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MARKET SOLUTIONS

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MARKET SOLUTIONS
Editor
Dorcas Pearce
Contributing Editors*
Marc-Alain Galeazzi
Barbara R. Mendelson

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FINANCIAL MARKETS ASSOCIATION

Sanctions: Will the Trump Administration Stay the Course?

By Daniel Tannebaum, Tracy Bruner, Jason Rhoades, and Michael Horn
PricewaterhouseCoopers LLP

President Trump made many statements during the campaign regarding actions he plans to take to reverse Obama administration sanctions policies.[1] These included revisiting the agreement to ease sanctions on Iran, rolling back the sanctions program against Russia, and reversing the Obama administration's policy of easing sanctions on Cuba. However, we believe that reversing course on these policies is much easier said than done.

For example, several of the Obama administration's sanctions policies – including those involving Iran and Russia – were part of multilateral actions rather than unilateral sanctions programs, so breaking from such agreements will be difficult. Iran and the other parties to the Iran agreement have signaled their unwillingness to renegotiate, and the EU is unlikely to reverse sanctions against Russia without a change in Russian policy regarding Crimea. Additionally, recent concerns regarding alleged Russian hacking have led to bipartisan support from Congress to block any scaling back of sanctions on Russia.

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Cross-Selling Remains a Key Strategy for Banks So Let's Get It Right

By Jeffrey S. Holik and Renee Kramer
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.

Cross-selling: What Is It?

Cross-selling is the practice of marketing multiple products and services to existing bank customers. The concept sounds simple. If a customer has a checking account, why not sell her a mortgage, brokerage services and credit cards as well? The idea is that existing customers are the easiest and best prospects for buying additional products and services, and having a greater share of a customer's wallet makes it tougher for her to leave the bank.

Why Have Regulators Taken Interest?

On September 8, 2016, Wells Fargo & Co. was fined $185 million by federal and state regulators, including a $100 million penalty from the Consumer Financial Protection Bureau ("CFPB"), the largest such penalty that agency has issued. The regulators said the practices, which date back to 2011, reflected serious flaws in the control infrastructure at one of the nation's largest banks. According to published reports, Wells Fargo has fired at least 5,300 employees

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Route to: Audit Compliance Legal Risk Management Back Office Training

Legislative/Regulatory Actions

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

In this issue, we address selected developments with regard to cybersecurity regulation, SEC guidance for robo-advisers, investment manager regulations, and variation margin requirements, and we provide an update from the CFPB. We will continue to follow and report on developments affecting the financial industry under the new Administration, such as the two executive orders briefly discussed in the investment manager outlook below.

CYBERSECURITY

Final NYDFS Cybersecurity Rule Takes Effect

On March 1, 2017, the closely watched New York State Department of Financial Services (NYDFS) cybersecurity rule (the "Final Rule") took effect. The Final Rule tracks the second proposed rule issued by NYDFS in December 2016. As a result, the rule is narrower and less prescriptive than the original proposal (issued in September 2016), but still presents compliance challenges – particularly for financial institutions that do not have mature cybersecurity processes and controls in place.

In light of the recent effective date and upcoming compliance deadlines, covered entities should promptly (1) assess the current state of their information security programs and determine whether modifications may be required based on the specific controls required by the Final Rule; and (2) consider the policies, procedures and mechanisms required to meet the Final Rule's reporting, recordkeeping and certification requirements.

These efforts aside, uncertainty regarding the nature and scope of certain of the prescriptive requirements may create challenges in implementation. In endeavoring to achieve compliance with the Final Rule, covered entities should be mindful of the following complexities:

Encryption. The Final Rule is not clear as to whether encryption is a mandate in all cases. It requires "controls, including encryption, to protect Nonpublic Information" based on the entity's risk assessment. However, the Final Rule permits "compensating controls" as an alternative to encryption "to the extent a Covered Entity determines that encryption … is infeasible," but such controls must be reviewed by the covered entity's Chief Information Security Officer annually.

Nonpublic Information. While the definition of "nonpublic information" has been narrowed to include relatively sensitive personal information, such as Social Security numbers and biometric data, the term still includes certain "business-related information" that if accessed or disclosed would "cause a material adverse impact to the business, operations or security" of a covered entity. The identification of such information may present an ongoing challenge, particularly when coupled with the obligation to encrypt such information where feasible.

Multi-factor Authentication. The rule requires multi-factor authentication for access to "internal networks from an external network." It is unclear whether this requirement applies to both employee remote access and customer access to online accounts.

Annual Certification. Each covered entity must annually submit a certification of compliance certifying actual compliance with the entirety of the Final Rule (the certification must be signed by a senior officer or the chairperson of the board). This is as opposed to, for example, a narrower

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FMA Welcomes New Members!

Samuel Bookhardt	**Broad and Cassel**
Stephanie Boryla	**UMB Financial Corporation**
Julie Breault	**First Bankers' Banc**
Leo Breault	**Scottrade Inc.**
Michael Drews	**Multi-Bank Securities, Inc.**
Merlin Elsner	**Multi-Bank Securities, Inc.**

Sanctions…

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While President Trump criticized the Obama administration's policy of easing sanctions on Cuba during the campaign, the popularity of the policy as well as its positive effects on Cuba's economy will make reimposing sanctions a low priority for the President. Similarly, the Trump administration has little incentive to reverse Obama's policies of easing sanctions on Myanmar2 and Sudan unless either country changes their behavior (e.g., promoting democratic reforms, or cooperating with US intelligence).

This financial crimes observer provides our perspective on what to expect in the sanctions landscape this year.

> *"…several of the Obama administration's sanctions policies – including those involving Iran and Russia – were part of multilateral actions rather than unilateral sanctions programs, so breaking from such agreements will be difficult."*

The Sanctions Landscape

Despite campaign rhetoric around reversing many of the Obama administration's sanctions policies, we believe the Trump administration will largely stay the course.

Iran

Although President Trump had been vocal during his campaign against the easing of sanctions on Iran, the Trump administration is unlikely to reverse the deal. The sanctions relief occurred under the Joint Comprehensive Plan of Action (JCPOA), a multilateral agreement between Iran, the European Union, Germany, and the five permanent members of the UN Security Council.[3] Because the other parties to the JCPOA have signaled their unwillingness to renegotiate the agreement, it will be difficult for the Trump administration to alter the deal.

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Cross-Selling…

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who were involved in the wrongdoing. In all, bank employees opened roughly 1.5 million new accounts and applied for more than half a million credit cards that may not have been authorized by customers, the regulators said in a news conference. The bank has 40 million retail customers.[1] The CFPB explained that "employees boosted sales figures by covertly opening accounts and funding them by transferring funds from consumers' authorized accounts without their knowledge or consent, often racking up fees or other charged," which was "[s]purred by sales targets and compensation incentives."[2] In early November, the Securities and Exchange Commission initiated an investigation of the bank to determine whether it misled investors and violated whistleblower protections while possibly engaging in *illegal sales practices*.[3] And federal prosecutors also have launched probes.[4]

Wells Fargo is not the only bank to raise regulators' attention. In October, 2016, the Massachusetts Securities Division filed an administrative complaint against Morgan Stanley Smith Barney LLC, alleging that the "firm-wide culture emphasizes the aggressive cross-selling of banking and lending products to wealth management clients."[5] This culture was allegedly fueled in part by sales contests which encouraged financial advisors to push lending products on customers with inadequate compliance and supervisory oversight.[6]

Not to be outdone, in October, 2016, the Financial Industry Regulatory Authority ("FINRA") issued a targeted examination letter (a/k/a "sweep") of cross-selling programs at bank-affiliated broker-dealers.[7] The inquiry focuses on identifying incentives to broker-dealer employees for (1) promoting bank products to broker-dealer retail customers through referrals or direct sales, (2) adding features to broker-dealer retail customer accounts, and (3) opening additional broker-dealer retail accounts for customers.

What's the Problem with Cross-Selling?

On the surface, cross-selling seems like a good thing for customers, and in many ways it is. A financial institution should offer solutions for as many of the needs of their customers as possible to help them better manage their finances. Having your financial

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While we do not expect the JCPOA to be reversed, financial institutions should be aware that US institutions remain largely prohibited from transacting with Iran. Additionally, the US Treasury's Office of Foreign Assets Control (OFAC) just added several Iranian individuals and entities deemed connected to recent missile tests to the Specially Designated Nationals (SDN) list.[4] While these new designations do not involve or alter the JCPOA, they create additional complexities for those both inside and outside the US when considering transactions with an Iranian nexus.

An additional risk for financial institutions is that the JCPOA contains a "snapback" provision, which would restore all lifted sanctions if Iran violates any provision of the agreement. Additionally, Iran's launch of a ballistic missile earlier this week could potentially be found to violate UN weapons prohibitions, which would give the Trump administration broader international support to discuss restoring sanctions. Therefore, EU firms doing business with Iran should seek to enter into shorter term agreements with Iranian counterparties or include escape provisions in long term agreements.

Finally, US firms risk becoming indirectly involved in prohibited transactions through an EU counterparty dealing with Iran. Therefore, US firms should closely monitor their activities for any involvement with Iranian parties, as impermissible transactions may be nestled within seemingly permissible ones.

Russia

Throughout the campaign, President Trump often advocated strengthening US ties with Russia and discussed revisiting the sanctions issued against many Russian political leaders, banks, and companies.[5] Last week, Trump suggested that he is open to lifting sanctions on Russia, though he plans to keep them for "at least a period of time." However, we believe that rolling back the sanctions program against Russia will be unlikely for a number of reasons.

First, the Trump administration will face opposition from Congress if they attempt to lift sanctions on Russia. Recent concerns over alleged Russian hacking as well as lasting tensions over Russia's annexation of Crimea have prompted a

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affairs consolidated in one place can make keeping track of and managing them easier, and customers with larger and more significant relationships often get better service and pay less.

Taken at its worst, however, "cross-selling" can be code for bank "profitability," rather than meeting "customer needs." And when combined with a high pressure sales environment driven by aggressive sales goals and financial incentives, cross-selling can raise significant conflict of interest concerns. A bank employee's responsibility to make sound product recommendations may be subordinated to self-interest when management imposes unrealistic targets, combined with pressure to perform and the threat of adverse consequences if goals are not met. The pressure to perform can also cause employees to engage in dishonest or unethical behavior.[8]

"…when combined with a high pressure sales environment driven by aggressive sales goals and financial incentives, cross-selling can raise significant conflict of interest concerns."

Doing It Right: How Financial Institutions Can Cross-Sell to Customers Without Running Afoul of Regulators

Regulatory concern over cross-selling activities is not likely to wane anytime soon. Nor will banks' interest in continuing to engage in activities that will grow share of wallet, for the simple reason that earning more business from current customers is a tried and true method of growing the bottom line. Going forward, it will be more important for financial institutions to strike the right balance. Compliance and Legal personnel can play an important role. Here are some factors to consider.

Culture is Key. Today, most financial services firms are evolving from a strict "product sales" orientation to a more "service and advice" model. This is a good

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bipartisan group of senators to support a bill that would block any moves to reduce such sanctions.

Additionally, the sanctions against Russia were issued in conjunction with the EU, which does not appear to have an appetite to change its sanctions program against Russia barring a significant development in Ukraine. The US's close relationship to its European allies makes it difficult for the US to turn its back on the EU regarding continued enforcement of sanctions on Russia.

Finally, the Trump administration would face significant public backlash if they were to take steps to lift sanctions against Russia, due to concern over Russia's alleged cyber attacks. Notably, President Trump spoke with Russian President Vladimir Putin last week, and the topic of sanctions was not raised during the call.

> *"Despite campaign rhetoric around reversing many of the Obama administration's sanctions policies, we believe the Trump administration will largely stay the course."*

Cuba

President Trump has given mixed signals on the Obama administration's steps to ease sanctions against Cuba.[6] During his campaign, he made statements pledging to reverse the Obama administration's policies and close the US embassy in Havana. However, he has also claimed that he will not restore sanctions but will rather renegotiate the terms of the sanctions program.

Given the widely-held view that the Cuba sanctions program has been ineffective, the opportunities for US businesses to expand their presence in Cuba, public support behind the easing of sanctions on Cuba, and the positive effects that the easing of sanctions has had on Cuba and its economy, we believe that reversing the Obama administration's Cuba policy will not be a high priority for President Trump. Notably, in a break from his past rhetoric,

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Cross-Selling…

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thing, both for customers and the banks themselves. Changes in the regulatory landscape – such as the impending Department of Labor fiduciary retirement advice rule – are accelerating this trend. To compete effectively, financial services firms will need to focus more attention on *customer needs*. Messaging needs to start at the top. As FINRA indicated in a targeted examination letter earlier this year, "[f]irm culture has a profound influence on how a broker-dealer conducts its business, including how it manages conflicts of interest. A culture that consistently places ethical considerations and client interests at the center of business decisions helps protect investors and the integrity of the markets."[9] Compliance and Legal need to speak up when they see concerns about the tone at the top … and in the middle!

Beware of unrealistic goals. If somebody says: "This doesn't make sense. Where are you getting these sales goals?" then it's time to take a good hard look at the goal rather than simply dismissing the concern as unduly negative or lacking in team spirit. Goals should be reasonable and achievable to encourage honest success. Ask questions about how goals are set and by whom.

Sales Contests Should be a Relic of the Past. Sales managers love contests. They always have. In today's highly regulated environment, firms should give serious consideration to eliminating them. By definition, a sales contest is internally-focused, on the profits of the institution and the compensation of the employee-contestant. The focus should be external, on client needs. Sales contests do not promote the best interests of customers; it's really that simple.

Moderate incentives. Be careful when sales or referral goals are used to determine financial incentives, especially when the approach used is formulaic. Be especially wary if managers are encouraged or permitted to exert pressure when an employee falls short of targets. An example of a red flag is where managers pressure underperforming employees to sell accounts and other products to family members and friends. The focus should be on meeting customer needs, not fulfilling sales quotas. In general, goals which focus on measuring the number and quality

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Sanctions…

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President Trump has appointed a proponent of closer ties with Cuba as his special representative for international negotiations.

While we do not expect significant changes to the Obama administration's policy of relaxing sanctions on Cuba, financial institutions should be aware that much of the general prohibitions on banking and trade are still in place. Last year, financial institutions reported an increase in blocked transactions due to misunderstandings regarding the permissibility of certain activities. For example, payments processors have mistakenly believed that facilitating a wide spectrum of payments for Cuban goods is now permitted, but OFAC has only authorized payments for a narrow list of independent Cuban entrepreneur-produced goods.

Sudan

Last month, President Obama issued an executive order that effectively lifted the embargo against Sudan and unblocked Sudanese government property currently held by US financial institutions.[7] The easing of sanctions, issued in exchange for the Sudanese government to improve access for aid groups and cooperate with US intelligence, will officially go into place on July 12, 2017. Unless Sudan fails to live up to its commitments, we do not expect the Trump administration to restore these sanctions.

However, financial institutions looking to conduct business with Sudan should be mindful that several Sudanese individuals and companies remain on OFAC's SDN list. Additionally, sanctions relating to the Darfur region remain in place.

Myanmar

Last year, the US government took a series of steps to lift sanctions against Myanmar, ending the longstanding sanctions program against the country. The relief was granted in response to Myanmar's recent moves toward democracy after decades of military rule. Because Myanmar has made these democratic reforms, there is no reason that the Trump Administration would reinstate sanctions.

The new sanctions relief lifts restrictions on banking and transacting with Myanmar, removes most Burmese individuals and entities from the

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of conversations held with prospects are safer – and more effective – than quantitative sales requirements or targets. Riskiest of all are when the financial incentives tied to cross-sales represent a significant proportion of an employee's overall compensation, which is a not uncommon situation at the bank branch level.

> *"Regulatory concern over cross-selling activities is not likely to wane anytime soon."*

Effective Supervision is Critical. Especially where employees are compensated directly for cross-sell activity, appropriate supervisory review is critical to ensuring that customers are being sold suitable products. Moreover, it is important that silos between bank and investment activities do not serve to mask questionable practices. This is especially critical for dual bank and broker-dealer employees whose activities may be subject to supervision by multiple managers.

Summing Up

Acting in the client's best interest has become a baseline regulatory expectation in many areas, and that trend is very likely to continue. There is nothing inherently wrong with cross-selling. The key to doing it right, and staying out of the regulatory cross-hairs, is to recognize that additional products and services – such as investment accounts, credit cards, and mortgages – must be treated as solutions to a depositor's demonstrated need and not as primarily an opportunity to sell. ■

Mr. Holik is Of Counsel and Ms. Kramer is an associate in the financial regulatory practice group of Shulman, Rogers, Gandal, Pordy and Ecker in Potomac, MD.

[1] *See "Consumer Financial Protection Bureau Fines Wells Fargo $100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts," (available at:* http://www.consumerfinance.gov/about-us/newsroom/consumer-

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SDN list, and removes the restrictions on importing Burmese jade and rubies into the US. However, concerns over the continued military involvement in the Burmese government as well as human rights abuses (e.g., those committed against the Rohingya minority) could result in a "snapback" of sanctions. ■

[1] *For our view on how the Trump administration will impact financial regulations, including sanctions and anti-money laundering regulations, see PwC's First take, Donald Trump's victory: Ten key points (November 2016).*

[2] *See PwC's Financial crimes observer, Sanctions: Myanmar restrictions lifted (December 2016).*

[3] *See PwC's Financial crimes observer, Iran sanctions and beyond: Avoiding the rising fines (February 2016).*

[4] *Individuals on the SDN list are prohibited from conducting any business dealings with the US.*

[5] *See PwC's Regulatory brief, Sanctions: US and EU action on Ukraine (March 2014).*

[6] *The US has gradually relaxed trade and business restrictions with Cuba beginning with Obama's December 2014 announcement of changes to the Cuba sanctions program. For additional information, see PwC's Financial crimes observer, Sanctions: Cuba restrictions falling (April 2016).*

[7] *OFAC requires that financial institutions "block" funds that have been impermissibly transferred under sanctions rules. When funds are blocked, they are held in an interest-bearing account and can only be released with permission from OFAC.*

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For additional information about this article or PwC's Financial Crimes Unit, please contact Dan Tannebaum (646/471-7159, daniel.l.tannebaum@pwc.com).

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financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/. The Bank also paid a $35 million fine to the Office of the Comptroller of the Currency and $50 million to the City and County of Los Angeles.

[2] *Id.*

[3] *"SEC Probing Wells Fargo Around Sales-Practice Disclosures," The Wall Street Journal (November 2, 2016) (available at: http://www.wsj.com/articles/sec-probing-wells-fargo-around-sales-practice-disclosures-1478127877)*

[4] *See "Federal Prosecutors Investigating Wells Fargo Over Sales Tactics," The Wall Street Journal (September 14, 2016) (available at: http://www.wsj.com/articles/federal-prosecutors-investigating-wells-fargo-over-sales-tactics-1473881424)*

[5] *http://www.sec.state.ma.us/sct/current/sctmorgan/Complaint%20(Docket%20No.%20E-2016-0055).pdf*

[6] *Id.*

[7] *See http://www.finra.org/industry/review-cross-selling-programs.*

[8] *See, for example, the Letter of Acceptance, Waiver and Consent in In re Michael Stupar, FINRA Case No. 2013039618501 (December 2015), where a dual bank/broker-dealer employee was sanctioned for entering false information into a firm database which tracked customer interactions designed to foster cross-sell activity.*

[9] *See FINRA, "Establishing, Communicating and Implementing Cultural Values" (February 2016) (available at: http://www.finra.org/industry/establishing-communicating-and-implementing-cultural-values).*

2017 Examination Priorities

FINRA

http://www.finra.org/sites/default/files/2017-regulatory-and-examination-priorities-letter.pdf

SEC

https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf

Legislative/Regulatory Actions

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certification attesting that the covered entity has implemented policies and procedures designed to meet the requirements of the Final Rule. However, the Final Rule also requires covered entities to document remedial efforts to address "areas, systems or processes that require material improvement." By requiring covered entities to both certify their full compliance and document areas requiring improvement, NYDFS risks giving covered entities a Hobson's Choice: either document noncompliance or forego efforts to continually improve and update the enterprise's information security program.

Timing. The Final Rule requires compliance in phases. Compliance is generally required within 180 days from March 1, 2017 (i.e., August 28, 2017). Compliance with certain specific requirements is due within one year (e.g., the penetration testing and multifactor authentication requirements), eighteen months (e.g., the audit trail requirement), and two years (the third-party service provider security policy requirements) from the effective date. However, the time periods are not consistent. For example, the compliance date for the risk assessment is one year from the effective date of the regulation (i.e., March 1, 2018). Yet the covered entity's cybersecurity policies and procedures – which are required to be in place within 180 days of the effective date – must be based on the risk assessment. Moreover, the first certification of compliance will occur before the phased compliance periods expire. As a result, a covered entity's first two certifications may only be able to address those aspects of the Final Rule that are required at the time of the certification.

Covered entities will need to carefully consider how to best navigate these and other uncertainties in the Final Rule. As Governor Cuomo stated in the press release announcing the Final Rule, the regulation is the "first-in-the-nation cybersecurity regulation" issued by a state financial regulator. Among other things, being first means that this rule is both untested and unprecedented. That may leave covered entities grappling with an uncertain regulatory future for some time.

For additional information on this topic, please visit: *https://media2.mofo.com/documents/170222-nydfs-cyber-rule-finalized.pdf*. For the Final Rule, visit: *http://www.dfs.ny.gov/legal/regulations/adoptions/rf23-nycrr-500_cybersecurity.pdf*.

SEC Provides Guidance for Robo-Advisers

Robo-advisers, or automated advisers, are typically registered investment advisers that offer personal investment advice with little, if any, human contact. With their gains in popularity among all age groups and classes of investors, robo-advisers have recently faced increased regulatory scrutiny. In February 2017, the U.S. Securities and Exchange Commission's (SEC) Division of Investment Management issued guidance for robo-advisers that urges them to improve risk disclosures and compliance programs (the "Guidance"). While the Guidance focuses on compliance with the Investment Advisers Act of 1940, it suggests that robo-advisers could run afoul with the provisions of this Act if they do not properly structure their programs to conform to the conditions of the exemption from registration in Rule 3a-4.

Specifically, the Guidance is directed at three main topics: (1) disclosures; (2) the duty to provide suitable advice; and (3) compliance programs.

Disclosures. The Guidance encourages robo-advisers to explain their business model and the scope of services they provide – and the limitations on those services – in a way their clients can understand. Online disclosures should be presented in a form easily understandable for users, using features such as pop-up boxes and interactive text. Disclosures

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FMA Welcomes *More* New Members!

Dionne Fajardo	Wiand Guerra King P.A.
Daniel Halstad	M&T Bank
Lisa Herrnson	PricewaterhouseCoopers LLP
Joan Hudson	FINOP – outsourcing
Charis Jones	LPL Financial
Jason Kirchner	Central Bank
Howard Kirkham	Federal Reserve Bank of Chicago

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should also not mislead customers regarding the scope of services that the robo-adviser provides, such as, by implying that the robo-adviser provides comprehensive financial planning when the robo-adviser does not consider a client's tax or personal situation. The Guidance includes a list of disclosures that robo-advisers should consider providing.

Suitable Investment Advice. The Guidance explains that their fiduciary duty requires robo-advisers to ensure that questionnaires relied upon to gather information from clients are clear and elicit sufficient information to allow them to meet their fiduciary obligations. The Guidance also states that robo-advisers should consider using pop-up boxes or other means to highlight why they believe particular recommended portfolios may be more appropriate for a client, in light of inconsistencies between a client's stated objectives and the portfolios they select.

Compliance. The Guidance states that robo-advisers "should be mindful of the unique aspects" of their business model and should consider whether their compliance policies should address the following areas: (i) the development, testing and back-testing of algorithmic codes; (ii) whether online questionnaires are sufficient; (iii) updates to clients regarding changes to the algorithmic code; (iv) oversight of third-party servicers; (v) cybersecurity; (vi) social and other electronic marketing; and (vii) protection of client accounts and key advisory systems.

In general, the Guidance is a helpful attempt to keep up with rapid changes affecting investment advisers and their clients, as advances in technology quickly outpace rules written in the pre-digital era. The Guidance does not amount to new rules; rather, it provides a window into how SEC staff interprets existing rules in the context of new technology. At the very least, taking the SEC staff's suggestions for enhancing disclosure and compliance programs will likely minimize surprises in future regulatory examinations.

For a copy of the Guidance, please visit: *https://www.sec.gov/investment/im-guidance-2017-02.pdf*; for our client alert discussing the Guidance, please visit *https://media2.mofo.com/documents/170227-robo-advisers.pdf.*

Investment Management Regulation

What to Expect in 2017

Emerging trends may lead to long-term shifts in how the SEC approaches regulation and enforcement with respect to investment management.

Presidential "TwoFer" Order. An executive order issued on January 30, 2017 requires agencies to offset any new incremental costs associated with new regulations, to the extent permitted by law, with the "elimination of existing costs associated with at least two prior regulations." The TwoFer Order does not apply to independent agencies, including the SEC, however such agencies are encouraged to comply.

Presidential Order Establishing Core Principles. A February 3, 2017 executive order established six "core principles" for regulating the U.S. financial system. The order directs the Secretary of the Treasury to consult with the SEC chair and other members of the Financial Stability Oversight Council to identify laws, treaties, regulations or guidance at odds with the core principles and seeks to identify existing laws and rules for repeal.

Department of Labor (DOL) Fiduciary Rule. On February 3, 2017, the White House issued a Presidential Memorandum directing DOL to conduct an examination of the controversial fiduciary rule issued by DOL in April 2016, to determine whether the rule will hinder access to retirement information and financial advice. The Presidential Memorandum also directs DOL to prepare an updated economic and legal analysis regarding the likely impact of

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FMA Welcomes *More* New Members!

Sarah LeDonne	Hardin Compliance Consulting LLC
Wesley Moore	Quarule, Inc.
William Reilly, Jr.	Oyster Consulting, LLC
Dave Sanchez	Norton Rose Fulbright US LLP
Matthew White	Baker Donelson

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the fiduciary rule. On March 1, 2017, DOL issued a proposed rule to extend the applicability date of the fiduciary rule for 60 days, until June 9, 2017. The March 1 proposed rule also seeks comments on the examination required by the Presidential Memorandum, which are due by April 17, 2017.

Mutual Fund Use of Derivatives. Final rules to regulate mutual fund use of derivatives became a casualty of the SEC's inability to muster a quorum in December 2016. Given their complexity, it is unlikely that the SEC will promulgate the rules in their current form any time soon.

Rules in the Pipeline. Several rules were in the SEC rulemaking pipeline but evaded adoption in 2016. Some of these rules enjoyed the support of Acting Chair Michael Piwowar and are therefore more likely to proceed toward adoption even without former Chair Mary Jo White in office. They include rules on web-based transmittal of shareholder reports (Proposed Rule 30e-3) and rules regarding capital margin requirements for security-based swap intermediaries.

Existing Rules at Risk. Several high-profile rules adopted in the past three years may be targeted for repeal, especially if the SEC voluntarily adheres to the TwoFer Order. These include rules regarding money market reform, liquidity risk management programs, investment company reporting modernization, swing pricing and amendments to Form ADV and reporting rules under the Investment Advisers Act of 1940.

Areas of Continuity. Irrespective of the change in administration, it is likely that certain regulatory trends will continue. This includes the SEC's adoption of a risk-based and data driven approach to investment adviser examinations. It is also expected that the well-established statutory and fiduciary oversight responsibilities of fund directors will not change in the short term. Similarly, the role of compliance personnel is not likely to diminish, and may grow. Further, it is not expected that provisions in the Dodd-Frank Act that required rules regarding the registration of certain investment advisers to private funds will be repealed.

Potential Congressional Action. Congress may push through certain discrete provisions applicable to investment advisers. This includes a proposal to broaden the exemption from the definition of an investment company for venture capital funds. Another bill which already passed the House, H.R. 78, would require the SEC to identify the problem that a rule is designed to address and ensure that the benefits justify the cost prior to issuing any new regulations.

For our client alert discussing our predictions for the future of investment management regulation, please see: *https://media2.mofo.com/documents/170208-future-investment-management-regulation.pdf.*

Variation Margin Requirements

Banking Agencies Clarify Supervisory Expectations for Variation Margin Requirements

On February 22 and February 23, 2017, respectively, the Board of Governors of the Federal Reserve System (the "Federal Reserve") and the Office of the Comptroller of the Currency (OCC and, collectively with the Federal Reserve, the "Banking Agencies") each released guidance (together, the "Examination Guidance") clarifying the Banking Agencies' expectations regarding compliance by swap entities with minimum variation margin requirements (the "Margin Rules").

The Margin Rules were adopted as part of a November 2015 joint rule addressing margin and capital requirements for swap entities. The rules set forth minimum variation margin requirements applicable to swap entities engaging in non-cleared swaps and security-based swaps transactions. The Margin Rules established a compliance date of September 1, 2016, "where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2016 that exceeds $3 trillion." However the Margin Rules established a later compliance date of March 1, 2017, "for any other covered swap entity with respect to covered swaps with any other counterparty." It is this latter date (the "Compliance Date") which the Examination Guidance addresses.

The Examination Guidance signals that the Banking Agencies will not seek to enforce strict compliance with the Compliance Date. Instead, the

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Examination Guidance states that swap entities are expected to "prioritize their efforts according to the size and risk inherent in the credit and market risk exposures presented by each counterparty." Thus although swap dealers were expected to have achieved full compliance with respect to swap dealers and financial end users that present significant exposures by March 1, for other counterparties, swap dealers must make good faith efforts to comply with variation margin requirements in a "timely manner" but in no case later than September 1, 2017.

In view of the substantial changes necessary for swap dealers to achieve full effective compliance, the Examination Guidance states that during initial examinations for compliance with the variation margin requirements, Federal Reserve and OCC examiners should evaluate a swap dealer's "management systems and program to come into compliance." Swap dealers are expected to have "governance processes that assess and manage their current and potential future credit exposure to non-cleared swap counterparties, as well as any other market risks arising from such transactions." According to the Examination Guidance, "examiners will consider a swap entity's implementation plan, including actions taken to update documentation, policies, procedures, and processes, as well as training of appropriate staff and handling of early technical problems or other implementation challenges."

The Examination Guidance will likely have a significant effect on the manner in which Federal Reserve and OCC supervised swap entities implement their plans to comply with the Margin Rules and, in turn, on their counterparties, including financial end users. Together with a no-action letter issued on February 13, 2017, by the Commodity Futures Trading Commission (CFTC) regarding its margin rules for dealers that are not subject to regulation by the Federal Reserve or the OCC, the Examination Guidance provides much needed relief not only to swap dealers but also to their smaller counterparties, many of which were not fully prepared to comply with variation margin requirements by March 1.

For additional information concerning this topic, please visit: *https://media2.mofo.com/documents/170227-federal-reserve-occ-guidance.pdf.*

CFPB UPDATE

RFI on Alternative Data and Modeling Techniques

On February 16, 2017, the Consumer Financial Protection Bureau ("CFPB") issued a Request for Information (RFI) seeking public feedback on how lenders use alternative data and modeling techniques in the consumer lending "credit process" and the risks and benefits of using alternative data sources in making lending decisions. For purposes of the RFI, "credit process" refers to the processes and decisions of a creditor during a credit product's life cycle, which makes the scope of the CFPB's inquiry broad enough to cover everything from marketing and prescreening to debt collection.

The CFPB noted the potential for FinTech companies to benefit consumers with "thin" or non-traditional credit experience into the credit market by using alternative data and modeling techniques to evaluate creditworthiness. Examples of alternative data described in the RFI include payments for rent, mobile phone and cable contracts; bank account information, such as deposits, withdrawals and transfers; and education and occupation. The CFPB posits that use of such information could make a credit evaluation more accurate, more up-to-date, more convenient and less costly. However, the CFPB also expressed skepticism regarding the potential for inaccurate information where alternative data is not subject to standards as rigorous as those governing traditional data, consumers' potential inability to improve their credit standing, and the potential for discrimination and other unintended consequences of using alternative data.

The RFI adds another item to the CFPB's agenda with respect to FinTech and emerging financial services; however, the full picture remains unclear.

For our client alert on the RFI, please visit: *https://media2.mofo.com/documents/170217-cfpb-alternative-date-modeling-techniques.pdf.*

CFPB Continues its Section 8 Enforcement Efforts Post-PHH

On January 31, 2017, the CFPB announced a series of consent orders alleging widespread violations of the Real Estate Settlement Procedures Act (RESPA)

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Section 8 by Prospect Mortgage LLC, certain of its affiliates and several real estate brokerage firms identified in the Prospect Mortgage order. The scope of these consent orders is notably broad, covering many common marketing-related arrangements between mortgage lenders and other settlement-side parties, such as real estate agents and brokers.

These are the CFPB's first reported RESPA-related proceedings since the D.C. Circuit issued its opinion in *PHH Corp. v. CFPB*, overturning on constitutional, statutory and administrative law grounds the CFPB's order for PHH to pay $109 million for its RESPA violations. The CFPB appeared to give little weight to the D.C. Circuit opinion, however. Specifically, the CFPB did not acknowledge countervailing facts related to bona fide compensation to referring parties for actual marketing services or facilities provided; nor did the CFPB consider the adequacy of compensation or fees paid to referring parties, as is traditionally the case in a RESPA context.

For our client alert on the Consent Order, please visit: *https://media2.mofo.com/documents/170302-respa-cfpb.pdf.*

Special Supervision Highlights on Credit Reporting

On March 2, 2017, the CFPB published a special edition of its Supervision Highlights report, focusing on problems in the credit reporting industry. The report provides supervisory observations on the performance of consumer reporting companies (CRCs) and data furnishers with respect to issues such as data accuracy, dispute handling and resolution, and adherence to permissible purpose requirements. CFPB examiners found that certain CRCs and furnishers were not in compliance with the Fair Credit Reporting Act, and directed those entities to address the identified issues and make improvements to their systems to improve compliance. For example, the CFPB reports that one or more CRCs failed to consider documentation that consumers provided regarding disputed items on credit reports. After the CFPB directed the CRCs to improve their dispute investigation systems, however, the CRCs appear to have improved these systems.

To view the special edition of Supervision Highlights, visit the CFPB website at *http://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.*

Prepaid Update: Proposed Delay of Effective Date and Guide to Short Form Disclosures

On March 9, 2010, the CFPB announced via a blog post a proposed rule to delay the October 1, 2017 effective date of the rule governing Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (the " Prepaid Accounts Final Rule") by six months, to April 1, 2018. The blog post stated that delaying the effective date by six months addresses concerns that some industry participants may have difficulty complying with the original effective date, although the proposal itself gives another reason for the delay: "delaying the effective date will allow the Bureau to more closely evaluate concerns raised by industry participants regarding certain substantive aspects of the Prepaid Accounts Final Rule that they assert are posing particular complexities for implementation or may have negative consequences for consumers that were not anticipated or fully explained by commenters in response to the Prepaid Accounts NPRM." The CFPB's proposal comes in the context of the Trump administration's memorandum calling for a regulatory freeze and a temporary postponement of the effective date of finalized rules, for "the purpose of reviewing questions of fact, law, and policy they raise." However, the CFPB does not expressly reference the Trump administration's memorandum.

On March 7, 2017, the CFPB released a guide, entitled "Preparing the Short Form Disclosure for Prepaid Accounts." The guide is intended to assist financial institutions in preparing the short-form preacquisition disclosures required by Section 1005.18(b) of the Prepaid Accounts Final Rule. Using one of the model forms from the Prepaid Accounts Final Rule, the guide provides step-by-step instructions for preparing the short-form disclosure, including with respect to content, format and appearance requirements.

For our client alert on the proposed delay and short-form guide, please visit: *https://media2.mofo.com/documents/170310-cfpb-prepaid-accounts-rule.pdf.* ■

**Jay G. Baris, Meghan E. Dwyer, Julian E. Hammar, Amanda J. Mollo, James Schwartz, Mark R. Sobin, and Nathan D. Taylor contributed to this column.*

Watch For

CFTC Press Release 7535-17 (March 13, 2017) – The CFTC announced that it is extending the comment period on its proposed capital requirements applicable to swap dealers and major swap participants for an additional 60 days. The original comment period was to expire March 16, 2017. (See CFTC Press Release 7494-16, Dec. 2, 2016). As extended, the comment period will expire on May 15, 2017.

FINRA Regulatory Notice 17-09 (March 9, 2017) – On November 15, 2016, the SEC approved the National Market System Plan Governing the Consolidated Audit Trail. The Plan, as modified by an exemptive order issued by the SEC, includes synchronization and certification requirements with regard to business clocks that capture time in milliseconds. The participants in the Plan, including the national securities exchanges and FINRA, issued an alert to provide firms with information regarding upcoming deadlines regarding clock synchronization requirements, including certifications, that apply to certain firms (effective March 15, 2017).

March 7, 2017 – To facilitate compliance with Securities and Exchange Commission Regulation Systems Compliance and Integrity (Regulation SCI), the MSRB adopted Rule A-18 on Mandatory Participation in Business Continuity and Disaster Recovery Testing on November 2, 2015. Pursuant to Section (b) of Rule A-18, the MSRB is notifying 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. See MSRB Notice 2017-06.

SEC Press Release 2017-57 (March 1, 2017) – The SEC voted to propose rule amendments to improve investor protection and enhance transparency in the municipal securities market. The proposed amendments would provide timely access to important information regarding certain financial obligations incurred by issuers and obligated persons that could impact such entities' liquidity and overall creditworthiness. The public comment period will remain open for 60 days following publication of the proposing release in the *Federal Register*.

MSRB Press Release (March 1, 2017) – The MSRB is seeking comment on draft rule amendments to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements, to clarify existing application of the rule to certain new issue municipal securities, to expand the application of the rule to certain additional industry participants and to make definitional and technical changes. In addition, the MSRB reminds brokers, dealers and municipal securities dealers of their existing obligation under Rule G-34(b) to obtain CUSIP numbers for certain secondary market securities. Comments should be submitted no later than March 31, 2017.

SEC Press Release 2017-55 (March 1, 2017) – The SEC approved rules to ease investor access to exhibits in company filings. They will require issuers to include a hyperlink to each exhibit in the filing's exhibit index. The final rules will take effect on September 1, 2017.

Federal Reserve Press Release (February 23, 2017) – The FRB and OCC issued guidance explaining how supervisors should examine for compliance with the swap margin rule, which established margin requirements for swaps not cleared through a clearinghouse. The guidance explains that the Board and the OCC expect swap entities covered by the rule to prioritize their compliance efforts surrounding the March 1, 2017, variation margin deadline according to the size and risk of their counterparties. The guidance explains that swap entities' compliance with counterparties that present significant credit and market risk exposures is expected to be in place on March 1, 2017, as laid out in the final rule. For other counterparties that do not present significant credit and market risks, the OCC and the Board expect swap entities to make good faith efforts to comply with the final rule in a timely manner, but no later than September 1, 2017.

SEC Press Release 2017-52 (February 23, 2017) – The SEC published information and guidance for investors and the financial services industry on the fast-growing use of robo-advisers, which are registered investment advisers that use computer algorithms to provide investment advisory services online with often limited human interaction.

SEC Press Release 2017-50 (February 17, 2017) – The SEC and NASAA signed an information-sharing agreement as new rules to facilitate intrastate crowdfunding offerings and regional offerings take effect. The agreement intended to facilitate the sharing of information to ensure that the new exemptions are serving their intended purpose of facilitating access to capital for small businesses. Under the memorandum of understanding, federal and state securities regulators will be better able to monitor the effects of the new rules and also guard against fraud. Under the new rules, companies will have more flexibility to engage

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in intrastate offers through websites and social media without having to register their offering with the federal government. Companies now can also raise up to $5 million per year through other amended rules, which could facilitate the development of regional offering exemptions at the state level to permit companies to raise from investors in a specific region. The previous limit was $1 million.

MSRB Regulatory Notice 2017-04 (February 16, 2017) – The MSRB is requesting comment on draft amendments to MSRB Rule G-21, on advertising, and on new draft MSRB Rule G-40, on advertising by municipal advisors. The draft amendments to Rule G-21, applicable to brokers, dealers and municipal securities dealers would update as well as harmonize Rule G-21 with certain provisions of the advertising rules of other financial regulators. Further, consistent with the MSRB's regulation of dealers under Rule G-21, draft Rule G-40 would address advertising by municipal advisors. Comments should be submitted no later than March 24, 2017

FINRA Regulatory Notice 17-08 (February 15, 2017) – The SEC approved amendments to FINRA Rule 2232 (Customer Confirmations) that require member firms to disclose additional transaction-related information to retail customers for trades in certain fixed income securities. Specifically, amended Rule 2232 requires a member to disclose the amount of mark-up or mark-down it applies to trades with retail customers in corporate or agency debt securities if the member also executes an offsetting principal trade in the same security on the same trading day. The amended rule also requires members to disclose two additional items on all retail customer confirmations for corporate and agency debt security trades: (1) a reference, and a hyperlink if the confirmation is electronic, to a web page hosted by FINRA that contains publicly available trading data for the specific security that was traded, and (2) the execution time of the transaction, expressed to the second. These amendments will become effective on May 14, 2018.

CFTC Press Release 7531-17 (February 13, 2017) – The CFTC's Division of Swap Dealer and Intermediary Oversight issued a time-limited no-action letter stating that, from March 1, 2017 to September 1, 2017, DSIO will not recommend an enforcement action against a swap dealer for failure to comply with the variation margin requirements for swaps that are subject to a March 1, 2017 compliance date. The DSIO no-action letter does not postpone the March 1, 2017 compliance date for variation margin, rather it allows market participants a grace period to come into compliance.

DSIO also issued a no-action letter stating that DSIO will not recommend an enforcement action against an SD, subject to certain conditions, that does not comply with the minimum transfer amount requirements of CFTC Regulations 23.152(b)(3) or 23.153(c) with respect to one or more swaps with any legal entity that is the owner of more than one separately managed account. DSIO is providing this relief to allow SDs entering into swaps with SMAs to treat each account as a separate counterparty, subject to certain limits, for purposes of applying the MTA, despite that such accounts are owned by the same legal entity.

FINRA Regulatory Notice 17-07 (February 10, 2017) – This Notice provides firms with information regarding an updated no-action letter and updated instructions issued by the staff of the Division of Trading and Markets of the SEC regarding electronic filing of the annual and supplemental reports required under SEA Rules 17a-5 and 17a-12.

FINRA Regulatory Notice 17-06 (February 10, 2017) – FINRA is soliciting comment on proposed amendments to FINRA Rule 2210 (Communications with the Public). The proposed amendments would create an exception to the rule's prohibition on projecting performance to permit a firm to distribute a customized hypothetical investment planning illustration that includes the projected performance of an asset allocation or other investment strategy, but not an individual security, subject to specified conditions. The comment period expires March 27, 2017.

MSRB Press Release (February 8, 2017) – The MSRB has enhanced EMMA's automated email alerts so that users can specify the types of continuing disclosure filings to trigger a notification. For example, an investor can choose to receive email alerts only when new audited financial statements or notices of bond calls are posted. Previously, users could opt to receive alerts for every financial disclosure or all event filings for one or more securities but could not narrow their selection to specific documents or events. EMMA's automated alerts have also been improved to include more useful details about the relevant bond and its associated trade activity or filing that triggered the alert.

CFTC Press Release 7529-17 (February 6, 2017) – The CFTC's Division of Market Oversight issued a time-limited no-action letter stating that, from February 14, 2017 to August 14, 2017, it will not recommend an enforcement action for failure to file a notice when relying on certain aggregation exemptions from federal

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position limit levels. Absent this relief, on February 14, 2017, market participants would have been required to file notices to rely on certain aggregation exemptions under CFTC Regulation 150.4(c). Separately, DMO is announcing the availability of a portal that provides the form and manner for filing aggregation exemption notices. This new portal will be available on Saturday, February 11, 2017 on the Forms & Submissions page of *www.cftc.gov*. Although the no-action letter provides temporary relief from the aggregation notice filing compliance date of February 14, 2017, DMO is providing the portal for participants who choose, of their own accord during the relief period, to file a notice with the CFTC of their intent to take advantage of certain aggregation exemptions under CFTC Regulation 150.4(c).

FDIC Press Release (February 6, 2017) – The FDIC released the economic scenarios that will be used by certain financial institutions with total consolidated assets of more than $10 billion for stress tests required under the Dodd-Frank Act of 2010. The baseline, adverse, and severely adverse scenarios include key variables that reflect economic activity, including unemployment, exchange rates, prices, income, interest rates, and other salient aspects of the economy and financial markets. The FDIC coordinated with the FRB and OCC in developing and distributing these scenarios.

FINRA Regulatory Notice 17-05 (February 1, 2017) – FINRA and the other U.S. members of the Intermarket Surveillance Group have updated several data elements for Electronic Blue Sheets. The updates are, in part, in response to the EC's approval, dated December 14, 2016, of the MIAX PEARL. The updates will be effective on February 6, 2017.

Federal Reserve Press Release (January 30, 2017) – The FRB finalized a rule adjusting its capital plan and stress testing rules, effective for the 2017 cycle. The final rule removes large and noncomplex firms from the qualitative assessment of the Federal Reserve's Comprehensive Capital Analysis and Review, reducing significant burden on these firms and focusing the qualitative review in CCAR on the largest, most complex financial institutions. The scenarios and instructions for the 2017 CCAR cycle will be released by the end of this week.

OCC Bulletin 2017-7 (January 24, 2017) – The OCC is issuing examination procedures to supplement OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," issued October 30, 2013. The supplemental procedures promote consistency when examining national banks and federal savings associations' risk management of third-party relationships.

Available Publications

FDIC Press Release (March 7, 2017) – The FDIC issued "Credit Risk Trends and Supervisory Expectation Highlights," which appears in the Winter 2016 issue of *Supervisory Insights*. The article identifies trends in credit risk and emphasizes to bankers and examiners that now is the time to heed long-standing principles of sound risk-management practices. The article examines growth on bank balance sheets and effective risk-management practices related to commercial real estate, agriculture, and oil and gas-related lending. The "Regulatory and Supervisory Roundup" provides an overview of recently released regulations and supervisory guidance.

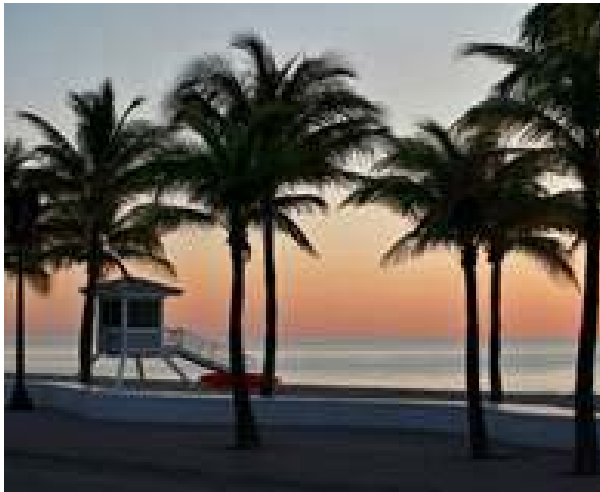
MSRB Press Release (March 6, 2017) – The MSRB published the annual FACT BOOK of municipal securities market data.

OCC Bulletin 2017-11 (February 16, 2017) – The OCC issued the "Changes in Directors and Senior Executive Officers" booklet of the *Comptroller's Licensing Manual*. This revised booklet replaces the booklet of the same title issued in October 2009. The revised booklet updates procedures and requirements following the integration of the Office of Thrift Supervision into the OCC in 2011, and it incorporates revised regulations (12 CFR 5) that became effective July 1, 2015, addressing changes in directors and senior executive officers of national banks, federal savings associations, and federal branches.

MSRB Press Release (February 14, 2017) – Audited financial statements of municipal bond issuers reach investors an approximate average of 200 days after the end of the issuer's fiscal year, based on an updated report from the MSRB. In the six years since the MSRB began analyzing data on the timeliness with which municipal securities issuers and other obligated persons make their audited financials available to the public, the typical timing has remained stable, averaging between 196 and 202 days after the end of the issuer's fiscal year. The *Timing of Annual Financial Disclosures by Issuers of Municipal Securities* report analyzes submissions of annual financial information and audited financial statements made by issuers and obligated persons to the MSRB's EMMA website between January 2010 and December 2016.

Program Update

2017 Securities Compliance Seminar



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

The Planning Committee has been hard at work developing varied agenda topics and confirming noted industry leaders and regulators as speakers. Members include: **David Block** *(MUFG Union Bank);* **Harry Chaffee** *(Renaissance Regulatory Services);* **Jeff Holik** *(Shulman, Rogers, Gandal, Pordy & Ecker, P.A.);* **Dan Newman** *(Broad and Cassel);* **Mike Post** *(MSRB) and* **Keith Watson** *(Fifth Third Bank).*

The current agenda (which can be viewed/downloaded at *www.fmaweb.org*) includes these sessions and confirmed speakers:

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

- Joy Aldridge ■ Compliance Counsel LLC
- Louis Dempsey ■ Renaissance Regulatory Services, Inc.
- Matthew Hardin ■ Hardin Compliance Consulting LLC

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

Key 2017 Legislative and Regulatory Initiatives

- Dr. Sharon Brown-Hruska ■ NERA Economic Consulting
- Carl Fornaris ■ Greenberg Traurig, P.A.
- Steven Greenbaum ■ TradeStation Securities, Inc.
- Joel Oswald ■ Williams & Jensen

Cybersecurity: Avoiding Pitfalls and Legal Exposure

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

Internal Audit Hot Topics and Emerging Issues

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

AML / OFAC Compliance

- Rachel Dondarski ■ OFAC *(Invited)*
- Pamela Kwiatkoski ■ PNC Financial Services
- Daniel Tannebaum ■ PricewaterhouseCoopers LLP

Regulatory Forum—Banking

- James Gallagher ■ OCC
- Michael Orange ■ FDIC
- Jason Seiler ■ FRB-Atlanta

Senior Investors: Risk Management, Existing and Proposed Legislation and Rules

- Eric Bustillo ■ SEC
- Patricia Cowart ■ Wells Fargo & Co.
- Lee Kell ■ Florida Division of Securities
- William Reilly, Jr. ■ Oyster Consulting, LLC

Cross-Sell: What Banks and Broker-Dealers Need to Know

- Mitch Avnet ■ Compliance Risk Concepts
- Robert Jamieson ■ Wiand Guerra King P.A.
- Wesley Moore ■ Quarule, Inc.

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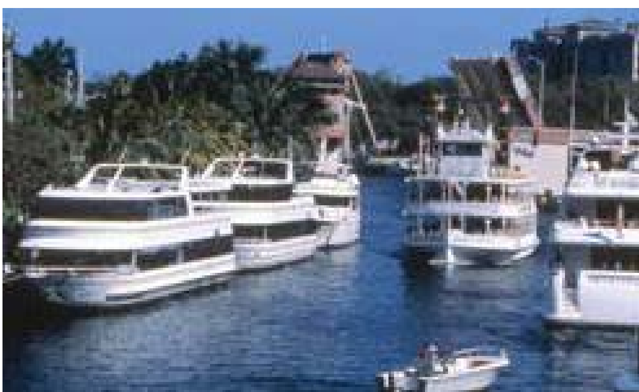
Department of Labor Fiduciary Rule
- Mark Griffin ■ Baker Donelson
- Lisa Herrnson ■ PricewaterhouseCoopers LLP
- James Rabenstine ■ Nationwide Financial Services

CCO Liability: Defining the True Standard of Care
- Joy Aldridge ■ Compliance Counsel LLC
- Matthew Hardin ■ Hardin Compliance Consulting LLC
- Roomy Khan ■ Roomyk, LLC
- Diane Novak ■ DPN Consulting Services

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

Municipal Advisors – The Developing Framework
- Cynthia Friedlander ■ FINRA
- Saliha Olgun ■ MSRB
- Dave Sanchez ■ Norton Rose Fulbright US LLP
- Mary Simpkins ■ SEC

FinTech: Focus on Robo-Advisors
- Charis Jones ■ LPL Financial
- Diane Novak ■ DPN Consulting Services
- Jared Shaw ■ Ernst & Young



Informal group dinners 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.

Peer Groups

Peer group discussions (lead by facilitators) will take place Wednesday and Thursday afternoons. Topics may include: *AML/OFAC; Ask the Regulators; Broker-Dealer Compliance Hot Topics; CCO Liability; Complex/Alternative Products Compliance Issues; Compliance Risk Management; Cross-Selling; Customer Due Diligence; Cybersecurity; DOL Fiduciary Rule; Evolving Role of Compliance; FinTech Compliance; Institutional Compliance Sales; Internal Audit Hot Topics; Key 2017 Legislative and Regulatory Initiatives; Managing Remote Offices and Employees; Municipal Advisors; Municipal Bond Pricing and Disclosure Issues; Registered Investment Advisers; Retail Sales Hot Topics; Senior Investor Protections; Social Media and Advertising; and Surviving a Regulatory Exam/Investigation.*
If you would like to facilitate one of these discussions, please contact FMA.

The FMA room block expires **April 4**…and could sell out any day…so make your reservation right away (click here ***FMA 2017 Compliance Seminar*** or call 954/524-5551) to get the $209 group rate. If you're told the block is full, contact Dorcas Pearce. FMA may have a few rooms in reserve still at the group rate that will be given out on a first-come, first-served basis.

Register today for this important spring conference. Deep discounts are still available to first-timers, teams, regulators and Florida "locals". Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 with questions and/or to register. Online registration is also available at *www.fmaweb.org.*

CLE / CPE

CLE & CPE accreditation (among others) is available. Good news…The Florida Bar has approved the program for 21.5 CLE hours. Pennsylvania, Tennessee and Mississippi have also approved the program for CLE. Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 to request accreditation and/or if you have questions.

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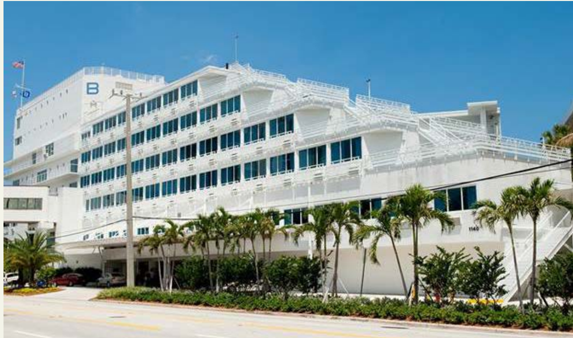
Program Update *(continued from page 17)*



Although the hotel name is one that has hosted the event in the past, this is actually a **different and newly renovated property** (formerly the Yankee Clipper–***www.boceanfortlauderdale.com***. Please don't show up at the wrong hotel!

Pre-Seminar Workshop

Matthew Hardin (Hardin Compliance Consulting LLC); **Joy Aldridge** (Compliance Counsel LLC); and **Louis Dempsey** (Renaissance Regulatory Services) will lead an optional pre-seminar interactive workshop, "**What Are the Nightmares Keeping You Awake at Night?**", on Wednesday, April 26 from 8:30–10:45 am. This workshop presents a unique opportunity to network with other compliance and audit professionals and provide an *interactive* format to address the questions and concerns of the participants. Panelists will discuss a myriad of topics based on the needs and requests of the participants. This session is designed for persons new to the securities industry as well as seasoned compliance and audit personnel. **This is your chance to get answers to specific questions about your compliance and audit programs and to come away with new ideas and resources for making your job more manageable.**

Although no additional registration fee will apply, **space is limited and pre-registration is required – no walk-ins!** Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 for details and/or to register.

Please note…this workshop is closed to regulators and service providers.

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

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Program Update *(continued from page 18)*

2017 Legal and Legislative Issues Conference

FMA's 26th **Legal & Legislative Conference** is set to take place **October 25–26** at the **Hyatt Regency Washington on Capitol Hill** (site of the 2016 program) here in Washington, DC. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance officers/risk managers, internal auditors and regulators. The day and a half program provides participants with an opportunity to share information on current legal and regulatory developments as well as network with peers.

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

FMA requests your input! An e-survey will be sent out in April to a sampling of past conference attendees and friends of the firm asking for topical and speaker suggestions. The Planning Committee will rely greatly on these responses when formulating the program...so please respond quickly and share your thoughts and ideas…even if you do not receive the survey. **Help us make this the best conference ever.**

CLE and CPE accreditation…as well as 2-for 1, first timer, govt/regulatory/SRO and team discounts…will be available, so be sure to budget for (and plan to attend) the 2017 Legal & Legislative Issues Conference. Contact Dorcas Pearce at *dp-fma@starpower.net* or 202/544-6327 with questions and/or to volunteer.

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

Who's News

Scott G. Alvarez, General Counsel, will retire later this year after nearly 36 years of service to the Federal Reserve Board, including more than 12 years as head of the Legal Division. The Board will begin a search for his successor.

Michael Blayney has joined MUFG Union Bank, NA as Director, Assistant General Counsel. Previously, Mike was Counsel in the Financial Institutions Practice Group at WilmerHale.

Elin Cherry, formerly Principal and Head of Capital Markets at Compliance Risk Concepts, is the founder and Chief Executive Officer of Elinphant, LLC, a compliance consulting firm, with offices in New York, New Jersey and Massachusetts, that provides quality risk management and compliance solutions to financial service firms such as banks, broker-dealers, investment advisors, hedge funds, and other service providers.

Stephen Cohen has joined Sidley Austin LLP as a Partner in its Securities & Derivatives Enforcement and Regulatory practice. Steve was formerly Associate Director/Enforcement at the SEC.

Xiomara Corral has joined K&L Gates LLP as Counsel in their Boston office. Previously, she was SVP, Legal Counsel at Santander Securities.

Daniel J. Davis has been named General Counsel at the CFTC. Mr. Davis comes to the CFTC from the law firm of Proskauer Rose LLP, where he was Special Counsel in the Labor & Employment Law Department.

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Who's News *(Continued from page 19)*

Jason Goggins has joined Daly Consulting Group in Washington, DC as Managing Director. Previously, Jason was Chief of Staff, Office of Commissioner J. Christopher Giancarlo at the CFTC.

Arian June has joined Debevoise & Plimpton as a White Collar & Regulatory Defense Counsel. Previously, she was a Securities Enforcement Counsel at WilmerHale.

Jelena McWilliams has joined Fifth Third Bank as EVP, Chief Legal Officer and Corporate Secretary. Previously, she was Chief Counsel and Deputy Staff Director at the U.S. Senate Banking Committee.

CFTC Acting Chairman J. Christopher Giancarlo has announced that General Counsel **Jonathan L. Marcus** will depart the agency. Mr. Marcus joined the agency in 2011 as Deputy General Counsel for Litigation, and was promoted to General Counsel in 2013. **Robert A. Schwartz**, currently the Deputy General Counsel for Litigation and Adjudication, will become the Acting General Counsel.

Jack Murphy has returned to Cleary Gottlieb Steen & Hamilton LLP as Senior Counsel. Previously, Jack was a Managing Director at Promontory Financial Group LLC and CEO of Promontory Regulatory Analytics LLC.

Thomas Rosenkoetter has joined BNP Paribas as US Head of Government Affairs. Previously, Tom was SVP for Federal Public Policy at HSBC Bank USA.

Matthew Vitek has joined FS Investment Solutions, an affiliate of FS Investments, as Vice President, Legal. Previously, Matt was an Associate General Counsel at FINRA.

Mary Jo White has rejoined Debevoise & Plimpton LLP as Senior Chair. Ms. White was formerly Chair of the U.S. Securities and Exchange Commission.