions, Section 765 of the Dodd-Frank Act, which specifically directs the Commission to adopt rules to mitigate conflicts of interest for security-based swap clearing agencies. The rules improve the governance of registered clearing agencies by identifying certain responsibilities of the board, increasing transparency into board governance, and, more generally, improving the alignment of incentives among owners and participants of a registered clearing agency. In support of these objectives, the rules establish new requirements for board and committee composition, independent directors, management of conflicts of interest, and board oversight. The adopting release has been published on SEC.gov and will be published in the Federal Register. The compliance date is 12 months after publication in the *Federal Register*, except for the independence requirements for the board and board committees, for which the compliance date is 24 months after publication in the *Federal Register*.

SEC Press Release 2023-230 (November 3, 2023) – The SEC adopted new Regulation SE under the Securities Exchange Act of 1934 to create a regime for the registration and regulation of security-based swap execution facilities. The new regulatory framework was required under Title VII of the Dodd-Frank Act relating to the over-the-counter derivatives market. The adoption addresses the Exchange Act's trade execution requirement for security-based swaps and the cross-border application of that requirement, implements Section 765 of the Dodd-Frank Act to mitigate conflicts of interest at SBSEFs and national securities exchanges that trade security-based swaps, and promotes consistency between Regulation SE and existing rules under the Exchange Act. In adopting Regulation SE, the Commission has sought to harmonize as closely as practicable with parallel rules of the CFTC that govern swap execution facilities and swap execution generally. The adopted rules will become effective 60 days following the date of publication in the *Federal Register*. Any entity that meets the definition of SBSEF may file an application to register with the Commission on Form SBSEF at any time after the effective date, and would need to do so within 180 days of the effective date and have its application on Form SBSEF be complete within 240 days of the effective date in order to continue to operate as an SBSEF while its application is pending.

SEC Press Release 2023-225 (October 18, 2023) – The SEC proposed a new rule that would prohibit national securities exchanges from offering volume-based transaction pricing in connection with the execution of agency or riskless principal ("agency-related") orders in NMS stocks. The proposal also would require national securities exchanges to have certain anti-evasion rules and written policies and procedures and disclose certain information if they offer volume-based transaction pricing for member proprietary volume in NMS stocks. Proposed Rule 6b-1 under the Securities Exchange Act of 1934 would prohibit national securities exchanges from offering volume-based transaction pricing in connection with the execution of agency-related orders in NMS stocks. It also would require exchanges that offer volume-based transaction pricing in connection with the execution of members' proprietary orders in NMS stocks to disclose certain information, including the number of members that qualify for each transaction pricing tier that the exchange offers. Exchanges would be required to submit this information to the Commission on a monthly basis, and the public would be able to access the information through the Commission's EDGAR system. In addition, proposed Rule 6b-1 would require exchanges that have volume-based transaction pricing for member proprietary orders in NMS stocks to have anti-evasion measures, including rules requiring members to engage in practices that facilitate the exchange's ability to comply with the prohibition on volume-based exchange transaction pricing for agency-related orders in NMS stocks and to have written policies and procedures reasonably designed to detect and deter members from receiving volume-based pricing in connection with the execution of agency-related orders in NMS stocks. The proposing release will be published in the *Federal Register*. The public comment period will remain open until 60 days after the date of publication of the proposing release in the *Federal Register*.

SEC Press Release 2023-222 (October 16, 2023) – The SEC's Division of Examinations released its 2024 examination priorities to inform investors and registrants of the key risks, examination topics, and priorities that the Division plans to focus on in the upcoming year. This year's examinations will prioritize areas that pose emerging risks to investors or the markets in addition to core and perennial risk areas. The published priorities are not exhaustive of the focus areas of the Division in its examinations, risk alerts, and outreach. The scope of any examination includes analysis of an entity's history, operations, services, products offered, and other risk factors.

SEC Press Release 2023-221 (October 13, 2023) – The SEC adopted new Rule 13f-2 to provide greater transparency to investors and other market participants by increasing the public availability of short sale related data. Congress directed the SEC in Section 929X of the Dodd-Frank Act of 2010 to promulgate rules to make certain short sale data publicly available. Specifically, Rule 13f-2 will require institutional investment managers that meet or exceed certain thresholds to

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report on Form SHO specified short position data and short activity data for equity securities. The Commission will aggregate the resulting data by security, thereby maintaining the confidentiality of the reporting managers, and publicly disseminate the aggregated data via EDGAR on a delayed basis. This new data will supplement the short sale data that is currently publicly available. Relatedly, the Commission also adopted an amendment to the National Market System Plan governing the consolidated audit trail. The amendment to the NMS Plan governing the CAT will require each CAT reporting firm that is reporting short sales to indicate when it is asserting use of the bona fide market making exception in Rule 203(b)(2)(iii) of Regulation SHO. The adopting release for Rule 13f-2 and related Form SHO, as well as the notice of the amendment to the CAT NMS Plan, will be published in the *Federal Register*. The final rule, Form SHO, and the amendment to the CAT NMS Plan will become effective 60 days after publication of the adopting release in the *Federal Register*. The compliance date for Rule 13f-2 and Form SHO will be 12 months after the effective date of the adopting release, with public aggregated reporting to follow three months later, and the compliance date for the amendment to the CAT NMS Plan will be 18 months after the effective date of the adopting release.

SEC Press Release 2023-220 (October 13, 2023) – The SEC adopted new Rule 10c-1a, which will require certain persons to report information about securities loans to a registered national securities association and require RNSAs to make publicly available certain information that they receive regarding those lending transactions. The rule is intended to increase the transparency and efficiency of the securities lending market. Rule 10c-1a will require certain confidential information to be reported to an RNSA to enhance the RNSA's oversight and enforcement functions. Further, the new rule requires that an RNSA make certain information it receives, along with daily information pertaining to the aggregate transaction activity and distribution of loan rates for each reportable security, available to the public. FINRA is currently the only RNSA. The adopting release will be published in the *Federal Register*. The final rule will become effective 60 days after publication in the *Federal Register*. The compliance dates for the new rule will be as follows: (1) an RNSA is required to propose rules within four months of the effective date; (2) the proposed RNSA rules are required to be effective no later than 12 months after the effective date; (3) covered persons are required to report information required by the rule to an RNSA starting on the first business day 24 months after the effective date; and (4) RNSAs are required to publicly report information within 90 calendar days of the reporting date.

SEC Press Release 2023-219 (October 10, 2023) – The SEC adopted rule amendments governing beneficial ownership reporting under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934. The amendments update Regulation 13D-G to require market participants to provide more timely information on their positions to meet the needs of investors in today's financial markets. Among other things, today's amendments: shorten the deadline for initial Schedule 13D filings from 10 days to five business days and require that Schedule 13D amendments be filed within two business days; generally accelerate the filing deadlines for Schedule 13G beneficial ownership reports (the filing deadlines differ based on the type of filer); clarify the Schedule 13D disclosure requirements with respect to derivative securities; and require that Schedule 13D and 13G filings be made using a structured, machine-readable data language. Further, the adopting release provides guidance regarding the current legal standard governing when two or more persons may be considered a group for the purposes of determining whether the beneficial ownership threshold has been met, as well as how, under the current beneficial ownership reporting rules, an investor's use of certain cash-settled derivative securities may result in the person being treated as a beneficial owner of the class of the reference equity securities. The adopting release is published on SEC.gov and will be published in the *Federal Register*, and the amendments will become effective 90 days after publication in the *Federal Register*. Compliance with the revised Schedule 13G filing deadlines will be required beginning on Sept. 30, 2024. Compliance with the structured data requirement for Schedules 13D and 13G will be required on Dec. 18, 2024. Compliance with the other rule amendments will be required upon their effectiveness.

SEC Press Release 2023-189 (September 20, 2023) – The SEC approved a rule to revise the Commission's regulations under the Privacy Act, which is the principal law governing the handling of personal information in the federal government. The final rule clarifies, updates, and streamlines the Commission's Privacy Act regulations. In addition, the final rule revises procedural and fee provisions and eliminates unnecessary provisions. The final rule also allows for electronic methods to verify one's identity and submit Privacy Act requests. Due to the scope of the revisions, the final rule replaces the Commission's current Privacy Act regulations in their entirety. The Commission last updated its Privacy Act rules in 2011. The approved revisions will codify current practices for processing requests made by the public under the Privacy Act. This provides greater clarity regarding the Commission's process for how individuals can access information pertaining to themselves. The final rule is published on SEC.gov and will be published in the *Federal Register*. The final rule becomes effective 30 days after publication in the *Federal Register*.

SEC Press Release 2023-188 (September 20, 2023) – The SEC adopted amendments to the Investment Company Act "Names Rule," which addresses fund names that are likely to mislead investors about a fund's investments and risks. The amendments modernize and enhance the Names Rule and other names-related regulatory requirements to further the Commis-

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sion's investor protection goals and to address developments in the fund industry in the approximately 20 years since the rule was adopted. The amendments will include enhanced prospectus disclosure requirements for terminology used in fund names, including a requirement that any terms used in the fund's name that suggest an investment focus must be consistent with those terms' plain English meaning or established industry use. The amendments will also include additional reporting and recordkeeping requirements for funds regarding compliance with the names-related regulatory requirements. The amendments will become effective 60 days after publication in the *Federal Register*. Fund groups with net assets of $1 billion or more will have 24 months to comply with the amendments, and fund groups with net assets of less than $1 billion will have 30 months to comply.

SEC Press Release 2023-179 (September 13, 2023) – The SEC proposed rule and form amendments to improve filer access to and management of accounts on the SEC's EDGAR system. The proposed amendments would require EDGAR filers to authorize identified individuals who would be responsible for managing filers' EDGAR accounts. In addition, individuals acting on behalf of filers on EDGAR would need individual account credentials to access those EDGAR accounts and make filings. If the proposed amendments are later adopted, the SEC will make technical changes to EDGAR, including to make available to EDGAR filers certain Application Programming Interfaces for machine-to-machine submissions on EDGAR and retrieval of related filing information. The SEC also announced that it will open to the public a beta software environment for filer testing and feedback, which will reflect the proposed rule and form amendments and the related technical changes, on Sept. 18, 2023. Information about signing up for beta testing and extensive additional information about the proposal and related technical changes can be found on the EDGAR Next—Filer Access and Account Management page on SEC.gov. The proposing release will be published in the *Federal Register*. The public comment period will remain open until 60 days after the date of publication of the proposing release in the *Federal Register*.

Available Publications

January 11, 2024 –The MSRB has released its 2023 Municipal Market Year in Review report, which reveals a volatile, unprecedented and ever-changing market in 2023. Highlights include: Significant yield volatility throughout the year; Record trade count in 2023, breaking the record set in 2022; Strong demand from individual investors, but limited demand from institutional investors; Continued growth in trading on Alternative Trading Systems (ATS); Muted new issue volume; and Two dealers exiting part or all of the muni business.

FINRA News Release (January 9, 2024) – FINRA published its 2024 FINRA Annual Regulatory Oversight Report, formerly known as the Report on FINRA's Examination and Risk Monitoring Program. The report provides member firms with key insights and observations from recent activities of FINRA's regulatory operations to use in strengthening their compliance programs. The report highlights crypto and other new topics; cybersecurity; AML, fraud and sanctions; Reg BI and Form CRA; Consolidated Audit Trail; and evolving trends and key findings. For each of the 26 topics covered, the report identifies the relevant rule(s) involved, highlights key considerations for firms' compliance programs, summarizes noteworthy findings or observations from recent oversight activities, outlines effective practices that FINRA observed and provides additional resources that may be helpful to firms in reviewing their supervisory procedures and controls and fulfilling their compliance obligations.

OCC News Release 2023-135 (December 7, 2023) – The OCC reported the key issues facing the federal banking system in its *Semiannual Risk Perspective for Fall 2023*. The OCC highlighted credit, market, operational, and compliance risks, as the key risk themes in the report. The report also highlighted artificial intelligence (AI) in banking as an emerging risk. The potential for further benefits as AI gains more widespread adoption could be significant. Developments in the technology may reduce costs and increase efficiencies; improve products, services, and performance; strengthen risk management and controls; and expand access to credit and other banking services. Widespread adoption of AI, however, may also present significant challenges relating to compliance risk, credit risk, reputation risk, and operational risk. The report presents information in five main areas: the operating environment, bank performance, special topics in emerging risks, trends in key risks, and supervisory actions.

October 11, 2023 – The MSRB released its Third Quarter 2023 Municipal Securities Market Summary. The report discusses key developments in the municipal bond market, including: Rising yields in the municipal bond and Treasury markets on continuing concerns about inflation and the potential for additional Fed rate hikes; Continued high trade count levels due to persistent demand from individual investors; Muted demand from institutional investors due to continued outflows from tax-exempt mutual funds and banks reducing their municipal bond holdings; and Modest new issue volume.

OCC News Release 2023-109 (September 28, 2023) – The OCC released its bank supervision operating plan for fiscal year (FY) 2024. The plan outlines the OCC's supervision priorities and objectives for the year. It also facilitates the implementation of supervisory strategies for individual national banks, federal savings associations, federal branches and agencies of foreign

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Watch For

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banking organizations, and third-party service providers subject to OCC examination. OCC staff uses this plan to guide its supervisory priorities, planning, and resource allocations. Key areas of heightened focus for supervisory strategies in FY 2024: Asset and liability management; Credit; Allowance for credit losses; Cybersecurity; Operations; Digital ledger technology activities; Change management; Payments; Bank Secrecy Act/anti-money laundering/countering the financing of terrorism and Office of Foreign Assets Control; Consumer compliance; Community Reinvestment Act; Fair lending; and Climate-related financial risks. The OCC provides periodic updates about supervisory priorities, emerging risks, and horizontal risk assessments in the *Semiannual Risk Perspective* in the fall and spring. ■

Directory

The **2023 FMA Membership Directory** was emailed to all current members on December 14. Updates received since its distribution are included in the next column.

If you're a current FMA member and did not receive (or perhaps misplaced) the Directory, contact Dorcas Pearce directly – 919/494-7479 or ***dp-fma@starpower.net*** – to request another copy.

Corrections

Dodge, Conway T.
Partner | Head of the Americas
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Franklin Templeton Investments
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henry.stiles@franklintempleton.com

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2024 OCC Bank Supervision Operating Plan –

https://www.occ.gov/news-issuances/news-releases/2023/nr-occ-2023-109a.pdf

2024 SEC Examination Priorities –

https://www.sec.gov/files/2024-exam-priorities.pdf

2024 FINRA Regulatory Oversight Report –

(formerly known as the Examination and Risk Monitoring Program Report)

2024 FINRA Annual Regulatory Oversight Report | FINRA.org

Program Update

2024 Securities Compliance Seminar

April 17 – 19 in Chicago

Registrations are now being accepted for FMA's 2024 Securities Compliance Seminar taking place April 17–19 at the InterContinental Chicago Magnificent Mile Hotel (site of our 2016 program). This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys, service providers and regulators.

The Planning Committee has been hard at work developing varied agenda topics and inviting noted industry leaders and regulators as speakers. Members include: **Carlos Arias** (U.S. Bancorp Investments); **Conway Dodge** (Promontory Financial Group, a Business Unit of IBM Consulting); **Diane Novak** (HomeStreet Bank); **Mark Carberry** (J.P. Morgan); **Mark Lasswell** (Ameriprise Financial Services / RiverSource); and **Melissa Loner** (Avantax, Inc.)

An ebrochure, including the complete agenda, will be distributed next week and will then be available on the FMA website – *www.fmaweb.org*. Currently, the working agenda includes these general sessions and confirmed speakers:

Key 2024 (and Beyond) Legislative and Regulatory Initiatives

Moderator: **Kimberly Prior | Winston & Strawn LLP**

- **Elizabeth Sheridan** — **National Futures Association**
- **Ed Wegener** — **Oyster Consulting, LLC**
- **Daniel Yukilevich** — **BMO Capital Markets**

Fiduciary Requirements in BDs: Reg BI—Where Is It Going?

Moderator & Speaker: **David Porteous | Faegre Drinker Biddle & Reath**

- **Bradford Campbell** — **Faegre Drinker Biddle & Reath**
- **James Martignon** — **BMO Financial Group**

Compliance Challenges in the Sales of Complex Products

Moderator: **Mark Carberry | J.P. Morgan**

- **Speakers to be Announced**

Evolving Market Structure

Moderator: **Zachary Zweihorn | Davis Polk & Wardwell LLP**

- **Racquel Russell** — **FINRA**
- **David Shillman** — **SEC** *(Invited)*

2-for-1, first-timer and government/regulatory/SRO registration discounts…plus a special offer for 'locals' (*Illinois attendees only*) are available.

Courtesy of Choose Chicago

Regulatory Forum

Moderator & Speaker: **Shawn O'Neill | FINRA**

- **Vanessa Horton** — **SEC**
- **William Otto** — **MSRB**
- **Kathryn Pyszka** — **SEC**

Artificial Intelligence in the Financial Services Market

Moderator & Speaker: **Conway Dodge | Promontory Financial Group, a Business Unit of IBM Consulting**

- **Judith Pinto** — **Promontory Financial Group, a Business Unit of IBM Consulting**
- **Tara Tune** — **Charles Schwab**

Best Practices: Supervision & the Risk Controls Framework

Moderator: **Carlos Arias | U.S. Bancorp Investments**

- **Shawn O'Neill** — **FINRA**
- **Additional Speakers to be Announced**

Continuing Challenges with Off-Channel Communications

Moderator: **Mark Lasswell | Ameriprise Financial Services and RiverSource**

- **Mark Carberry** — **J.P. Morgan**
- **Alexander Schneble** — **Robert W. Baird & Co.**
- **Jeffrey Ziesman** — **Bryan Cave Leighton Paisner LLP**

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Program Update

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Workforce Engagement Strategies

Moderator: **Melissa Loner | Avantax, Inc.**

- **James Clements** — **Carson Group**
- **Heather Lyon** — **Strategic Investment Advisors, LLC**
- **Jennifer Selliers** — **Renaissance Regulatory Services**

Internal Audit: The Changing Landscape Within the Financial Industry

Moderator: **James Connors | Wells Fargo Audit**

- **Jay Simmons** — **Wells Fargo Audit**
- **Additional Speakers to be Announced**

Navigating the Currents: Dive into AML Enforcement Trends and Regulatory Responses

Moderato & Speaker: **Deborah Connor | Morrison & Foerster LLP**

- **Michael Buffardi** — **FTI Consulting**
- **Additional Speakers to be Announced**

Elder and Vulnerable Adult Financial Exploitation

Moderator: **Louis Dempsey | Renaissance Regulatory Services**

- **Joshua Jones** — **Bressler, Amery & Ross, P.C.**
- **Deborah Royster** — **Consumer Financial Protection Bureau**
- **Michael Paskin** — **FINRA**

What You Need to Know About Cybersecurity

Moderator: **Diane Novak | HomeStreet Bank**

- **Anne Joves** — **National Futures Association**
- **Additional Speakers to be Announced**

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

CLE accreditation will be available and Dorcas will work with attendees on submitting **CPE** accreditation applications on an individual state-by-state basis.

FMA's room block at the **InterContinental expires March 26**. After that date, room rates will increase and there's also a good chance the block could sell out well before then.

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Courtesy of Choose Chicago

Courtesy of Choose Chicago

Click here to make a reservation –Financial Markets Association 2024 (dedicated weblink). Or, you can contact the Reservations Dept at **312/321-8895** and mention you're with the Financial Markets Association (FMA) group. The main hotel number is **312/944-4100** and our group rate is **$249**.

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Program Update

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Register today for this important spring conference – CLE accreditation and multiple registration discounts (2-for-1, 'locals', first-timers and govt/regulatory) are available. Contact Dorcas Pearce at ***dp-fma@starpower.net*** or 919/494-7479 with questions and/or to register.

FMA gratefully acknowledges these sponsors of FMA's 2024 Securities Compliance Seminar

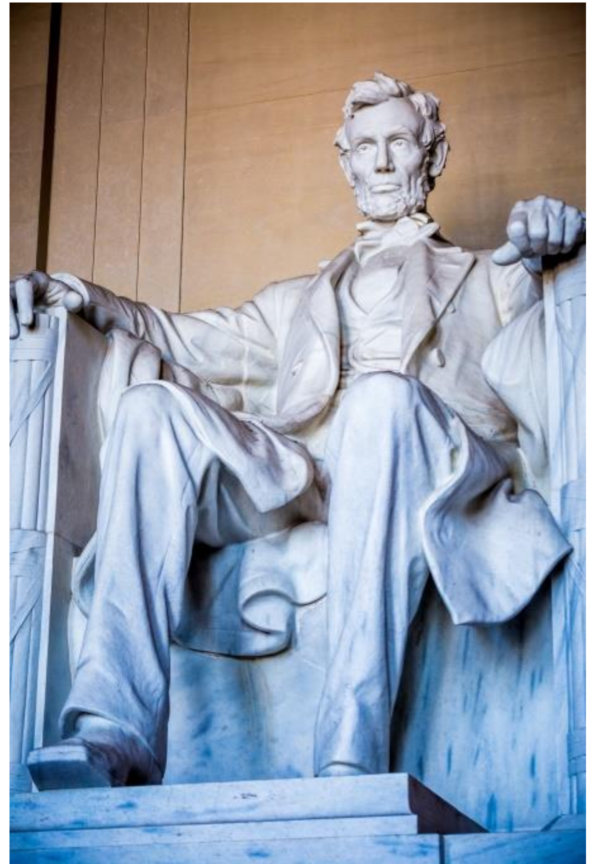
WINSTON & STRAWN LLP

Davis Polk

2023 Legal and Legislative Issues Conference

FMA's 31st Legal and Legislative Issues Conference took place **November 2-3** at the Washington Marriott Georgetown Hotel in Washington, DC. This annual program is a high-level forum for banking/securities/regulatory attorneys as well as senior compliance officers, risk managers, internal auditors, consultants 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 and have 'face time' with senior regulators in an intimate environment. And, **attendees were eligible for CLE accreditation**.

Congratulations to the Program Planning Committee for developing a timely agenda that included noted industry leaders and senior regulatory officials. Members included:



Courtesy of washington.org

Neil Bloomfield *(Moore & Van Allen, PLLC)*; **Breana Smith Jeter** *(Wells Fargo)*; **Barbara Mendelson** *(Morrison & Foerster LLP)*; **Simona Mola** *(Cornerstone Research)*; **Tiffany Smith** *(WilmerHale)*; and **Joseph Vitale** *(Fried, Frank, Harris, Shriver & Jacobson LLP)*.

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

Banking General Counsels

***Moderator :* Barbara Mendelson | Morrison & Foerster LLP**

- **Charles Gray** — **FRB**
- **Benjamin McDonough** — **OCC**
- **Harrel Pettway** — **FDIC**

Legislative Update

***Moderator :* Aisha Smith | Davis Wright Tremaine LLP**

- **Matt Hoffmann** — **House Financial Services Committee**
- **Lila Nieves-Lee** — **Senate Banking Committee**
- **Elisha Tuku** — **Senate Banking Committee**

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Program Update

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Bank Regulatory Hot Topics

Moderator: **Joseph Vitale | Fried, Frank, Harris, Shriver & Jacobson LLP**

- **Derek Bush** — **Cleary Gottlieb Steen & Hamilton LLP**
- **Eric McLaughlin** — **Davis Polk & Wardwell LLP**
- **Ursula Pfeil** — **PNC**
- **Sharon Yang** — **JP Morgan Chase & Co.**

ESG and Financial Regulation

Moderator: **Michael Held | WilmerHale**

- **David Curran** — **Paul, Weiss, Rifkind, Wharton & Garrison LLP**
- **Sandra Lee** — **U.S. Department of the Treasury**
- **Emily Pierce** — **Persefoni**
- **Caroline Swett** — **Debevoise & Plimpton LLP**

Legal Inventory Building

Moderator: **Kathryn Wellman | Moore & Van Allen, PLLC**

- **Turner Benoist** — **Regions Bank**
- **Erin Burke Henderson** — **U.S. Bank**
- **Sylwia Perry** — **Wells Fargo**
- **Jonathan Robilotto** — **PwC**

Artificial Intelligence and Its Impact on Financial Services Legal Practice

Moderator & Speaker: **Matt Mrkobrad | Wells Fargo**

- **Joe Knight** — **FTI Consulting**
- **Jeremy Moorehouse** — **Figure**
- **Whitney Pryor** — **Microsoft Corporation**
- **Matt White** — **Baker Donelson**

Securities General Counsels

Moderator & Speaker: **Dan Berkovitz | Epictetus Strategic Consulting, LLC and former General Counsel, SEC**

- **Natasha Coates** — **CFTC**
- **Robert Colby** — **FINRA**
- **Jacob Lesser** — **MSRB**
- **Carol Wooding** — **NFA**

SEC Division Reports

Moderator: **Simona Mola | Cornerstone Research**

- **Luna Bloom** — **Corporation Finance**
- **Kaitlin Bottock** — **Investment Management**
- **Song Pak Brandon** — **Examinations**
- **Mark Cave** — **Enforcement**
- **Devin Ryan** — **Trading and Markets**

Crypto Hot Topics

Moderator: **Tiffany Smith | WilmerHale**

- **TuongVy Le** — **Bain Capital Crypto**
- **Lucas Moskowitz** — **Robinhood**
- **Wyatt Robinson** — **Microsoft Corporation**

Enforcement Update and Anticipated Trends

Moderator: **Neil Bloomfield | Moore & Van Allen, PLLC**

- **James Haldin** — **Davis Polk & Wardwell**
- **Matthew Beville** — **WilmerHale**
- **Alexander White** — **Bank of America**
- **Kwamina Thomas Williford** — **Holland & Knight LLP**

FMA gratefully acknowledges these sponsors of FMA's 2023 Legal and Legislative Issues Conference

MORRISON FOERSTER

Fried Frank

Moore&VanAllen

RRS
Renaissance Regulatory Services

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

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Who's News

Continued from Page 8

Robert Jacobs has joined Texas Partners Bank as VP, Senior Auditor. Previously, Robert was Lead Audit Manager for Credit Risk at Wells Fargo.

Ted Kaouk has been named the Chief Data Officer and Director of the CFTC's Division of Data and **John Coughlan** has been named Chief Data Scientist.

Christopher Kelly, SVP and Enforcement Deputy Director at FINRA, has departed to pursue other opportunities. In his most recent role, he oversaw the work of FINRA's Enforcement attorneys throughout the country as well as Enforcement's Litigation Group.

Jimmy Kirby has been named Deputy Director at FinCEN. He previously served as FinCEN's Acting Deputy Director and prior to that, served as Associate Director of FinCEN's Research and Analysis Division (formerly FinCEN's Intelligence Division) as well as FinCEN's Chief Counsel.

Jon Kroeper, Executive Vice President, Quality of Markets, left FINRA at the end of December to pursue other opportunities. He had been responsible for the management of the equity and fixed income automated surveillance and investigatory program, including data integrity, market conduct, customer protection and market manipulation-related activity.

Asad Kudiya has been promoted to Deputy Associate General Counsel at the Federal Reserve Board.

Nathanael Kurcab has been promoted to Of Counsel at Morrison & Foerster LLP.

Alex LePore has joined the FDIC as Deputy to the Vice Chairman. Previously, he was an Associate at Sullivan & Cromwell LLP and a Counsel on the Senate Banking Committee.

Dave Lynn has joined Goodwin Procter LLP as a Partner and Chair of the Public Company Advisory practice. Previously, Dave was a Partner at Morrison & Foerster LLP.

Elyse Martin has joined Morrison & Foerster's National Security team as Of Counsel. Previously, Elyse was Senior Counsel at Akin Gump Strauss Hauer & Feld LLP and before that, Assistant Director, Regulatory Affairs at the U.S. Department of the Treasury.

Dan Meade has joined Paul, Weiss, Rifkind, Wharton & Garrison LLP as Counsel. Previously, Dan was a Partner at Cadwalader, Wickersham & Taft LLP.

Omer Meisel has been promoted to EVP of FINRA's National Cause and Financial Crimes Detection Program. He succeeds **Bill St. Louis**, who was appointed Head of Enforcement in August. Omer had served as acting head of the NCFC since St. Louis stepped into his new role. Omer also chairs FINRA's Crypto Hub, which includes representatives from across FINRA, and is tasked with enhancing crypto and blockchain regulatory capabilities.

Katherine Monahan has been promoted to Assistant Director in the SEC's Division of Examinations Broker-Dealer and Exchange Group.

Richard N. Pagnotta, Sr., CCRP, has joined Banco de la Nación Argentina, New York Branch as Co-Chief Compliance Officer. Previously, Rich was SVP & General Manager, Miami Branch at Itau Unibanco.

Sylwia Perry has been promoted to Senior Vice President and Managing Counsel at Wells Fargo.

Leo Rodriguez Goyco has been promoted to Vice President/ Senior Officer Manager of the COO Issue Management Program at Wells Fargo.

Michael Scarpa has joined Treliant as Managing Director. Previously, Michael was Managing Director, Financial Services at PwC.

Jay Schwarz has been promoted to Deputy Associate General Counsel at the Federal Reserve Board.

Shinu Shilesh has been named Executive Director for the OCC's Office of Minority and Women Inclusion. In this role, Ms. Shilesh provides executive direction, sets policies, and oversees all agency matters relating to equal employment opportunity, diversity, equity, inclusion, and accessibility in management, employment, and business activities. She fills a role vacated by **Joyce Cofield**, who retired from the position.

Maggie Sklar has joined SEDA Experts as a Managing Director. Previously, Maggie was a Partner/Banking and Financial Services at Davis Wright Tremaine LLP and, before that, held senior roles at the Federal Reserve Bank of Chicago and CFTC.

Feral Talib has been named Executive Vice President and Head of Surveillance and Market Intelligence at FINRA.

Quincy Todd, CIA, has been named Senior Audit Manager at United Community Bank.

Dan Vogel has been promoted to Deputy General Counsel at Bloomberg.

David Wall, formerly Assistant General Counsel at the FDIC, has retired after 24 years of service at the FDIC in financial institution resolutions and receiverships, and 42 years overall in the Federal government. Congratulations and best of luck, David.

Tracy Whille has joined Guggenheim Securities as Global Chief Compliance Officer. Previously, Tracy was a Risk Advisory Partner at KPMG.

Program Update

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Thanks to all FMA 2023 Sponsors