LAST CHANCE TO REGISTER for FMA's LEGAL AND LEGISLATIVE ISSUES CONFERENCE
October 18 – 19, 2018 ■ Washington Marriott Georgetown Hotel ■ Washington, DC
Ask about the 2-for-1 or first-timer registration discount!

MARKET SOLUTIONS

Volume 27, Number 3 | Financial Markets Association | September 2018

In This Issue

2018 Legal and Legislative Issues Conference 18
2019 Securities Compliance Seminar 19
Directory 6
Legislative/Regulatory Actions 2
New Members 2,7,8,9,10
Program Update 18
Sponsor Acknowledgement............ 19
Watch For 11
Who's News 17

MARKET SOLUTIONS

Editor
Dorcas Pearce

Contributing Editors*
Marc-Alain Galeazzi
Barbara R. Mendelson

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

©2018, Financial Markets Association

Fintechs Can Now Be Banks, Too: Overview of the OCC's Fintech Charter and Related Considerations

By Katherine M. Lamberth, Edward P. O'Keefe, and Kristina B. Whittaker
Moore & Van Allen PLLC

As part of its ongoing initiative to promote responsible innovation in the federal banking system, on July 31, 2018 the Office of the Comptroller of the Currency ("OCC") announced that it would begin to accept applications for special purpose national bank charters from financial technology firms ("fintechs"). This announcement came more than a year and half after the OCC first issued a whitepaper outlining a potential federal charter option for fintechs, which are currently subject to state regulation in each of the states in which they operate.

The OCC's announcement also coincided with the release of a report by the Treasury Department aimed at encouraging technological advancements in the financial services industry ("Treasury Report").[1] The Treasury Report contains recommendations on actions that legislative and regulatory stakeholders can take to eliminate impediments to the adoption of emerging technology and includes an endorsement of the OCC's acceptance of applications from fintechs for special purpose national bank charters.

What is the OCC's Fintech Charter?

The "fintech charter" is not a new type of bank charter. Instead, the OCC has issued licensing guidance pursuant to which it will consider granting charters to fintechs under the National Bank Act ("NBA"), which is the same chartering authority applicable to all national banks. Fintechs that receive a national bank charter in accordance with the OCC's licensing guidance (hereinafter, "federally chartered fintechs") would be chartered for "special purpose" operations and thus considered "special purpose national banks."

Special purpose national banks are commercial banks that only engage in, and are only authorized to engage in, a limited range of banking activities. In particular, special purpose national banks only offer a small number of products, target a limited customer base, or have nontraditional or targeted business plans.[2] Common examples of existing special purpose national banks include trust banks that only engage in fiduciary and trust-related activities and credit card banks that only engage in credit card lending activities.[3]

What Type of Activities are Acceptable for a Federally Chartered Fintech?

Special purpose national banks must conduct either fiduciary activities or at least one of the

(Continued on Page 3)

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 banking regulators and the Bureau of Consumer Financial Protection (fka CFPB).

Banking Regulators

Agencies Provide Guidance Regarding Implementation of EGRRCPA

On July 6, 2018, the Federal Reserve, the OCC, and the FDIC (the "Agencies") issued joint guidance, and the Federal Reserve issued additional separate guidance, explaining how the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) impacts rules and regulations administered by the Agencies (together, the "Guidance"). EGRRCPA was enacted on May 24, 2018 and amends the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA), as well as other statutes.

The Guidance helps clarify how various rules and regulations will be enforced after the enactment of the EGRRCPA and prior to any new rulemakings by the Agencies. A summary of the Guidance is provided below:

- The EGRRCPA increased the thresholds for application of certain enhanced prudential standards (EPS) required by DFA. Consistent with the new law, the Guidance states that the Federal Reserve will not take action to require bank holding companies with less than $100 billion in total consolidated assets to comply with such EPS. The Guidance also includes an attachment with detailed information regarding which regulatory and reporting requirements will apply to which entities, and the effective dates of the changes.
- The EGRRCPA removed the requirements for financial companies with total consolidated assets of less than $250 billion that are not bank holding companies to conduct company-run stress tests, but established an effective date of 18 months after enactment. The Agencies used authority under the DFA to essential make this relief effective immediately.
- Under the DFA, bank holding companies and savings and loan holding companies with $50 billion or more in total consolidated assets were subject to an assessment to cover the cost of supervision. The EGRRCPA raised the minimum asset threshold for such an assessment to $100 billion. In the Guidance, the Federal Reserve announced that it would continue to collect assessments for 2017, but will not collect assessments for entities that do not meet the new threshold for the year 2018 and going forward.
- The Guidance provides some clarification to the EGRRCPA's changes to the treatment of high-volatility commercial real estate loans.
- Statutory changes to the Resolution Plan requirement and the Volcker Rule were included in the EGRRCPA but current regulations have not yet been updated to reflect these changes. The Agencies confirmed that they will not enforce the Resolution Plan rule or the Volcker Rule in a manner inconsistent with the EGRRCPA.
- Pending the promulgation of new rules, the Agencies announced that they "would not take action to require an institution subject to the liquidity regulations to exclude from the definition of [High-Quality Liquid Assets (HQLA)]

(Continued on Page 7)

FMA Welcomes New Members!

Autumn Agans	Farm Credit Administration
Elijah Alper	Capital One
Paul Architzel	WilmerHale
Edward Cahillane	Citizens Bank
Daniel Crowley	K&L Gates LLP
Gary DeWaal	Katten Muchin Rosenman LLP

Fintechs Can Now Be Banks…

Continued from Page 1

three core banking functions: receiving deposits, paying checks, or lending money.[4] Pursuant to the OCC's licensing guidance, a federally chartered fintech may engage in any of the core banking functions ***except*** receiving deposits.[5] Accordingly, federally chartered fintechs must engage in banking activities that at least include paying checks or lending money.[6] The OCC also recognizes that as the business of banking evolves, core banking functions such as "paying checks" and "lending money" include equivalent activities such as discounting notes, purchasing bank-permissible debt securities, or engaging in lease-financing transactions and issuing debit cards or facilitating electronic payments, respectively. Federally chartered fintechs may also engage in any other activity that is permissible for a national bank, to the extent the range of activities conducted is consistent with its "special purpose" status.[7] The OCC will determine whether an applicant for a fintech charter can conduct an activity that is not specifically authorized by the NBA, another statute, or OCC precedent (regulations, interpretive letters, or corporate decisions) on a case-by-case basis.[8]

What Federal Regulatory Requirements Would Apply to a Federally Chartered Fintech?

As a special purpose national bank, a federally chartered fintech will generally be subject to the same laws and regulations applicable to all national banks, including minimum capital and liquidity requirements and certain lending limitations. Federally chartered fintechs would also be supervised by the OCC[9] and subject to prudential safety and soundness standards that are tailored based on their business model, size, complexity, and related risks.[10] Additionally, depending on the types of banking activities they conduct, federally chartered fintechs would be required to comply with anti-money laundering requirements under the Bank Secrecy Act ("BSA") and federal consumer financial laws that apply to consumer financial product and service providers generally, such as the Equal Credit Opportunity Act, the Truth in Lending Act, the Electronic Funds Transfer Act, and the Fair Credit Reporting Act, as applicable.

Because they will not receive deposits nor be insured by the Federal Deposit Insurance Corporation ("FDIC"), however, federally chartered fintechs will generally not be required to comply with laws or regulations applicable solely to insured depository institutions. As a condition of charter approval, however, the OCC may indirectly require federally chartered fintechs to comply with certain standards contained in laws and regulations that are only directly applicable to insured depository institutions. For example, although the Community Reinvestment Act will not apply to federally chartered fintechs, the OCC stated that federally chartered fintechs will be required to demonstrate a commitment to financial inclusion, and that such commitments will be imposed as a condition of charter approval.[11]

> *"The primary benefit fintechs can expect from obtaining a federal charter is a streamlined regulatory framework."*

Importantly, however, because federally chartered fintechs will not be FDIC-insured they will not be considered a "bank" for purposes of the Bank Holding Company Act ("BHCA"), which reduces certain regulatory burdens and restrictions that are typically implicated by investing in, or controlling, national banks.[12] In particular, investors that own or acquire a controlling interest in a federally chartered fintech would not be considered a "bank holding company" under the BHCA.[13] As a result, investors may be able to maintain controlling investments in federally chartered fintechs without implicating certain types of regulatory requirements applicable to bank holding companies (such as activity restrictions and nonbanking acquisitions).[14]

As noted, however, the OCC may impose requirements or restrictions similar to those imposed or implicated by the BHCA when considering charter applications. For example, the OCC stated that it will not approve applications that would result in an inappropriate commingling of banking and commerce.[15] Further, the OCC could, as a condition for charter approval, require compliance with certain heightened standards, such as entering into a liquidity maintenance agreement with a parent company.[16]

(Continued on Page 4)

Fintechs Can Now Be Banks…

Continued from Page 3

What Are the Benefits and Burdens of Obtaining a Fintech Charter?

Benefits

The primary benefit fintechs can expect from obtaining a federal charter is a streamlined regulatory framework.

Currently, fintechs that operate on a multistate or nationwide basis are required to comply with a myriad of state financial services laws and regulations that impose licensing requirements and other restrictions on businesses engaged in certain types of activities, including money transmission, consumer lending, and loan brokering.

The scope of state financial services laws and regulations, however, can vary significantly by state, imposing disparate standards (including scope of applicability) across states and resulting in conflicting guidance and obligations. Additionally, fintechs must comply with applicable licensing requirements (including applying for and maintaining any required license) on a state-by-state basis and they are subject to supervision by the relevant regulatory agency in each state in which a license is required. As a result of the fragmented application of state financial services laws and regulations and the state-by-state licensing and supervisory regime, fintechs are often restrained from engaging in geographic expansion and offering more than one type of product or service. Further, fintechs have to dedicate significant financial and personnel resources to obtaining and maintaining state licenses, coordinating and responding to multiple state examinations, and otherwise managing compliance with applicable states' financial services laws and regulations.

Pursuant to the doctrine of federal preemption, however, federally chartered fintechs generally will *not* be subject to state financial services laws and regulations.[17] In particular, federally chartered fintechs will not be required to maintain licenses on a state-by-state basis and they will only be examined by the OCC (unless subject to CFPB supervisory jurisdiction) on a periodic basis.[18] Additionally, federally chartered fintechs engaged in lending money can charge interest at the rate permitted by the state in which it is located (typically home state) on a nationwide basis, instead of having to comply with each states' interest rate restrictions.

> *"…federally chartered fintechs' ability to remain flexible and adaptable to evolving market preferences will depend on the extent to which the OCC is willing to differentiate certain of its supervisory expectations."*

Although there are significant regulatory challenges associated with being a federally chartered bank, the streamlined regulatory framework associated with unitary federal supervision provides greater uniformity and increases certain regulatory efficiencies. Accordingly, regulatory compliance costs may be lower for federally chartered fintechs, particularly once they have aligned their operations to the OCC's regulatory framework.

Burdens

Concerned that fintechs will opt for unitary federal supervision, and about the decreased authority associated with losing a large share of their constituency, in April 2017 the Conference of State Bank Supervisors ("CSBS") an association of state financial service regulatory agencies sued the OCC in an attempt to block the "creation" of a fintech charter.[19] The CSBS's lawsuit (which has since been dismissed because the claim was unripe) was based, in part, on purported public policy concerns that the OCC would not adequately supervise fintechs for compliance with consumer protection and safety and soundness requirements.

Despite the CSBS's protestations, however, prudential supervision of banks whether conducted by the OCC, other federal banking agencies, or state banking agencies, as appropriate is undoubtedly more exacting than non-bank supervision, particularly with respect to matters of safety and soundness and compliance management. Prudential supervision of banks is risk-based and focused on evaluating risk, identifying material and emerging problems, and ensuring that corrective action is taken before

(Continued on Page 5)

Fintechs Can Now Be Banks…

Continued from Page 4

problems compromise safety and soundness or result in the unfair treatment of customers. Additionally, banking agencies, including the OCC, require banks to maintain robust compliance management systems to identify and address potential violations of applicable laws or regulations, including the BSA and consumer financial laws and regulations. As a result, banks are typically more risk-averse and process-driven than their non-bank peers, and therefore slower to adopt emerging technologies or offer new products and services. Accordingly, federally chartered fintechs' ability to remain flexible and adaptable to evolving market preferences will depend on the extent to which the OCC is willing to differentiate certain of its supervisory expectations.

Although the OCC's licensing guidance indicates that it will supervise federally chartered fintechs pursuant to the same standards applicable to national banks generally, the OCC notes that such standards are tailored based on the risks presented by a particular institution. Because of differences in the types and nature of risks presented by federally chartered fintechs, including the prohibition on receiving deposits and lack of FDIC insurance, certain of these standards may be applied on a more or less stringent basis. For example, unlike the majority of insured depository institutions (specifically those with consolidated assets of less than $50 billion), federally chartered fintechs are required to develop contingency plans to address significant financial stress, which must outline strategies for restoring financial strength and options for selling, merging, or liquidating the federally chartered fintech in the event the recovery strategies are not effective. However, other safety and soundness standards, namely those that are particularly important when considering risks related to receiving deposits, may be less stringent as applied to federally chartered fintechs.

The Treasury Department indicated that it would be supportive of tailoring OCC supervision of federally chartered fintechs "to drive economic growth while ensuring appropriate oversight" in the Treasury Report, which recommends that the OCC "tailor compliance requirements under a [fintech] charter to better suit the safety and soundness risks posed by [federally chartered fintechs] in light of the absence of FDIC insurance and potential business model differences.[20]

Conclusion

Because the OCC has not yet chartered or started supervising fintechs pursuant to its recently issued licensing guidance, it is still too early to ascertain whether the fintech charter will offer a meaningful alternative to the fragmented state regulatory framework within which fintechs currently operate. However, fintechs that are seeking a more efficient way to operate on a multistate or nationwide basis should monitor developments to determine whether they could benefit from obtaining a fintech charter going forward. ■

1 U.S. Department of Treasury, A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation (July 31, 2018).

2 OCC, Comptroller's Licensing Manual Charters, at 50.

3 OCC, Exploring Special Purpose National Bank Charters for Fintech Companies, at 3 (Dec. 2016); see also OCC Interpretive Letter 877 (Jan. 2000) (describing the OCC's authority to grant a national bank charter to special purpose banks such as trust banks that engage in fiduciary activities and incidental or trust-related activities).

4 12 C.F.R. § 5.20(e)(1)(i).

5 Fintechs applying for a bank charter that plan to accept deposits would not be subject to evaluation under the OCC's fintech charter licensing guidance. Instead, fintechs that plan to accept deposits would have apply for a bank charter, and Federal Deposit Insurance Corporation ("FDIC") insurance, on the same terms as non-fintech applicants, which this article does not address.

6 OCC, Comptroller's Licensing Manual Supplement Considering Charter Applications From Financial Technology Companies, at 2 n.5 (July 2018).

7 Limitations on the range, or permissible types, of activities that federally chartered fintechs may conduct will generally encompassed in the business plan, and any proposed change in activities would have to receive approval (or non-objection) from the OCC. Activities of certain special purpose national banks may also be limited in the Articles of Association or conditions for charter approval.

8 See OCC, Exploring Special Purpose National Bank Charters for Fintech Companies, at 4 (Dec. 2016).

9 Note, however, that the Bureau of Consumer Financial Protection Bureau would examine a federally chartered fintech for compliance with federal consumer financial laws if it is a "larger participant" in the consumer reporting, auto lending or leasing, debt collection, student loan servicing, or international money transfer markets.

10 See 12 C.F.R. Part 30.

(Continued on Page 6)

Fintechs Can Now Be Banks…

Continued from Page 5

[11] OCC, Comptroller's Licensing Manual Supplement Considering Charter Applications From Financial Technology Companies, at 17 (July 2018).
[12] 12 U.S.C. § 1841(c)(1). Although controlling shareholders federally chartered fintechs will not necessarily be considered bank holding companies because of their controlling interests, there is no prohibition on incorporating a federally chartered fintech into an existing bank holding company structure.
[13] 12 U.S.C. § 1841(a).
[14] However, certain regulatory requirements and restrictions applicable to bank-affiliated entities apply to entities that are not affiliated through a holding company structure. For example, Regulation W applies to any entity that is affiliated to a bank because of common control, regardless of whether the parent company with common control (control of bank and other entity) is a "bank holding company."
[15] OCC, Evaluating Charter Applications From Financial Technology Companies, at 7 (March 2017)
[16] OCC, Comptroller's Licensing Manual Supplement Considering Charter Applications From Financial Technology Companies, at 10 (July 2018).
[17] However, certain state consumer financial laws and state laws of general application, such as criminal law and contract law, will be applicable the extent they do not interfere with federally chartered fintechs' exercise of enumerated or incidental banking powers.
[18] 12 C.F.R. § 7.4000.
[19] Complaint, Conference of State Bank Supervisors v. Office of the Comptroller of the Currency, Case No. 1:17-cv-00763 (D. D.C. Apr. 26, 2017).
[20] U.S. Department of Treasury, A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation, at 72 (July 31, 2018).

Directory

FMA will distribute the **2018 Membership Directory** later this month. The Directory will include each member's full name, accreditation(s), title/department, mailing address (including floor/suite # or mail sort/code), phone number, cell number (if used for business), email and firm web site (if provided).

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

Members were emailed on August 20 and given 72 hours to correct their information on file and/or provide missing data. A "last chance" email went out on September 10 to non-responders with an immediate response request. If you missed this extension, there's still a limited window of opportunity—respond ASAP by email (*dp-fma@starpower.net* – easiest!) or phone (202/544-6327). FMA wants your directory to be as accurate as possible...so be sure to submit your information right away.

Legislative/Regulatory Actions

Continued from Page 2

municipal obligations that it believes meet the statutory criteria for inclusion in HQLA" under the EGRRCPA.

For the Guidance issued jointly by the Agencies, please see: *https://www.fdic.gov/news/news/press/2018/pr18044a.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery*. For the Guidance issued by the Federal Reserve, please see: *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706a1.pdf*.

HVCRE Exposures: New Regulatory Guidance
Section 214 of the EGRRCPA clarified the treatment of acquisition, development, and construction (ADC) loans characterized as high-volatility commercial real estate (HVCRE) exposures under the capital rules. Classification as an HVCRE exposure requires ADC loans to be risk-weighted at 150% under the capital rules, rather than the 100% risk-weighting accorded to other commercial loans. The new legislation provides that, to be subject to the 150% risk weight, HVCRE exposures must meet a new, narrower definition of "HVCRE ADC loans." In other words, unless it meets the HVCRE ADC loan definition, a HVCRE exposure is subject to a 100% risk weight (unless it would carry another risk weight by reason of other circumstances, such as being in default).

On July 6, 2018, the federal banking agencies provided guidance on the impact of the legislative changes to the definition of HVCRE exposures (the "Joint Guidance"). Principal takeaways from the Guidance include the following:

- The legislative changes affecting the treatment of HVCRE exposures were effective immediately on May 24, 2018. As a result, depository institutions can assign the 150% risk weight to only those loans that meet the definition of "HVCRE ADC loans" under the statute.
- When reporting HVCRE exposures on their call reports, depository institutions may use available information to estimate and report as HVCRE exposures those loans that meet the definition of an "HVCRE ADC loan." Depository institutions may refine these estimates as new information becomes available, but will not be required to amend previously filed reports. The Joint Guidance provides an invitation for banks to re-characterize as non-HVCRE exposures (using the new definition) those ADC loans previously reported as HVCRE exposures under the old definition, provided information is available to justify the re-characterization.
- Alternatively, depository institutions can continue to risk-weight and report HVCRE exposures according to the definition currently contained in the instructions to the call report (in other words, the definition under the old regime), pending further action from the federal banking agencies.
- Bank holding companies, savings and loan holding companies, and intermediate holding companies are permitted to estimate and report HVCRE exposures on Schedule HC-R, Part II of the FR Y-9C in a manner consistent with the approach taken by their subsidiary depository institutions, in conformance with the new law.

For our client alert regarding discussing the Joint Guidance, see: *https://media2.mofo.com/documents/180712-hvcre-exposures.pdf*.

Treasury Issues Report Regarding Nonbank Financials, Fintech, and Innovation
On July 31, 2018, the U.S. Department of the Treasury ("Treasury") issued a press release announcing a report entitled "Nonbank Financials, Fintech, and Innovation" (the "Report"). The Report is the fourth and final in a series of reports prepared by Treasury in response to President Trump's February 2017 Executive Order 13772 ("Executive Order").

(Continued on Page 8)

FMA Welcomes *More* New Members!

Mary Alice Donner	Farm Credit Administration
Linda Filardi	Capital One
Jerry Flanagan	Wells Fargo
Eric Friedberg	Stroz Friedberg, an Aon company
Ledina Gocaj	Davis Polk & Wardwell LLP
David Grahn	Farm Credit Administration

Legislative/Regulatory Actions

Continued from Page 7

In response to the Executive Order, and consistent with other reports in the series, the Report identifies laws, treaties, regulations, guidance, reporting, and recordkeeping requirements, as well as other government policies that promote or inhibit federal regulation of the U.S. financial system in a manner consistent with certain core principles enumerated in the Executive Order.

The following are some highlights from the Report:

- **Consumer Access to Account Data.** Treasury makes several recommendations, including removal of legal and regulatory uncertainties that currently limit financial services companies and data aggregators from establishing data-sharing agreements, which would move firms away from screen-scraping to more secure and efficient methods of data access. Treasury recommends a solution developed in conjunction with the private sector that addresses data sharing, standardization, security, and liability issues.
- **Data Security.** Treasury recommends that Congress enact a federal data security and breach notification law.
- **OCC Special Purpose National Bank Charter.** Treasury encourages the OCC to develop a special purpose national bank charter. Shortly after Treasury's release of the Report, the OCC announced that it would begin accepting applications for such charters.
- **Third-Party Guidance.** Treasury recommends that the federal banking agencies coordinate a review of third-party guidance through a notice and comment process, to further harmonize their guidance with a greater emphasis on (1) improving the current tailoring and scope of application of guidance for third-party vendors to improve the efficiency of oversight, and (2) enabling innovations in a safe and prudent manner.
- **Marketplace Lending.** Treasury recommends that Congress codify the "valid when made" doctrine and the role of the bank as the "true lender" of loans it makes.
- **Short-Term Small-Dollar Loans.** Treasury recommends that the Bureau of Consumer Financial Protection ("Bureau") rescind its Payday Rule. Treasury also recommends that both federal and state banking regulators take steps to encourage prudent and sustainable short-term small-dollar installment lending by banks.
- **Debt Collection.** Treasury recommends that the Bureau establish minimum effective federal standards for third-party debt collectors, including standards for the information that must be transferred with the debt for purposes of third-party collection or sale.
- **New Credit Models and Data.** Treasury recommends that regulators further enable the testing of new credit models and data sources that may support credit underwriting decisions.
- **Money Transmitters.** Treasury recommends that the states work to harmonize money transmitter requirements for licensing and supervisory examinations, and that the Bureau provide more flexibility regarding the issuance of remittance disclosures.
- **Federal Reserve Faster Payments.** Treasury encourages the Federal Reserve to move quickly in facilitating a faster retail payments system, including by considering development of a real-time settlement service that would allow for more efficient and widespread access to innovative payment capabilities.

(Continued on Page 9)

FMA Welcomes *More* New Members!

Julian Hammar	Morrison & Foerster LLP
Bret Hester	TIAA
Megha Kalbag	Milbank, Tweed, Hadley & McCloy LLP
Catherine Leef Martin	Milbank, Tweed, Hadley & McCloy LLP
Jordan Milev	NERA Economic Consulting
Jonathan Olin	Capital One
Robert Pargac	Promontory, an IBM Company

Legislative/Regulatory Actions

Continued from Page 8

- **Regulatory Sandboxes.** Treasury recommends that federal and state financial regulators establish a unified solution that coordinates and expedites regulatory relief under applicable laws and regulations to permit meaningful experimentation for innovative products, services, and processes.

For our client alert regarding discussing the Report, see: *https://media2.mofo.com/documents/180806-treasury-occ-fintech.pdf.*

OCC Begins Accepting Applications for Fintech Charter
On July 31, 2018, the Office of the Comptroller of the Currency (OCC) announced that it would begin accepting applications for special purpose national bank charters from companies that are engaged in the business of banking, but do not take deposits. The OCC press release was accompanied by a "Policy Statement on Financial Technology Companies' Eligibility to Apply for National Bank Charters" and a Supplement to the Comptroller's Licensing Manual, titled "Considering Charter Applications From Financial Technology Companies" ("Supplement").

Notably, the special purpose national bank charter would not be permitted to accept deposits, which means that the bank holding company limitations on permissible activities would not apply to parent companies of chartered entities.

The Supplement sets forth key considerations for agency review of the charter application, including evaluation of:

- Whether the applicant's organizers, managers, and directors are well qualified, with diverse experience in relevant areas, and whether they have experience in highly regulated industries, including experience needed to implement the proposed bank's business plan.
- The applicant's business plan, which should describe the bank's proposed activities, define the market that the proposed bank plans to serve and the products and services it will offer, establish the bank's written goals and objectives, explain how the bank will organize its resources to meet its goals and measure its progress, and articulate a clear path and timeline to profitability.
- The business plan's description of the proposed bank's risk management framework to identify, measure, monitor, and control risks and the plan's description of the bank's proposed internal system of controls to monitor and mitigate risk, including management information systems.
- The applicant's risk assessment, which should demonstrate a realistic understanding of risk, describe management's assessment of all risks inherent in the proposed business model and products and services, and set out the degree of risk the bank intends to assume (i.e., its risk appetite) and how it would manage the identified risks.
- The applicant's capital, the minimum and ongoing levels of which should be commensurate with the risk and complexity of the proposed activities, as well as its liquidity profile and funds management.
- The applicant's commitment to financial inclusion.
- The applicant's contingency plan, which should address significant financial stress that could threaten the viability of the bank and outline strategies for restoring the bank's financial strength and options for selling, merging, or liquidating the bank in the event the recovery strategies are not effective.

For our client alert regarding discussing the OCC's action, see: *https://media2.mofo.com/documents/180806-treasury-occ-fintech.pdf.*

Federal Agencies Issue Joint Statement Reaffirming That Supervisory Guidance Is Not Law
On September 11, 2018, the federal banking agencies and the Bureau issued a joint statement on the role

(Continued on Page 10)

FMA Welcomes *More* New Members!

Jim Pastore	Debevoise & Plimpton LLP
Nancy Perkins	Arnold & Porter Kaye Scholer LLP
John Pinto	Renaissance Regulatory Services
Gil Rudolph	Greenberg Traurig, LLP
Kim Roberts	King & Spalding International LLP

Legislative/Regulatory Actions

Continued from Page 9

of supervisory guidance for regulated institutions. The joint statement reaffirms the historic role of supervisory guidance. Specifically, the joint statement emphasizes that supervisory guidance "does not have the force and effect of law," and that "the agencies do not take enforcement actions based on supervisory guidance." The agencies contrasted supervisory guidance with regulations "that generally have the force and effect of law [and that] generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document."

For our client alert on the joint statement by federal agencies on supervisory guidance, please visit: *https://media2.mofo.com/documents/180912-supervisory-guidance.pdf.*

Bureau of Consumer Financial Protection Update

Citibank Agrees to Settlement Concerning Rate Re-evaluation Practices
On June 29, 2018, Citibank reached a settlement with the Bureau under which the bank must refund $335 million to customers for violations of the Truth in Lending Act and Regulation Z. The Bureau alleged that Citibank failed to re-evaluate and reduce the annual percentage rates (APRs) for 1.75 million consumer credit card accounts over eight years. Citibank also failed to maintain reasonable policies and procedures to conduct re-evaluations of the APR, as required under Regulation Z. According to the Bureau's press release, the Bureau did not assess civil money penalties against Citibank based on a number of factors, including that Citibank self-identified and self-reported the violations to the Bureau, and self-initiated remediation to affected consumers.

TCF National Bank Agrees to Settlement Related to Overdraft Services
On July 20, 2018, the Bureau filed a proposed settlement with TCF National Bank ("TCF") regarding the claims related to TCF's marketing and sales of overdraft services arising under the Consumer Financial Protection Act (CFPA). Related claims arising under the Electronic Fund Transfer Act and Regulation E were dismissed by the district court in September 2017. The proposed settlement resolves the remaining claims, which alleged deceptive and abusive conduct under the CFPA. Specifically, the Bureau alleged that TCF's application process obscured from consumers the overdraft fees it charged for one-time debit purchases and ATM withdrawals. The Bureau also alleged that TCF misled consumers by implying that providing consent to these overdraft fees was mandatory for new customers to open an account. Under the terms of the proposed settlement, TCF will pay $25 million in restitution and a $5 million civil money penalty, which was adjusted to account for a $3 million penalty imposed by the OCC in a related settlement.

The Bureau Amends Regulation P with the GLBA Annual Notice Exception
On August 17, 2018, the Bureau published a final rule amending its Regulation P to include an exception to the Gramm-Leach-Bliley Act (GLBA) annual privacy notice obligation. Nearly three years ago, the Fixing America's Surface Transportation Act (FAST Act) amended the GLBA to provide for such an exception. Specifically, a financial institution is not required to provide an annual privacy notice to its customers if: (1) the institution shares nonpublic personal information (NPI) about customers with nonaffiliated third parties only to the extent

(Continued on Page 11)

FMA Welcomes *More* New Members!

Shigeru Shimizu	Bank of Japan
Eulonda Skyles	Capital One
Nicholas Smith	Milbank, Tweed, Hadley & McCloy LLP
Michael Spafford	Paul Hastings LLP
Jennifer Talbert	Morrison & Foerster LLP
Sarah Vigneron	Renaissance Regulatory Services
Cal Waits	Citibank
Tommy Watkins	Wells Fargo
Jeremiah Williams	Ropes & Gray LLP
Zachary Zweihorn	Davis Polk & Wardwell LLP

Legislative/Regulatory Actions

Continued from Page 10

permitted by exceptions in the GLBA or Regulation P, and (2) the financial institution has not changed its policies and practices with respect to disclosing NPI from those described in the most recent privacy notice sent to customers. The Bureau's amendment to Regulation P aligns the regulation with the GLBA, as amended by the FAST Act. The final rule took effect on September 17, 2018, but as a practical matter, the exception to the annual notice obligation had been effective since the enactment of the FAST Act.

For our client alert on the amendment to Regulation P, please visit: *https://media2.mofo.com/documents/180828-cfpb-fast-act.pdf.*

The Bureau Proposes Revisions to Its Trial Disclosure Program

On September 10, 2018, the Bureau proposed revisions to its existing Policy to Encourage Trial Disclosure Programs ("Policy"). The Policy, created in 2013 under authority granted to the Bureau by the DFA, permits approved entities to conduct trial disclosure programs to improve existing disclosures and provides a safe harbor or waiver from complying with the corresponding regulatory requirements. However, the Bureau noted that the Policy has "failed to effectively encourage trial disclosure programs" and the Bureau has yet to approve a program since the Policy's inception. The Bureau's proposed revisions are intended to encourage companies to conduct trial disclosure programs and create a "disclosure sandbox." The revised Policy would streamline the application and review process; grant or deny applications within 60 days of submission; establish an expected two-year time frame for the testing of disclosures; specify procedures for permitting companies to continue to use disclosures that test successfully; and promote coordination with state regulators so that entities participating in state regulatory sandboxes can also participate in the Bureau's disclosure sandbox, without applying separately to the Bureau. The Bureau requested comments on the proposed Policy revisions by October 10, 2018. ■

**Jeremy R. Mandell, Elyse S. Moyer, and Mark R. Sobin contributed to this column.*

Watch For

CFTC

CFTC Press Release 7771-18 (August 21, 2018) – The CFTC unanimously approved final amendments clarifying and simplifying its regulations governing chief compliance officer duties and annual compliance reporting requirements for futures commission merchants, swap dealers and major swap participants. The amendments clarify a CCO's duties by providing reasonable standards and guidance on effective compliance. The amendments also modify the CCO annual report content and submission requirements to reduce report preparation burdens while also making the reports more effective. By adopting these amendments, the CFTC is also further synchronizing the CCO regulations with the comparable regulations adopted by the SEC for security-based swap dealers. The further convergence of the two regimes will allow greater efficiencies for the market intermediaries registered with both agencies.

CFTC Press Release 7756-18 (July 16, 2018) – The CFTC issued a Customer Advisory warning customers to use caution and do extensive research before purchasing virtual coins or tokens, including those that are self-described as "utility coins," or "consumption coins." The advisory, titled "Use Caution When Buying Digital Coins or Tokens," warns customers to view any promises or guarantees of future value as a "red flag." Since this market is still very new, there is no commonly accepted standard to assigning a value on a particular virtual coin or token. This is an important reason to beware of coins or tokens sold today with the claim that they can buy goods, services, or platform access in the future.

FDIC

FDIC Press Release (September 13, 2018) – The FDIC is seeking comment on a proposed rule to implement

(Continued on Page 12)

Watch For *(Continued from page 11)*

Section 202 of the Economic Growth Act to exempt certain reciprocal deposits from being considered as brokered deposits for certain insured institutions. This rulemaking is the first of a two-part effort the FDIC plans to take to revisit the brokered deposit rules. For the second part, the FDIC plans to seek comments later this year on the agency's overall brokered deposit and rate cap regulations. Comments on the proposed rule to implement Section 202 of the Economic Growth Act on reciprocal deposits will be accepted for 30 days after publication in the *Federal Register*.

Federal Reserve Board

Federal Reserve Press Release (September 11, 2018) – Five federal agencies issued a joint statement explaining the role of supervisory guidance for regulated institutions. The statement from the agencies (FRB, BCFP [fka CFPB], FDIC, NCUA & the OCC) confirms that supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. The joint statement explains that supervisory guidance can outline the agencies' supervisory expectations or priorities and articulate the agencies' general views regarding appropriate practices for a given subject area.

Federal Reserve Press Release (August 23, 2018) – Federal banking agencies issued interim final rules expanding examination cycles for qualifying small banks and U.S. branches and agencies of foreign banks (generally increased from $1 billion in total assets to $3 billion). Comments will be accepted for 60 days after the interim final rules' publication in the *Federal Register*.

Federal Reserve Press Release (August 22, 2018) – Three federal banking agencies issued an interim final rule regarding the treatment of certain municipal securities as high-quality liquid assets. The Economic Growth Act requires the agencies to treat a municipal obligation as a high-quality liquid asset under their liquidity coverage ratio rules if that obligation is considered "liquid and readily-marketable" and "investment grade." This interim final rule takes effect upon publication in the *Federal Register* and comments will be accepted for 30 days after the interim final rule's publication in the *Federal Register*.

Federal Reserve Press Release (July 6, 2018) – The FRB issued a statement describing how, consistent with the recently enacted Economic Growth Act, the Board will no longer subject primarily smaller, less complex banking organizations to certain Board regulations, including those relating to stress testing and liquidity. The Board's statement also provides guidance on the Board's implementation of other Economic Growth Act changes, including those relating to assessments and high volatility commercial real estate exposures. The Board will take the positions described in the statement in the interim until the Board incorporates the Economic Growth Act's changes into its regulations.

FINRA

FINRA Regulatory Notice 18-31 (September 14, 2018) – This Notice provides firms with information regarding recent guidance issued by staff of the SEC's Division of Trading and Markets regarding the use of third-party recordkeeping services.

FINRA Regulatory Notice 18-29 (September 12, 2018) – FINRA is issuing this Notice to remind firms of their obligations under the FINRA trade reporting rules and other applicable FINRA and SEC rules when effecting over-the-counter trades in equity securities on a "net" basis.

FINRA Regulatory Notice 18-27 (September 6, 2018) – Effective October 1, 2018, FINRA is restructuring its representative-level qualification examination program. As part of this restructuring, FINRA has developed the Securities Industry Essentials examination and revised nine of its existing representative-level qualification examinations. FINRA has also eliminated seven representative-level examinations that have become outdated or have limited utility. In addition, FINRA has (1) set the fee for the SIE examination; (2) revised the fees for the representative-level examinations that FINRA is retaining; and (3) revised the administration and delivery fee for the Municipal Securities Representative (Series 52) examination.

FINRA Regulatory Notice 2018-25 (August 13, 2018) – FINRA is issuing this notice to remind Alternative Trading Systems of their supervision obligations. As registered broker-dealers and FINRA members ATSs—like other broker-dealer trading platforms—are required to maintain

(Continued on Page 13)

Watch For *(Continued from page 12)*

supervisory systems that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules including, for example, rules on disruptive or manipulative quoting and trading activity.

FINRA Regulatory Notice 2018-24 (August 10, 2018) – FINRA has released an updated Security Futures Risk Disclosures Statement to replace the one that was originally issued in 2002, and a new integrated supplement. The implementation date of the Updated Statement and 2018 Supplement is September 5, 2018.

FINRA Special Notice (July 30, 2018) – FINRA requests comments on financial technology innovation in the broker-dealer industry including how FINRA can support fintech development consistent with its mission. FINRA also requests specific comment on certain fintech areas, including the provision of data aggregation services, supervisory processes concerning the use of artificial intelligence, and the development of a taxomony-based machine-readable rulebook.

FINRA Information Notice (July 13, 2018) – FINRA has received reports of member firms receiving telephone calls from persons claiming to work for FINRA in an attempt to deceive firms into revealing confidential information. Firms that receive telephone calls or emails purportedly from someone at FINRA requesting *any* type of information should use caution and verify the identity of the caller or sender before providing any information or responding to an email.

FINRA Regulatory Notice 18-20 (July 6, 2018) – FINRA is monitoring developments in the digital asset marketplace and is undertaking efforts to ascertain the extent of FINRA member involvement related to digital assets. FINRA is issuing this notice to encourage each member to promptly notify FINRA if it, or its associated persons or affiliates, currently engages, or intends to engage, in any activities related to digital assets, such as cryptocurrencies and other virtual coins and tokens.

MSRB

MSRB Press Release (September 19, 2018) – The MSRB filed with the SEC a proposed rule change to amend MSRB Rule G-3, on professional qualification requirements, to enhance the professional qualification standards for municipal advisor professionals who act in a principal capacity at their firms. The proposed amendments to Rule G-3, in part, will require municipal advisor principals to pass both the existing MSRB Municipal Advisor Representative Qualification Examination (Series 50) and a new Municipal Advisor Principal Qualification Examination (Series 54) to be appropriately qualified as a municipal advisor principal. The MSRB anticipates offering a pilot version of the Series 54 examination from February 2019 through June 2019. Any municipal advisor principal will be able to take the pilot exam during the pilot period. Thereafter, when the permanent version of the Series 54 examination becomes available, all municipal advisor principals will have one year to become appropriately qualified by taking and passing the exam.

MSRB Notices 2018-24 & 25 (September 17, 2018) – The MSRB published *FAQs Regarding the Use of Municipal Advisory Client Lists and Case Studies Under MSRB Rule G-40, on Advertising by Municipal Advisors* providing further explanation of Rule G-40, particularly with respect to a municipal advisor's use of municipal advisory client lists and case studies. The MSRB also is publishing a request for comment on draft guidance regarding the content standards under Rule G-40. Comments are due October 17, 2018.

MSRB Notice 2018-22 (September 7, 2018) – The MSRB is seeking comment on draft interpretive guidance related to "pennying" and draft amendments to existing guidance on best execution relating to the posting of bid-wanteds on multiple trading platforms. In addition, the MSRB also seeks comment as to whether there are other secondary market trading practices that could benefit from additional regulatory guidance or clarity, or whether there are any MSRB requirements related to secondary market trading practices that commenters may feel are no longer necessary and could be removed from and/or amended in MSRB rules. Comments should be submitted no later than November 6, 2018.

MSRB Press Release (August 27, 2018) – The MSRB published a request for information on the accessibility, methodology and utility of the yield curves and other benchmarks currently available in the municipal market. Answers to questions posed in the request for information and any supporting data should be submitted to the MSRB no later than November 27, 2018.

MSRB Press Release (August 21, 2018) – The MSRB said it supports a decision by the SEC that will result in issuers of municipal securities and obligated

(Continued on Page 14)

Watch For *(Continued from page 13)*

persons publicly disclosing additional information about bank loans and other material financial obligations, certain material terms in connection with financial obligations, and specified events that reflect financial difficulties. The SEC decision to amend its Rule 15c2-12, designed to ensure the public availability of certain disclosures about municipal securities, means that additional information about bond issuers will be available on the MSRB's Electronic Municipal Market Access website. The MSRB is in the process of updating the EMMA website to accept and display the new disclosures. EMMA currently accepts and displays bank loan and alternative financing disclosures on a voluntary basis. Under Rule 15c2-12, municipal securities underwriters generally must secure an agreement from issuers and obligated persons to make publicly available certain ongoing information about the security. Examples include annual financial statements and the occurrence of certain material events. The new disclosures required by the SEC's action must be included in continuing disclosure agreements in connection with offerings that occur after the compliance date specified in the SEC's order (180 days following publication of the order in the *Federal Register*).

MSRB Notice 2018-18 (August 14, 2018) – The MSRB requests comment on a draft set of frequently asked questions regarding the use of social media by brokers, dealers or municipal securities dealers, as part of their municipal securities activities, or municipal advisors, as part of their municipal advisory activities. In particular, these draft FAQs illustrate the application to social media of MSRB G-21, on advertising by dealers, and of MSRB Rule G-40, on advertising by municipal advisors. Comments should be submitted no later than September 14, 2018.

MSRB Notice 2018-18 (August 14, 2018) – The MSRB is providing its *Compliance Advisory for Municipal Advisors* as a compliance resource to assist municipal advisors in their continuing compliance efforts. The Advisory highlights certain MSRB rules and provides considerations a municipal advisor could use in assessing its own policies and procedures for compliance with the applicable rules.

MSRB Notice 2018-17 (August 14, 2018) – The MSRB published its annual *Compliance Advisory for Brokers, Dealers and Municipal Securities Dealers*. This Compliance Advisory highlights certain MSRB rules and provides examples of compliance considerations a dealer could use in assessing its own policies and procedures for compliance with the applicable rules.

July 26, 2018 – The MSRB published a new compliance resource for municipal securities dealers to assist in their efforts to comply with provisions in MSRB Rules G-15 and G-30 related to mark-up disclosure and determining prevailing market price. Dealers may wish to use this resource to support their continuing compliance efforts and in assessments of their relevant policies and procedures. This compliance resource summarizes amendments to Rule G-15 and Rule G-30 that went into effect May 14, 2018 and relevant aspects of certain other key MSRB obligations. The compliance resource also offers considerations designed to assist dealers with continued compliance.

MSRB Notice 2018-16 (July 23, 2018) – Effective October 1, 2018, the rates of assessment for the MSRB's underwriting, transaction and technology fees under MSRB Rule A-13 will be reduced temporarily by approximately one-third to provide short-term limited relief to dealers. The lower assessment rate will apply only for activity that occurs during the period October 1, 2018 – December 31, 2018. Rates of assessment will revert to current levels effective January 1, 2019.

MSRB Press Release (July 19, 2018) – The MSRB requested comment on draft amendments to MSRB rules on syndicate practices and disclosure of information related to primary offerings. The request for comment includes several potential amendments to MSRB Rule G-11 regarding syndicate practices, including requiring senior syndicate managers to provide specified information to issuers and standardizing the process for issuing a "free-to-trade wire" to communicate to all syndicate members at the same time that the new issue is free to trade. The MSRB's request for comment also includes potential changes to MSRB Rule G-32 to, among other things, collect additional information on Form G-32 to support municipal market transparency efforts. Comments should be submitted no later than September 17, 2018.

MSRB Notice 2018-14 (June 27, 2018) – The MSRB requests comment from market participants and the public on a draft set of frequently asked questions related to the application of MSRB Rule G-40, on advertising by municipal advisors, to the use of municipal advisory client lists and

(Continued on Page 15)

Watch For *(Continued from page 14)*

case studies by municipal advisors. This notice seeks information and insight from commenters to further inform the MSRB's development of the FAQs for planned publication. The MSRB invites market participants and the public to submit comments in response to this request, along with any other information that they believe would be useful to the MSRB in developing the FAQs through July 27, 2018.

OCC

OCC Bulletin 2018-30 (September 19, 2018) – The OCC is proposing to amend its enforceable guidelines relating to recovery planning standards for insured national banks, insured federal savings associations, and insured federal branches (banks) in order to limit the application of the guidelines to the largest, most complex banks and thereby provide regulatory burden relief to smaller, less complex institutions.

OCC News Release 2018-78 (August 15, 2018) – The OCC released an update to the Bank Accounting Advisory Series. This edition of the BAAS reflects accounting standards issued by the Financial Accounting Standards Board on such topics as hedging and credit losses. Additionally, this edition includes recent answers to frequently asked questions from the industry and examiners. The OCC updates the BAAS annually.

OCC News Release 2018-74 (July 31, 2018) – The OCC announced it will begin accepting applications for national bank charters from nondepository financial technology (fintech) companies engaged in the business of banking. Qualifying fintech companies also may apply for federal charters under the OCC's authority to charter full-service national banks and other special purpose banks, such as trust banks, banker's banks, and credit card banks.

SEC

SEC Press Release 2018-173 (September 4, 2018) – Five federal financial regulatory agencies on extended until Oct. 17, 2018, the comment period for a proposed rule to simplify and tailor compliance requirements for the "Volcker rule." The Volcker rule generally restricts banking entities from engaging in proprietary trading and from owning or controlling hedge funds or private equity funds.

SEC Press Release 2018-158 (August 20, 2018) – The SEC adopted amendments to enhance transparency in the municipal securities market. The adopted amendments to Rule 15c2-12 of the Securities Exchange Act will focus on material financial obligations that could impact an issuer's liquidity, overall creditworthiness, or an existing security holder's rights. The compliance date for the amendments is 180 days after they are published in the *Federal Register*.

SEC Press Release 2018-143 (July 24, 2018) – The SEC voted to propose rule amendments to simplify and streamline the financial disclosure requirements applicable to registered debt offerings for guarantors and issuers of guaranteed securities, as well as for affiliates whose securities collateralize a registrant's securities. The proposed amendments to Rules 3-10 and 3-16 of Regulation S-X would focus disclosures on information that is material to investors given the specific facts and circumstances, make the disclosures easier to understand, and reduce the costs and burdens for registrants. By reducing compliance burdens, the proposed amendments should further encourage issuers to register debt offerings, and thus provide investors with additional protections that are not present in unregistered offerings. The proposal will have a 60-day public comment period following its publication in the *Federal Register*.

SEC Press Release 2018-136 (July 18, 2018) – The SEC announced it has voted to adopt amendments to Regulation ATS to enhance operational transparency and regulatory oversight of alternative trading systems that trade stocks listed on a national securities exchange. Certain ATSs will be required to file detailed public disclosures on new Form ATS-N which will be made publicly available on the Commission's website via the Commission's EDGAR system.

SEC Press Release 2018-135 (July 18, 2018) – The SEC issued final rules to amend Securities Act Rule 701, which provides an exemption from registration for securities issued by non-reporting companies pursuant to compensatory arrangements. As mandated by the Economic Growth Act, the amendment increases from $5 million to $10 million the threshold in excess of which the issuer is required to deliver additional disclosures to investors. In addition, the Commission is soliciting comment on possible ways to modernize rules related to compensatory arrangements in light of the significant evolution in both the types of compensatory offerings and the composition of the workforce since the

(Continued on Page 16)

Watch For *(Continued from page 15)*

Commission last substantively amended these rules in 1999. The public comment period will remain open for 60 days following publication of the concept release in the *Federal Register*.

SEC Press Release 2018-121 (June 28, 2018) – The SEC approved several final and proposed rules in its latest open meeting, including : 1) adoption of amendments to modernize the definition of "smaller reporting company," which was established in 2008; 2) adoption of amendments to require the use of the Inline XBRL format in certain filings, which were proposed in 2017 and has been under study for many years; 3) a proposal that would permit certain exchange-traded funds to operate without first obtaining a fund-specific exemptive order from the Commission, which is a process that has not changed since the first ETF was approved in 1992; 4) adoption of amendments related to disclosures of liquidity risk management for open-end funds, which were proposed earlier this year; and 5) a proposal to amend rules that govern the Commission's whistleblower program. An archived webcast of the meeting will be available on *sec.gov.*

SEC Press Release 2018-119 (June 28, 2018) – The SEC adopted amendments to public liquidity-related disclosure requirements for certain open-end funds. Under the amendments, funds would discuss in their annual or semi-annual shareholder report the operation and effectiveness of their liquidity risk management programs. This requirement replaces a pending requirement that funds publicly provide a quantitative end-of-period snapshot of historic aggregate liquidity classification data for their portfolios on Form N-PORT. These amendments will become effective 60 days after they are published in the *Federal Register*.

SEC Press Release 2018-118 (June 28, 2018) – The SEC voted to propose a new rule and form amendments intended to modernize the regulatory framework for exchange-traded funds by establishing a clear and consistent framework for the vast majority of ETFs operating today. ETFs that satisfy certain conditions would be able to operate within the scope of the Investment Company Act of 1940 and to come to market without applying for individual exemptive orders. The proposal would therefore facilitate greater competition and innovation in the ETF marketplace, leading to more choice for investors. ETFs relying on the rule would have to comply with certain conditions designed to protect investors, including conditions on transparency and disclosure. The SEC will seek public comment on the proposal for 60 days.

Available Publications

OCC News Release 2018-20 (July 23, 2018) – The OCC issued the "Capital and Dividends" booklet of the *Comptroller's Handbook*. The revised booklet presents the regulatory capital framework and discusses the regulatory capital rules that define regulatory capital and establish minimum capital standards. The booklet also provides guidance to examiners for assessing banks' capital adequacy and compliance with capital and dividend regulations.

OCC News Release 2018-18 (June 28, 2018) – The OCC issued the revised "Bank Supervision Process," "Community Bank Supervision," "Compliance Management Systems," and "Large Bank Supervision" booklets of the *Comptroller's Handbook*. In addition, the OCC updated the "Federal Branches and Agencies Supervision" booklet.

Who's News

Elizabeth Baird and **Christian Sabella** have been named Deputy Directors in the SEC's Division of Trading and Markets. Ms. Baird joins the SEC from Morgan, Lewis & Bockius LLP and Mr. Sabella has been an Associate Director in the division's Office of Clearance and Settlement since 2015.

Dan M. Berkowitz has been confirmed by the U.S. Senate to be a Commissioner at the CFTC. Previously, Dan was a Partner at WilmerHale, co-chairing the firm's futures and derivatives practice.

Charles Callahan has joined the Office of Professional Responsibility at U.S. Customs and Border Protection as a Special Agent. Previously, Charles was a Special Agent in the Office of the Inspector General at the Department of Homeland Security.

Michael Curley has joined Robertson Stephens as CCO. Previously, Mike was a Senior Investment Officer, Trust & Investment Management at Exchange Bank.

Marco Egoavil has been named Head of Financial Crimes Compliance – Corporate Banking Group at Wells Fargo. Previously, Marco was Head of Financial Crimes Risk Management for GTFx (Wells Fargo International).

Daniel Gregus has been named National Associate Director of the Clearance and Settlement examination program in the SEC's Office of Compliance Inspections and Examinations. Mr. Gregus has successfully led this program in an acting role since October 2016. He has served as the Associate Regional Director for the Broker-Dealer Examination Program in the SEC's Chicago office since June 2015 and will continue in that role while formally assuming this additional leadership position in OCIE.

Bradford Hardin has been named Partner at Davis Wright Tremaine LLP.

Jeff Holik is now affiliated as Of Counsel with Matasar Jacobs LLC, a litigation and financial services regulatory boutique law firm in Cleveland, Ohio. Jeff will continue his expert witness practice from Florida, where he relocated earlier this year.

Elizabeth Khalil has joined CIBC US as Managing Director and Associate General Counsel. Previously, Elizabeth was a Member at Dykema.

Avery Kranz has joined BMO Capital Markets as Managing Director, Global Compliance Regulatory Reporting and Development. Previously, Avery was Chief Compliance Officer at KGS-Alpha Capital Markets, LP.

Theresa Lamie has been promoted to Business Risk Office - Senior Risk Manager / Investing, Wealth Management, Robo Advisor at Capital One.

S. Dean Lesiak has joined Central Pacific Bank as SVP, Division Manager. Previously, Dean was a Senior Manager at Deloitte.

Jeremy Newell has joined the Bank Policy Institute as Executive Vice President, General Counsel & Chief Operating Officer. Previously, Jeremy was Executive Managing Director, General Counsel & Head of Regulatory Affairs at The Clearing House Association.

Saliha Olgun has been promoted to Associate General Counsel at the Municipal Securities Rulemaking Board.

Rebecca J. Olsen has been named Director of the SEC's Office of Municipal Securities. Ms. Olsen has served as OMS's Acting Director since September 2017.

Program Update

2018 Legal and Legislative Issues Conference

Be sure to ask for the 2-for-1 or first-timers registration discount!

Registrations are still being accepted for FMA's 27th **Legal & Legislative Conference** taking place **October 18–19** at the **Washington Marriott Georgetown** here in Washington, DC. This annual program…just a day and a half away from the office…is a high-level forum for banking and securities attorneys as well as senior compliance officers/risk managers, internal auditors and regulators. Participants are provided with a unique opportunity to share information on current legal and regulatory developments as well as network with peers and regulators in an intimate environment. And, **attendees are eligible for CLE and CPE accreditation (among others).**

The program planning committee has devised a timely agenda including noted industry leaders and senior regulatory officials. Members include: **Dr. Sharon Brown-Hruska (NERA Economic Consulting); Edward Cahillane (Citizens Bank); Linda Filardi (Capital One); Daniel Kearney, Jr. (WilmerHale); Barbara Mendelson (Morrison & Foerster LLP)** and **Robert Pargac (Promontory, an IBM Company)**.

The agenda, focusing on current areas of regulatory and Congressional activity/scrutiny, includes these sessions and confirmed speakers:

Banking General Counsels

- Ted Dowd — OCC
- Laurie Schaffer — FRB
- Charles Yi — FDIC

Reexamining Dodd-Frank

- Daniel Crowley — K&L Gates LLP
- Michael Halloran — Halloran Farkas + Kittila LLP
- John Ivan — Capital Forensics, Inc.
- Daniel Kearney — WilmerHale

Cryptocurrency, Blockchain and Fintech: Innovation and Regulation

- Elijah Alper — Capital One
- Gary DeWaal — Katten Muchin Rosenman LLP
- Daniel Gorfine — CFTC
- Jordan Milev — NERA Economic Consulting

First-timer and 2-for-1 registration discounts are available.

Recent Banking and Securities Enforcement Actions and Litigation

- Sharon Brown-Hruska — NERA Economic Consulting
- Mark Carberry — J.P. Morgan
- Melissa Hodgman — SEC
- James McDonald — CFTC *(Invited)*
- Michael Spafford — Paul Hastings LLP
- Jeremiah Williams — Ropes & Gray LLP

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

- Jennifer Archie — Latham & Watkins LLP
- Eric Friedberg — Stroz Friedberg, an Aon company
- Jim Pastore — Debevoise & Plimpton LLP
- Cal Waits — Citibank

Derivatives: Market Rebounds and Refinements in Regulation

- Paul Architzel — WilmerHale
- Julian Hammar — Morrison & Foerster LLP
- Ananda Radhakrishnan — American Bankers Association
- Maggie Sklar — CFTC

Securities General Counsels

- Daniel Davis — CFTC
- Marie-Louise Huth — SEC
- Lanny Schwartz — MSRB
- Thomas Selman — FINRA
- Carol Wooding — National Futures Association

SEC Division Reports

- Michele Anderson — Corporation Finance
- Melissa Hodgman — Enforcement
- John Polise — OCIE
- Christian Sabella — Trading and Markets
- Sarah ten Siethoff — Investment Management

Privacy Law: Impact on Financial Institution Operations

- Eulonda Skyles — Capital One
- Nancy Perkins — Arnold & Porter Kaye Scholer LLP
- Kim Roberts — King & Spalding International LLP

(Continued on page 19)

Program Update *(continued from page 18)*

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

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

FMA's room block at the Marriott expires **September 26.** If there's a chance you might need overnight accommodation, please contact the hotel before that date to book a room at FMA's group rate. After September 26, rates may increase dramatically or even become unavailable. If the hotel is sold out, FMA has a few rooms in reserve that will be given out on a first-come, first-served basis. Contact Dorcas Pearce right away if you need assistance.

FMA gratefully acknowledges these sponsors of FMA's 2018 Legal and Legislative Issues Conference

MORRISON | FOERSTER

Davis Polk

NERA
ECONOMIC CONSULTING

Capital One
Commercial Banking

Citizens Bank®

2019 Securities Compliance Seminar

Save these dates – May 1-3, 2019!

FMA's **2019 Securities Compliance Seminar** will take place at the **Marriott Pompano Beach Hotel** in **Fort Lauderdale, Florida** next spring. This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators.

The Planning Committee will soon begin work on program development. Contact Dorcas Pearce (*dp-fma@starpower.net* or 202/544-6327) to volunteer…as a committee member, a general session panelist, workshop facilitator or peer discussion leader…or to share topical and/or speaker suggestions.

FMA needs your input! A survey will be emailed shortly asking for hot topic/best practice ideas and speaker recommendations…*you may even choose to volunteer!* **Please call or email your suggestions to Dorcas Pearce within 72 hours of receipt.**

CPE & CLE accreditation will be available, so be sure to budget for, and plan to attend, the 28th annual Securities Compliance Seminar next spring.

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

Deanna Rankin has joined Argent Trust Company as Chief Compliance Officer. Previously, Deanna was SVP – Trust Internal Audit at Frost Bank.

Brandon Reddington has joined Goldman Sachs as Vice President, Government Sanctions Group. Previously, Brandon was Director, Global Head of Sanctions Advisory at Credit Suisse.

Jim Reilly has joined Capital Forensics, Inc. as a Senior Advisor. Previously, Jim was the Head of Compliance at TD Ameritrade.

Jason Seiler has been promoted to Senior Examiner at the Federal Reserve Bank of Atlanta.

Kristin Snyder has been named Deputy Director of the SEC's Office of Compliance Inspections and Examinations. She has served as the Co-National Associate Director of OCIE's Investment Company/ Investment Adviser examination program since August 2016 and as the Associate Regional Director for Examinations in the SEC's San Francisco office since November 2011. She will continue in both of these roles while also assuming this additional leadership role in OCIE.

Adam Trost has joined Morgan Stanley as Executive Director, Liquidity Planning & Coverage. Previously, Adam was an Executive Director at EY.

Romy Vinas has started a new position as Senior Compliance Consultant at RAV Compliance Consulting. Previously, Romy was Managing Director, U.S. Regulatory Compliance Advisor at ABLV Advisory Services.

Aaron Weller is one of the co-founders of Sentinel, LLC, a privacy consulting and technology firm where he will hold the role of Managing Director, Consulting. He was previously a Managing Director within PwC's Cybersecurity and Privacy practice.