# Market Solutions

Volume 24, Number 2 | Financial Markets Association | June 2015

## In This Issue



**Market Solutions**

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*Market Solutions* is a quarterly newsletter about the activities of the Financial Markets Association as well as legislative/regulatory developments of interest to FMA members. The opinions expressed in this publication are those of the authors, not necessarily those of the Association and are not meant to constitute legal advice. *Market Solutions* is provided as a membership service of the **Financial Markets Association**, 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.



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## Know Who You Are Hiring: Now More Than Ever

*By Emily P. Gordy, Renée Kramer and Jeffrey Holik*
*Shulman Rogers Gandal Pordy & Ecker PA*

Make no mistake about it – regulatory reporting for individuals employed in the securities industry and for the firms that employ them – is a FINRA priority. In the past year and a half there has been a rule change, a regulatory notice, significant enforcement actions, and plenty of senior FINRA regulators talking about the topic, issuing warnings, guidance, and expectations. There are a number of moving parts in this discussion and we are here to try to put it all together.

### Regulatory Reporting – A FINRA Priority

By now, most financial industry professionals know that on July 1, 2015, additional requirements under FINRA's supervision rule will take effect requiring member firms to perform heightened due diligence on prospective employees. Hopefully, firms already are prepared for compliance. These new requirements were spawned, in part, by a 2014 *Wall Street Journal* analysis and report finding that more than 1,600 brokers with bankruptcy filings from 2004 to 2012 had not disclosed them on their public CRD records.[1] FINRA subsequently announced approval of an amendment to the pre-hiring due diligence provision of the supervision rule (Rule 3110(e)), requiring firms to verify the accuracy and completeness of the information contained in an applicant's Form U4 and to adopt written procedures that include searching public records.[2] In addition, FINRA stated its intention to conduct a one-time search of all registered persons to ensure the accurate and timely reporting of material financial information.[3] FINRA has spent the past year reviewing public databases for gaps in what brokers have reported.[4]

Importantly, in its annual Regulatory and Examination Priorities Letter for 2015, FINRA discussed the criticalness of timely reporting of disclosable information for investor protection. FINRA stated that its "examiners will review whether required disclosures are complete, accurate and made within the required time periods; determine whether firms have controls, processes and procedures in place to ensure timely filings; and determine whether public records reviews are occurring."[5]

As discussed below, FINRA also expects that due diligence procedures exist and reviews, similar to those required for new hires or transfers, are also occurring with current employees.

In Regulatory Notice 15-05, FINRA states that firms should consider "all available information" in the pre-registration process. FINRA also suggests member firms should consider

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# 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 the Volcker Rule, virtual currencies, the Consumer Financial Protection Bureau, and other regulatory developments.

## VOLCKER RULE

***New Volcker Rule Guidance on Foreign Public Funds and Joint Ventures***

On June 12, 2015, the federal agencies responsible for implementing the Volcker Rule issued guidance that clarifies when the activities and investments of a controlled foreign public fund will be attributed to the banking entity that controls the fund. The guidance acknowledges the differences between the structure and governance of foreign public funds and the typical structure and governance characteristics of U.S. registered investment companies.

A separate guidance addresses the scope of the joint venture exception to the definition of "covered fund" under the Volcker Rule. This guidance appears to impose new limitations on the circumstances under which a vehicle could qualify for the joint venture exception. For example, the guidance indicates that such exception is not available for issuers that raise money from a small number of investors primarily for the purpose of investing in securities, regardless of the duration for which such securities are held.

For more information, please read our client alert at ***http://www.mofo.com/~/media/Files/ClientAlert/2015/06/150615VolckerRuleGuidance.pdf.***

## VIRTUAL CURRENCIES

***The NYDFS Finalizes its BitLicense Proposal***

On June 3, 2015, the New York Department of Financial Services issued a final rule regarding its "BitLicense" regulatory regime. At a high level, the Final Rule requires licensing for any person who engages in "Virtual Currency Business Activity," as defined in the Final Rule, and subjects licensees to extensive compliance obligations, capital requirements, examination, and approval requirements, among other things. The Final Rule provides for a "conditional license" designed to reduce regulatory burden on startups and small businesses engaged in Virtual Currency Business Activities. The Final Rule follows the NYDFS's revised proposal from February 2015, and contains few material differences from the Revised Proposal, primarily related to definitional clarifications. For example, the Final Rule clarifies the prepaid card exclusion from the definition of "Virtual Currency." In addition, the Final Rule further enumerates the circumstances under which a licensee must obtain approval for a material change to the licensee's business. Finally, the Final Rule clarifies that a licensee must only file suspicious activity reports with the Superintendent of the NYDFS if the licensee is not already submitting the reports to the Financial Crimes Enforcement Network; however, the Final Rule does require reporting to the NYDFS for virtual currency transactions that are not currently subject to federal reporting requirements (e.g., virtual currency-to-virtual currency transaction reporting). For our client alert on the Final Rule, please visit ***http://www.mofo.com/~/media/Files/ClientAlert/2015/06/150611TheNYDFSFinalizesitsBitLicenseProposal.pdf.***

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## FMA Welcomes New Members!

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| Gerardo Blanco | Banco Santander International |
| Timothy Bonacci | Navian Capital |
| Kyle Boulton | Renaissance Regulatory Services, Inc. |
| Dawn Calonge | FINRA |
| Angelique Figueroa | Mora Wealth Management Securities, LLC |

## *Know Who You Are Hiring…*

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using private background checks, credit reports and reference letters for this purpose. In addition, at a minimum, firms must conduct public record searches—a new, mandatory requirement—which includes reviews of an applicant's criminal records, bankruptcy records, civil litigations and judgments, liens, and business records.

Notably, if a firm chooses to outsource their new hire reviews, it needs to ensure that the vendor is conducting a thorough review. As FINRA has noted in prior guidance, firms are fully responsible for outsourced functions and if a problem develops, they need to be able to conduct diligent, effective oversight of the vendor and be able to document their follow up.[6]

> *"FINRA has spent the past year reviewing public databases for gaps in what brokers have reported."*

This new requirement is part of the firm's core duty to supervise the business of the firm. It has long been settled that the duty to supervise is not a "one size fits all" requirement but rather imposes on firms the responsibility to tailor its oversight of the business, and the brokers through whom it is conducted, to applicable facts and circumstances. The new rule reflects FINRA's view that firms must be fully aware of its employees' backgrounds when determining how to supervise them.

FINRA also noted the changes to their own registration review process and examination program to review for noncompliance. In connection with these changes, FINRA noted their one-time review of ALL active registered persons and stated that they "will continue this review process on a periodic basis for all registered persons."[7]

This statement, as well as FINRA's ratcheting up of fines in reporting cases, sends a very clear message that reporting and supervisory obligations of firms are truly a FINRA priority. We expect to see an increase in the number of significant U4 reporting enforcement actions against firms in 2015.

## Recent Updates from the 2015 FINRA Annual Conference

During FINRA's May 2015 Annual Conference, FINRA senior staff and panelists discussed the importance of FINRA Rule 3110(e) and provided insights into their expectations.

During one panel, FINRA staff observed that the amended rule should be understood as a "Know Who You're Hiring" obligation just as firms are required, under FINRA Rule 2090, to "Know Your Customer."[8] FINRA staff and panelists outlined several best practice suggestions to aid in compliance.

The suggested best practices fall into three categories. First, in the pre-hiring stage, firms must perform the requisite due diligence by evaluating red flags on a potential hire's CRD and search public records, including court documents. If your firm does not have the tools to conduct such a search, consider hiring an outside vendor.

Second, once hired, firms must be diligent in monitoring developments affecting their employees. While annual attestations have often been a staple part of firms' supervision of, for example, a representative's outside business activities, one senior FINRA official offered the view that reliance on the attestation may not be enough going forward, especially if red flags pop up that reasonably warrant further inquiry.[9] Another senior FINRA official noted that firms would benefit from doing "life style" checks on representatives should red flags occur.[10] One example given was to use well known publically available real estate databases to identify when representatives have purchased a new home and assess whether the purchase price raises questions based on what is otherwise known about the person's finances.[11] Simply put, whatever the nature of the red flag – unusual behavior, a spike in customer complaints, luxury homes or cars or an over-the-top family wedding inconsistent with income or assets, liens and judgments – look into it proactively.

Third, firms should adopt appropriate procedures to ensure that when questions come up and issues are identified, supervisors know what specific steps should be taken and how (and to whom) to escalate when necessary. Supervisors should be trained on the procedures to assure solid understanding of the protocols. Provision should be made for alerting compliance, senior management and, where appropriate, legal, when serious potential problems or systematic issues are detected.

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## *Know Who You Are Hiring…*

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### Four Key Take Aways:

**Conduct a Public Records Search**
Be proactive in reviewing public databases and investigating any judgments or liens or other disclosable events against registered representatives. Due diligence is critical because FINRA's current massive public database review is bound to reveal discrepancies in brokers' current public disclosure records. Prepare now for the inevitable regulatory inquiry.

> *"…examiners will review whether required disclosures are complete, accurate and made within the required time periods; determine whether firms have controls, processes and procedures in place to ensure timely filings; and determine whether public records reviews are occurring."*

**Obtain Documents**
Upon learning of any unsatisfied judgments or liens, obtain court documents, checks, monthly statements, and any other records to verify the judgment or lien's existence and to prove payment or any satisfaction thereof. Do not be complacent.

**Investigate**
When the payroll department or any other division or personnel learns that there may be an action against a registered representative, through a garnishment order or other resource, investigate and report discrepancies to compliance . Firms should have specific procedures (and training on the procedures) covering this area.

**Report**
If a judgment or lien exists, amend the Form U4 and report it promptly. If there is any uncertainty as to the existence of the judgment or lien, explain it in the DRP.

### Failures to Comply with Reporting Obligations Become Supervisory Failures

Past enforcement cases involving failures to timely amend U4s were generally brought against individual registered representatives. It was (and remains) the obligation of the registered person to apprise the firm of any reportable event. If they failed to do so and a U4 was not timely amended, the individual was charged and the matter was framed as a reporting violation. This reporting obligation, however, may become a supervision issue based on either the scope of the failures to report (number of registered persons and/or number of events that are not timely reported) or red flags by the firm that put the firm on notice that there might be reporting issues.

In a settlement filed against Oppenheimer in late March 2015, FINRA fined the firm $2.5 million for failing to supervise a broker who had stolen money from his customers and excessively traded their brokerage accounts.[12] The firm was disciplined for, among other things, having a "lax supervisory structure" which originated at the time of the broker's hiring. FINRA stated in its press release that the firm failed to adequately investigate the broker prior to hiring him, even though he was subject to twelve reportable events, including criminal charges and seven customer complaints. Specifically, the firm was disciplined because "it did not obtain or review any additional information [aside from the representative's CRD record], such as court filings, that would have allowed it to better understand the risks that [the representative] presented to the firm and the investing public."

This action, while brought in part under NASD 3010(e), cited conduct directly attributable to FINRA 3110(e), which has yet to even become effective. Both rules require that member firms ascertain by investigation the good character, business reputation, qualifications and experience of an applicant, but FINRA 3110(e) expressly provides that firms "shall, at a minimum, provide for a search of reasonably available public records." As demonstrated by this case and the new rule, when it comes to considering new hires and their backgrounds – firms must dig deeper.

This disciplinary action extended to the firm's conduct even after the representative's hiring. For example, the firm failed to detect red flags raised

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## *Know Who You Are Hiring…*

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by the representative's customer transactions, complaints, and correspondence, which may have been properly identified had he been placed under heightened supervision and subsequently could have prevented him from carrying out a fraud. In sum, the firm was charged with not only failing to conduct a reasonable pre-hire investigation but also failing to supervise the representative once hired, which was aggravated by having inadequate procedures related to third party wire transfers and excessive trading, as well as failing to make required U4 or U5 filings.

*"In addition, at a minimum, firms must conduct public record searches—a new, mandatory requirement—which includes reviews of an applicant's criminal records, bankruptcy records, civil litigations and judgments, liens, and business records."*

### From Interview to Hiring – Close the Information Loop

It is one thing to identify suspicious conduct but it is another thing as to what a member firm is going to do about it. As noted above, in the Oppenheimer case, the "firm's procedures did not provide for specific additional action to be taken when the firm's surveillance reports showed account activity that was presumptively excessive, or when customer accounts continued to appear on the reports over time." As such, firms should consider memorializing not only the procedures in identifying questionable conduct or trading but further how a matter should escalate, including to whom and how that conduct should be reported. Additionally, firms should consider training employees so that they know what to expect should a situation arise that requires escalation. Regardless of what internal system firms establish, the process should be reasonable and the information should not be siloed from senior staff. Keeping everyone in the loop is essential to ensure that there is appropriate follow-up and that FINRA's U4 or U5 reporting obligations are met.

*"…whatever the nature of the red flag – unusual behavior, a spike in customer complaints, luxury homes or cars or an over-the-top family wedding inconsistent with income or assets, liens and judgments – look into it proactively."*

### Sanctions for Failing to Report or Late Reporting

Outsized fines are here to stay for the foreseeable future when there are extensive lapses in timely amending U4s. FINRA By-Laws provide that a firm is obligated to file an amended Form U4 no later than 30 calendar days after learning of the facts or circumstances that cause the firm to amend the U4. FINRA has signaled on numerous occasions the importance of this reporting obligation over the past year.

The issue of red flags surfaced as early as December 2012, when FINRA fined a broker-dealer $35,000 for not having supervisory procedures in place to ensure that the Payroll Department notified the Compliance Resolution Department of garnishments that might trigger reportable events.[13] The firm's Payroll Department periodically received garnishment notices from judgment creditors, tax levies, from federal or state taxing authorities and/or bankruptcy wage withholding orders and failed to have a process in place to notify the Compliance Department. Hindsight review prompted by FINRA inquiry, determined that 16 garnishment notices required amendments to 13 registered representatives. In November 2014, FINRA fined another member firm $12,500 for failing on several occasions to amend one representative's Form U4 to disclose several judgments and IRS liens and develop and maintain supervisory procedures to disclose unsatisfied liens and judgments of registered representatives on Forms U4.[14]

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## *Know Who You Are Hiring…*

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In March 2015, FINRA significantly ratcheted up fines in this area. First, FINRA fined a firm $350,000 for reporting failures for approximately 80 brokers between 2011 and 2013, in circumstances where the firm was receiving garnishment notices on registered persons.[15] One potentially aggravating factor, as described in the AWC, is that the firm became aware in February 2013 that they had a deficiency in this area and voluntarily took steps to amend their written supervisory procedures (WSPs) and put in a place a process to have payroll notify compliance. They failed to properly implement the process until July 2014.

Days later, FINRA fined another broker-dealer $500,000 over its failure to report judgments and liens imposed upon registered representatives under similar circumstances.[16] Over a three-year period, FINRA found that the firm failed to amend the disclosure forms of about 103 registered representatives who had unsatisfied liens and judgments filed against them. FINRA officials raised the issue that the firm's payroll department was put on notice of these outstanding debts because it had processed numerous wage garnishment orders for the registered representatives. FINRA also noted that broker-dealer failed to document that it reviewed employee disclosures made in annual compliance certifications for reportable events, despite registered representatives reporting being subject to "financial difficulties such as liens." One aggravating factor was that the firm had been fined $370,000 in 2007 for failing to file timely U4 and U5 amendments and lacking supervisory procedures. The firm had also agreed at that time to have internal audit evaluate the effectiveness of its systems and procedures for U4/U5 reporting obligations.

What can we glean from these cases? A variety of factors will be considered in assessing whether enforcement actions will be taken against firms based on unreported or late reported events. Factors include the scope of the violation; for example, the number of representatives who have unreported events and/or the number of undisclosed events for each individual. Other aggravating factors may include a firm's prior relevant disciplinary history, knowledge of the failures without prompt remedial action, inadequate procedures and/or poor training. If FINRA chooses to adopt a "per violation" calculus in assessing fines, as they did in the 2004 late U4/U5 reporting sweep, penalties could be significant.[17] However FINRA chooses to proceed, one thing is certain: firms must incorporate thorough pre-hire background checks and ongoing monitoring of current employees as a core part of its supervisory controls.

> *"It has long been settled that the duty to supervise is not a "one size fits all" requirement but rather imposes on firms the responsibility to tailor its oversight of the business, and the brokers through whom it is conducted, to applicable facts and circumstances."*

### Concluding Thoughts

Hopefully, due to FINRA's relatively recent focus on these reporting obligations and the awareness that information may be publicly available, FINRA will take an appropriately measured approach and not view disciplinary actions against firms as "shooting fish in a barrel."

That said, while we expect FINRA to take a balanced and measured approach, actions by firms will speak louder than words. FINRA's actions against the member firms discussed above illustrate its focus on supervision and firms' due diligence. In turn, firms' actions, through proactive due diligence, can mitigate the potential disciplinary sanction. So…act now! ■

[1] Wall Street Journal, ***Jean Eaglesham and Rob Barry,*** Stockbrokers Fail to Disclose Red Flags ***(March 5, 2014)***.

[2] *See FINRA Board Approves Amendment to Supervision Rule Requiring Firms to Conduct Background Checks on Registration Applicant (press release April 24, 2014).*

[3] *Id.*

[4] *FINRA Regulatory Notice 15-05, at 6.*

[5] *FINRA 2015 Annual Regulatory and Examination Priorities Letter (Jan. 6, 2015) ("Annual Priorities Letter") at 13.*

[6] *Notice to Members 05-48 (Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers).* ***http://www.finra.org/industry/notices/05-48****. As discussed in the Notice: "outsourcing an activity or function to a third party does not relieve members of their*

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## *Know Who You Are Hiring…*

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*ultimate responsibility for compliance with all applicable federal securities laws and regulations and [FINRA]… rules regarding the outsourced activity or function. As such, members may need to adjust their supervisory structure to ensure that an appropriately qualified person monitors the arrangement. This includes conducting a due diligence analysis of the third-party service provider." See also, FINRA's 2015 Annual Regulatory and Examination Priorities Letter in which FINRA highlighted the obligations of firms when outsourcing and noted that this area will be a priority for 2015 examinations. FINRA also noted that their review will include "an analysis of the due diligence and risk assessment firms perform on potential providers, as well as the supervision that they implement for the outsourced activities and functions." Annual Priorities Letter at 13.*

> *"Due diligence is critical because FINRA's current massive public database review is bound to reveal discrepancies in brokers' current public disclosure records."*

[7] *FINRA Annual Priorities Letter (Jan. 6, 2015) at 13.*

[8] *FINRA Staff and Panelists, "Top 10 Regulatory Trends" (May 27, 2015).*

[9] *FINRA Staff and Panelists, "Top 10 Regulatory Trends" (May 27, 2015).*

[10] *FINRA Staff and Panelists, "OBAs: Key Requirements & Leading Practices" (May 28, 2015).*

[11] *FINRA Staff, "Plenary: Ask FINRA Senior Staff" (May 29, 2015).*

[12] *FINRA DOE v. Oppenheimer & Co. Inc., AWC (2009017408102) (March 26, 2015).*

[13] *FINRA DOE v. Edward Jones, AWC (2010025367601) (Dec. 17, 2012).*

[14] *FINRA DOE v. Regal Securities, AWC (2011027363402) (Nov. 21, 2014).*

[15] *FINRA DOE v. Vanguard Marketing Corp., AWC (2013038325801) (March 6, 2015).*

[16] *FINRA DOE v. UBS Financial Services, AWC (2013037118101) (March 10, 2015).*

[17] *NASD Fines 29 Firms Over $9.2 Million for Late Reporting (Nov. 30, 2004); http://www.finra.org/newsroom/2004/nasd-fines-29-firms-over-92-million-late-reporting; NASD Fines Morgan Stanley $2.2 Million for Late Reporting, Firm Temporarily Suspended from Registering New Brokers (July 29, 2004) http://www.finra.org/newsroom/2004/nasd-fines-morgan-stanley-22-million-late-reporting-firm-temporarily-suspended).*

> *"Outsized fines are here to stay for the foreseeable future when there are extensive lapses in timely amending U4s."*

**Emily Gordy**, practice chair of Shulman Rogers' Financial Industry Regulatory Practice, joined the firm after 27 years as a financial industry regulator — which includes serving as senior vice president of FINRA Enforcement and as deputy chief counsel of the U.S. Securities and Exchange Commission's Division of Enforcement.

**Jeffrey S. Holik**, a partner at Shulman Rogers, practices in the area of financial industry regulation. Jeff joined the firm after ten years as a senior financial regulatory official and, most recently, chief legal officer for the retail investment businesses of PNC Bank.

**Renée Kramer**, an associate at Shulman Rogers, practices in the areas of financial industry regulation, securities, and securities enforcement, and government investigations.

To stay current with the latest financial industry news and insights, follow Shulman Rogers' Financial Industry Regulatory Practice Group on Twitter @ *PlayByTheRegs*.

## *Legislative/Regulatory Actions*

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***NYDFS Licenses itBit Exchange***
On May 7, 2015, the NYDFS granted a charter under the New York Banking Law to itBit Trust Company, LLC, a commercial Bitcoin exchange. Following the NYDFS approval, itBit becomes the first virtual currency company to receive a charter from NYDFS. itBit now will be able to operate as a limited-purpose trust company under the New York Banking Law. itBit submitted its application following the NYDFS March 2014 order that initiated a process for accepting licensing applications from virtual currency exchanges under the New York Banking Law. According to a press release announcing the approval, the NYDFS "conducted a rigorous review of that application, including, but not limited to, the company's anti-money laundering, capitalization, consumer protection, and cyber security standards." As a limited-purpose trust, itBit will have to meet, among other things, capital requirements and AML requirements. For our client alert on the itBit charter approval, please visit ***http://www.mofo.com/~/media/Files/ClientAlert/2015/05/150526FirstsVirtualCurrencies.pdf.***

***First Virtual Currency Exchanger Enforcement Action***
On May 5, 2015, FinCEN announced an enforcement action against a virtual currency exchanger to settle alleged violations of the Bank Secrecy Act and its implementing regulations. FinCEN alleges that the virtual currency exchanger previously engaged in these virtual currency activities without registering as a money services business and failed to comply with other BSA requirements. Specifically, the virtual currency exchanger failed to develop a written AML program; failed to report transactions at or above $2,000 in value that it knew, suspected, or had reason to suspect were suspicious; and engaged in a series of transactions in which the virtual currency exchanger either failed to file suspicious activity reports, or filed them in an untimely manner. Under the terms of the settlement, the virtual currency exchanger agreed to pay a $700,000 civil money penalty and take certain remedial actions. A settlement between the virtual currency exchanger and the U.S. Attorney's Office was also announced to resolve criminal charges associated with the alleged BSA violations. It is worth noting that the virtual currency exchanger registered as an MSB on September 4, 2013, developed a written AML program on September 26, 2013, and hired an AML compliance officer in January 2014; however, the settlement agreement focused on violations that preceded these actions. For our client alert on the FinCEN enforcement action, please visit ***http://www.mofo.com/~/media/Files/ClientAlert/2015/05/150526FirstsVirtualCurrencies.pdf.***

## CFPB UPDATE

***CFPB Files Proposed Consent Orders Related to Wireless Billing Practices; Judge Refuses to "Rubber Stamp"***
On May 12, 2015, the CFPB filed proposed consent orders in federal courts that would settle unfair, deceptive, and abusive acts or practices allegations against two wireless carriers. The CFPB claimed that the carriers unfairly permitted customers to be charged for unauthorized purchases by establishing billing and processing systems that enabled third-party merchants to directly bill consumers for purchases. Notably, the CFPB deemed the carriers to be "covered persons" under the Dodd-Frank Act based on the allegation that the carriers extended credit to, and processed payments for, consumers. However, while one of the carriers' proposed settlements was approved the day it was filed, a New York federal judge directed the CFPB and the

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## FMA Welcomes *More* New Members!

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| David Klafter | FINRA |
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## *Legislative/Regulatory Actions*

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other carrier to submit motions "explaining why this proposed settlement is fair, reasonable, and does not disserve the public interest" on May 19, 2015, stating that it "would be a dereliction of the court's duty" to act as a mere "rubber stamp." Both parties filed motions urging the court to approve the settlement in mid-June. For our client alert on the proposed settlements, please visit ***http://www.mofo.com/~/media/Files/ClientAlert/2015/05/150514CFPBWirelessBillingPractices.pdf.***

*CFPB Includes Individuals in RESPA Crackdowns*
On April 29, 2015, the CFPB, in conjunction with the Maryland Attorney General, brought a Real Estate Settlement Procedures Act enforcement action against participants in an alleged mortgage-kickback scheme at the now-defunct Maryland-based title company Genuine Title. According to the complaint, the alleged "kickback" was that the title company executives provided valuable marketing services in exchange for mortgage referrals from outside loan officers. The complaint further alleged that executives funneled cash payments to loan officers through sham entities owned by those loan officers. These orders affirm the CFPB's focus on potential RESPA violations and demonstrate that any party, irrespective of which side of the alleged "kickback scheme" they may be on, could be subject to prosecution in a RESPA matter. For our client alert on the consent orders, please visit ***http://www.mofo.com/~/media/Files/ClientAlert/2015/04/150430CFPBUpstheAnteinRESPA.pdf.***

*CFPB Finalizes Rule Suspending Quarterly Submission of Credit Card Agreements*
On April 15, 2015, the CFPB announced a final rule suspending for one year the requirement under the Truth in Lending Act and Regulation Z that credit card issuers must submit card agreements to the CFPB on a quarterly basis. According to the supplementary information adopted with the Final Rule, issuers will be required to resume quarterly submissions the first business day on or after April 30, 2016. Notwithstanding the Final Rule, issuers still must post credit card agreements on their websites. During the suspension period, the CFPB will work to develop a "streamlined and automated electronic submission system" that will enable issuers to upload agreements directly to the CFPB's online repository. For our client alert on the Final Rule, please visit ***http://www.mofo.com/~/media/Files/ClientAlert/2015/04/150420CFPBFinalizesRule.pdf.***

*CFPB Releases Report on Arbitration*
The CFPB released its long-awaited report to Congress on arbitration agreements in consumer financial contracts in March. As expected, the Report, and Director Richard Cordray in his remarks on the publication, indicated that consumers are better served by litigation—and particularly, class action litigation—than by agreements to arbitrate disputes. The Report addressed nine key areas, including the prevalence and features of arbitration agreements, consumer understanding of arbitration agreements, the types and resolutions of claims in arbitration and in court, and the value of class action settlements. By its Report, the CFPB has fulfilled its statutory mandate to study the use of pre-dispute arbitration clauses in connection with consumer financial products and services and is now statutorily authorized to promulgate regulations that "prohibit or impose conditions or limitations on the use of" such agreements, subject to certain conditions. For our client alert on the Report, please visit ***http://www.mofo.com/~/media/Files/ClientAlert/2015/04/150406CFPBReleasesReport.pdf.***

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| Clare Pierce | BMO Capital Markets Corp. |
| Gregory Stein | Ulmer & Berne LLP |
| Brian Walker | Country Club Bank |

## *Legislative/Regulatory Actions*

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# OTHER REGULATORY DEVELOPMENTS

***Federal Reserve Implements Changes to Name Check Process***

On June 25, 2015, the Federal Reserve implemented changes to the applications process for reviewing proposed officers, directors, and/or new principal shareholders of financial institutions supervised by the Federal Reserve.

Under the previous process, name checks were generally conducted on all proposed officers and directors and/or new principal shareholders. Exceptions were made for individuals with five years of relevant banking or thrift experience (individuals "known to banking"), and proposed outside directors with less than five percent ownership interest in the financial institution. Where the specific facts and circumstances warrant, name checks were conducted on an entire board or ownership group. For example, in proposals which involved numerous organizers (each with limited or no ownership in the relevant supervised financial institution) and no clear top policymakers, name checks generally were conducted for the entire group of organizers.

Under the new process, the Federal Reserve generally will conduct name checks only on an individual that, upon consummation of an application, will become a principal shareholder or one of the top two policymakers of the supervised financial institution. Where the proposed principal shareholder is a company, name checks generally will be conducted on the top two policymakers of the company. In the case of a group acting in concert, name checks generally will be initiated on all individual group members with five percent or greater individual ownership interests.

In addition, the Federal Reserve will no longer take into consideration whether an individual is "known to banking" when determining whether a name check must be conducted. Rather, unless the facts and circumstances suggest otherwise, a completed name check will remain current for a period of five years, and individuals and companies with current name checks will generally not be rechecked, unless circumstances indicate to the Reserve Bank or Board staff that a name check is appropriate.

In certain limited situations, the Federal Reserve will obtain credit bureau reports to supplement and corroborate financial information provided in application filings or from other sources. These credit checks will be conducted on an ad hoc basis when the facts and circumstance indicate that the information provided in the credit report could be helpful to the Federal Reserve in its comprehensive assessment of individuals under review.

For more information, please refer to Federal Reserve Supervisory Letter SR 15-8, available at ***http://www.federalreserve.gov/bankinforeg/srletters/sr1508.htm.***

***Agencies Publish Diversity Standards for Financial Institutions***

On June 10, 2015, six federal financial agencies (the Federal Reserve, the FDIC, the NCUA, the OCC, the CFPB, and the SEC), jointly published a final Interagency Policy Statement, as required by Section 342 of the Dodd-Frank Act, outlining standards for assessing the diversity policies and practices of the entities regulated by each Agency. Section 342 requires the directors of the Offices of Minority and Women Inclusion, which have been established at each Agency, to develop standards for assessing the "diversity policies and practices of entities regulated by the agency." The Policy Statement clarifies certain aspects of the Agencies' October 25, 2013 proposal on the same subject. For example, the Policy Statement defines "diversity," which was not defined in the proposal, to mean minorities and women, and defines "minorities" to mean African Americans, Native Americans, Hispanic Americans and Asian Americans. The Policy Statement does not preclude a regulated entity from using broader definitions. Compliance with the standards is voluntary; that is, the standards will not be a part of the examination or supervisory process. Instead, the Agencies have developed a "model assessment," which a regulated entity could voluntarily disclose to the appropriate Agency or publish in order to increase the public's awareness and understanding of the entity's efforts in this regard. Additional comments on the joint standards may be submitted until August 10, 2015. For our client alert on the Policy Statement, please visit ***http://www.mofo.com/~/media/Files/ClientAlert/2015/06/150612AgenciesPublishDiversityStandardsforFinancialInstitutions.pdf.*** ■

**Jeremey R. Mandell, Amanda J. Mollo, and Diana E. Whitaker contributed to this column.*

# Watch For

June 30, 2015 – The MSRB announced that it is extending by 60 days the date the first submissions of information about 529 college savings plans are due to the MSRB under its Rule G-45. Recently adopted Rule G-45 requires underwriters of 529 college savings plans to provide the MSRB with information regarding their plans' assets, contributions, withdrawals, fees and cost structure. The first submissions are now due October 28, 2015.

CFTC Press Release 7192-15 (June 29, 2015) – The CFTC voted unanimously to propose a rule that would apply the Commission's margin requirements for uncleared swaps in the context of cross-border transactions. The Proposed Rule would apply to Commission-registered swap dealers and major swap participants that are not subject to the margin requirements of other prudential regulators, such as the FRB, OCC and FDIC. The comment period ends 60 days after the publication in the *Federal Register*.

FINRA Regulatory Notice 15-25 (June 29, 2015) – FINRA is making available updates to interpretations in the Interpretations of Financial and Operational Rules that have been communicated to FINRA by the staff of the SEC's Division of Trading and Markets. The updated interpretations relate to the effectiveness of amendments that the SEC adopted to Securities Exchange Act Rules 15c3-1 and 15c3-3.1.

FINRA Regulatory Notice 15-24 (June 23, 2015) – FINRA is requesting comment on a proposal to reduce the delay period for the Historic TRACE Data Sets from 18 months to 6 months. The comment period expires August 24, 2015.

FINRA Regulatory Notice 15-23 (June 19, 2015) – FINRA is providing limited relief regarding the requirement to promptly transmit customer funds received in connection with sales of securities on a subscription-way basis for the purpose of completing suitability reviews. Pursuant to the limited relief, a firm may hold a customer check payable to an issuer or an appropriate third-party payee acting on behalf of the issuer (e.g., a transfer agent or custodian) for up to seven business days from the date that an office of supervisory jurisdiction receives a complete and correct application package for the purchase of securities on a subscription-way basis provided that all conditions set forth herein are present.

FINRA Regulatory Notice 15-22 (June 17, 2015) – FINRA is requesting comment on a revised proposal to adopt a consolidated FINRA rule regarding discretionary accounts and transactions. The comment period expires August 17, 2015.

June 17, 2015 – The MSRB reminded municipal advisors that new MSRB Rule G-44, which establishes the supervisory and compliance obligations of municipal advisors, became effective on April 23, 2015. The MSRB has provided an educational document designed to support municipal advisors' development of effective policies and procedures for supervision and compliance, particularly for municipal advisors that are newly subject to regulatory oversight. Read *Considerations for Developing a Municipal Advisory Supervisory and Compliance System.*

Joint Press Release (June 16, 2015) – The FRB, FDIC and OCC finalized revisions to the regulatory capital rules adopted in July 2013. The final rule applies only to large, internationally active banking organizations that determine their regulatory capital ratios under the advanced approaches rule—generally those with at least $250 billion in total consolidated assets or at least $10 billion in total on-balance sheet foreign exposures. The agencies published changes to the rules affecting these organizations on December 18, 2014, and the final rule, which will be effective October 1, 2015, adopts these changes substantially as proposed.

MSRB Press Release (June 16, 2015) – The MSRB has added a new feature to its EMMA website that allows investors and others to access the full universe of disclosure information available for a municipal security in cases where new identification (CUSIP) numbers are assigned to portions of the bond after issuance.

CFTC Press Release 7186-15 (June 15, 2015) – The CFTC's Division of Market Oversight issued a no-action letter extending the time-limited relief previously provided in no-action letter 14-90, expiring on June 30, 2015, to June 30, 2016. The relief is provided to Swap Dealers and Major Swap Participants from the obligation to report valuation data for cleared swaps as required by section 45.4(b)(2)(ii) of the Commission's regulations.

SEC Press Release 2015-118 (June 12, 2015) – The SEC announced that it is seeking public comment to help

*(Continued on Page 12)*

# Watch For *(Continued from page 11)*

inform its review of the listing and trading of new, novel, or complex exchange-traded products. The public comment period will remain open for 60 days following publication of the comment request in the *Federal Register.*

CFTC Press Release 7184-15 (June 5, 2015) – The CFTC's Division of Swap Dealer and Intermediary Oversight announced it will not recommend that the Commission take action for failure to register as an introducing broker or commodity trading advisor against persons located outside the United States that facilitate swap transactions for International Financial Institutions that have offices in the United States.

OCC News Release 2015-79 (June 3, 2015) – The OCC released a mid-cycle report on key actions completed to date to execute its annual operating plan and priority objectives for its 2015 fiscal year. According to the plan, supervisory priorities for the remainder of the fiscal year include: 1) Strategic planning and execution; 2) Cybersecurity; 3) Corporate governance; 4) Operational risk; 5) Loan underwriting; 6) Stress testing; 7) Interest rate risk; and 8) Compliance.

Federal Reserve Press Release (June 2, 2015) – Federal banking agencies reiterated the disclosure requirements for the annual stress tests conducted by financial institutions with total consolidated assets between $10 billion and $50 billion. These medium-sized companies are required to conduct annual, company-run stress tests–implementing a provision of the Dodd-Frank Act–with the results disclosed to the public for the first time this year. Stress test results must be disclosed by the companies between June 15 and June 30.

MSRB Press Release (June 1, 2015) – The MSRB announced that its EMMA website now includes public finance ratings from Moody's Investors Service, Inc., giving investors and the public free access to ratings from all major agencies together with other key information about municipal bonds. Credit ratings from Moody's Investor Service, Kroll Bond Rating Agency, Fitch Ratings and Standard & Poor's all appear for free on EMMA along with the trading and disclosure information for each municipal security, and are also integrated into EMMA's advanced search function and price discovery tool.

FINRA Regulatory Notice 15-20 (May 27, 2015) – FINRA is requesting comment on a concept proposal to restructure the current representative-level qualification examination program into a format whereby all potential representative-level registrants would take a general knowledge examination and an appropriate specialized knowledge examination to reflect their particular registered role. The comment expires July 27, 2015.

FINRA Regulatory Notice 15-19 (May 27, 2015) – FINRA is requesting comment on a proposed rule to require delivery of an educational communication to customers of a transferring representative. The comment period expires July 13, 2015.

MSRB Press Release (May 26, 2015) – The MSRB received approval from the SEC to enhance the transparency of municipal securities transactions by collecting additional post-trade data for display on the MSRB's EMMA website. Municipal securities dealers will soon be required to use a new indication for trades that occurred on an alternative trading system, among other changes. The new data reporting requirements for dealers are included in amendments to MSRB Rule G-14 on trade reporting and the MSRB's facility for its Real-Time Transaction Reporting System. The requirements take effect on May 23, 2016, giving dealer firms one year to implement the necessary system changes.

FINRA Regulatory Notice 15-17 (May 22, 2015) – FINRA provided additional guidance on rules governing communications with the public.

Federal Reserve Press Release (May 21, 2015) – The Federal Reserve Board proposed adding certain general obligation state and municipal bonds to the range of assets a banking organization may use to satisfy regulatory requirements designed to ensure that large banking organizations have the capacity to meet their liquidity needs during a period of financial stress. Comments on the proposed rule will be accepted until July 24, 2015.

SEC Press Release 2015-95 (May 20, 2015) – The SEC proposed rules, forms and amendments to modernize and enhance the reporting and disclosure of information by investment companies and investment advisers. The comment period for the proposed rules will be 60 days after publication in the *Federal Register.*

*(Continued on Page 13)*

# Watch For *(Continued from page 12)*

FINRA Regulatory Notice 15-16 (May 18, 2015) – FINRA is soliciting comment on proposed amendments to the FINRA rules governing communications with the public. The proposed amendments would revise the filing requirements in FINRA Rule 2210 (Communications with the Public) and FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) and the content and disclosure requirements in FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings). The comment period expires July 2, 2015.

CFTC Press Release 7174-15 (May 12, 2015) – The CFTC released its Final Interpretation on Forward Contracts with Embedded Volumetric Optionality. The interpretation identifies when an agreement, contract, or transaction would fall within the forward contract exclusions from the "swap" and "future delivery" definitions in the Commodity Exchange Act, notwithstanding that it allows for variations in the delivery amount (i.e., contains "embedded volumetric optionality").

FINRA Regulatory Notice 15-15 (May 12, 2015) – The National Adjudicatory Council revised the Sanction Guidelines related to misrepresentations and suitability; effective immediately.

May 11, 2015 – The MSRB's request for approval from the SEC of a proposal to establish the core standards of conduct and duties of municipal advisors has been published in the *Federal Register*. Proposed Rule G–42, on duties of non-solicitor municipal advisors, is accompanied by associated proposed amendments to Rule G–8, on books and records. The deadline for submitting comments to the SEC is May 29, 2015.

SEC Press Release 2015-82 (May 6, 2015) – The SEC approved a proposal by the national securities exchanges and FINRA for a two-year pilot program that would widen the minimum quoting and trading increments–or tick sizes–for stocks of some smaller companies. The SEC plans to use the pilot program to assess whether wider tick sizes enhance the market quality of these stocks for the benefit of issuers and investors. The tick size pilot will begin by May 6, 2016. The exchanges and FINRA will submit their initial assessments on the tick size pilot's impact 18 months after the pilot begins based on data generated during the first 12 months of its operation.

FINRA Regulatory Notice 15-14 (May 6, 2015) – The SEC approved amendments to require firms to identify transactions with non-member affiliates in TRACE trade reports; effective November 2, 2015.

MSRB Press Release (May 6, 2015) – The MSRB published an updated report on the timing of annual financial disclosures by issuers of municipal securities.

FINRA Regulatory Notice 15-13 (May 5, 2015) – FINRA requested comment on the proposed exemption to the trading activity fee for proprietary trading firms. The comment period expires June 19, 2015.

CFTC Press Release 7166-15 (April 30, 2015) – The CFTC approved a proposed rulemaking to amend the trade option exemption by reducing certain reporting and recordkeeping requirements for end-users. The proposed rulemaking will be open for public comment for 30 days after publication in the *Federal Register*.

SEC Press Release 2015-78 (April 29, 2015) – The SEC voted to propose rules to require companies to disclose the relationship between executive compensation and the financial performance of a company. The proposed rules, which would implement a requirement mandated by the Dodd-Frank Act, would provide greater transparency and allow shareholders to be better informed when they vote to elect directors and in connection with advisory votes on executive compensation. The comment period for the proposed rules will be 60 days after publication in the *Federal Register*.

FINRA Regulatory Notice 15-12 (April 29, 2015) – 2015 GASB accounting support fee to fund the Government Accounting Standards Board – the fee is collected on a quarterly basis from member firms that report trades to the MSRB. Each member firm's assessment is based on the firm's portion of the total par value of municipal securities transactions reported by all FINRA member firms to the MSRB during the previous quarter.

SEC Press Release 2015-77 (April 29, 2015) – The SEC proposed cross-border security-based swap rules regarding activity in the U.S. The rules would provided increased transparency and enhanced oversight. The comment period will close 60 days after they are published in the *Federal Register*.

*(Continued on Page 14)*

# Watch For *(Continued from page 13)*

CFTC Press Release 7160-15 (April 23, 2015) – The CFTC's Division of Market Oversight issued Guidance to Swap Execution Facilities on the calculation of projected operating costs.

MSRB Press Release (April 22, 2015) – The MSRB released the content outline for the first municipal advisor professional qualification exam. The outline includes the topics that will be covered on the exam, sample questions and a list of reference materials to assist municipal advisor professionals in preparing for the Municipal Advisor Representative Qualification Examination, which will be introduced as a pilot later this year. All municipal advisor representatives and principals are required to pass the new exam, called the Series 50 examination, within one year of its launch. The MSRB expects to launch the permanent exam in 2016. The MSRB will first administer a pilot exam this fall for those municipal advisor professionals who volunteer to participate. The content outline has been filed with the SEC for immediate effectiveness.

April 16, 2015 – The MSRB reminded municipal advisors that amendments to MSRB Rule G-44 regarding supervisory and compliance obligations of municipal advisors, and related amendments to MSRB Rule G-8 (on books and records) and MSRB Rule G-9 (on preservation of records) become effective on April 23, 2015. Municipal advisors are required to establish, implement and maintain a system to supervise their municipal advisory activities and those of their associated persons that is reasonably designed to achieve compliance with all applicable securities laws and regulations.

SEC Press Release 2015-67 (April 15, 2015) – SEC staff and FINRA issued a report to help broker-dealers assess, craft, or refine their policies and procedures for investors as they prepare for and enter into retirement. The National Senior Investor Initiative report includes observations and practices identified in examinations that focused on how firms conduct business with senior investors.

MSRB Press Release (April 15, 2015) – The MSRB is seeking SEC approval to implement their cornerstone conduct rule for municipal advisors. G-42 would establish core standards of conduct for municipal advisors, provide guidance on the obligations and prohibitions that accompany their federal fiduciary duty to state and local governments, and clarify their duties of care and fair dealing to all clients.

FINRA Regulatory Notice 15-11 (April 10, 2015) – The Securities Industry/Regulatory Council on Continuing Education has released its Spring 2015 Firm Element Advisory. The Council suggests that firms consult the FEA when developing their Firm Element training needs analysis. The updated FEA is available at: ***http://cecouncil.com/media/242295/2015-spring-firm-element-advisory.pdf***. Previous editions of the FEA, as well as a matrix indicating the topics covered in those editions, are available at the Council's website at ***www.cecouncil.com***.

OCC Bulletin 2015-23 (April 6, 2015) – The OCC, along with the FRB and the FDIC, are releasing answers to frequently asked questions regarding the regulatory capital rule. The FAQs address the following topics: Definition of capital; High-volatility commercial real estate exposures; Other real estate and off-balance-sheet exposures; Separate account and equity exposures to investment funds; Qualifying central counterparty questions; Credit valuation adjustment questions; and Other miscellaneous questions.

FINRA Information Notice (March 31, 2015) – Starting in April, 2015, FINRA will conduct a survey to create the Securities Trader qualification examination.

OCC Bulletin 2015-20 (March 30, 2015) – The FFIEC, on behalf of its members, issued a statement to notify financial institutions of the increasing threat of cyber attacks involving destructive malware and to recommend risk mitigation techniques. Banks should take appropriate risk mitigation steps, including the following: Securely configure systems and services; Review, update, and test incident response and business continuity plans; Conduct ongoing information security risk assessments; Perform security monitoring, prevention, and risk mitigation; Protect against unauthorized access; Implement and test controls around critical systems regularly; Enhance information security awareness and training programs; and Participate in industry information-sharing forums.

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# Program Update

## 2015 Legal & Legislative Conference

**Registrations are now being accepted for** FMA's 24th annual **Legal & Legislative Conference** set to take place **October 22 – 23** at the **Hyatt Regency Washington on Capitol Hill** (site of the 2014 program) here in Washington, DC. This annual program is a high-level forum for banking and securities attorneys as well as senior compliance officers/risk managers, internal auditors and regulators. The day and a half program provides participants with an opportunity to share information on current legal and regulatory developments as well as network with peers. **Be sure to ask for the first-timers or the 2-for-1 registration discount.**

The Program Planning Committee is currently developing an agenda focusing on current areas of regulatory and Congressional/agency scrutiny and activity. Members include: **Gail Bernstein** *(WilmerHale);* **Joseph Bielawa** *(Natixis North America LLC);* **Randall Guynn** *(Davis Polk & Wardwell LLP);* **Daniel Meade** *(Wells Fargo);* **Barbara Mendelson** *(Morrison & Foerster LLP);* and **Joseph Vitale** *(Schulte Roth & Zabel LLP).*

The working agenda currently features these panels:

- **General Counsels: FRB, OCC, FDIC, FINRA, CFTC & SEC**
- **Legislative Update from Hill Staffers**
- **Regulatory Reform Post Dodd-Frank/ Volcker**
- **Cross-Border, Banking and Prudential Issues**
- **Derivatives Update and CFTC/SEC Developments**
- **Cybersecurity**
- **AML / BSA**
- **Broker-Dealer Sales Practices and Enforcement Issues**
- **Compliance Officer Personal Liability**
- **SEC Division Reports: Trading and Markets, Enforcement, Corporation Finance, Investment Management, OCIE, Economic and Risk Analysis and Office of International Affairs.**

If you would like to volunteer to speak on any of these topics…or suggest other noted leaders in these fields as panelists…please contact Dorcas Pearce and she will advise the program planning committee of your interest/input. The complete e-brochure will be distributed mid- to late July and will also be featured on FMA's website – ***www.fmaweb.org*.**

**CLE and CPE accreditation…as well as team, government and first-timer discounts…will be available, so be sure to budget for (and plan to attend) the 24th annual Legal & Legislative Issues Conference.**

Contact Dorcas Pearce at ***dp-fma@starpower.*** net or 202/544-6327 if you have questions and/ or wish to register. Online registration is also an option.

**ATTENTION SPONSORS!**

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

*(Continued on Page 16)*

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# Program Update *(Continued from page 15)*

## 2015 Securities Compliance Seminar

**FMA's 24th annual Securities Compliance Seminar** took place **April 22 – 24**, 2015 at the Sonesta Fort Lauderdale in **Fort Lauderdale, Florida**. This annual program was a three-day educational and networking experience for securities compliance professionals, internal auditors, risk managers, attorneys and regulators.

Congratulations to the Program Planning Committee for developing a varied agenda topics and securing noted industry leaders and regulators as speakers. Members included: **Carl Fornaris** *(Greenberg Traurig, P.A.)*; **Dan Tannebaum** *(PricewaterhouseCoopers LLP)*; **Bao Nguyen** *(Kaufman, Rossin & Co.)*; **Mac Northam** *(FMA Board Member)*; **Brandon Reddington** *(Credit Suisse)*; **Bill Reilly** *(Oyster Consulting, LLC)* and **Kristen Constantino** *(Capital One Investing, LLC)*.

The agenda featured these general sessions and peer discussions:

### Key 2015 Legislative and Regulatory Initiatives

- Russell Bruemmer ■ WilmerHale
- Jeffrey Holik ■ The PNC Financial Services Group, Inc. *(now at Shulman, Rogers, Gandal, Pordy & Ecker, P.A.)*
- Daniel Newman ■ Broad and Cassel
- Grace Vogel ■ PricewaterhouseCoopers LLP

### Working with Retail Investors

- Timothy Bonacci ■ Navian Capital
- Margaret Edmunds ■ BMO Harris Financial Advisors
- Donald Litteau ■ FINRA

### Internal Audit Hot Topics

- Scott Norton ■ BankUnited
- Daniel Suarez ■ Kaufman, Rossin & Co.
- John White ■ WeiserMazars

### AML / OFAC Compliance in a Dynamic Regulatory Environment

- Sarah Green ■ FINRA
- Brandon Reddington ■ Credit Suisse
- Jeffrey Weiss ■ TD Ameritrade

### 2 Regulatory Forums—Securities and Banking

- Askari Foy ■ SEC
- Cynthia Friedlander ■ FINRA
- Donald Litteau ■ FINRA
- Saliha Olgun ■ MSRB

and

- John Karansky ■ FRB
- Frank Kulbaski III ■ CFPB
- Gregory Moore ■ OCC

### Understanding Municipal Advisor Regulations and Examinations

- Cynthia Friedlander ■ FINRA
- Saliha Olgun ■ MSRB
- Mary Simpkins ■ SEC

### Establishing Effective Policies, Procedures and Best Practices for Dealing with Elderly Clients

- Neil Baritz ■ Baritz & Colman LLP
- Joe Borg ■ Alabama Securities Commission
- Ronald Long ■ Wells Fargo Advisors

### Social Media Challenges

- Michelle Dávila ■ Franklin Templeton Investments
- Ann Robinson ■ RegEd
- Frederick Schrils ■ GrayRobinson, P.A.

### Cybersecurity

- Mauricio Angée ■ Mercantil Commercebank N.A.
- Alfred Saikali ■ Shook, Hardy & Bacon LLP
- David Weinberger ■ International Assets Advisory, LLC

### Institutional Compliance

- Joy Aldridge ■ Compliance Counsel LLC
- Matthew Hardin ■ Hardin Compliance Consulting LLC
- James Rabenstine ■ Nationwide Financial Services

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# Program Update *(Continued from page 16)*

### Conflicts of Interest, Risk Assessments and Other Supervisory Issues

- Dawn Calonge ■ FINRA
- William Reilly, Jr. ■ Oyster Consulting, LLC
- Vaughn Swartz ■ TD Securities (USA) LLC

### Personal Liability Facing Financial Industry Compliance Personnel

- David Klafter ■ FINRA
- William Mack ■ Greenberg Traurig, P.A.
- Marshall Martin ■ City National Bank of Florida

## Peer Discussions

### Broker-Dealer Compliance Hot Topics (2 sessions)

- Joy Aldridge ■ Compliance Counsel LLC
- Vaughn Swartz ■ TD Securities (USA) LLC

### Internal Audit Hot Topics (2 sessions)

- Daniel Suarez ■ Kaufman, Rossin & Co.
- Michelle Dávila ■ Franklin Templeton Investments

### Key 2015 Legislative and Regulatory Initiatives

- Louis Dempsey ■ Renaissance Regulatory Services, Inc.

### AML / OFAC

- Daniel Tannebaum ■ PricewaterhouseCoopers LLP

### Best Practices for Investment Advisers

- Matthew Hardin ■ Hardin Compliance Consulting LLC

### Compliance Officer Personal Liability

- Jeffrey Weiss ■ TD Ameritrade

### Supervisory Issues

- Jaqueline Hummel ■ Hardin Compliance Consulting LLC

## Pre-Seminar Workshop

**Louis Dempsey** (Renaissance Regulatory Services); **James Sallah** (Sallah Astarita & Cox, LLC); **Nicholas Monaco** (SEC); and **Yvette Panetta** (FINRA) led an optional pre-seminar interactive workshop, **Regulatory Examinations and Investigations**, on Wednesday, April 22 from 8:30–10:45 am. This workshop presented a unique opportunity to network with other legal, compliance and audit professionals and provide an interactive format to address the questions and concerns of the participants. It was designed to enhance attendees' knowledge about the regulatory examination and investigative process, and compare and contrast their similarities and differences.

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

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# Program Update *(Continued from page 17)*

## FMA gratefully acknowledges these sponsors of FMA's 2015 Securities Compliance Seminar










*(Continued on Page 19)*

# Watch For *(Continued from page 14)*

## Available Publications

OCC Bulletin 2015-31 (June 30, 2015) – The FFIEC, on behalf of its members, has issued a Cybersecurity Assessment Tool that institutions may use to evaluate their risks and cybersecurity preparedness. The OCC examiners will gradually incorporate the Assessment into examinations of national banks, federal savings associations, and federal branches and agencies of all sizes. In addition to the Assessment, the FFIEC has also made available resources institutions may find useful, including an executive overview, a user's guide, an online presentation explaining the Assessment, and appendixes mapping the Assessment's baseline items to the *FFIEC Information Technology (IT) Examination Handbook* and to the National Institute of Standards and Technology's Cybersecurity Framework.

OCC News Release 2015-94 (June 30, 2015) – Interest rate, underwriting, strategic, compliance, and cybersecurity top the OCC's supervisory concerns in its *Semiannual Risk Perspective for Spring 2015*

OCC Bulletin 2015-26 (April 15, 2015) – The OCC issued the "Trade Finance and Services" booklet of the *Comptroller's Handbook*. This revised booklet replaces the "Trade Finance" and "Bankers' Acceptances" booklets, issued in November 1998 and September 1999, respectively.

OCC Bulletin 2015-25 (April 14, 2015) – The OCC issued the "Real Estate Settlement Procedures Act" booklet of the *Comptroller's Handbook*. This revised booklet replaces a similarly titled booklet issued in October 2011 and provides updated information resulting from recent changes made to Regulation X (12 CFR 1024) regarding mortgage servicing and loss mitigation.

OCC Bulletin 2015-22 (April 3, 2015) – The OCC is revising and reorganizing its current guidance for subordinated debt issued by national banks (at appendix A of the "Subordinated Debt" booklet of the Comptroller's Licensing Manual) and replacing it with new "Guidelines for Subordinated Debt."

# Program Update *(Continued from page 18)*

## 2016 Securities Compliance Seminar

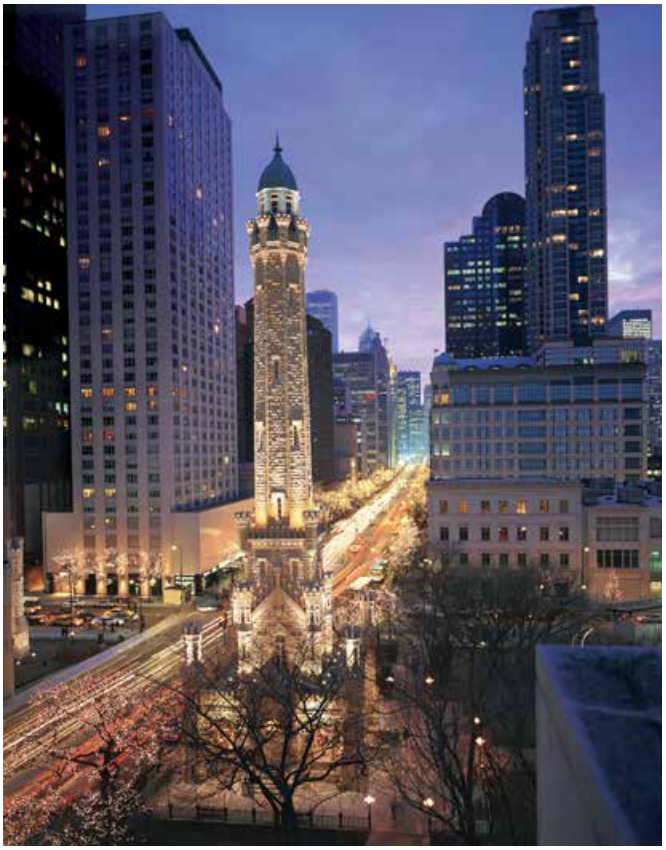
### Save these dates – April 20-22, 2016!

FMA's **2016 Securities Compliance Seminar** will take place at the **Wyndham Grand** (one block from Michigan Avenue, the "Magnificent Mile" and overlooking the river) in Chicago, Illinois next spring.

Chicago was the host city of the 2011 program where we recorded our highest attendance numbers ever. Hopefully, we'll set another record next April!

Mark your calendar…and hope to see you there.

P. S. The Planning Committee will be assembled in the summer to begin work on program development. Contact Dorcas Pearce to volunteer…as a committee member, a general session panelist, workshop facilitator or peer discussion leader…or to share topical and/or speaker recommendations. Sponsor inquiries will also be welcome.



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# *Who's News*

**Barbara Drohan Ballard**, formerly of FleetBoston/Bank of America, has joined the Board of Directors at 1st Advantage Credit Union.

**Andrew J. Bowden**, former Director of the SEC's Office of Compliance Inspections and Examinations, has joined Jackson National Life Insurance Company as SVP & General Counsel.

**Russ Bruemmer** has retired as a Partner and the Chair of WilmerHale's Financial Institutions Group. Russ has served as FMA's Special Counsel since FMA's inception and for many years as the Chair of the Legal and Legislative Issues Conference Planning Committee. He has also been a regular speaker and moderator at FMA's Securities Compliance Seminar. As those who know Russ might expect, although he has retired from WilmerHale, Russ is neither tired nor expired, and will likely be a speaker at upcoming FMA seminars.

**Mark Carberry**, formerly a Partner in the Securities & Commodities Litigation Group at Neal, Gerber & Eisenberg LLP, has joined J.P. Morgan as Executive Director/Compliance.

**Kristen Constantino** has transitioned to a new role with Capital One Investing, LLC as Senior Director of Operations.

**Anthony DiMilo**, formerly Examination Specialist - Trust, has retired after 23 and a half years at the FDIC. Best of luck, Tony!

**Andrew J. "Buddy" Donohue** has been named Chief of Staff at the SEC.

**Michael Emerson**, formerly Head of Legal and Compliance, America at Australia and New Zealand Banking Group Limited, has joined Signature Bank as General Counsel.

**Blair Foster** has transitioned to the Commercial Real Estate Division within Wells Fargo where he is currently an Operational Risk Manager, responsible for building and implementing a compliance and operational risk assurance program.

**Sheldon Goldfarb**, former General Counsel at RBS, has retired after 35+ years in the financial services industry. Congratulations, Sheldon!

**Daniel R. Gregus** has been named Associate Director for the broker-dealer examination program in the SEC's Chicago Regional Office. He has been its acting Associate Director since February 2014.

**David Grim** has been named Director of the Division of Investment Management at the SEC. He has been the division's acting director since February, following the departure of former director Norm Champ.

**Jeffrey S. Holik**, formerly Chief Counsel, Broker-Dealer at the PNC Financial Services Group and before that a long-time senior official at FINRA, has joined Shulman, Rogers, Gandal, Pordy & Ecker, P.A. as a Shareholder in their broker-dealer and investment adviser regulatory practice group.

**Jessica Kane** has been named Director of the SEC's Office of Municipal Securities; **Rebecca Olsen** will be Deputy Director. Ms. Kane, its former Deputy Director and Ms. Olsen, it's former Chief Counsel, each spent time representing the office publicly since the departure of former director John Cross late last year.

**Maryann H. Kennedy** and **Kris A. McIntire** have been named Deputy Comptrollers for Large Bank Supervision at the OCC.

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## *Who's News* *(Continued from Page 20)*

**William Langford**, formerly Global Head of Compliance Architecture and Strategy at Citi, has joined GE Capital as Chief Compliance Officer.

Long time FMA member **Keith Leavy**, formerly Chief Compliance Officer at BMO Capital Markets Corp., has retired. Best of luck, Keith!

**Saliha Olgun** has been promoted to Assistant General Counsel at the MSRB.

**Paul Saltzman**, formerly President of the Clearing House Association, has joined Deutsche Bank AG as Vice Chairman.

**Henry A. Stiles**, formerly an Associate Corporate Counsel at Raymond James Financial, Inc., is now Counsel @ Citi.

**Richard Taf**t has been named Deputy Comptroller for Credit Risk at the OCC. He succeeds **Darrin Benhart**, who became the Deputy Comptroller for Supervision Risk Management in October 2014.

**Marc Wyatt** has been named Acting Director of the SEC's Office of Compliance Inspections and Examinations. He succeeds Andrew Bowden, who left the SEC to rejoin the private sector at the end of April.

**Happy 4th of July!**