MAYER | BROWN

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REVERSE inquiries

Structured and market-linked product news for inquiring minds.

2020 OCIE Examination Inquiries

On January 7, 2020, the Office of Compliance Inspections and Examinations ("OCIE") of the U.S. Securities and Exchange Commission ("SEC") announced its examination priorities for fiscal year 2020.[1] OCIE's 2020 examination priorities include:

In This Issue

1. The protection of retail investors, particularly seniors and those saving for retirement, through the review of disclosures relating to fees, expenses and conflicts of interest;
2. The review of system security and resiliency of entities that provide services critical to the functioning of capital markets (e.g., clearing agencies' timely corrective action in response to prior examinations);
3. The review of cyber and other information security risks across the entire examination program;
4. The risk-based examinations of registered investment advisers ("RIAs"), investment companies, broker-dealers and municipal advisors;
5. Compliance with applicable anti-money laundering requirements;
6. The review of advancing financial technology ("Fintech") and innovation, including digital assets, electronic investment advice and the use of new sources of data ("alternative data"), digital currencies and RIAs that provide services to their clients through automated investment tools and platforms ("robo-advisers"); and
7. The evaluation of the effectiveness of the programs, policies and procedures of the Financial Industry Regulatory Authority, Inc. ("FINRA") and the Municipal Securities Rulemaking Board.[2]

OCIE will focus on private placements, securities of issuers in new and emerging risk areas and higher risk products, particularly including those that (i) are complex or non-transparent, (ii) have high fees and expenses or (iii) where an issuer is affiliated with or related to the registered firm making the recommendation. Before the June 30, 2020 implementation deadline for Regulation Best Interest, OCIE also intends to examine

[1] A copy of OCIE's 2020 examination priorities is available at http://bit.ly/2sNrm54.

[2] *See* OCIE Announces 2020 Examination Priorities, available at http://bit.ly/2RO1zU2.

broker-dealers' and RIAs' progress in implementing the Regulation Best Interest requirements, including conflicts disclosure policies and procedures and Form CRS content and delivery.

OCIE is also keen on examining how firms use data sets from FinTech and innovation, including digital assets, electronic investment advice and alternative data, in interacting with, and providing services to, investors, firms and other service providers.

FINRA Priorities Letter

On January 9, 2020, FINRA released its annual risk monitoring and examination priorities letter (the "2020 Letter").[3] The 2020 Letter describes the areas of focus for FINRA's risk monitoring, surveillance and examination programs in 2020. The 2020 Letter is organized into four main areas, each with multiple subcategories:

- Sales Practice and Supervision;
- Market Integrity;
- Financial Management; and
- Firm Operations.

The 2020 Letter is wide-ranging, but this article discusses matters of interest to the structured products community.

Compliance with sales practice obligations and firms' supervision of these practices will be a continued area of focus in 2020, particularly with respect to complex products, variable annuities, private placements, fixed income mark-up/mark-down disclosures, representatives acting in certain positions of authority and senior investors.

Compliance with Regulation Best Interest and the use of Form CRS will also draw FINRA's attention. Prior to the Regulation Best Interest and Form CRS compliance date of June 30, 2020, FINRA will review firms' preparedness for Regulation Best Interest. After that date, FINRA will review firms' compliance with Regulation Best Interest, Form CRS and the related SEC guidance and interpretations.

FINRA listed ten factors which, among others, it would take into consideration when reviewing for Regulation Best Interest compliance after June 30, 2020:

- Does your firm have procedures and training in place to assess recommendations using a best interest standard?
- Do your firm and your associated persons apply a best interest standard to recommendations of types of accounts?
- If your firm and your associated persons agree to provide account monitoring, do you apply the best interest standard to both explicit and implicit hold recommendations?
- Do your firm and your associated persons consider the express new elements of care, skill and costs when making recommendations to retail customers?

[3] The 2020 FINRA Risk Monitoring and Examination Priorities Letter is available at: http://bit.ly/37N2WYA.

- Do your firm and your associated persons consider reasonably available alternatives to the recommendation?
- Do your firm and your registered representatives guard against excessive trading, irrespective of whether the broker-dealer or associated person "controls" the account?
- Does your firm have policies and procedures to provide the disclosures required by Reg BI?
- Does your firm have policies and procedures to identify and address conflicts of interest?
- Does your firm have policies and procedures in place regarding the filing, updating and delivery of Form CRS?

FINRA will also review compliance with FINRA Rule 2210 (Communications with the Public), the supervisory and recordkeeping requirements in FINRA Rules 3110 and 4510 and the related rules under the Securities Exchange Act of 1934 (the "Exchange Act"), Rules 17a-3 and 17a-4 (Books and Records Requirements).

In 2020, FINRA will review how firms review, approve, supervise and distribute retail communications regarding private placement securities via online distribution platforms, as well as traditional channels. FINRA will also look at firms', registered representatives' and customers' use of digital communications (texting, messaging, social media or collaboration applications) and any challenges to firms' requirements relating to the review and retention of these digital communications.

Under the "Trading Authorization" category, FINRA will review whether firms have reasonably designed supervisory systems to detect and address registered representatives exercising discretion without written authorization from the client, as required under FINRA Rule 3260 (Discretionary Accounts).

Outside of FINRA's examination program, FINRA will engage with firms to understand how the broker-dealer industry is preparing for the LIBOR phase-out by year end 2021, any firms' exposure to LIBOR-linked financial products, steps that firms are taking to plan for the transition from LIBOR to alternative rates and the effect of the LIBOR phase-out on customers.

ARRC Consultation on SOFR to LIBOR Spread Adjustments

On January 21, 2020, the Alternative Reference Rates Committee ("ARRC") released a consultation on methodologies for spread adjustments (the "Consultation") to be used in USD LIBOR contracts, such as floating rate notes, that use the ARRC's hard-wired recommended fallback language.[4] That fallback language provides a mechanism for a USD LIBOR floating rate note to shift over to the secured overnight financing rate ("SOFR") at the time that LIBOR ceases publication.[5] The ARRC's recommended fallback language, however, is currently missing two elements.

The first fallback from USD LIBOR, term SOFR, does not yet exist and is not expected to become available prior to the cessation of LIBOR. The second missing piece is the spread adjustment to be added to SOFR. The goal of the Consultation is to achieve a consensus in the market on the methodology for calculating the spread

[4] The Consultation is available at: https://nyfed.org/2OeNooy.

[5] We discuss in detail the ARRC's recommended fallback language in our Legal Update dated May 2, 2019, available at: http://bit.ly/2rYcccs.

adjustment, which would be static and would be fixed at a specified time at or prior to LIBOR's cessation and make the spread-adjusted SOFR rate comparable to LIBOR by minimizing the expected change in value resulting from the change in rates.

SOFR is a backward-looking secured overnight rate, while LIBOR is a forward-looking unsecured rate published with different tenors, and also incorporates an element of bank credit risk. Consequently, the two rates differ, with LIBOR tending to be higher than SOFR, and the two rates having different responses to stressed markets. The spread adjustment is designed to minimize any change in the value of the contract (such as a floating rate note) when moving from LIBOR to SOFR. Once a methodology is adopted by the ARRC, it would be the same across different LIBOR tenors, but would be applied separately to each tenor.[6] There would be a different spread adjustment for each LIBOR tenor, although the methodology would be the same.

The Consultation looks to the spread methodologies proposed by the International Swaps and Derivatives Association, Inc. ("ISDA") and builds upon them. It is important to align the spread methodologies with those put forward by ISDA in order to minimize any basis risk in hedges related to LIBOR floating rate notes and other LIBOR contracts. A majority of respondents to a recent ISDA consultation on parameters for the derivatives market supported a static spread adjustment for derivatives, which adjustment will be calculated as the median of the historical difference between a given tenor of USD LIBOR and a compound average of SOFR in arrears of a corresponding tenor. The median difference will be calculated using the five years of historical data preceding a trigger event causing a switch from USD LIBOR to SOFR. The ISDA spread adjustments will be static, as they will be set at one point in time (when a trigger event occurs, causing the USD LIBOR floating rate note to switch to SOFR) and will not be revised once determined.

The Consultation addresses a number of choices that need to be considered in selecting a replacement spread adjustment methodology:

- Whether the same methodology and parameter choices should be used to calculate the spread adjustment for compounded average SOFR in arrears, compounded average SOFR in advance, and a forward-looking term rate;
- How the long-run level of the difference between LIBOR and SOFR should be measured;
- How far back in time data should be reviewed to estimate the long-run level; and
- How quickly the spread adjustment should move to the long-run historical level.

The Consultation includes extensive comparison data to help market participants make informed choices about the spread adjustment methodology, and ends with a list of questions to be answered by market participants. The comment period ends on March 6, 2020.

SEC: A "Call to Action" Can Happen Anywhere

You are floating on your raft in the hotel pool, drink in hand, watching the clouds go by. You are also an associated person of a broker-dealer. A natural person floats over in your direction. You say "Hello." You introduce yourself; conversation ensues, and mutual connections are discovered. Being somewhat of a driven

[6] The spread adjustment would be calculated for 1, 2, 3 and 6-month USD LIBOR and 1-year LIBOR. One week and overnight LIBOR tenors will not have spread adjustments as those tenors are rarely used.

person, you can't stop yourself from telling your new friend that you have been working with a mutual friend for years, helping him invest for his children's education. You would like to help your raft-mate with her investments, and produce a water logged, but legible, business card. Is this a recommendation captured by Regulation Best Interest?

This and other questions are answered in the SEC's Division of Trading and Markets Frequently Asked Questions on Regulation Best Interest (the "FAQ"), posted January 10, 2020, which discusses recommendations, the disclosure obligation, the care obligation and the conflict of interest obligations (the four core obligations of Regulation Best Interest ("Reg BI")).[7]

Regarding our floating salesman, the FAQ notes that Reg BI applies to a recommendation of a securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, and does not depend on location. Because this conversation most likely would not reasonably be viewed as a "call to action," it would not be considered a recommendation, but instead a run-of-the-mill "hire me" communication, not subject to Reg BI. Likewise, if an associated person of a broker-dealer tells her retail customers that she is leaving Firm A to move to Firm B, encouraging them to follow her to Firm B, without making a recommendation, that communication is not subject to Reg BI.

The FAQ discusses other questions, including:

- the limited circumstances in which oral disclosures can satisfy the Disclosure Obligation;
- what constitutes a "series of transactions" under the Care Obligation; and
- conflict mitigation measures under the Conflict of Interest Obligation.

Refresher: Regulation M

Regulation M was adopted in 1996 to prevent manipulation of the price of an offered security by offering participants during an offering. Regulation M prohibits underwriters, broker-dealers, issuers (including selling security holders) and other persons participating in a "distribution" from directly or indirectly bidding for or purchasing the offered security (or inducing another person to do so) during the applicable "restricted period."

Regulation M is organized into six rules:

- Rule 100, definitions;
- Rule 101, covering the activities of underwriters, broker-dealers and others participating in a distribution;
- Rule 102, governing activities by issuers and selling security holders during a distribution;
- Rule 103, Nasdaq passive market making;
- Rule 104, governing stabilization transactions and certain post-offering activities by underwriters; and

[7] The FAQ is available at: http://bit.ly/38PwTaz..

- Rule 105, governing short selling in anticipation of a public offering.[8]

This article addresses issues arising in the realm of Rules 101 and 102, and does not discuss activities affected by Rules 103-105.

SOME IMPORTANT DEFINITIONS

The "restricted period" under Regulation M means, for a security, the period beginning on the later of five business days prior to the pricing of the offered security or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution. For any security with a worldwide average daily trading volume ("ADTV") (as defined) value of $100,000 or more of an issuer whose common equity securities have a public float of $25 million or more, the restricted period is the period beginning on the later of one business day prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution.

A "distribution" means an offering of securities, whether or not subject to registration under the Securities Act of 1933 (the "Securities Act"), that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. Factors relevant to the "magnitude of the offering" include the number of shares to be offered for sale by the issuer and the percentage of the outstanding shares, public float and trading volume that those shares represent.[9] Providing greater than normal sales compensation arrangements pertaining to the distribution, delivering a sales document, such as a prospectus, and conducting road shows are considered to be generally indicative of "special selling efforts and selling methods."[10] Distributions may include public offerings, private placements such as Rule 506 offerings, shelf offerings, exempt offerings such as bank note programs, exchange offers, and private investment in public equities (PIPE) offerings.[11]

A "distribution participant" means an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution.

"Completion of participation in a distribution" occurs when a participant in the distribution acquires securities for investment. For an issuer, such completion occurs when the distribution is completed, meaning that the securities are all sold (this may include instances in which unsold allotments are taken into investment accounts) and the syndicate (assuming there was a syndicate in place in connection with the distribution) is terminated. For an underwriter, such completion occurs when the underwriter's participation has been distributed, including all other securities of the same class acquired in connection with the distribution, and any stabilization arrangements and trading restrictions in connection with the distribution have been terminated, subject to an exception discussed below.

A "covered security" means any security that is the subject of a distribution, or any reference security. A "reference security" means a security into which a security that is the subject of a distribution ("subject

[8] 17 CFR §§242.100-105.

[9] See FINRA SEC Regulation M-Related Notice Requirements under FINRA Rules Frequently Asked Questions ("FINRA Reg M FAQ") Q2.2.

[10] FINRA Reg M FAQ Q2.3.

[11] FINRA Reg M FAQ Q1.1.

security") may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of a subject security.

WHAT ACTIVITIES ARE PROHIBITED?

Rule 101 covers the activities of underwriters and dealers. The rule provides that, in connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period.

Rule 102 covers the activities of issuers and selling security holders. The rule provides that, in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, it shall be unlawful for such person, or any affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period.

Each of Rule 101 and Rule 102 have a carveout, available depending on the role of the distribution participant. The proviso to Rule 101(a) provides that if a distribution participant or affiliated purchaser is the issuer or the selling security holder of the securities subject to the distribution, such person *shall be* subject to Rule 102 rather than Rule 101. The proviso to Rule 102(a) provides that if an affiliated purchaser is a distribution participant, the affiliated purchaser *may comply* with Rule 101 instead of Rule 102.

WHAT TYPES OF OFFERINGS AND ACTIVITIES ARE EXEMPT?

Both Rule 101 and Rule 102 have exceptions for certain securities and transactions. Under Rule 101, distribution participants and their affiliated purchasers are permitted to engage in the routine dissemination of research reports, the exercise of options and other securities, transactions in baskets of securities involving a covered security, and [certain] Rule 144A transactions.

Because issuers and selling security holders have the greatest interest in an offering's outcome, the transaction exceptions of Rule 102 are narrower than those of Rule 101. Rule 102 permits, during the restricted period, transactions in nonconvertible investment grade securities and, exercises of options and other securities, and odd-lot transactions and associated round-up transactions during an issuer odd-lot tender offer.
Most transactions in connection with dividend reinvestment plans and stock purchase plans are excluded from Rule 102.

Both Rule 101 and 102 except the same securities from their coverage: (i) "actively-traded securities," those that have an ADTV value of at least $1 million and are issued by an issuer whose common equity securities have a public float of at least $150 million (other than the distribution participant or any of its affiliates); (ii) investment grade nonconvertible debt or preferred, and asset-backed, securities, rated investment grade by at least one rating agency;[12] (iii) exempted securities, as defined in Section 3(a)(12) of the Securities Exchange Act of 1934 ("Exchange Act"); and (iv) face-amount certificates or securities issued by an open-end management investment company or unit investment trust.

FINRA NOTICE REQUIREMENTS

Under FINRA Rule 5190(c)(1), a member firm acting as a manager (or in a similar capacity) in a distribution of a covered security subject to a restricted period under Rule 101 must notify FINRA of its determination as to

[12] A "nationally recognized statistical rating organization" as defined in Section 3(a)(62) of the Exchange Act.

whether a one- or five-day restricted period applies under Rule 101 and the date and time of the commencement of the restricted period, the pricing of the distribution, the cancellation of any distribution for which prior notification of the commencement of the restricted period has been submitted to FINRA and other related information. If a member firm is acting as a manager (or in a similar capacity) of a distribution of an actively traded security, then, under FINRA Rule 5190(d), the member firm must notify FINRA that no restricted period applies under Rule 101 and the basis for such firm's determination. The member firm must also notify FINRA of the pricing of the distribution and other related data.

STRUCTURED NOTES

A structured note that derives its value from an underlying security, such as a share of common stock, would be a derivative security, not subject to Regulation M.[13] The underlying share of common stock would be a reference security. A security will be a reference security only when it, or an index of which it is a component, is referred to in the terms of the subject security (the structured note).[14] Consequently, during a distribution of a structured note, Rule 102 applies to the reference security. For structured notes linked to common stock, the ADTV exemption will most likely apply. Therefore, the issuer of the structured note can purchase or sell the underlying common stock during the distribution of the structured note, and also enter into derivative transactions on the underlying common stock.

THE FREEZER

Structured notes are generally sold on a riskless principal basis; *i.e.*, the underwriter has customer orders in hand prior to purchasing the structured notes from the issuer to satisfy such orders. In the past, questions were raised about whether a distribution had been completed if an underwriter purchased securities for investment.

When and how may an underwriter sell its unsold allotment? In order to avoid an inadvertent extension of the restricted period, practitioners have advised that the unsold allotment be held in the underwriter's investment account (the "freezer") for a significant period of time before any resale.

OVER-SELLING THE SHOE

An underwriter's participation in a distribution will not be deemed to be completed if a syndicate overallotment option is exercised in an amount that exceeds the net syndicate short position at the time of such exercise.[15] This situation is more likely to occur in an equity offering, where a "green shoe" overallotment option is held by the underwriters. It may also occur in offerings of listed debt securities, such as "public income notes." If an overallotment option is exercised for an amount of securities that exceeds the syndicate net short position (i.e., taking into account shares purchased in stabilizing or syndicate short covering transactions), the distribution would be deemed to continue until the time that all the excess shares were sold, and purchases of the securities made prior to the exercise of the option would have been in violation of Regulation M.[16]

INVESTMENT GRADE NONCONVERTIBLE DEBT SECURITIES

The exemption from Rules 101 and 102 for investment grade nonconvertible debt securities provides is useful for dealers and issuers, respectively, of structured notes. This exemption is based on the premise that these

[13] See Release No. 33-7375 (Dec. 20, 1996) (the "Adopting Release") at II.B.3.

[14] *Id.*

[15] See 17 CFR §242.100.

[16] See the Release at II.B.2.c.

securities are traded on the basis of their yields and credit ratings, are largely fungible and, therefore, are less likely to be subject to manipulation.[17] Although not defined, the term "investment grade nonconvertible debt securities" is understood to mean debt securities of an issuer that are not convertible into any of the issuer's securities or exchangeable for securities of any other issuer. Many practitioners take the view that even if the offered security is not itself rated by a nationally recognized statistical rating organization, the offered security is within the exemption if it is *pari passu*, or in the same class or series, with other investment grade nonconvertible debt securities of the same issuer. This approach is used by market participants when market making in, or holding an inventory of, rate-linked notes of an issuer that are *pari passu* with that issuer's investment grade rated nonconvertible fixed rate debt securities.

EXCHANGE TRADED NOTES

Exchange traded notes ("ETNs") are continuously issued and offered in response to customer demand. Due to these ongoing ETN creations, the distribution is continuous, as is the restricted period. This raises an issue, as the ETN issuer needs to be able to redeem ETNs, and its affiliated broker-dealer needs to conduct market-making activities, during the restricted period. Without relief from the Staff, the redemptions and market-making activities would have violated Rules 102 and 101 of Regulation M, respectively. Consequently, prior to the time of the first ETN issuance, Barclays Bank plc requested no-action relief from the SEC Division of Trading and Markets.[18]

In the iPath Letter, counsel raised a number of points about the ETN mechanics, arguing that, taken together, issuer redemptions and purchases and sales by its affiliated dealer would not affect the market price of the ETNs:

- The NYSE listing would provide intra-day secondary market liquidity;
- The ETNs were redeemable by the holders on a weekly basis;[19]
- Arbitrage activity will remove any significant disparity between the market price of the ETNs and the value of their underlying index;
- Because the value of the ETNs would be tied primarily to the value of their underlying index, market-making activities by the broker-dealer would not have a significant impact on the trading price of the ETNs;
- The underlying index level was publicly available on a real-time basis; and
- The issuer would publish the ETNs' "indicative value," meant to approximate the economic value of the ETNs, on a public source, and calculate the end-of-day indicative value and publish it on the issuer's website.

The Staff granted relief based on the weekly redemption feature and that the secondary market price of the ETNS should not vary substantially from the value of the underlying index.

[17] See the Release at II.b.6.b. In Release 34-64352 (Apr. 27, 2011), the SEC proposed removing the references to credit ratings in Rules 101 and 102, and replacing them with a set of standards.

[18] Barclays Bank PLC (July 27, 2006) SEC no-action letter (the "iPath Letter").

[19] Modern ETNs are redeemable on a daily basis.

The SEC Division of Trading and Markets ("DTM") may have taken note of the rationale raised by counsel in the iPath Letter when considering whether participants in a distribution of actively–managed exchange-traded fund ("ETF") shares could bid or purchase such shares during a distribution under the Rule 101(c)(4) exemption and whether the Rule 102(d)(4) exception was available to permit an open-end investment company to redeem actively managed ETF shares. In responding affirmatively to these questions in Staff Legal Bulletin No. 9 (revised Nov. 22, 2019), the DTM essentially ticked off the points raised by counsel in the iPath Letter as conditions for meeting the exemptions.

Upcoming Events

NFA Advertising Rules and Related Enforcement Actions
PLI Webinar
February 4, 2020, 3:00 p.m. – 4:00 p.m. EST
Register here: http://bit.ly/2RF8lLt.

Most National Futures Association (NFA) members will be required to comply with a broader rule regarding communications with the public and use of promotional material beginning on January 1, 2020. NFA expanded Compliance Rule 2-29 and its related Interpretive Notices to apply to all commodity interest (not just futures-related) activities and better reflect current technology and industry practices. Revised Rule 2-29 will require all futures commission merchants (FCMs), commodity pool operators (CPOs), commodity trading advisors (CTAs) and some forex dealer members (FDMs) to examine and potentially update their websites, disclosure documents and marketing materials, among other communications. Although NFA clarified that the rule will not apply to swap dealers, any member that is dually registered as a swap dealer will be required to comply with Rule 2-29 with respect to its FCM activities.

Matthew F. Kluchenek and Ansley H. Schrimpf of Mayer Brown will discuss:

- CFTC Part 4 Rules Regarding Calculations and Communications;
- NFA Compliance Rules 2-29 and 2-36: An Overview and What's New;
- How NFA Compliance Rule 2-29 Affects 4.7 Commodity Pools; and
- NFA and CFTC Advertising-related Enforcement Actions.

CLE credit is available.

REVERSEinquiries Workshop: SEC's Regulation Best Interest and its Impact on Structured Investments
Mayer Brown Webinar
February 18, 2020
12:00 p.m. – 1:00 p.m. EST
Register here: http://bit.ly/31a3022.

With the compliance date approaching, in this webcast, we will provide an overview of what has become one of FINRA's top priorities, Regulation Best Interest (Reg BI) and the Form CRS requirement, focusing specifically on the anticipated effects for market participants in the structured investments sector. We will discuss:

Thomas Grygiel of ACA Compliance Group along with Marlon Paz of Mayer Brown will discuss:

- Overview of the regulation;
- What types of conflicts specific to this market should be disclosed?
- What should you focus on if you do not face retail customers?
- What changes are retail-facing distributors and other intermediaries likely to require from product manufacturers?
- Guidance to date from the SEC and FINRA; and
- Proposed changes to FINRA's suitability rule to conform to Reg BI.

CLE credit is pending.

LIBOR – What to do now
Intelligize Webinar
February 19, 2020
1:00 p.m. – 2:00 p.m. EST
Register here: http://bit.ly/2RK4MUF.

Join us for a discussion of the upcoming cessation of LIBOR quotations and the market's transition to the Secured Overnight Financing Rate (SOFR). Mayer Brown's Bradley Berman and David Duffee will discuss what market participants should expect to see in 2020, including:

- promulgation of spread adjustment methodologies by ISDA and the ARRC;
- publication of SOFR averages;
- loans priced at a rate based on SOFR;
- regulatory demands; and
- a possible legislative solution.

CLE credit is available.

Canadian Bail-in and TLAC Requirements
West LegalEdcenter Webinar
February 24, 2020
1:00 p.m. – 2:00 p.m. EST
Register here: http://bit.ly/2S23i6Z.

Join Andrew Parker and Wendi Locke of McCarthy Tetrault along with Anna Pinedo of Mayer Brown for this webinar on Canadian Bail-in and TLAC Requirements. During this session, we will address the Canadian federal rules relating to Bank Recapitalization (Bail-in) Conversion Regulations and Total Loss Absorbing Capacity

(TLAC). Since the rules came into effect in September 2018, these rules have a significant impact on how the major Canadian banks (D-SIBs and now one G-SIB) offer debt securities in Canada, the United States and elsewhere. In particular, the speakers will address

- An overview of the regulatory framework and capital requirements;
- How the framework differs from that in Europe and from the TLAC requirements in the United States;
- Securities and instruments excluded from bail-in and ineligible for TLAC;
- Changes to offering documents, program agreements, indentures and legal opinions;
- Issuance trends and what to expect;
- The impact on structured note offerings; and
- The process for compensating debtholders.

CLE credit is pending.

Mayer Brown is pleased to be shortlisted once again for Americas Law Firm of the Year for *GlobalCapital*'s Americas Derivatives Awards 2020.

Mayer Brown was named Global Law Firm of the Year (Overall) at *GlobalCapital's* 2019 Global Derivatives Awards.

ANNOUNCEMENTS

MAYER BROWN CAPITAL MARKETS TAXQUARTERLY
DON'T TAX YOU. DON'T TAX ME. TAX THAT FELLOW BEHIND THE TREE.

Capital Markets Tax Quarterly. Mayer Brown's Capital Markets Tax Quarterly provides capital markets-related US federal tax news and insights.

In our latest issue we look at Q4 2019.

LinkedIn Group. Stay up to date on structured and market-linked products news by joining our LinkedIn group. To request to join, please email REVERSEinquiries@mayerbrown.com.

Suggestions? *REVERSEinquiries* is committed to meeting the needs of the structured and market-linked products community, so you ask and we answer. Send us questions that we will answer on our LinkedIn anonymously or topics for future issues. Please email your questions or topics to: reverseinquiries@mayerbrown.com.

The Free Writings & Perspectives, or FW&Ps, blog provides news and views on securities regulation and capital formation. The blog provides up-to-the-minute information regarding securities law developments, particularly those related to capital formation. FW&Ps also offers commentary regarding developments affecting private placements, mezzanine or "late stage" private placements, PIPE transactions, IPOs and the IPO market, new financial products and any other securities-related topics that pique our and our readers' interest. Our blog is available at: www.freewritings.law.

Contacts

Bradley Berman
New York
T: +1 212 506 2321
E: bberman@mayerbrown.com

Gonzalo Go
New York
T: +1 212 506 2390
E: ggo@mayerbrown.com

Anna Pinedo
New York
T: +1 212 506 2275
E: apinedo@mayerbrown.com