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“Living Wills” for Bank Holding Companies, Depository Institutions and Foreign Banking Organizations

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The FDIC and Federal Reserve Board (“FRB”) have issued regulations that require bank holding companies with assets over \$50 billion (including foreign banking organizations (“FBOs”) with US operations) to prepare and submit so-called “living wills” describing how such entities would be resolved under the federal Bankruptcy Code. In addition—and not to be overlooked—the FDIC has issued a companion regulation requiring a depository institution with over \$50 billion in assets to prepare a living will detailing the resolution of the depository institution under the receivership authority of the Federal Deposit Insurance Act (the “FDI Act”). Depending upon the size and complexity of covered entities, the regulations establish time frames for submission of a living will—with the largest entities being required to submit by July 1, 2012 and smaller entities being required to submit their living wills by December 2013.

The rules describe and require a comprehensive “mapping” of a covered company’s operations in a manner that arguably will assist the federal government to resolve those companies upon failure. This Alert summarizes the regulatory requirements, and identifies several significant concerns that holding companies and depository

institutions must consider when commencing a compliance project.

Background

As a result of the heavily criticized federal assistance provided to large banking organizations in the past few years, Title II of the Dodd-Frank Act adopted provisions that require large institutions to analyze their own depository and non-depository structures and provide detailed information to the FDIC and the FRB to allow those agencies to resolve a failed organization. In what appears to be a statutory approach that acknowledges the possible dual applicability of the federal Bankruptcy Code and the FDI Act, a two-fold approach was adopted for the purpose of drafting so-called “living wills.” First, for holding companies, a living will is required indicating how a holding company would be resolved under the Bankruptcy Code. Second, for depository institutions and their subsidiaries, a living will is required indicating how a resolution would best proceed under the receivership provisions of the FDI Act.

Covered Entities

There are several categories of covered financial entities under the regulations, and the specific content of the living will depends

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MARKET SOLUTIONS

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FINANCIAL MARKETS ASSOCIATION

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 various selected developments in connection with the **Dodd-Frank Act** (including developments relating to the *Volcker Rule*, *Living Wills*, *Derivatives*, *Enhanced Prudential Standards*, *Systemically Important Non-Bank Financial Institutions*, and *Consumer Protection*), and **Capital Markets**. We also have a look at the **Basel Committee's** draft on defining global systemically important banks and the most recent developments of **FinCEN** relating to tougher economic sanctions on Iran.

DODD-FRANK ACT

Volcker Rule

On October 11 and 12, 2011, the FDIC, the Federal Reserve Board, the OCC and the SEC (the "Agencies") released a proposed rule regarding the "Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds" (the "Proposed Rule"), implementing Section 619 of the Dodd-Frank Act—the Volcker Rule (codified as a new Section 13 of the BHC Act at 12 U.S.C. 1851). The Proposed Rule was published in the Federal Register on November 7, 2011, and is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-11-07/pdf/2011-27184.pdf>. The Volcker Rule generally prohibits certain banking entities from engaging in proprietary trading and investing in or sponsoring hedge funds and private equity funds.

The Proposed Rule attempts to reflect the structure of the new Section 13 of the BHC Act and (i) determines which entities will be treated as "covered banking entities" under the Volcker Rule, (ii) defines, among others, the terms "proprietary trading," "trading account" and "covered financial position," and (iii) describes under what circumstances proprietary trading would be permissible for covered banking entities (e.g., with regard to underwriting and market-making activities, risk mitigating hedging

activities, trading in government obligations, trading on behalf of customers, trading by a regulated insurance company, and off-shore trading).

Further, the Proposed Rule defines certain terms in connection with prohibited fund activities and investments (such as "covered funds," "ownership interest," or "sponsor"), describes how a covered banking entity can retain a *de minimis* ownership interest in certain customer-oriented funds, and what other covered fund activities are permissible for a covered banking entity. In addition, the Proposed Rule clarifies that a covered banking entity that, directly or indirectly, serves as investment manager, investment adviser, commodity trading adviser, or sponsor to a covered fund may not engage in a transaction with the covered fund, if such transaction would qualify as a "covered transaction" under

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FMA Welcomes New Members!

Sebastian Gomez Abero	Securities and Exchange Commission
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Hardy Callcott	Bingham McCutchen LLP
Karen Caplan	Federal Reserve Board
Katherine Carroll	Cleary Gottlieb Steen & Hamilton LLP

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upon the size of the entity and its subsidiaries. Those categories are:

- Bank holding companies with non-bank assets greater than \$250 billion;
- Bank holding companies with non-bank assets greater than \$100 billion but less than \$250 billion;
- Bank holding companies with consolidated assets greater than \$50 billion but less than \$100 billion;
- FBOs with global assets in excess of \$50 billion that operate a bank, branch, agency, representative office or other subsidiary in the US; and
- A depository institution with assets exceeding \$50 billion.

Initial and Annual Reporting

The regulations establish the date on which a required living will must be initially submitted, as follows:

- July 1, 2012—(a) Bank holding companies with non-bank assets exceeding \$250 billion; (b) any depository institution subsidiary of that holding company with assets greater than \$50 billion; and (c) FBOs with US non-bank assets exceeding \$250 billion.
- July 1, 2013—(a) Bank holding companies with more than \$100 billion of non-bank assets but less than \$250 billion of non-bank assets; (b) any depository institution subsidiary of that holding company with more than \$50 billion of assets; and (c) FBOs with more than \$100 billion of non-bank US assets but less than \$250 billion of non-bank US assets.
- December 2013—(a) Bank holding companies with more than \$50 billion in consolidated assets but less than \$100 billion in non-bank assets; (b) any depository institution subsidiary of that holding company with \$50 billion or more

of assets; and (c) any FBO with global assets in excess of \$50 billion but less than \$100 billion of non-bank US assets.

Content of Holding Company and FBO Living Wills

Depending upon the size and complexity of a holding company, the living will must include the following sections—focusing on the resolution of the entity and its non-bank assets under the Bankruptcy Code:

- Executive Summary
- Strategic Analysis
- Corporate Governance Relating to Resolution Planning
- Organizational Structure
- Management and Information Systems
- Interconnectiveness and Interdependencies
- Supervisory and Regulatory Information
- Contact Information

“As a result of the heavily criticized federal assistance provided to large banking organizations in the past few years, Title II of the Dodd-Frank Act adopted provisions that require large institutions to analyze their own depository and non-depository structures and provide detailed information to the FDIC and the FRB to allow those agencies to resolve a failed organization.”

A covered FBO must provide the same or similar information, but may limit its information and analysis to its subsidiaries, branches and agencies (including critical operations and core businesses) domiciled in the US or conducted in whole or in part in the US. Further, an FBO must provide information on how its US-based resolution plan is related to its overall resolution plan as required by foreign regulatory authorities, including its home country regulator.

It should also be noted that the regulations provide some relief for holding companies and FBOs whose assets are primarily depository institutions and which comprise 85% or more of the holding company’s assets or the FBO’s US assets. In those instances, the regulations provide

a slightly streamlined set of reporting criteria for responsive non-bank data (which is logical because

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the depository institution subsidiary would remain required to submit a living will if its assets exceed \$50 billion).

Content of Depository Institution Living Wills

A depository institution with assets of \$50 billion or more in assets (referred to in the regulation as a “covered insured depository institution” or “CIDI”), must submit a companion living will to the FDIC that contains the following components:

- Executive Summary
- Organizational Structure of Legal Entities, Core Businesses Lines and Branch System
- Critical Services
- Interconnectiveness to the Parent Company’s Organization
- Strategy to Separate the CIDI from the Parent Company’s Organization
- Strategy for the Sale or Disposition of the Deposit Franchise, Business Lines and Assets
- Analysis of the Least Costly Resolution Method
- Asset Valuation Sales
- Identification of Major Counterparties
- Off-Balance-Sheet Exposures
- Collateral Pledged
- Trading Activities, Derivatives and Hedging
- Unconsolidated Balance Sheet of the CIDI and Other Material Entity Financial Statements
- Payment, Clearing and Settlement Systems
- CIDI Capital Structure and Funding Sources
- Affiliate Transactions, Exposures and Concentrations
- Systemically Important Functions
- Cross-Border Elements

“It should also be noted that the regulations provide some relief for holding companies and FBOs whose assets are primarily depository institutions and which comprise 85% or more of the holding company’s assets or the FBO’s US assets.”

- Management Information Systems
- Intellectual Property
- Corporate Governance and CIDI Contacts

Observations and Recommendations

While this Alert is intended to provide a summary of the requirements of the two regulations, we offer several observations for covered entities subject to the rules.

First, the complexity of the analysis both at the holding company and bank levels will be challenging.

A review of the detail required at both levels indicates detailed mapping and disclosure of customer- and counterparty-level information, including exposure analyses and possible alternative resolution approaches of the aggregate corporate family.

To accomplish the drafting of one or several living wills, a detailed project plan is required, assembling legal, operational and risk management expertise. In that regard, the project team will require particular expertise to enable it to apply principles of bankruptcy law, as well as FDIC

receivership law. This is because at both the holding company level and the depository level, federal bank receivership law might apply. Specifically, even though the regulations for holding company living wills appear to require that a holding company describe a recommended resolution plan at the holding company level under the Bankruptcy Code, for systemically important institutions Title II of the Dodd Frank Act permits the FDIC to supersede a bankruptcy filing at the holding company level and effectively create an FDIC receivership comprised of the entire holding company system. In a similar manner, the unique (and formidable) rules possessed by the FDIC for receiverships involving depository institutions must be clearly understood in order to adequately describe an effective resolution strategy for a depository institution that is subject to the requirement that it submit a living will, including a calculation of a least-cost resolution for the FDIC’s Deposit Insurance Fund.

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Second, we note that the FDIC and the FRB recognize, and, in fact, encourage an iterative process for the development of responsive living wills, which is a regulatory dialogue that we believe should be initiated at the earliest opportunity. In order to avoid a living will being rejected by the FDIC or the FRB, we believe that regulatory consultation should commence immediately to determine the scope and detail necessary to produce acceptable documents and content.

Third, we note that the probable detail required by the rules creates serious concerns both in regard to business confidentiality and legal risk. In respect of business confidentiality, for example, it is likely that highly proprietary business strategies and competitive data must be provided to the FDIC and the FRB, including customers, counterparties, sources of business and overall strategic initiatives. From a legal risk perspective, it should be noted that, despite assurances to the contrary, the regulatory privilege for information in possession of the banking agencies is not absolute, which could result in data and systems of records being accessible to third parties through litigation and/or discovery requests directed at the submitting entity, the FDIC or the FRB.

“To accomplish the drafting of one or several living wills, a detailed project plan is required, assembling legal, operational and risk management expertise.”

In that regard, we note that there is a very useful provision that was included in the FDI Act several years ago that safeguards existing legal privileges when data is provided to the federal banking agencies. While beyond the scope of this discussion, we suggest that a compliance plan might incorporate such a strategy to further protect the confidentiality of resolution information submitted to the FDIC and the FRB.

We trust that this Alert is useful in identifying legal and compliance concerns when developing a project plan and team to address the living wills regulations. Of course, as a summary, this discussion does not include a discussion of many specialized concerns of covered entities, including holding companies, depository institutions and FBOs. ■

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Directory Updates

The 2011 FMA Membership Directory was emailed to all current members on October 31. See below for additional updates received since its distribution. If you are a current FMA member and did not receive (or perhaps misplaced?) the Directory, contact Dorcas Pearce at 202/544-6327 or dp-fma@starpower.net.

Job Changes

Kevin L. Fein SVP & Director of Wealth Compliance TD Bank 444 Madison Avenue, 11th FL New York, NY 10022 646/652-1309 212/207-4194 Fax 347/268-5153 Mobile kevin.l.fein@td.com	Curtis K. Tao Managing Director, Associate General Counsel–Bank Regulatory. Citigroup 388 Greenwich Street, 17th FL New York, NY 10013 212/816-0501 646/274-5143 Fax curtis.tao@citi.com
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Address Change

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New Email Address

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Section 23A of the Federal Reserve Act (the so-called Super 23A prohibition) and implements the “market terms” requirement of Section 23B of the Federal Reserve Act for any transaction between a covered banking entity and an affiliated fund.

The Proposed Rule also would require covered banking entities to develop and maintain a quite elaborate program to monitor compliance with the prohibitions and restrictions under the Volcker Rule. However, the Agencies acknowledge that not all banks are the same, and the Proposed Rule identifies three tiers of covered banking entities depending on their level of engagement in covered trading and investment fund activities. Under the Proposed Rule, each tier would face nominally different requirements with regard to its Volcker Rule compliance program, but it appears that, in practice, the obligations will overlap.

The Proposed Rule contains nearly 400 questions, many with various sub-questions, and the Agencies recently extended the original comment period from January 13, 2012 to February 13, 2012. There is a hard statutory deadline for the Volcker Rule to become effective—July 21, 2012, rule or no rule. It is expected that the Agencies will issue a final rule before the effective date of the Volcker Rule. However, because this may happen only a few months before the effective date, financial institutions may be under a lot of pressure to react quickly. The Volcker Rule provides for a conformance period until July 21, 2014 (with the possibility of certain extensions), but the Agencies plan to use the two years to fine-tune the requirements. For more details about the Federal Reserve Board’s final rule regarding the conformance period, please see the Morrison & Foerster client alert at <http://www.mofo.com/files/Uploads/Images/110214-Federal-Reserve-Publishes-Final-Rule-Conformance-Volcker.pdf>.

A lot has been written about the Proposed Rule and it is expected that the public as well as the industry will comment heavily on it and that the final rule may look quite different from the Proposed Rule. For more details about the Proposed Rule, please see Morrison & Foerster’s client alert at <http://www.mofo.com/files/Uploads/Images/111014-Volcker-Rule.pdf>.

Living Wills

On November 1, 2011, the Federal Reserve Board and the FDIC (the “Agencies”) implemented Section

165(d) of the Dodd-Frank Act and issued a final rule requiring certain “Covered Companies” to submit a resolution plan (*i.e.*, a “living will”). The purpose of the living will is to outline a plan whereby, if a covered company is at risk of default, it can be sold, broken up, or wound down quickly and effectively in a way that mitigates serious adverse effects to U.S. financial stability.

Covered Companies include bank holding companies with consolidated assets of \$50 billion or more, foreign banks or companies that are bank holding companies or are treated as bank holding companies under section 8(a) of the International Banking Act of 1978 (each an “FBO”) that have \$50 billion or more in total consolidated assets, and nonbank financial companies supervised by the Federal Reserve Board, as designated by the Financial Stability Oversight Council (“FSOC”). According to the Agencies, there are approximately 124 Covered Companies, including as many as 100 FBOs.

For more information on the substantive requirements of a living will, the deadlines applicable to Covered Companies, the Agencies’ review process,

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Jason Cave	Federal Deposit Insurance Corporation
Shara Chang	Cleary Gottlieb Steen & Hamilton LLP
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Jeffrey Curry	FTI Consulting
Alyssa DaCunha	WilmerHale LLP
Michael Dube	WilmerHale LLP
Kurt Eidemiller	Bureau of the Public Debt
Chehani Ekaratne	Shearman & Sterling LLP
Cindy Ellis	Commerce Bancshares, Inc.
Marlene Ellis	Federal Reserve Board

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and initial steps that Covered Companies should consider, please see our Living Wills User Guide available at <http://www.mofo.com/files/Uploads/Images/110905-Living-Wills.pdf>.

Enhanced Prudential Standards

Shortly before year-end, the Federal Reserve Board proposed several rules to manage systemic risks presented by bank holding companies with consolidated assets of \$50 billion or more and by nonbank financial institutions that are designated as systemically important by the FSOC. The proposed regulation (the “Proposed Regulation”) would implement the mandatory portions of sections 165 and 166 of the Dodd-Frank Act. The Proposed Regulation does not purport to be exhaustive, and further rulemaking is likely since the Proposed Regulation does not address all of the Federal Reserve’s authority under Section 165 (e.g., the Proposed Regulation specifically does not cover foreign banking organizations).

The Proposed Regulation includes seven sets of requirements for bank holding companies over the \$50 billion mark and systemically important nonbanks (collectively, the “covered companies”): (i) risk-based capital requirements and leverage limits for certain covered companies, (ii) liquidity requirements, (iii) single-counterparty credit limits, (iv) risk management, (v) stress tests, (vi) the debt-to-equity ceiling, and (vii) early remediation. Two

other requirements in section 165 already have been the subject of rulemaking. Section 165(d) requires the submission of resolution plans and credit exposure reports by covered companies (as discussed above); and a proposed rule dealing with credit exposure reports was published in April 2011, but remains pending. Additionally, the Federal Reserve’s recent capital planning regulation relates to the capital and stress test requirements in section 165.

In general, the requirements build on existing supervisory guidance for large and complex banking organizations. Nevertheless, certain sets of requirements will either be new to an institution or compel substantial revisions to existing compliance programs. These substantively new requirements cover (i) capital planning by nonbank covered companies, (ii) expanded duties for directors and management in overseeing liquidity policy; (iii) a quantitative liquidity buffer based on the Basel III liquidity coverage ratio, (iv) the treatment of credit enhancements in connection with limits on single-counterparty credit exposures; (v) double stress-testing of capital adequacy; and (vi) an “early remediation framework.” Niche issues that also may be important relate to the adoption of Basel III requirements, more stringent treatment of foreign sovereign debt for liquidity and single counterparty credit exposure, and more lenient treatment of Fannie Mae and Freddie Mac securities for the same purposes. The text of the Proposed Regulation is

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AWARD

Morrison & Foerster is seeking nominations for the 2012 Regulatory Innovation Award. Morrison & Foerster established the award in 2008 through the Burton Foundation to honor an academic or non-elected public official whose innovative ideas have made a significant contribution to the discourse on regulatory reform in the areas of corporate governance and executive compensation, securities, capital markets, regulatory capital or the regulation of financial institutions.

For more information, please view the attached [brochure](#) or visit this dedicated website to submit a nomination at www.regulatoryinnovationaward.com.

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available at <http://www.gpo.gov/fdsys/pkg/FR-2012-01-05/pdf/2011-33364.pdf>.

Designation of Nonbank Financial Institutions as Systemically Important

On October 11, 2011, the FSOC issued a second proposal (“the Proposal”) on the process by which it will consider whether to designate a nonbank financial institution as systemically important. The Proposal may be accessed at <http://www.gpo.gov/fdsys/pkg/FR-2011-10-18/pdf/2011-26783.pdf>. These institutions will be subject to largely the same enhanced prudential standards that will apply to banking organizations with \$50 billion or more in consolidated assets (as discussed above).

The Proposal sets forth a three-stage process to decide whether large nonbank financial institutions are systemically important. In Stage 1, from an unspecified group of institutions, the FSOC will identify a pool of institutions for further review for systemic importance. This pool will consist of nonbank financial companies that meet one or more of the following quantitative thresholds: (i) for U.S. based companies, \$50 billion in global total consolidated assets; for non-U.S. companies, \$50 billion in U.S. total consolidated assets; (ii) \$30 billion in gross notional credit default swaps outstanding for which a nonbank financial company is the reference entity; (iii) \$3.5 billion of derivative liabilities; (iv) \$20 billion of outstanding loans borrowed and bonds issued; (v) leverage ratio of total consolidated assets to total equity of 15:1; and (vi) short-term debt to total assets of 10 percent. The FSOC reserves the right to apply other factors as well, including substitutability and existing regulatory scrutiny.

In Stage 2, the FSOC will employ six considerations to arrive at something of a presumptive group of systemically important companies. Three of the six—size of the institution, available substitutes for its products and services in the event of failure, and the degree of its interconnectedness with other large financial companies—seek to assess the potential impact of the nonbank financial company’s financial distress on the broader economy. The remaining three—leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny—cover the vulnerability of the company to financial distress. Each of

these considerations involves both quantitative measurements and qualitative analysis.

In Stage 3, the FSOC will request additional information from the Stage 2 companies in order to consider their systemic profile and their resolvability in the event of default. The Stage 3 analysis will result in a pool of companies, each of which may be subject to a Proposed Determination of systemic importance by the FSOC. Institutions so voted will be notified of the Proposed Determination and may request a hearing before a final determination is made.

Derivatives

As 2011 came to a close, the OTC derivatives markets and their participants continued to face significant uncertainties and potentially daunting compliance challenges relating to Title VII of the Dodd-Frank Act, which is intended to establish a new regulatory regime for swaps and security-based swaps.

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FMA Welcomes More New Members!

Jim Embersit	Ernst & Young LLP
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Julian Hammar	Commodity Futures Trading Commission
Gaurav Harode	Oracle Financial Services Software
Mark Higgins	Commodity Futures Trading Commission
Edward Hill	Bank of America
Oliver Ireland	Morrison & Foerster LLP

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The effective date of this new regulatory regime continues to be an unknown. In July 2011, the CFTC granted temporary exemptive orders and other relief that, in effect, deferred the effective date for much of Title VII to December 31, 2011. In September 2011, the CFTC attempted to articulate a schedule for completing most of its Title VII rulemaking. Late in December 2011, the CFTC further clarified this schedule by formally extending the outside date of its temporary exemptive orders and other relief to July 16, 2012 (unless it subsequently establishes an earlier effective date based on its rulemaking).

Though both the CFTC and SEC were active on the rulemaking front during the last few months of 2011, considerable work remains to be done before final rules for all of Title VII are in place. During this period, the CFTC adopted several final rules under Title VII, including rules relating to whistleblower incentives and protection; registration, recordkeeping and reporting requirements for swap data repositories; general principles for derivatives clearing organizations; position limits for futures and swaps relating to physical commodities; and real-time reporting of swap transaction data. Despite being final rules, they were not free from controversy. In some cases, the CFTC commissioners were far from unanimous in their support for these rules. Most notably, the rule on position limits has become subject to a legal challenge initiated jointly by ISDA and SIFMA alleging procedural deficiencies in the CFTC's rulemaking process, including a failure by the CFTC to make adequate findings to support the rule as well as the CFTC's failure to conduct an adequate cost-benefit analysis of the impact of the rule.

The CFTC and the SEC also issued several proposed rules during this period. The CFTC proposed rules relating to the documentation and timing for clearing of swaps and the process for determining when a swap is available to trade on a trading platform (such as a swap execution facility). For its part, the SEC issued proposed rules regarding registration procedures for security-based swap dealers and major security-based swap participants.

The CFTC also adopted modifications to its regulations 1.25 and 30.7 (which had been long under consideration) limiting the ways in which futures commission merchants are permitted to hold and deploy excess customer funds.

Though not formally part of Title VII, the Proposed Rule implementing the Volcker Rule (as discussed above) is potentially of enormous significance to the derivatives market. The CFTC has not joined the Agencies in the Proposed Rule; however, it is expected that the CFTC will issue its own version early in 2012.

Consumer Protection

The most notable recent consumer protection development is the controversial recess appointment of Richard Cordray as Director of the Consumer Financial Protection Bureau ("CFPB") in January 2012. Many commentators believe that the appointment may be vulnerable, because (1) the

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FMA Welcomes More New Members!

Matthew Janiga	Capital One
Mary Jo Johnson	WilmerHale LLP
Rachel Jones	Federal Deposit Insurance Corporation
Arian June	WilmerHale LLP
Vivek Khare	Federal Deposit Insurance Corporation
Benjamin Klein	Federal Deposit Insurance Corporation
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Krista LaBelle	Comptroller of the Currency
Rebecca Laird	K&L Gates LLP
Mark Laponsky	Federal Housing Finance Agency
Robert La Porte	Northern Trust
David Levy	U.S. Bancorp
Carolyn Lowry	Bank of America
Scott McCleskey	Thomson Reuters
William McLucas	WilmerHale LLP
James McMullin	Wells Fargo

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Senate was not officially in recess at the time of the recess appointment but was instead holding “pro forma” sessions in which no business was conducted, and (2) the Dodd-Frank Act, which established the CFPB, states that the CFPB may not exercise the full extent of its powers until there is a “Senate-confirmed” Director. Nonetheless, the CFPB is taking the position that the appointment is valid and that the CFPB can now exercise all powers granted it by the Dodd-Frank Act, including, most notably, the examination and supervision of non-bank participants in consumer financial markets.

Even without a Director, however, the CFPB has been busy. Prior to the recess appointment of Mr. Cordray, the CFPB:

- Formally transferred from the banking agencies, HUD and the FTC the various rules under the federal consumer financial laws, and recodified Regulations B, Z, E and other consumer regulations in a new title of the Code of Federal Regulations.
- Began the process of examining the 100+ banks with more than \$10 billion in assets – a task which the CFPB has authority to perform even without a Director. (The CFPB is charged with examining these large banks for compliance with consumer financial laws, as well as examining these banks to identify and assess risks to consumers.)
- Published Examination Guidelines, based largely on examination guidance issued earlier by the banking agencies, but including a new set of Guidelines for mortgage servicing.
- Established an online consumer complaint collection process for credit cards and mortgages, with a process for deposit products to follow shortly.
- Proposed improvements to a variety of consumer disclosures:
 - Mortgage origination and closing documents under RESPA and TILA;
 - Student financial aid disclosures; and
 - Consumer credit card agreements.
- Promulgated procedural rules for rulemaking, investigations, and enforcement proceedings.
- Established an “early warning” process, similar to the SEC’s Wells process, whereby a letter is sent to an enforcement target before a complaint is issued, to allow the target to respond.
- Began a process of “streamlining” the various rules under the federal consumer financial laws, to identify provisions that may be obsolete or in need of amendment.
- Executed information sharing and cooperation agreements with the federal banking agencies and most state banking regulators. (The Dodd-Frank Act also requires the CFPB and FTC to enter into a Memorandum of Understanding with respect to their shared enforcement jurisdiction by January 21, 2012.)

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FMA Welcomes More New Members!

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Andrea Robinson	WilmerHale LLP
Jonathan Rosenfeld	WilmerHale LLP
Gregg Rozansky	Shearman & Sterling LLP

Legislative/Regulatory Actions

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- Issued a Bulletin notifying examined entities that they may not refuse to produce supervisory documents to the CFPB, and that they may not assert claims of attorney-client or other privilege to avoid producing information requested by examiners.

Going forward, the CFPB still has much work to do to fully implement its bank examination process and to begin examining non-banks as well. CFPB leadership, however, predicts that the CFPB will have hired its full complement of 1,200 examiners, economists, lawyers and other professionals by September 30, 2012.

CAPITAL MARKETS

Exemption to Rule 17g-5(a)(3) Extended

On November 16, 2011, the SEC extended its order temporarily exempting a nationally recognized statistical rating organization (“NRSRO”) from complying with Rule 17g-5(a)(3) with respect to rating structured finance products where: (i) the issuer is a non-U.S. person; and (ii) the NRSRO has a reasonable basis to conclude that the product will be offered and sold only in transactions outside the U.S. until December 2, 2012. The extension gives the SEC additional time to address concerns about the extra-territorial application of this rule.

Rule 17g-5(a)(3) was designed to address conflicts of interest and improve the quality of credit ratings for structured finance products by encouraging other NRSROs not hired to rate the products. To do so, the rule requires that the NRSRO paid to issue the rating maintain a password protected website listing each structured finance product that it currently rates and provide access to the website to any NRSRO that provides certain certifications and undertakings. The information on the website must include all information the issuer, sponsor, or underwriter provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of determining the initial credit rating for the structured finance product.

Non-U.S. market participants are concerned about the rule’s extraterritorial application and conflicts with foreign laws. Trade organizations and regulators from Japan, Australia and the European Union have noted that certain of the rule’s requirements conflict

with proposed rating agency regulatory changes under consideration in their home jurisdictions. Issues also were raised with respect to compliance costs and operational challenges for non-U.S. firms.

Large Trader Reporting

In Release No. 34-64976 (the “Release”), the SEC adopted new Rule 13h-1 and Form 13H under Section 13(h) of the Securities Exchange Act of 1934 (“Exchange Act”). The large trader reporting requirements have two primary components: (1) registration of large traders with the SEC; and (2) recordkeeping, reporting, and monitoring duties imposed on registered broker-dealers that service large trader customers. Generally, a “large trader” is defined as “any person that: (i) directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level; or (ii) voluntarily registers as a large trader by filing electronically with the SEC Form 13H.” Rule 13h-1(c) provides additional aggregation rules on how a large trader is determined. This is a fairly broad definition, and, in analyzing their activities, a parent company should consider the aggregate trading activities of all entities under its control. As a general matter, the SEC will not be compelled to disclose information collected from large traders and registered broker-dealers under a large trader reporting system. For additional details on the Release, please see the Morrison & Foerster news bulletin at <http://www.mofo.com/files/Uploads/Images/111006-SEC-Adopts-13h.pdf>.

Covered Bonds

On November 9, 2011, “The United States Covered Bond Act of 2011” was introduced in the Senate by Senator Kay Hagan (D-NC) and Senator Bob Corker (R-TN) and co-sponsored by Senator Chuck Schumer (D-NY) and Senator Mike Crapo (R-ID). The language of the bill is very close to H.R. 940, which passed the House Financial Services Committee on a strong bipartisan vote of 44-7 in June. For the first time, there are active covered bond bills in both the

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Legislative/Regulatory Actions

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House and the Senate and the general consensus seems to be that H.R. 940 will be voted on by the House this spring and that hearings may be expected on the Senate bill, also in the spring. There is growing hope that even though this is an election year, it is possible that there will be covered bond legislation before the November election. For more information on the Senate and the House bills, please see the Morrison & Foerster client alerts at <http://www.mofo.com/files/Uploads/Images/111109-Covered-Bonds-the-Senate.pdf> and <http://www.mofo.com/files/Uploads/Images/110629-Covered-Bonds.pdf>, respectively.

BASEL COMMITTEE

Defining Global Systemically Important Banks

In July 2011, the Basel Committee on Banking Supervision published its draft proposals for the methodologies by which the global systemic importance of a bank should be tested, as well as its final recommendations as to the levels of additional capital to be held by such banks, in addition to the minimum capital criteria set out in its Basel III proposals.

The Basel Committee's methodology involves considering 5 indicators of systemic importance and assigning each bank a score for each indicator. The indicators, which are given equal weighting, are the bank's cross-jurisdictional activities, its size, its interconnectedness, its substitutability by other institutions if it fails and the complexity of its business, structure and operations.

The Basel Committee recommended four categories of "global systemically important banks" ("GSIB"), depending on its score on the above indicators. The category of a GSIB will determine whether it needs to hold 1%, 1.5%, 2% or 2.5% of additional loss absorbent capital, in comparison to its risk-weighted assets. It also proposed an additional top bucket (initially empty) of 3.5% of additional loss absorbent capital for those top level GSIBs which become even more globally systemically important. It concluded that the additional capital buffers should be met only with common equity Tier 1 capital.

The Basel Committee issued its final proposals in November 2011, which were largely unchanged from the July 2011 proposals.

From an initial sample of 73 banks, the Basel Committee has determined that 29 banks should be categorised as globally systemically important, and required to hold additional loss absorbing capital accordingly, effective January, 1 2016. It intends to update banks' indicator scores on an annual basis, so the list of GSIBs is not fixed, and nor is the GSIB bucket into which a bank may fall. The intention is to provide an incentive for banks to take steps to reduce their global systemic importance, as well as allowing the monitoring of whether GSIBs are becoming more globally systemically important.

The Basel Committee has agreed that it will, before 2016, disclose further information on the denominators used to normalize the indicator scores and the cut-off scores that determine into which bucket a GSIB falls. It expects all GSIBs to disclose all the relevant data from 2016 onwards.

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FMA Welcomes More New Members!

Melissa Ruth	Cleary Gottlieb Steen & Hamilton LLP
Jamie Schwing	Federal Housing Finance Agency
Stephen Selby	LIMRA Regulatory Strategy Center
Robyn Shields	BNP Paribas Americas
James Shorris	LPL Financial, LLC
Alexander Sixbey	Lincoln Financial Group
William Stiers	Balch & Bingham LLP
Barry Taylor-Brill	Wells Fargo & Company
Linda Chatman Thomsen	Davis, Polk & Wardwell LLP
Andrew Tino	PNC Capital Markets and Harris Williams

Legislative/Regulatory Actions

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For more detailed information on this issue, please see the Morrison & Foerster client alert “Defining Global Systemically Important Banks and Additional Loss Absorbency Requirements” at <http://www.mofo.com/files/Uploads/Images/110812-Loss-Absorbency-Requirements.pdf>.

FinCEN

Final Rule Implementing 104(e) of CISADA

On October 11, 2011, the Financial Crimes Enforcement Network (“FinCEN”) published its final rule (“Final Rule”) implementing certain reporting requirements under Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”). The Final Rule is effective as of October 11, 2011.

Under the Final Rule, upon receiving a written request from FinCEN, a U.S. bank that maintains a correspondent or payable through account for a specified foreign bank shall inquire of such foreign bank for the purpose of having such foreign bank certify: (1) whether it maintains a correspondent account for an Iranian-linked financial institution designated under the International Emergency Economic Powers Act (“IEEPA”); (2) whether, to its knowledge, it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and (3) whether, to its knowledge, it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iran Islamic Revolutionary Guard Corps linked person designated under IEEPA. The bank is also required to request that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank’s initial response.

A U.S. bank is required to report the information received from the foreign bank to FinCEN within 45 calendar days of the date of the written request from FinCEN. If a U.S. bank receives relevant information from the foreign bank after the 45-calendar-day deadline, it must update FinCEN within 10 calendar days.

If the foreign bank is unwilling to respond to a U.S. bank’s inquiry, the U.S. bank must notify FinCEN about this fact to comply with the reporting requirement. Under the Final Rule, a U.S. bank is not expected to independently verify the information provided by a foreign bank; however, FinCEN does expect a U.S. bank to report if it has information that is inconsistent with the foreign bank’s certification.

The full text of the Final Rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-10-11/pdf/2011-26204.pdf>.

Proposed Rule to Impose a Special Measure Against Iran as a Jurisdiction of Primary Money Laundering Concern

On November 28, 2011, FinCEN published a notice of proposed rulemaking imposing a special measure against Iran based on its finding that Iran is a jurisdiction of primary laundering concern pursuant to 31 U.S.C. 5318A of the Bank Secrecy Act (implementing Section 311 of the PATRIOT Act). The specific special measure proposed to be implemented

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FMA Welcomes More New Members!

Claudia Tobler	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Catherine Topping	Federal Deposit Insurance Corporation
Donald Waack	Mayer Brown LLP
David Wall	Federal Deposit Insurance Corporation
Russell Walter	Charles Schwab & Co.
Betty Whelchel	BNP Paribas Americas
Rick White	Renaissance Regulatory Services, Inc.
Thomas White	WilmerHale LLP
John Wright	Wells Fargo & Company

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is the prohibition against the opening or maintaining of correspondent accounts by any domestic financial institution or agency for or on behalf of a foreign banking institution, if the correspondent account involves Iran. The proposed rule would be applicable to “covered financial institutions” as defined in 31 C.F.R. 1010.605(e)(1)-(2).

The proposed rule would require that a covered financial institution notify those correspondent account holders that the covered financial institution knows or has reason to know the correspondent provides services to Iranian banking institutions and that such correspondents may not provide Iranian banking institutions with access to the correspondent account maintained at the covered financial institution. In addition, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by Iranian banking institutions, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. The proposed rule states that a covered financial institution must take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the improper indirect use of its correspondent accounts by Iranian banking institutions.

Comments on the proposed rule are due by January 27, 2012. The full text of the proposed rule is available at: <http://www.gpo.gov/fdsys/pkg/FR-2011-11-28/pdf/2011-30331.pdf>.

New Sanctions With Respect to the Financial Sector of Iran

On December 31, 2011, President Obama signed the National Defense Authorization Act for Fiscal Year 2012 (the “Act”). Section 1245 of the Act includes, among other sanctions, that within 60 days the President “prohibit the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of sanctions” pursuant to the IIEEPA.

Under the Act, the President is permitted to waive the imposition of sanctions for a period of not

more than 120 days, and may renew that waiver for additional periods of not more than 120 days, if he determines that such waiver is vital to the national security of the United States and he submits a report to Congress. If the President determines that the country with primary jurisdiction over the financial institution has significantly reduced its volume of crude oil purchased from Iran, he may, after submitting a report to Congress, exempt such foreign financial institution from sanctions.

The full text of the Act including Section 1245 is available at: <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>. ■

As a final note, the United States of America has embarked on the first global tax compliance initiative in history. The Foreign Account Tax Compliance Act, dubbed “FATCA,” is designed to enlist the world’s financial institutions in the hunt for non-compliant U.S. taxpayers. KNOWFatca.com is a resource designed by Morrison & Foerster to allow our users to stay abreast of FATCA as it develops. It includes all things FATCA from the law itself, the background, and what non-compliance with FATCA can mean. If you would like to gain access to the site free of charge, please send an e-mail to subscribe@knowfatca.com.

**Peter J. Green, Jeremy C. Jennings-Mares, David H. Kaufman, Anna T. Pinedo, Andrew M. Smith, Dwight C. Smith, Jerry R. Marlatt, Alexandra Steinberg Barrage, Aki Bayz, Melissa D. Beck, and Jeremy R. Mandell contributed to this column.*



Watch For

FINRA Regulatory Notice 12-03 (January 17, 2012) – FINRA provided guidance to firms about heightened supervision of complex products.

January, 2012 – The MSRB is in the process of establishing minimum professional qualifications for municipal advisors as required by the Dodd-Frank Act. The MSRB expects to survey registered municipal advisors about the proposed examination content and use the results of the survey to determine how content will be represented in the examination. Registered municipal advisors interested in participating in the examination content survey should send their contact information (name, company, address, email) to PQMailbox@msrb.org, and include “municipal advisor survey” in the subject line.

OCC Bulletin 2012-5 (January 12, 2012) – In response to requests to clarify points in the 2010 Interagency Advisory on Interest Rate Risk Management, a “Frequently Asked Questions” document was created and is available on the OCC’s website.

SEC Press Release 2012-3 (January 4, 2012) – The SEC issued alerts on social media risks for investors and firms – “Investment Adviser Use of Social Media” and “Social Media and Investing: Avoiding Fraud.”

OCC Bulletin 2011-50 (December 29, 2011) – The OCC, Federal Reserve Board and FDIC are seeking comment on a notice of proposed rulemaking that would revise their market risk capital rules. Comments are due on or before February 3, 2012.

Joint Press Release (December 23, 2011) – Four federal agencies extended until February 13, 2012 the comment period on a proposal to implement the so-called Volcker Rule of the Dodd-Frank Act. Comments were originally due by January 13, 2012.

FINRA Trade Reporting Notice (December 21, 2011) – FINRA addressed frequently asked questions about TRACE reporting issues.

SEC Press Release 2011-274 (December 21, 2011) – The SEC adopted a net worth standard for accredited investors under the Dodd-Frank Act.

Federal Reserve Press Release (December 20, 2011) – The Federal Reserve Board proposed steps to strengthen regulation and supervision of large bank holding companies and systemically important nonbank financial firms. The proposal addressed issues such as capital, liquidity, credit exposure, stress testing, risk management, and early remediation requirements. Comments are requested by March 31, 2012.

CFTC Press Release 6161-11 (December 19, 2011) – The CFTC issued a final order amending the effective date for swap regulation to July 16, 2012.

MSRB Notice 2011-69 (December 19, 2011) – The SEC approved amendments to MSRB Rule G-16, to facilitate risk-based compliance examinations, effective December 16, 2011 and MSRB Rule G-9, on preservation of records, effective June 16, 2012.

FINRA Regulatory Notice 11-56 (December 13, 2011) – FINRA and the other interested members of the Intermarket Surveillance Group (ISG interested members) are enhancing the Electronic Blue Sheets to improve the regulatory agencies’ ability to analyze broker-dealers’ trading activities. Effective August 31, 2012, firms will be required to submit new data elements to FINRA and the other ISG interested members.

OCC Bulletin 2011-47 (December 8, 2011) – The OCC outlined the process they intend to follow to fully integrate the OTS policy guidance documents into a common set of supervisory policies that applies to both national banks and federal savings associations.

CFTC Press Release 6156-11 (December 7, 2011) – The CFTC’s Division of Market Oversight issued a Guidebook for Part 20 Reports, providing additional guidance and detailed instructions for submitting large swaps trader reports to the Commission.

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Watch For *(Continued from page 15)*

Joint Press Release (December 7, 2011) – The federal bank regulatory agencies announced they are seeking comment on additional revisions to the market risk capital rules. Comments are requested by February 3, 2012.

CFTC Press Release 6151-11 (December 2, 2011) – The CFTC issued an interpretation concerning Dodd-Frank anti-fraud authority.

FINRA Information Notice (December 1, 2011) – FINRA reminded firms of their obligation to file annual audit and Financial and Operational Combined Uniform Single (FOCUS) reports by the required due dates. All such filings must be received by FINRA by the required due date in order to avoid certain fees as set forth in FINRA's By-Laws. This Notice listed due dates for 2012.

MSRB Notice 2011-67 (November 30, 2011) – The MSRB answered frequently asked questions regarding dealer disclosure obligations under Rule G-17.

FINRA Regulatory Notice 11-54 (November 30, 2011) – FINRA and the SEC issued joint guidance on effective policies and procedures for broker-dealer branch inspections.

OCC News Release 2011-140 (November 29, 2011) – The OCC proposed a rule to remove references to credit ratings from various OCC regulations and related guidance on due diligence requirements in determining whether investment securities are eligible for investment.

MSRB Notice 2011-66 (November 28, 2011) – The MSRB reminded brokers, dealers and municipal securities dealers that revised MSRB Rule G-23 (concerning the activities of financial advisors) are now in effect.

FINRA Information Notice (November 28, 2011) – On January 2, 2012, FINRA implemented a redesigned version of the S201 Regulatory Element Program (required for supervisory/principal registrants) in an effort to improve and keep the Continuing Education Program current and

relevant. Further information about the redesigned program, including how to register, is available at www.finra.org/ce/training.

Federal Reserve Press Release (November 22, 2011) – The Federal Reserve Board issued a final rule requiring top-tier U.S. bank holding companies with total consolidated assets of \$50 billion or more to submit annual capital plans for review. These capital plans were required to be submitted by January 9, 2012.

FINRA Regulatory Notice 11-53 (November 21, 2011) – The SEC approved amendments to TRACE reporting requirements to conform with requirements in the multi product platform.

CFTC Press Release 6144-11 (November 18, 2011) – The CFTC's Division of Market Oversight issued a letter to market participants requiring compliance with the new large trader system for physical commodity swaps and swaptions. The Division will provide temporary and conditional safe harbor for less than fully compliant reporting. Fully compliant reporting is due by March 20, 2012.

Joint Press Release (November 17, 2011) – Five federal financial supervisory agencies issued a statement to clarify supervisory and enforcement responsibilities for federal consumer financial laws.

FINRA Regulatory Notice 11-52 (November 11, 2011) – FINRA reminded firms of their obligations regarding the supervision of registered persons using senior designations.

MSRB Notice 2011-63 (November 8, 2011) – The MSRB requested comment on updating its definition of "sophisticated municipal market professional." The comment period expired December 13, 2011.

MSRB Notice 2011-62 (November 7, 2011) – Changes to the registration of municipal securities professionals and a reminder of supervisory obligations of principals; plus, a new category of registered persons – municipal securities sales limited representative.

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Watch For *(Continued from page 16)*

FINRA Trade Reporting Notice (November 7, 2011) – An asset-backed securities transaction reporting pilot program expired November 18, 2011. Subsequently, most transactions in asset-backed securities must be reported the day of execution during TRACE system hours.

MSRB Notice 2011-61 (November 3, 2011) – The MSRB amended a proposal on interpretive notice concerning the application of MSRB Rule G-17 to underwriters of municipal securities.

MSRB Press Release (November 3, 2011) – The MSRB filed amendments to its proposal regarding the duties of underwriters to state and local government issuers under the MSRB's "fair dealing" rule. The amendments would enhance certain disclosure requirements for underwriters as well as clarify the risks disclosure part of the proposal.

FINRA Regulatory Notice 11-50 (November 2, 2011) – The SEC approved amendments to FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing, effective December 2, 2011.

FINRA Regulatory Notice 11-48 (October 21, 2011) – FINRA requested comment on a proposed new rule requiring carrying/clearing member firms to maintain and keep current certain records in a central location. The comment period expired December 9, 2011.

SEC Press Release 2011-205 (October 12, 2011) – The SEC proposed rules for the registration of securities-based swap dealers and major security-based swap participants.

MSRB Notice 2011-58 (October 4, 2011) – The MSRB reminded firms of procedures for submission of information under MSRB rules surrounding non-business days (Rules G-14, G-32 and G-34).

FINRA Regulatory Notice 11-45 (September 29, 2011) – FINRA revised the Series 7, 17, 37 and 38 examination programs, effective November 7, 2011.

FINRA Regulatory Notice 11-44 (September 29, 2011) – FINRA requested comment on proposed amendments to NASD Rule 2340 to address values of unlisted direct participation programs and real estate investment trust in customer account statements. The comment period expired November 12, 2011.

SEC Press Release 2011-198 (September 29, 2011) – The SEC staff issued a Risk Alert on master/sub-account risks.

MSRB Notice 2011-56 (September 28, 2011) – The MSRB reminded brokers, dealers and municipal securities dealers of previous guidance on the application of Rule G-37 to federal election campaigns of issuer officials.

SEC Press Release 2011-190 (September 27, 2011) – The SEC published for public comment updated market-wide circuit breaker proposals to address extraordinary market volatility.

FINRA Regulatory Notice 11-43 (September 20, 2011) – FINRA requested comment on proposed amendments to Rule 5210 regarding publication of indications of interest. The comment period expired October 21, 2011.

Available Publication

FINRA Regulatory Notice 11-47 (October 14, 2011) – The Securities Industry/Regulatory Council on Continuing Education released its **Fall 2011 Firm Element Advisory**.

Program Update

2012 Securities Compliance Seminar

Registrations are now being accepted for FMA's 21st Securities Compliance Seminar taking place April 25 – 27, 2012 at the Sir Francis Drake Hotel in San Francisco, California. This annual program is a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators. And, *CPE and CLE accreditation will be available.*

The Program Planning Committee has been hard at work developing varied agenda topics and confirming noted industry leaders and regulators as speakers. Members include: Mitchell Avnet (*Lincoln Financial Group*); Anthony Cipiti, Jr. (*Squire Sanders (US) LLP*); Jim Embersit (*Ernst & Young LLP*); Alexander Sixbey (*Lincoln Financial Group*); Bala Subramaniam (*Fidelity India*); and Vaughn Swartz (*TD Securities*).

A complete brochure will be emailed in the next two weeks and will then also be available on the FMA website – www.fmaweb.org. Currently, the working agenda includes these general sessions, concurrent workshops and confirmed speakers:

Key 2012 Legislative and Regulatory Initiatives

- › Hardy Callcott ■ Bingham McCutchen LLP
- › Louis Dempsey ■ Renaissance Regulatory Services, Inc.
- › John Wright ■ Wells Fargo & Company

Governance Risk & Compliance vs. ERM

- › Debra Freitag ■ RegEd
- › Sean Gray ■ PNC Financial Services Group
- › Chuck Hester ■ Oracle Financial Services Software
- › Scott McCleskey ■ Thomson Reuters

Internal Auditor Roles and Responsibilities

- › Mitchell Mantua ■ Ernst & Young LLP

Regulatory Forum

- › Marc Fagel ■ SEC
- › Judith Foster ■ OCC
- › Malcolm Northam ■ FINRA
- › Kathleen Miles ■ MSRB
- › Brandon Reddington ■ OFAC (*Invited*)

Municipal Adviser Issues

- › Bruce Gabriel ■ Squire Sanders (US) LLP
- › David Levy ■ U.S. Bancorp
- › Kathleen Miles ■ MSRB

Anti-Money Laundering

- › Alma Angotti ■ Navigant

Cross Border Issues

Retail Compliance Workshop

- › Christine Kaufman ■ Impact Consultants, Inc.

Institutional Compliance Workshop

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

Social Media & Financial Services

- › Carolyn Pawelek ■ Socialware
- › Stephen Selby ■ LIMRA Regulatory Strategy Center

Whistleblower Provisions of the Dodd-Frank Act

- › Steven Pearlman ■ Seyfarth Shaw LLP
- › Oliver Quinn ■ Taft and Partners

Conflicts of Interest / Insider Trading

- › Steve Brown ■ PricewaterhouseCoopers LLP
- › Michael Sullivan ■ Wells Fargo
- › Andrew Tino ■ PNC Capital Markets and Harris Williams

In addition, peer group discussions (lead by facilitators) will take place on Wednesday and Thursday afternoons. Tentative topics include: *AML/BSA/OFAC; Ask the Regulators; Broker-Dealer Compliance Hot Topics; Compliance & Technology; Cross Border Issues; Conflicts of Interest/Insider Trading; Current Investment Adviser Issues; Customer Complaints; Fixed Income Pricing & Valuation; Governance Risk & Compliance vs. ERM; Internal Audit Hot Topics; Legislative & Regulatory Update/Regulatory Reform; Managing Remote Offices & Employees; Municipal Adviser Issues; New Fiduciary Standard; Privacy & Protection of Information; Private Funds; Social Media & Financial Services; Surviving a Regulatory Exam & Increased Regulatory Oversight; and Whistleblower Provisions.* If you would like to facilitate one of these discussions, or if you have additional topical suggestions, please contact FMA.

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2012 Securities Compliance Seminar

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Register today for this important spring conference – team discounts are available. Contact Dorcas Pearce at dp-fma@starpower.net or 202/544-6327 with questions and/or to register. Online registration is also available at www.fmaweb.org.

FMA is currently seeking interested seminar exhibitors and vendors. So that FMA can be most responsive, please suggest vendors or products that FMA can invite to participate at the 2012 Securities Compliance Seminar. Thanks!

2011 Legal & Legislative Conference

FMA's 20th Legal & Legislative Conference took place October 20 – 21 at the Sheraton Four Points Hotel here in Washington, DC. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance officers and regulators. The two-day program provided participants with an opportunity to share information on current legal and regulatory developments as well as network with peers. And, attendees were eligible for CLE and CPE accreditation.

Congratulations to the Program Planning Committee for developing a timely agenda that included noted industry leaders and senior regulatory officials. Members included: Russell Bruemmer (*WilmerHale LLP*); Kevin Fein (*was at Citizens Wealth Management Group, recently joined TD Bank*); Sara Kelsey (*WilmerHaleLLP*); Kevin MacMillan (*U.S. Bank*); Barbara Mendelson (*Morrison & Foerster LLP*); and Richard Pearson (*Balch & Bingham LLP*).

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

General Counsels

- › Scott Alvarez ■ FRB
- › Dan Berkovitz ■ CFTC
- › David Blass ■ SEC
- › Michael Krimminger ■ FDIC
- › Marc Menchel ■ FINRA
- › Julie Williams ■ OCC

Current Developments

- › Robert Tortoriello ■ Cleary Gottlieb Steen & Hamilton LLP

Legislative Update with Hill Staffers

- › Michael Beresik ■ House Financial Services Committee
- › Jim Clinger ■ House Financial Services Committee
- › Andrew Olmem ■ Senate Banking Committee
- › Charles Yi ■ Senate Banking Committee

Navigating the Dodd-Frank Whistleblower Rules

- › Anthony Cavallaro ■ FINRA
- › Matt Morley ■ K&L Gates LLP
- › Lori Richards ■ PricewaterhouseCoopers LLP

Derivatives

- › Kenneth Raisler ■ Sullivan & Cromwell LLP
- › Jess Sharp ■ U.S. Chamber of Commerce
- › Greg Todd ■ Bank of America

An End to Too Big to Fail?—SIFIS, Living Wills and Enhanced Regulation of Large Institutions

- › Angelo Aldana ■ Mizuho Corporate Bank, Ltd.
- › Susan Krause Bell ■ Promontory Financial Group, LLC
- › Jason Cave ■ Federal Deposit Insurance Corporation
- › Mark Van Der Weide ■ Federal Reserve Board

Secondary Mortgage Market: Looking Into the Crystal Ball

- › Robert Bostrom ■ SNR Denton US LLP
- › Erik Klingenberg ■ SNR Denton US LLP
- › Alfred Pollard ■ Federal Housing Finance Agency

SEC Division Reports

- › David Blass ■ Trading and Markets
- › Carlo di Florio ■ Office of Compliance Inspections and Examinations
- › Hunter Jones ■ Investment Management
- › Jennifer Marietta-Westberg ■ Risk, Strategy, and Financial Innovation
- › Shelley Parratt ■ Corporation Finance
- › Lorin Reisner ■ Enforcement

Cross-Border Insolvency and Resolution Issues

- › Alexandra Steinberg Barrage ■ Morrison & Foerster LLP
- › Debra Stone ■ Federal Reserve Bank of New York
- › David Wall ■ Federal Deposit Insurance Corporation

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2011 Legal & Legislative Conference

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Public Finance Initiatives

- › Ernesto Lanza ■ MSRB
- › Cristeena Naser ■ American Bankers Association
- › Donald Smith ■ K&L Gates LLP

Dodd-Frank Act Update—Volcker Rule

- › Margaret Grieve ■ Bank of America
- › Randall Guynn ■ Davis, Polk & Wardwell LLP
- › Christopher Paridon ■ Federal Reserve Board

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

FMA gratefully acknowledges these sponsors of FMA's 2011 Legal and Legislative Issues Conference:



Renaissance Regulatory Services, Inc.



2012 Legal & Legislative Conference

Late October/early November dates and LDC hotels are currently being considered for FMA's 21st Legal & Legislative Issues Conference this fall.

FMA will assemble a Program Planning Committee in the spring 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 202/544-6327 or dp-fma@starpower.net.

CLE and CPE accreditation...as well as team discounts...will be available, so be sure to budget for (and plan to attend) the 2012 Legal & Legislative Issues Conference.



Who's News

Susan Boudrot, formerly Chief Compliance Officer at Fidelity in their Workplace and Personal Investing division, has joined TD Ameritrade, Inc. as the Chief Compliance Officer of their retail broker-dealer and heads the investment advisor compliance department.

Hugh Conroy, formerly Managing Director & Associate General Counsel at Citigroup's Bank Regulatory Office, has joined Cleary Gottlieb Steen & Hamilton LLP's Banking and Financial Institutions practice group in their New York office.

Kevin Fein, formerly SVP & Chief Compliance Officer at Citizens Wealth Management (RBS Citizens, NA), has joined TD Bank as SVP & Director of Wealth Compliance in their New York office.

Sarah Green, formerly Bank Secrecy Act Specialist in the Division of Enforcement at the Securities and Exchange Commission, has joined FINRA as a Senior Director in the Enforcement Division where she will focus mainly on anti-money laundering and Bank Secrecy Act issues.

Joe Hanvey, formerly Head of AML for the Americas at Nomura Securities International, Inc., has joined Deloitte Financial Advisory Services LLP as a Senior Manager in their Anti-Money Laundering and Economic Sanctions Practice.

Mike Kadish, formerly Managing Director & Senior Counsel at Deutsche Bank AG, has joined RBS Americas Legal as Head of its Bank Regulatory Unit in RBS's Stamford, CT office.

Kevin MacMillan, formerly Assistant General Counsel, Regulatory/Public Policy at Bank of America, has joined U.S. Bank as Managing Director, Federal Government Relations & Assistant General Counsel.

Mike Poell, formerly Director of Compliance at Mizuho Securities USA, has joined U.S. Bancorp Investments, Inc. as Managing Director/Fixed Income Compliance in their Charlotte, NC office.

Brandon Reddington has been named Sanctions Advisor (Securities) at the Office of Foreign Assets Control, U.S. Department of the Treasury in Washington, DC.

James Shorris, formerly EVP & Executive Director, Enforcement at FINRA, has joined LPL Financial, LLC as EVP and Associate Counsel for Regulatory & Compliance Policy in their Boston office.

Vaughn Swartz, formerly SVP/CCO—Corporate & Institutional Banking at the PNC Financial Services Group, has joined TD Securities as CCO in their NY office.

Daniel and Rachel Tannebaum welcomed Eliana Mara on September 23, 2011. Dan is Regional Head of Compliance - Americas, Travelex & Chief Compliance Officer, Travelex Currency Services Inc. Congratulations!

Curtis Tao, formerly VP & Associate General Counsel at Goldman, Sachs & Co., has joined Citigroup as Managing Director, Associate General Counsel-Bank Regulatory.

Karen Van Ness, formerly Product Management, Financial Crime & Compliance Solutions at Oracle Financial Services Software, has joined LexisNexis Risk Solutions as Senior Director Market Planning, Financial Services / Global AML Head.

Russ Walter has joined Charles Schwab and Co., Inc. as a Compliance Director in their San Francisco office.

Eric Young, formerly Managing Director/Global Policy Leader at GE Capital Corporation, has joined RBS as Managing Director and Chief Compliance Officer, RBS Global Banking & Markets, Americas.