Milbank

Summary of Recent Regulatory Actions Taken by FDIC, OCC, SEC, CFTC and NY DFS

As of May 20, 2020

Interagency Actions

May 20

- The Federal Reserve Board, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration and Office of the Comptroller of the Currency (OCC) issued principles to supervised banks, savings association and credit unions for offering responsible small-dollar loans to meet customers' short-term credit needs. Agencies recognize the significant role that small-dollar loans play in helping customers meet their ongoing credit needs due to unexpected expenses or temporary income shortfalls, including during periods of economic stress or national emergencies. The interagency statement, including characteristics of responsible small-dollar loan programs and the core lending principles for institutions offering small-dollar loan products, can be found here.
- The Federal Reserve Board, FDIC and OCC issued a final rule that excludes from the supplementary leverage ratio (SLR) certain central bank deposits of banking organizations predominantly engaged in custody, safekeeping and asset servicing activities. The rule provides that qualifying banking organizations could exclude from its total leverage exposure the lesser of (i) the amount of central bank deposits placed at qualifying central banks, or (ii) the amount of on-balance-sheet deposit liability of the banking organization that are linked to fiduciary or custodial and safekeeping accounts. Additional information can be found here.

May 15

- The federal bank regulatory agencies approved an interim final rule that permits depository institutions subject to the supplementary leverage ratio[1] to temporarily exclude US Treasury securities and deposits at Federal Reserve Banks from the ratio denominator. The temporary modifications will provide flexibility to certain depository institutions to expand their balance sheets in order to provide credit to households and businesses in light of the challenges arising from the COVID-19 pandemic. If an institution elects to change its supplementary leverage ratio calculations, it must request approval from its primary federal banking regulator before making capital distributions, such as paying dividends to its parent company, as long as the exclusion is in effect. Once published in the Federal Register, the rule will be effective and comments will be accepted for 45 days. The rule will be in effect through March 31, 2021.

May 8

- The Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency and National Credit Union Administration issued an interagency statement on allowances for credit losses that promotes consistency in the interpretation and application of the FASB's credit losses accounting standard. Additionally, the agencies finalized interagency guidance on credit risk review systems. The final guidance discusses sound management of credit risk, a system of independent credit review and appropriate communication regarding the performance of the institution's loan portfolio to its management and board of directors.

[1] The supplementary leverage ratio generally requires subsidiaries of bank holding companies with more than $250 billion in total consolidated assets to hold a minimum ratio of 3 percent, measured against their total leverage exposure. More stringent requirements are in place for the largest and most systemic financial institutions.

May 6

- The Federal Reserve Board and FDIC announced two 90-day extensions for upcoming resolution plan deadlines. First, the agencies extended the deadline to September 29, 2020, for resolution plans from Barclays, Credit Suisse, Deutsche Bank and UBS that remediate certain weaknesses previously identified by the agencies. Second, the agencies extended the deadline to September 29, 2021 for the targeted resolution plans from the large foreign and domestic banks in Category II and Category III of the agencies' regulatory framework, which are listed here. Targeted resolution plans for the eight global systemically important banking organizations will remain due by July 1, 2021.

May 5

- The federal bank regulatory agencies announced an interim final rule that modifies the Liquidity Coverage Ratio (LCR) to support banking organizations' participation in the Federal Reserve's Money Market Mutual Fund Liquidity Facility and the Paycheck Protection Program Lending Facility. The rule promotes participation by neutralizing the LCR impact associated with the non-recourse funding provided by these facilities and does not otherwise alter the LCR or its calibration. The rule is effective immediately and comments will be accepted through June 5, 2020.

May 1

- The Federal Reserve and OCC issued a joint response about the effect of recent financial market volatility on the market risk capital rule. The question relates to an increase in the number of backtesting exceptions and the capital implication under the market risk capital rule. The response notes that affected banking organizations were notified during March and April 2020 that they may apply the multiplication factor that applied as of December 31, 2019, rather than applying a higher multiplier based on the most recent exceptions.

April 30

- The Federal Financial Institutions Examination Council (FFIEC) members issued a joint statement addressing the use of cloud computing services and security risk management principles in the financial services sector. This statement does not contain new regulatory expectations; rather, it highlights examples of risk management practices for financial institutions, safeguards to protect customers' sensitive information from risks that pose potential consumer harm and additional resources on general third-party risk management and outsourcing practices.

April 27

- The Federal Reserve and FDIC announced they will extend the comment period through June 4, 2020, for the agencies' proposed guidance for resolution plans submitted by certain large foreign banks. The proposed guidance would provide additional information on the agencies' expectations for resolution plans of certain large foreign banks, which would include the US operations of Barclays, Credit Suisse and Deutsche Bank. In light of the COVID-19 pandemic, the agencies are reviewing, and may adjust, other upcoming deadlines associated with the resolution planning process.

April 22

- The Federal Reserve, FDIC and OCC announced a final rule that makes technical changes to the interim final rule announced by the agencies on March 27, 2020, regarding the delayed implementation of certain accounting rules. The interim final rule allows banking organizations that are required under US accounting standards to adopt the current expected credit loss (CECL) methodology this year to delay the estimated impact on regulatory capital for up to two years, followed by a three-year transition period. The final rule makes the following technical changes to the interim final rule:

- Specifies that Category III banking organizations that elect to use the CECL transition in the interim final rule can adjust total leverage exposure when calculating the supplemental leverage ratio; and
- Clarifies that for purposes of calculating the modified CECL transitional amount and modified adjusted allowances for credit losses transitional amount under the interim final rule, the CECL transitional amount, deferred tax assets transitional amount, and adjusted allowances for credit losses transitional amount can be either a positive or negative number.

April 16

- The Federal Reserve, FDIC, OCC and NCUA will host a webinar for bankers on Friday, April 24, 2020, from 3:00-4:00 p.m. EDT to discuss the revised Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus that was released on April 7 (summary below).
  - You can register for the event here, and participants are encouraged to email questions in advance to: asktheregulators@stls.frb.org.
- The Federal Financial Institutions Examination Council (FFIEC)[2] released its Federal Disclosure Computational Tools, including the Annual Percentage Rate (APR) Computational Tool and the Annual Percentage Yield (APY) Computational Tool, which were designed to assist financial institutions in their efforts to comply with consumer protections laws and regulations. The OCC has discontinued use of its own APR and APY calculation programs in favor of the FFIEC Federal Disclosure Computational Tools.

April 15

- The FFIEC released several updated sections and related examination procedures to the Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual.[3] The Manual provides instructions to examiners for assessing the adequacy of a bank's BSA/AML compliance program. The updated sections provide transparency into the BSA/AML examination process and do not establish new requirements. Significant revisions include:
  - Risk-Focused BSA/AML Supervision – provides examiners with instruction on tailoring the examinations to a bank's risk profile, including examination and testing procedures and conducting risk-focused testing or analytical reviews
  - Assessing the BSA/AML Compliance Program – provides examiners with instruction on assessing the adequacy of a bank's BSA/AML compliance program and establishes a minimum set of procedures for full scope BSA/AML examinations
  - BSA/AML Risk Assessment – provides instruction for assessing a bank's BSA/AML risk assessment processes, including identification of specific risk categories unique to the bank and analysis of the information identified to better assess risk within these categories

April 14

- The federal banking agencies announced an interim final rule to temporarily defer real estate-related appraisals and evaluations under the agencies' interagency appraisal regulations. The appraisals and evaluations can be deferred for up to 120 days after the closing of residential or commercial real estate loan transactions. Excluded from this rule are transactions involving

[2] The members of the FFIEC include the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau and State Liaison Committee.

[3] In connection with the publication of the updates to the BSA/AML Examination manual, the FFIEC released an interagency statement and the Comptroller of the Currency also issued a general statement.

acquisitions, development and construction of real estate. These temporary provisions will expire on December 31, 2020 unless extended by the federal banking agencies.

April 9

- The federal bank regulatory agencies announced an interim rule to encourage lending to small businesses through the SBA's Paycheck Protection Program (PPP), a program established through the CARES Act. The interim rule modifies the agencies' capital rules to neutralize the regulatory capital effects of participating in the Federal Reserve's PPP facility because there is no credit or market risk in connection with PPP loans pledged to the facility. This action is similar to the treatment extended by the agencies in connection with the Federal Reserve's Money Market Mutual Fund Liquidity Facility (see March 19 under Interagency Actions). The interim final rule also clarifies that a zero percent risk weight applies to loans covered by the PPP for capital purposes. The rule is effective immediately and comments will be accepted for 30 days after publication in the Federal Register.

April 7

- The federal institution regulatory agencies issued a revised interagency statement encouraging financial institutions to work constructively with borrowers affected by COVID-19 and providing additional information regarding loan modifications. The revised statement clarifies the interaction between the interagency statement released on March 22, 2020, and the temporary relief provided by Section 4013 of the CARES Act, which was signed into law on March 27, 2020. The revised statement also provides the agencies' views on consumer protection considerations.
  - Section 4013 of the CARES Act suspends the requirement that certain loan modifications be classified as trouble debt restructurings (TDRs) in regulatory reports.
    - To be an eligible loan modification under Section 4013, the loan modification must be:
      - 1. Related to COVID-19;
      - 2. Executed on a loan that was not more than 30 days past due as of December 31, 2019; and
      - 3. Executed between March 1, 2020 and the earlier of (a) 60 days after the date of the termination of the national emergency or (b) December 31, 2020.
    - If the loan modification is not eligible under Section 4013, or if the financial institution elects not to account for the loan modification under Section 4013, the financial institution should evaluate whether the modified loan is a TDR in accordance with Subtopic 310-40 of the FASB Accounting Standards Codification.
  - The agencies encourage financial institutions to work with borrowers and will not criticize institutions for doing so in a safe-and-sound manner. The agencies view prudent loan modification programs offered to customers affected by COVID-19 as positive and proactive actions that can manage or mitigate adverse impacts on borrowers, and lead to improved loan performance and reduced credit risk. When working with borrowers, lenders and servicers should adhere to consumer protection requirements, including fair lending laws, to provide the opportunity for all borrowers to benefit from these arrangements.

April 6

- The Board of Governors of the Federal Reserve, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency announced the issuance of two interim final rules intended to provide relief to community banking organizations under the CARES Act which requires the aforementioned agencies to lower the community bank leverage ratio to 8%.

- Under the new rules, a banking organization that has a leverage ratio that is 8% or greater and meets other criteria may use the community bank leverage ratio framework from the second quarter through the end of 2020.
- The community bank leverage ratio will be 8% for the remainder of 2020 and then increase to 8.5% for 2021. On January 1, 2022, the ratio will return to 9% or greater.
- The interim final rules also include a two-quarter grace period for qualify community bank organizations whose leverage ratio falls no more than 1% below the community bank leverage ratio.
- The agencies will accept comments until June 8.

April 3

- The federal financial institution regulatory agencies and the state financial regulators issued a joint policy statement providing guidance to mortgage servicers on the agencies' flexible supervisory and enforcement approach during the COVID-19 pandemic. Under the CARES Act, borrowers in a federally backed mortgage loan experiencing direct or indirect hardship due to the pandemic may request forbearance by making a request to their mortgage servicer. Upon receipt of such a request, the mortgage servicer must provide a CARES Act forbearance that would allow mortgage payments to be deferred for 180-days or more.
    - The policy statement explains that as long as mortgage servicers make a good faith effort (i) to provide certain early intervention and loss mitigation notices, (ii) to take certain actions relating to loss mitigation set out in the mortgage servicing rules and (iii) to send annual escrow statements in a reasonable time, the agencies do not intend to take supervisory or enforcement action against mortgage servicers. Further, mortgage servicers offering mortgage forbearance programs or short-term repayment plans will not have to provide an acknowledgement notice within five (5) days of receipt of an incomplete application, provided the servicer sends the acknowledgement notice before the end of the forbearance or repayment period.

April 2

- The Federal Reserve, CFTC, FDIC, OCC and the SEC announced they will consider comments submitted before May 1, 2020 on their proposal to modify the Volcker rule's prohibition on banking entities investing in or sponsoring hedge funds of private equity funds.

March 27

- The Federal Reserve, FDIC and OCC:
    - Issued a notice allowing depository institutions and depository institutions holding companies to adopt, for the first quarter of 2020, a final rule issued last year setting forth a new methodology (SA-CCR) on how certain banking organizations measure counterparty credit risk derivatives contracts.
        - The final rule was not slated to become effective until April 1, 2020. The notice states that "[by] allowing early adoption of the SA-CCR rule, the notice allows banking organizations to implement the…methodology's more risk-sensitive measurement of the exposure amounts of derivatives contracts one quarter earlier than the…rule provided."
        - The notice was published in the Federal Register on March 31, 2020.
    - Issued an interim final rule allowing banking organizations that are required under US accounting standards to adopt the current expected credit loss (CECL) methodology this year to mitigate the estimated cumulative regulatory capital effects for up to two years.
        - The interim final rule was published in the Federal Register on March 31, 2020.

March 26

- The FDIC and OCC, along with the Federal Reserve, Consumer Financial Protection Bureau (CFPB) and National Credit Union Administration (NCUA) issued a joint statement encouraging financial institutions to engage in "responsible small-dollar lending" to customers in response to COVID-19, provided such loans are offered in a safe and sound manner and comply with applicable statutes and regulations, including consumer protection laws. With respect to borrowers who experience unexpected circumstances and cannot repay a loan as structured, the statement encourages institutions to consider workout strategies that would help enable the borrower to repay the principal of the loan while mitigating the need to re-borrow.

March 25

- The FDIC and OCC, along with the Federal Reserve, CFPB, NCUA and SLC, issued a joint statement providing a 30-day extension of the official filing deadline for institutions to submit their March 31, 2020, Call Reports.

March 22

- Note: Please refer to the Revised Interagency Statement released on April 7, which updates this guidance based on the CARES Act that was signed into law on March 27, 2020.
  - The federal financial institution regulatory agencies and the state banking regulators issued an interagency statement encouraging financial institutions to work constructively with borrowers affected by COVID-19 and providing additional information regarding loan modifications. The statement encourages financial institutions to work with borrowers and states that the agencies will not criticize institutions for doing so in a safe and sound manner and will not direct supervised institutions to automatically categorize loan modifications as TDRs. The joint statement also provides supervisory views on past-due and nonaccrual regulatory reporting of loan modification programs.

March 19

- The federal bank regulatory agencies announced an interim final rule to ensure that financial institutions will be able to effectively use the Money Market Mutual Fund Liquidity Facility. The interim final rule modifies the agencies' capital rules that would neutralize the regulatory capital effects of participating in the program, reflecting that institutions would be taking no credit or market risk associated with participating in the program.

March 17

- The federal bank regulatory agencies issued a statement encouraging banks to use their resources to support households and businesses.
- The federal bank regulatory agencies issued an interim final rule providing that if a bank's capital declines by a certain amount, the limitations on capital distributions that could apply under the capital rules will phase in gradually. The interim federal rule is meant to facilitate the use of firms' capital buffers to promote lending activity to households and businesses.

March 16

- The federal bank regulatory agencies released a statement encouraging banks to use the Federal Reserve's discount window.

Federal Deposit Insurance Corporation

May 12

- The Federal Deposit Insurance Corporation (FDIC) is seeking a comment on a proposed rule that would mitigate the deposit assessment effects of participating in the Paycheck Protection Program (PPP), Paycheck Protection Program Lending Facility (PPPLF) and Money Market Mutual Fund Liquidity Facility (MMLF). The FDIC is proposing an effective date by June 30, 2020, and an application date of April 1, 2020, which would ensure that the changes are applied to assessments starting in the second quarter of 2020 and provide certainty to the insured depository institutions regarding the assessment effects of these programs. Comments on the proposed rule will be accepted for seven days after publication in the Federal Register.

May 7

- The Federal Deposit Insurance Corporation (FDIC) updated its FAQ for Financial Institutions Affected by the Coronavirus Disease 2019. The previous version of the FAQ was released on May 4. Below are the questions that were added in the new version of the FAQ:
  - *Force Place Flood Insurance*. How does the Federal Emergency Management Agency (FEMA) Bulletin W-20002 affect the force placement requirement under the Flood Disaster Protection Act and the implementing regulation? If a flood insurance policy lapses during the COVID-19 emergency, should a lender force place insurance?
  - *Reserve Account Administration/Regulation D*. Are there changes to the six convenient transfer limit on savings deposits associated with the Federal Reserve Board's elimination of reserve requirements?

May 4

- The Federal Deposit Insurance Corporation (FDIC) updated its FAQ for Financial Institutions Affected by the Coronavirus Disease 2019. The previous version of the FAQ was released on April 28. Below are the questions that were added in the new version of the FAQ:
  - *Qualified Mortgage Status*. Does providing a loan modification impact an existing loan's qualified mortgage (QM) status?
  - *Flood Insurance*. Are lenders still required to make a flood hazard determination, establish escrow accounts, and provide flood notices to borrowers when modifying loans for borrowers adversely affected by COVID-19?
  - *Flood Insurance Triggers*. If a lender offers a payment deferral program or skip-a-payment program, will this trigger the Federal flood insurance requirements?
  - *Flood Insurance Coverage*. Do flood insurance renewal premium payments still need to be received within 30 days of the policy's expiration date to avoid a lapse or reduction in coverage?
  - *Cash Withdrawals*. What are the consumer compliance implications if a bank wants to limit customers' cash withdrawals?

April 28

- The Federal Deposit Insurance Corporation (FDIC) updated its FAQ for Financial Institutions Affected by the Coronavirus Disease 2019. The previous version of the FAQ was released on April 23. Below are the questions that were added in the new version of the FAQ:
  - *Offset of Deposits*. Are Economic Impact payments subject to offset for charged-off loans or other obligations to the financial institution?
  - *Garnishment*. Are Economic Impact payments subject to garnishment?
  - *Deposits into Closed Accounts*. What should a financial institution do if an Economic Impact payment is direct deposited to an account that is closed?

- *Payment to the Deceased*. What should a financial institution do if an Economic Impact payment is direct deposited to an account whose owner is deceased?
- *Fraudulent Economic Impact Checks*. We are worried about individuals presenting fraudulent IRS economic impact checks. What can a bank do to reduce the risk of accepting a fraudulent paper check?
- *Accounts for Unbanked Consumers*. Can banks open accounts for unbanked consumers to receive economic relief payments?
- *Non-customer Checks*. Is a financial institution required to cash an Economic Impact paper check issued to a non-customer?

April 23

- The Federal Deposit Insurance Corporation (FDIC) updated its FAQ for Financial Institutions Affected by the Coronavirus Disease 2019. The previous version of the FAQ was released on April 15. Below are the questions that were added in today's update of the FAQ:
  - *Reporting Delinquent Loans.* Do loans that receive payment accommodations have to be reported as delinquent or non-performing?
  - *Reserve Account Administration/Regulation D*. Are there changes to the six convenient transfer limit on savings deposits associated with the Federal Reserve Board's elimination of reserve requirements?
  - *CRA Credit for Assisting LMI Employees*. Can a financial institution receive positive CRA consideration for assisting its LMI employees?

April 16

- The FDIC announced that it is postponing its efforts to modify signage and advertising requirements for banks and savings associations. In February 2020, the FDIC began seeking input on potential changes to its sign and advertising rules, and the comment period was extended last month to April 20, 2020. The agency did not provide a timeframe for when it will resume these efforts.

April 3

- The FDIC announced that it will extend the comment period for its proposed rule to modernize its brokered deposit regulations by 60 days. The comment period was initially set to end on April 10, 2020, but the FDIC elected to extend the period to June 9, 2020, given the challenges associated with COVID-19.

March 19

- FDIC Chairman Jelena McWilliams sent a letter to the Financial Accounting Standards Board (FASB) urging a delay in transition to and exclusions from certain accounting rules, including:
  1. Excluding COVID-19-related modifications from being considered a concession when determining a troubled debt restructuring (TDR) classification;
  2. Permitting financial institutions currently subject to the current expected credit losses (CECL) methodology an option to postpone implementation of CECL given the current economic environment; and
  3. Imposing a moratorium on the effective date for those institutions that are not currently required to implement CECL to allow these financial institutions to focus on immediate business challenges relating to the impacts of the current pandemic and its effect on the financial system.

March 17

- The FDIC is seeking comment on a proposed rule that would require certain conditions and commitments for approval or non-objection to certain filings[4] involving an industrial bank or industrial loan company whose parent company is not subject to consolidated supervision by the Federal Reserve Board. Comments will be accepted until June 1, 2020.

[4] The proposed rule would apply to deposit insurance, change in bank control and merger filings that involve industrial banks.

Office of the Comptroller of the Currency

May 12

- The Office of the Comptroller of the Currency (OCC) issued a bulletin in response to inquiries from banks that are considering changes to the date, time or location of their annual meetings as a result of the COVID-19 pandemic. Before making any changes to the annual meeting, the bank's board of directors should consider all relevant facts and circumstances and applicable laws.
  - For national banks, the annual meeting requirement is governed by state corporate governance laws and the national bank's governing documents. The board should properly document any decision to change the date, time or location of the meeting.
  - For federal savings associations (FSA), the annual meeting requirement is governed by OCC regulations, which require that meetings be conducted no later than 150 days after the end of the fiscal year and that the meeting time frame be incorporated into its bylaws. An FSA may amend its bylaws to establish a longer time frame with the OCC's prior approval, provided certain conditions are met.

April 27

- The Office of the Comptroller of the Currency (OCC) issued a bulletin encouraging banks providing loans under the Paycheck Protection Program (PPP) to prudently document their implementation and lending decisions and to identify and track the PPP loans made to small business borrowers that have annual revenues of $1 million or less and are located in low- to moderate-income areas.

April 14

- The Office of the Comptroller of the Currency (OCC) announced that its Office of Innovation will host three listening sessions to discuss issues and potential solutions relating to the Paycheck Protection Program (PPP). Details for the listening session are below:
  - **Payroll verification** – April 16, 11:00 a.m. – 1:00 p.m. (eastern) – re: methods to increase the speed and efficiency of the payroll verification for PPP loans during application and monitoring processes
  - **Fraud identification** – April 20, 1:00 p.m. – 3:00 p.m. (eastern) – re: solutions that will enable entities to more effectively and efficiently identify fraudulent uses of the PPP, including obtaining PPP loans from more than one lender
  - **Backend processes** – April 21, 1:00 – 3:00 p.m. (eastern) – re: solutions to potential challenges entities may face monitoring PPP Loans during the loan forgiveness process
- If you are interested in providing your views for a particular session, please contact the OCC's Office of Innovation at innovation@occ.treas.gov

April 7

- In light of the recent disruptions and significant challenges faced by banks as a result of the COVID-19 pandemic, the OCC announced its support for FinCEN's updated Bank Secrecy Act (BSA) Notice released on April 3, 2020. The FinCEN BSA Notice provides for certain regulatory relief under the risk-based approach to BSA compliance, including exempting from beneficial ownership requirements new loans extended to existing customers under the CARES Act Paycheck Protection Program. The OCC supports this approach and notes that, when evaluating a bank's BSA compliance program, it will consider the actions taken by banks to protect and assist employees, customers and others in response to the COVID-19 pandemic, including any reasonable delays in BSA report filings, beneficial ownership verification or re-verification requirements and other risk management processes.

March 22

- The OCC announced an interim final rule to revise its short-term investment fund (STIF) rule for national banks acting in a fiduciary capacity. The rule allows the OCC to authorize banks to temporarily extend maturity limits of these funds. The rule is effective immediately, and the agency will accept comments through May 11, 2020.
- The OCC also announced an order extending the maturity limits for STIFs affected by the market effects of COVID-19. The order provides that a bank will be deemed in compliance with the rule if:
  - The STIF maintains a dollar-weighted average portfolio maturity of 120 days or less, as determined in the same manner as is required by the Securities and Exchange Commission SEC) pursuant to Rule 2a-7 for money market mutual funds (17 CFR 270.2a-7);
  - The STIF maintains a dollar-weighted average portfolio life maturity of 180 days or less, as determined in the same manner as is required by the SEC pursuant to Rule 2a-7 for money market mutual funds (17 CFR 270.2a-7).;
  - The bank is acting in the best interests of the STIF under applicable law in connection with using these temporary limits; and
  - The bank makes any necessary amendments to the written plan for the STIF to reflect these temporary changes.

  The relief provided by this order terminates on July 20, 2020, unless the order is revised by the OCC before that date.

Securities and Exchange Commission

May 15

- The Securities and Exchange Commission (SEC) adopted amendments to the national market system plan governing the consolidated audit trail (the "CAT NMS Plan") to bring additional transparency, governance, oversight and financial accountability to its implementation. The amendments require the self-regulatory organizations that participate in the CAT NMS Plan to file with the Commission a complete implementation plan for the Consolidated Audit Trail and quarterly progress reports. Additionally, the amendments establish target deadlines for four implementation milestones and reduce the amount of fee recovery available to the plan participants if those target deadlines are missed. The amendments will be effective 30 days after publication of the adopting release in the Federal Register.

May 6

- The Securities and Exchange Commission (SEC) announced an order directing the equity exchanges and FINRA to submit a new National Market System plan with a modernized governance structure for the production of public consolidated equity market data and the dissemination of trade and quote data from trading venues. The plan must be submitted within 90 days and will then be made available for public comment.

May 4

- The Securities and Exchange Commission (SEC) announced that it is providing temporary, conditional relief for established smaller companies affected by the COVID-19 pandemic that seek to meet their urgent funding needs through a Regulation Crowdfunding offering. The actions will provide eligible companies relief from certain rules regarding timing of the offering and the financial statements required. The relief will apply to offerings launched between the effective date of the rules and August 31, 2020. The temporary final rule can be found here.

April 27

- The Securities and Exchange Commission's (SEC) Investor Advisory Committee will hold a virtual public meeting on May 4, 2020, focusing on the COVID-19 pandemic. The committee will hold two discussions: a discussion of public company disclosure considerations in a COVID-19 pandemic context, and a discussion of public company shareholder engagement/virtual shareholder meetings in a COVID-19 pandemic context. The full agenda is available here.

April 24

- The SEC announced the formation of an internal, cross-divisional COVID-19 Market Monitoring Group, which will assist in (1) Commission and staff actions and analysis related to the effects of COVID-19 on markets, issuers, and investors—including our Main Street investors, and (2) responding to requests for information, analysis and assistance from fellow regulators and other public sector partners.

April 21

- The SEC announced a new rule proposal that would establish a framework for fund valuation practices. The proposal addresses how fund boards can satisfy their obligation to determine fair value in good faith, as required under the Investment Act of 1940. Recognizing that most fund boards do not play a day-to-day role in the pricing of fund investments, the rule generally permits boards to assign the determination to the fund's investment adviser, subject to board oversight and certain other conditions. The rule proposal can be found here.
- The SEC and PCAOB released a public statement regarding risks associated with emerging market investment and the PCAOB's continued inability to inspect audit work papers in China. Highlighted are the different requirements and standards across emerging markets and the resulting impact on the quality of financial information. Other emerging market risks include the

limited ability of US authorities to bring actions in those jurisdictions, as well as limited shareholder rights and practical remedies in those markets. Issuers should provide clear disclosure of any material risks or limitations relating to emerging market investments or exposure.

April 20

- In response to the COVID-19 pandemic, the SEC issued two exemptive orders relating to the National Market System Plan Governing the Consolidated Audit Trail (CAT NMS Plan). First, the Commission provided a phased CAT reporting timeline for broker-dealers. This order allows for a delayed start to CAT reporting provided the broker-dealers comply with certain other obligations. Second, the Commission allows certain introducing brokers to follow the small broker-dealer reporting timeline. The order applies to introducing brokers that meet the net capital requirements for small broker-dealers under the Securities Exchange Act of 1934 but fail to qualify as small broker-dealers for the purposes of the CAT NMS Plan.

  Select milestones for broker-dealer reporting to the CAT are below:

  - June 22, 2020: Initial equities reporting for large broker-dealers and small broker-dealers that currently report to FINRA's Order Audit Trail System
  - July 20, 2020: Initial options reporting for large broker-dealers
  - December 13, 2021: Full equities and options reporting for large and small broker-dealers
  - July 11, 2022: Full customer and account reporting for large and small broker-dealers

April 9

- The SEC adopted amendments to its rules for securities clearing agencies to apply enhanced standards to all SEC-registered central counterparties and central securities depositories. Prior to these amendments, the enhanced standards applied only to securities clearing agencies deemed systemically important and those that were central counterparties for security-based swaps. Securities clearing agencies subject to enhanced standards must comply with requirements regarding policies and procedures for financial risk management, governance, recovery planning, operations and disclosures to market participants and the public. The rules will become effective 60 days after publication in the Federal Register.

April 8

- The SEC announced temporary, conditional exemptive relief for business development companies (BDCs), which provide capital to smaller domestic operating companies that otherwise may not be able to readily access the capital markets. This relief will provide additional flexibility for BDCs to issue and sell senior securities in order to provide capital to such companies, including those with operations affected by COVID-19. The terms of an issuance must be evaluated and approved by a majority of the BDC's independent board members.
- The SEC adopted rule amendments to implement certain provisions of the Small Business Credit Availability Act and the Economic Growth, Regulatory Relief, and Consumer Protection Act relating to BDCs and other closed-end funds. The reforms will provide eligible funds with a more streamlined registration process that has long been available to operating companies.

  - Short-form registration: eligible funds can use the short-form registration statement if they meet certain filing and reporting history requirements and have a public float of at least $75 million
  - WKSI-eligible: Certain funds will now be able to qualify as Well-Known Seasoned Issuers (WKSIs) if they meet certain filing and reporting history requirements and have a public float of at least $700 million
  - Prospectuses and reporting: Eligible funds will be able to use a free writing prospectus, certain factual business information, forward-looking statements and certain broker-

dealer research reports; additionally, eligible funds can also satisfy the final prospectus delivery requirement by filing with the SEC

Most of the amendments will become effective August 1, 2020.

April 7

- The SEC's Office of Compliance Inspections and Examinations (OCIE) issued risk alerts regarding examinations that focus on compliance with Regulation Best Interest and Form CRS. These alerts provide broker-dealers and investment advisers with advance information about the scope of the initial compliance examinations. Initial examinations for Regulation Best Interest will focus on whether broker-dealers have made a good faith effort to implement policies and procedures relating to compliance with the regulation, including the operational effectiveness of those measures. Initial examinations for Form CRS will focus on assessing whether firms have made a good faith effort implement Form CRS, including reviewing the filing and posting of the required relationship summary as well as its process for delivering the relationship summary to existing and new retail investors. The compliance date for Regulation Best Interest and Form CRS is June 30, 2020.

March 26

- The SEC announced additional temporary relief to market participants in response to the effects of COVID-19, including:
  - Relief for filers from having to secure the notarization required to gain access to make filing on the EDGAR system. The relief is available through July 1, 2020 and is subject to certain conditions;
  - Extending the filing deadlines by 45 days for specified reports and forms that companies must file pursuant Regulation A and Regulation Crowdfunding; and
  - Extending the filing deadline by 45 days for annual updates to Form MA that municipal advisors must file, subject to certain conditions.

March 25

- The Securities and Exchange Commission announced that it is:
  - Extending the filing periods covered by its conditional reporting relief enacted on March 4, 2020, for certain public company filing obligations under the federal securities laws; and
  - Extending regulatory relief previously provided to funds and investment advisers whose operations may be affected by COVID-19.
- Additionally, the SEC's Division of Corporation Finance issued its views regarding disclosure considerations and other securities law matters related to COVID-19.

March 23

- The Securities and Exchange Commission announced temporary flexibility for registered funds affected by recent market events to borrow funds from certain affiliates and to enter into certain other lending arrangements. The relief is designed to provide funds with additional tools to manage their portfolios for the benefits of all shareholders as investors may seek to rebalance their investments.

March 22

- The SEC issued an order that, subject to certain conditions, provides registered transfer agents and certain other persons with exemptive relief for certain regulatory obligations under the federal securities laws through May 30, 2020. Importantly, however, transfer agents at all times continue to be subject to the requirements of Exchange Act Rule 17Ad-12, which requires transfer agents to ensure that they adequately safeguard securities and funds in their possession or custody.

March 21

- The SEC enabled for immediate effectiveness a proposed rule filing submitted by the New York Stock Exchange (NYSE) to facilitate electronic auctions in light of its decision to temporarily close its New York trading floor. The NYSE rule filing modifies certain rules to set wider price parameters, and to remove volume limits, within which NYSE designated market makers (DMMs) can facilitate auctions in an electronic trading environment. The NYSE has published a set of FAQs for market participants as it transitions to operations without the availability of its trading floor and floor-broker order types.

Commodity Futures Trading Commission

April 28

- CFTC Commissioner Brian Quintenz announced that he will not seek re-nomination as a Commissioner when his term expires this month. Commissioner Quintenz was sworn into office on August 15, 2017, for the remainder of a five-year term. The Commissioner intends to stay in his role until the earlier of the confirmation of his successor or October 31, 2020.

April 24

- The Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight (DSIO) announced additional targeted no-action relief to registrants listing new principals and to applicants for registration as associated persons (APs) from the requirement to submit a fingerprint card for any such principal or AP registration application, subject to certain conditions. The relief will remain in effect until July 23, 2020, or until the National Futures Association notifies the public that it has resumed processing fingerprints, whichever is earlier.

April 23

- The Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight (DSIO) announced additional targeted no-action relief to futures commission merchants (FCMs) and introducing brokers (IBs) in response to the COVID-19 pandemic. The relief permits eligible FCMs and IBs receiving covered loans under the Paycheck Protection Program to add back to capital certain amounts under covered loans that are forgivable in accordance with Regulation 1.17. Additionally, certain FCMs and IBs can add-back accrued FINRA annual assessment fees for capital purposes. This targeted relief aligns with the relief issued by FINRA.

April 21

- CFTC Chairman Heath Tarbert provided public remarks regarding crude oil futures. He addressed the state of oil futures markets, why negative futures prices were expected, volatility and counterparty risk, among other topics. Video of his interview, along with the transcript, can be found here.

April 14

- The CFTC unanimously approved three proposed rules and two final rules at its open meeting.
  - Proposed Rules
    - **Amendments to Part 190 Bankruptcy Regulations**[5] – comprehensive updates to part 190 to reflect current market practices and lessons learned from past commodity broker bankruptcies; there is a 90-day comment period starting April 14.
    - **Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR** – amends certain compliance requirements for commodity pool operators in Regulation 4.27 and Form CPO-PQR; there is a 60-day comment period starting April 14.
    - **Amendments to Part 50 Clearing Requirements for Central Banks, Sovereigns, IFIs, Bank Holding Companies and CDFIs** – addresses treatment of swaps entered into by certain central banks, sovereign entities and international financial institutions; also exempts swaps entered into by certain bank holding

[5] Commissioner Quintenz provided a statement of support for the proposal and highlighted a few aspects of it: 1. It reaffirms the special treatment of a customer account of an insolvent commodity broker, so that customer' positions can promptly be transferred; 2. It provides increased deference to the trustee that a US Bankruptcy Court appoints to oversee the proceedings of an insolvent commodity broker; and 3. The revised treatment of the "delivery account" also applies to digital assets.

companies, saving and loan holding companies and community development financial institutions from required clearing; there is a 60-day comment period following publication in the Federal Register.

– Final Rules

  - **Amendments to Part 23 Margin Requirements for the European Stability Mechanism** – codifies CFTC No-Action Letter 19-22, which provided that the DSIO will not recommend an enforcement action against a registered swap dealer that does not follow the uncleared margin rules with respect to swaps entered into with the European Stability Mechanism.
  - **Amendment to Part 160 Consumer Financial Information Privacy Regulation** – restores detailed requirements for policies and procedures to safeguard customer records and information in Commission regulation part 160 that were inadvertently deleted in a 2011 amendment.

April 10

- The CFTC announced that it is extending certain comment periods in light of the COVID-19 pandemic. The extensions apply to rules proposed by the Division of Market Oversight for which current comment periods started in January and February of 2020. The extensions are listed below.

Title of Rulemaking	Date Proposed	Original Closing Date for Comments	Extended Closing Date for Comments
Position Limits for Derivatives	1/30/2020	4/29/2020	**Friday, 5/15/2020**
Swap Execution Facility Requirements and Real-Time Reporting Requirements	1/30/2020	4/20/2020	**Friday, 5/22/2020**
Certain Swap Data Repository and Data Reporting Requirements	2/20/2020 (reopened comments on prior proposal)	5/20/2020	**Friday, 5/22/2020**
Amendments to the Real-Time Public Reporting Requirements	2/20/2020	5/20/2020	**Friday, 5/22/2020**
Amendments to the Swap Data Recordkeeping and Reporting Requirements	2/20/2020	5/20/2020	**Friday, 5/22/2020**

March 31

- The CFTC's Division of Swap Dealer and Intermediary Oversight (DSIO) announced additional targeted, temporary no-action relief to foreign affiliates of certain futures commission merchants (FCMs) in response to the COVID-19 pandemic. Subject to certain conditions, the DSIO temporarily permits certain foreign affiliates of FCMs that are exempt from registration with the Commission by CFTC Regulation 30.5 to accept orders from US persons for execution on US contract markets in the event an affiliated FCMs US personnel are unable to handle the order flow of US customers due to their absence from normal business sites. The relief expires on September 30, 2020.

March 20

- The CFTC announced that the DSIO issue two additional no-action letters providing temporary, targeted relief to a large US bank that helps finance America's oil and gas sector and to those who operate commodity-focused investment funds the CFTC regulates. The no-action letters provide:

- Relief to a major insured depository institution (IDI) from considering energy-related commodity swaps in determining whether such institution must register with the CFTC as a major swap participant (MSP); and
- Relief to Commodity Pool Operators (CPOs) from certain reporting requirements and filing deadlines pertaining to Form CPO-PQR, Pool Annual Reports and Pool Periodic Account Statements.

March 17

- The CFTC announced that the Division of Swap Dealer and Intermediary Oversight issued a number of no-action letters providing temporary, targeted relief to futures commission merchants, introducing brokers, swap dealers, retails foreign exchange dealers, floor brokers and other market participants in response to the COVID-19 pandemic, including:
  - Relief to futures commission merchants, introducing brokers, swap dealers, retail foreign exchange dealers, floor brokers and members of designated contract markets and swap execution facilities from CFTC regulations requiring recording of oral communications related to voice trading and other telephonic communications as well as time-stamping requirements when located in remote, socially-distanced locations;
  - 30 days of no-action relief to futures commission merchants and swap dealers from the requirement to furnish annual compliance reports to the CFTC; and
  - Relief from the requirement to be located on the premises of a designated contract market and to register as introducing broker, which might otherwise have been triggered in connection with trading activities undertaken at remote, socially-distanced locations.
- The CFTC announced its Division of Market Oversight (DMO) issued three no-action letters providing temporary, targeted relief to swap execution facilities (SEFs) and certain designated contract markets (DCMs) in response to the COVID-19 pandemic, including;
  - Relief to SEFs from CFTC regulations requiring recording of oral communications related to voice trading and other telephonic communications that will make them unable to comply with certain audit trail requirements, recordkeeping requirements related to maintaining a complete audit trail and monitoring requirements related to audit trail reconstruction. This relief expires on June 30, 2020. Additionally, the DMO will provide an extension of the time to submit certain filings, including annual compliance reports and fourth quarter financial reports; and
  - Relief to certain DCMs from audit trail and related requirements. This relief expires on June 30, 2020.

New York Department of Financial Services

April 22

- The New York Department of Financial Services (New York DFS) issued a circular letter directing New York-regulated health insurers to provide cash flow and administrative relief to New York State hospitals during the COVID-19 pandemic. This letter follows a previous directive on March 20 that suspended preauthorization and administrative requirements, including certain utilization review and notification requirements for hospitals. The new circular letter directs New York-regulated health insurers to:
  - Immediately process for payment outstanding hospital claims;
  - In collaboration with DFS, work with hospitals in insurers' networks to provide additional financial assistance if needed and feasible, focusing on community, rural, and safety-net hospitals;
  - Suspend preauthorization requirements for all services performed at hospitals, including lab work and radiology, until June 18, 2020;
  - Not conduct retrospective reviews of hospital claims until June 18, 2020, subject to limited exceptions; and
  - Not make medical necessity denials related to emergency department and inpatient hospital treatment for COVID-19.

April 16

- The New York DFS published an Order to provide two forms of temporary regulatory relief for New York-chartered financial institutions. First, during the disaster emergency and for 60 days thereafter, these institutions may conduct required meetings virtually provided all individuals can hear each other at the same time. Second, the timing requirement for annual stockholder meetings is extended from within the first 4 months of the institutions' fiscal year to within the first 7 months of the fiscal year if the prior deadline occurs during the disaster emergency.

April 8

- The New York DFS issued new regulation requiring health plans to defer payment of insurance premiums due under individual and small group commercial health insurance plans through June 1, 2020, for consumers and businesses experiencing financial hardship due to the COVID-19 pandemic. This follows the New York DFS's statement on April 2 that it would issue such regulation pursuant to Governor Andrew Cuomo's Executive Order No. 202.14. The regulation requires small group commercial health insurance plans to provide the following relief to consumers and businesses who can demonstrate financial hardship due to COVID-19:
  - Defer premium payments through June 1, 2020 and continue paying claims during this period;
  - Waive late payment fees otherwise due, and not report late payments to credit rating agencies; and
  - Work with individuals to help them transition to new coverage, if appropriate.

April 7

- The New York DFS announced that it reached an agreement with many of the major private student loan services and lenders to provide relief to borrowers facing financial hardship due to the COVID-19 pandemic. The CARES Act provides relief for millions of student loan borrowers who have loans owned by the federal government, which does not include an estimated 300,000 New Yorkers who have student loans owned by private lenders. Relief for borrowers who are impacted by COVID-19 includes: a minimum of 90 days of forbearance; waiving late payment fees; ensuring no borrower is subject to negative credit reporting; ceasing debt collection lawsuits for 90 days; and working with eligible borrowers to enroll them in other applicable borrower assistance programs. The private lenders who agreed to this relief hold approximately 90% of the privately-held student loans in New York.

April 2

- The New York DFS will require health plans to defer the payment of insurance premiums due under individual and small group health commercial insurance plans through June 1st for consumers and businesses experiencing financial hardship due to the COVID-19 pandemic.

April 1

- The New York DFS announced new action for consumers and small businesses facing financial hardship due to the COVID-19 pandemic, including:
  - Permitting consumers to defer paying life insurance premiums for 90 days;
  - Permitting consumers and small businesses to defer paying premiums for property and casualty insurance for 60 days;
  - Requiring premium finance agencies to provide the same relief as insurers; and
  - Permitting New Yorkers without health insurance to apply for coverage through NY State of Health under a special enrollment period from April 1st – April 15th.

March 24

- The New York DFS issued an emergency regulation requiring New York regulated institutions to:
  - Make applications for forbearance of any payment due on a residential mortgage of a property located in New York widely available to any individual residing in New York who demonstrates financial hardship as a result of the COVID-19 pandemic, and grant such forbearance for a period of 90 days, subject to safety and soundness requirements and certain federal exceptions; and
  - Provide the following financial relief to any individual demonstrating financial hardship from the COVID-19 pandemic, subject to safety and soundness requirements:
    - Elimination of fees charged for the use of ATMs that are owned or operated by the regulated banking organizations;
    - Elimination of any overdraft fees; and
    - Elimination of any credit card late payment fees.