MAYER·BROWN

THE CONTINUING IMPACT OF Dodd-Frank

Table of Contents

TAB 1

THE CONTINUING IMPACT OF

Dodd-Frank

Agenda
June 26, 2012

8:30 a.m. — **Registration and Breakfast**

9:00 a.m. – 10:00 a.m.
Wharton Ballroom

The Volcker Rule
This panel will focus on the implementation of the Volcker Rule.

- Interpreting recent guidance on the conformance period
- Key issues for the final regulations including: (i) asset liability management, hedging and market making exemptions from the proprietary trading ban; (ii) the definition of covered fund and the impact of Super 23A; and (iii) extraterritoriality
- Possible restructuring options in securitization

Panelists: *Carol A. Hitselberger and David R. Sahr*

10:00 a.m. – 11:00 a.m.
Wharton Ballroom

Developments in Bank Regulation
This panel will address several recent key regulatory initiatives affecting both traditional banking organizations and nonbank financial companies, as well as important Dodd-Frank provisions soon to take effect.

- Enhanced prudential standards for Systemically Important Financial Institutions (SIFIs)
- Designation of nonbank financial companies by the Financial Stability Oversight Council (FSOC) for supervision and regulation by the Federal Reserve Board (FRB)
- Impact of new Dodd-Frank financial stability criteria on bank acquisitions
- Upcoming changes to bank lending limits and Section 23A affiliate transaction restrictions

Panelists: *Scott A. Anenberg, Thomas J. Delaney and Jeffrey P. Taft*

11:00 a.m. – 11:15 a.m. — **BREAK**

11:15 a.m. – 12:15 p.m.
Wharton Ballroom

Mortgage Litigation
This panel will focus on recent trends in mortgage litigation.

- "Putback" litigation against issuers of Residential Mortgage-Backed Securities (RMBS)
- Securities claims against RMBS issuers and underwriters
- RMBS litigation against mortgage-securitization trustees
- Government investigations of RMBS
- Mortgage-related settlements

Panelists: *Matthew D. Ingber and Michael O. Ware*

12:15 p.m. – 1:15 p.m.
Hudson Room, 2nd Floor

LUNCH

1:15 p.m. – 2:00 p.m.
Wharton Ballroom

Derivatives Regulation
This panel will address the developments in derivatives regulation.

- Final Dodd-Frank definitions of swap dealer (SD)/major swap participant (MSP)
- Dodd-Frank registration process and timelime for SDs and MSPs
- Update on Dodd-Frank cross-border guidance
- The European Market Infrastructure Regulation (EMIR) in the context of Dodd-Frank

Panelists: *Joshua Cohn, Ed Parker and David R. Sahr*

2:00 p.m. – 2:45 p.m.

Concurrent Breakout Sessions

Session 1:
Wharton Ballroom

Capital
This breakout session will focus on recent regulatory capital developments, including US and global implementation of various Basel Committee standards, as well as the impact of the Collins Amendment and various capital-related provisions of Dodd-Frank.

- US implementation of Basel 2.5, including approach to Dodd-Frank ratings ban
- US proposal to implement Basel III capital and liquidity requirements
- Other Dodd-Frank capital provisions, including capital plans, stress testing and enhanced requirements for SIFIs
- Recent Basel Committee initiatives, including proposed comprehensive changes to trading book rules
- Impact on securitizations

Panelists: *Scott A. Anenberg and Carol A. Hitselberger*

Session 2:
Tribeca

Consumer Financial Protection Bureau
This breakout session will focus on the recent activities of the Consumer Financial Protection Bureau (CFPB), expectations for the next six months and the challenges facing depository institutions and other providers of consumer financial products and services.

- Notable CFPB rulemakings, bulletins and other issuances over the past year and expectations for the next six months
- Supervision and examination by the CFPB of non-depository institutions, including "larger participants" and those entities covered based upon a risk determination
- Enforcement of federal consumer protection laws by the CFPB and state attorneys general and the potential for additional private litigation
- Upcoming study regarding pre-dispute arbitration agreements and its potential impact

Panelists: *Andrew J. Pincus, Richard M. Rosenfeld and Jeffrey P. Taft*

Session 3:
Murray Hill

Insurance
This breakout session will focus on key aspects of the impact of Dodd-Frank on insurance companies.

- The Federal Insurance Office and Federal Advisory Committee on Insurance
- SIFI designation
- Non-admitted and Reinsurance Reform Act (NRRA)
- Distinguishing insurance from swaps
- Application of the Volcker Rule to insurers

Panelists: *Lawrence R. Hamilton and Vikram Sidhu*

2:45 p.m. – 3:00 p.m. **BREAK**

3:00 p.m. – 4:00 p.m.
Wharton Ballroom

Cross-Border & International Issues
This panel will highlight the status of financial reform efforts in the EU and developments in the extraterritorial reach of US reforms.

- Changes to EU legislation relating to market infrastructure, the regulation of investment services and financial instruments, insider dealing laws, alternative investment funds and capital requirements
- Extraterritorial and competitive concerns raised by US derivatives regulation and the Volcker Rule
- Cross-border application of the US federal securities laws

Panelists: *Marc R. Cohen and Jerome J. Roche*

4:00 p.m. – 5:00 p.m.
Wharton Ballroom

Securitization
This panel will focus on key aspects of the impact of Dodd-Frank on securitization transactions.

- Disclosure
- Risk retention
- Rating agencies
- Volcker Rule
- Conflicts of interest
- Regulatory capital

Panelists: *Barbara M. Goodstein and Jason H.P. Kravitt*

TAB 2

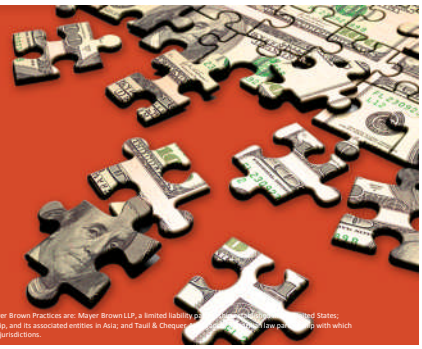
MAYER·BROWN

The Continuing Impact of Dodd-Frank

The Volcker Rule

Carol Hitselberger
Partner

David Sahr
Partner



Volcker Rule

- Section 619 of Dodd-Frank creates new section 13 of the Bank Holding Company Act ("BHCA") which prohibits a "banking entity" from:
  - "Proprietary trading" in securities, derivatives and other instruments
  - Sponsoring or investing in private equity and hedge funds ("covered funds")
  - Certain transactions with covered funds for which banking entities serve as investment adviser/manager/sponsor

Background

- Purpose of Volcker Rule is to prohibit banks and their affiliates from engaging in proprietary trading activities deemed to be risky and speculative
- Institutions with access to government assistance should stick to lending and other customer-service activities
- The “new” Glass-Steagall
- Volcker Rule has limited relevance to causes of the financial crisis
- Full of unintended consequences

Status of Regulatory Implementation

- Proposed regulation issued in October 2011; comment period over
- Final regulation appears unlikely to be issued until after statutory effective date of July 21, 2012
- Recent Fed guidance on two-year conformance period lasting until July 21, 2014
- Banks need to make good faith efforts to plan for conformance by July 21, 2014, including assessing activities that may be prohibited by Volcker Rule and developing and implementing a conformance plan

Banking Entity Definition

- Any FDIC-insured depository institution
- Any company that controls such an institution
- Any foreign bank that has a US branch or agency
- Any affiliate or subsidiary of the above, including any fund that is an affiliate
- Applies to all of these entities on a global basis (subject to exemptions discussed below including exemption for offshore activities of non-US banking organizations)

Prohibition on Proprietary Trading

- Proprietary trading defined as "engaging as a principal for the trading account…in any transaction to purchase or sell…any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such [instrument], or any other security or financial instrument designated by [the US regulators]"
- "Trading account" includes any account used "principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements)"

Regulatory Definition of Trading Account

- Any account used for financial positions for purpose of (i) short-term resale, (ii) benefitting from actual or expected short-term price movements, (iii) realizing short-term arbitrage profits, or (iv) hedging one or more such positions (60-day rebuttable presumption)
- Any account of a banking entity subject to the Market Risk Capital Rules to take financial positions subject to those rules
- Any account used by securities dealer, swap dealer or securities swap dealer to take positions in connection with its dealing activities

Covered Financial Positions

- Securities as defined in the Securities Exchange Act
  - Includes asset-backed securities and options on securities
- Derivatives
  - Includes any swap and any security-based swap as defined by the CFTC and the SEC in Title VII of Dodd-Frank
  - Also foreign currency swaps and forwards
- A contract for sale of a commodity for future delivery, and an option on such a contract

Excluded From Definition of Financial Position

- Loans
  - Leases
  - Extensions of credit
  - Secured and unsecured receivables
- Spot commodities (fx, metals)
- Exclusions from derivatives definition
  - Certain insurance products
  - Identified banking products (deposits, CDs)

Exclusions From Prohibition on Proprietary Trading

- In connection with underwriting or market making
- Hedging relating to the banking entity's positions
- Transactions on behalf of customers
- US government securities
- Activities engaged in "solely" outside the United States pursuant to Section 4(c)(9) of the BHCA
- Repos and reverse repos
- Securities lending and borrowing

Regulatory Exclusions From Prohibition on Proprietary Trading

- *Bona fide* liquidity management conducted in accordance with a documented liquidity management plan that among other things would:
  - Specifically contemplate the transactions to be conducted
  - Require they not be for short-term trading purposes
  - Involve highly liquid instruments not leading to appreciable profits/losses based on short-term price movements
  - Require positions be limited to an amount consistent with the banking entity's near-term funding needs

Regulatory Criteria for *Bona fide* Underwriting Activities

- Internal compliance program
- Exemption limited to securities
- Transactions must be solely in connection with a distribution for which the banking entity is acting as an underwriter
- The entity must have the appropriate dealer registration or, if outside the US, be subject to local regulation of its dealing
- The underwriting activities must not exceed the reasonably expected short-term demands of customers
- The activities must be designed to generate underwriting-type fees and revenues and not appreciation of covered financial positions or related hedging
- Compensation must not encourage proprietary risk-taking

Regulatory Criteria for Market-Making Activities

- Programmatic compliance regime including limiting activities to Appendix B description
- Trading desk acts as a market maker with respect to the covered financial position
- Positions must be taken in connection with reasonably expected near-term demands of customers
- Appropriate registration or regulation under securities/ commodities laws
- Designed to generate revenue from fees/commissions and not from appreciation of covered positions
- Compensation does not encourage proprietary risk-taking

Regulatory Criteria for Hedging

- Internal compliance program including policies/procedures internal controls and documentation
- Hedge one or more specific risks related to individual or aggregated positions (portfolio and limited anticipatory hedging ok)
- Reasonable correlation of the hedge to the underlying risk
- Hedge does not give rise at inception of the hedge to significant unhedged exposures not already present
- Continuous monitoring/managing/adjustments to hedge
- Compensation does not encourage proprietary risk-taking

Regulatory Criteria for Trading on Behalf of Customers

- Where the banking entity is acting in a fiduciary capacity for the customer and the banking entity is not a beneficiary of the position (e.g., where the banking entity is acting as an investment adviser)
- Customer-driven riskless principal transactions
- Trading for the separate account of insurance policy holders by a banking entity that is an insurance company

Proposed Regulatory Exemption for Trading "Solely" Offshore Under Section 4(c)(9)

- The banking entity is not organized under US law (and is not controlled by a US-based banking entity)
- Activity is conducted pursuant to section 4(c)(9)
- No party to the transaction is a US resident
- No personnel of the banking entity that is directly involved in the transaction is physically located in the United States
- The transaction is executed wholly outside the United States

Limitations on Permitted Activities

- Prohibits "material conflicts of interest" defined as having an interest in a transaction that is "materially adverse" to that of the customer
- Two requirements for mitigating such conflicts:
  - Specific disclosure must be made prior to effecting the transaction that provide the customer an opportunity to negate or substantially mitigate the conflict
  - Effective information barriers
- "High-risk asset" and "high-risk trading strategy" also prohibited

Prohibitions on Covered Funds

- A banking entity may not, as principal, directly or indirectly, have an equity, partnership or other ownership interest in, or sponsor, a covered fund unless exempt.
- A banking entity that serves as investment adviser/manager/sponsor to a covered fund may not, nor may any affiliate, enter into a covered transaction, as defined in section 23A of the Federal Reserve Act, with that fund, and other transactions must be on market terms.
- Any fund that is an "affiliate" of a banking entity is also a banking entity and is therefore itself subject to the above proprietary trading and funds prohibitions.

Definition of Sponsor

- Serving as a general partner, managing member, trustee or CPO of a covered fund; or
- Selecting in any manner or controlling the directors, trustees, or management of a covered fund; or
- Sharing the same or a similar name for various purposes.
  - A "trustee" is excluded from the definition if the trustee does not exercise investment discretion, or is not a directed trustee, with respect to a covered fund.

Definition of "Ownership Interest"

- Any equity, partnership interest or similar interest, voting or non-voting, includes both general and limited partnership interests, options and other derivatives
- Debt security or other interests included if "exhibits substantially same characteristics" – voting, share in profits and losses, earn return based on performance of the fund
- NOT include "carried interest" – allow banking entity to share in profits of covered funds as performance compensation
  - Cannot share in subsequent profits and losses
  - Banking entity can't provide any funds in acquiring or retaining carried interest
  - Only transferable to affiliate or subsidiary
- Clawback expressly permitted

Definition of Covered Fund

- "Covered Fund" is (i) any issuer that would be an investment company as defined in the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of the Act or (ii) any "similar funds" determined by the agencies.
  - Is the issuer an investment company as defined in the Act?
  - If yes, does it rely solely on the exclusions in section 3(c)(1) or 3(c)(7)?
  - If yes, is it otherwise exempt under BHCA section 13 or its implementing regulations?
- The proposed regulations would also designate:
  - Any foreign issuer if it would have to rely on section 3(c)(1) or 3(c)(7) if it had been offered in the US, a foreign "equivalent" fund
  - Commodity pool as defined in Commodity Exchange Act

Examples of Covered Funds

- Traditional private equity funds and hedge funds
- Proprietary funds and joint ventures
- UCITS and other non-US registered funds that rely on 3(c)(1) or 3(c)(7) for any US investors
- Foreign equivalent funds
- Securitization conduits
- Corporate vehicles, like intermediate holding companies

Permissible/Exempt Funds

- 1940 Act exemptions other than 3(c)(1) or 3(c)(7) such as section 3(c)(5)
- Investment companies registered with the SEC
- Funds offered and organized in connection with *bona fide* fiduciary and advisory services to customers
- Securitization conduit holding loans
- Joint ventures that are operating companies
- An investment acquired in the ordinary course of collecting debts previously contracted in good faith

Banking Entity Can Organize and Offer, and Act as Sponsor of, Covered Fund, Under Following Conditions

- Banking entity must provide *bona fide* trust, fiduciary or investment advisory services and fund can only be offered in connection with provisions of these services
- Fund must be offered only to customers of banking entity
  - No pre-existing relationship required
- Ownership limitations
- Banking entity may not, directly or indirectly, guarantee, assume or otherwise insure obligations or performance of covered fund
- Fund may not share same name or variation thereof or have the word "bank" in its name
- No director or employee of bank may have ownership interest in fund **UNLESS** "directly engaged" in providing investment advisory or other services to fund
  - Banking entity directly or indirectly, cannot (1) extend credit for the purpose of enabling person to acquire ownership interest in the fund or (2) otherwise guarantee against loss
- Required disclosures in offering document
  - Bank doesn't guarantee loss, not FDIC insured

Ownership Limitations With Respect to Such Funds

Fund-level

- 3% of total outstanding interests
  - Exclude funds not yet called for investment
  - Calculate in same way fund calculates asset values
  - Includes any investment held by any entity controlled by banking entity as well as a *pro rata* share of interests held through non-controlled entities
  - Includes coinvestments with fund
  - Applies at "all times" – no grace period
  - Calculate value as often as fund calculates, but at least once a quarter
- May not be more than 3% of losses
- Seed investments
  - Can have a larger investment to provide fund with sufficient initial equity for investment for one year
  - Can request extension for up to two more years, must apply at least 90 days before

Ownership Limitations

Aggregate

- Limit of 3% of Tier 1 Capital in all such covered funds
  - Depository institution and subsidiaries calculate at depository institution level
  - Bank holding company and nonbank subsidiaries thereof calculate at top-tier BHC/foreign bank level
  - Depository institution subsidiaries of BHC must also include investments in the top-tier BHC capital calculation
  - Investment in covered fund also deducted from Tier 1 Capital
  - No grace period

Permitted Fund Activities Outside the United States

- A foreign bank may invest in or sponsor covered funds so long as the activity takes place solely outside of the United States and pursuant to section 4(c)(9) of the BHCA. To meet the "solely" requirement, the proposal specifies that:
  - The banking entity is not organized under US law (and is not controlled by a US-based banking entity)
  - No US affiliate or personnel of the banking entity may be involved in the offer or sale of an ownership interest in the fund
  - No ownership interest in such covered fund is offered for sale or sold to a US resident

Super 23A Prohibition

- Banking entities that serve as investment adviser/manager/sponsor are prohibited (as are their affiliates) from entering into covered transactions (as defined in section 23A of the Federal Reserve Act) with covered funds, and all transactions must be on market terms

Covered Funds for Purposes of Super 23A

- Issuers relying solely on the 3(c)(1)/3(c)(7) exemptions
- Non issuers relying on section 3(c)(5), Rule 3a-7 and other 1940 Act exemptions other than 3(c)(1) or 3(c)(7)
- Issuers relying solely on the 3(c)(1)/3(c)(7) exemptions but that are otherwise exempt under BHCA Section 13 and the implementing regulations such as:
  - Non-US funds
  - Loan securitization vehicles
  - *Bona fide* fiduciary funds

Super 23A Covered Transactions

- Loan to the fund including purchase of assets subject to repo agreement
- Purchase of assets from the fund
- Purchase of or an investment in securities issued by the fund
- Acceptance of securities or other obligations issued by the fund as collateral for a loan to a third party
- Issuance of a guarantee or l/c on behalf of the fund
- Derivatives or security lending transaction with the fund that results in credit exposure to the fund

Prime Brokerage Services

- A banking entity can provide prime brokerage services that would be a covered transaction under 23A (such as financing or securities lending/borrowing) to a covered fund that the banking entity organized and offered to advisory customers subject to the following conditions:
  - Banking entity complies with the limitations on organizing and offering covered funds discussed above.
  - CEO of the top-tier affiliate certifies annually that the banking entity does not guarantee the obligations of the covered fund.
  - The Fed has not determined that such transaction is inconsistent with safe and sound banking.

Other Restrictions

- All other transactions with sponsored/advised covered funds must be on arms-length basis/prevailing market terms.
  - This includes all prime brokerage services including custody, clearance, trade execution, financing, securities lending or borrowing and data, operational and portfolio management support
- No transactions are permitted that would result in: (i) material conflicts of interest, (ii) material exposure to high-risk assets or trading strategies, or (iii) threat to safety and soundness of banking entity.

Funds that are Affiliates

- Fund that is controlled by banking entity under BHCA is an affiliate subject to the prop trading and covered fund ban
- Preamble indicates mutual funds generally should be exempt and asks for comment on other registered funds
- Proposal would exempt *bona fide* customer funds and funds controlled by such funds
- No exemption for funds that are exempt under 3(c)(5) or other exemptions or for non-US funds
- Request for comment on whether loan securitization vehicles need a regulatory exemption

Compliance Program Highlights

- Six minimum elements: (i) written policies and procedures, (ii) internal controls to identify noncompliance, (iii) management accountability, (iv) independent testing, (v) training, and (vi) recordkeeping
- Any banking entity engaged in significant covered trading or covered fund activities must also meet specified minimum standards
- Metrics for market-making and hedging exceptions
  - Measured daily
  - Reported to regulators periodically

FRB Policy Statement on Conformance Period

- Banks will have until July 21, 2014 to conform to the Volcker Rule
- Existing activities may continue; even new activities not prohibited during that time period
- No need to put in place complex compliance and reporting procedures by July 21, 2012
  - When final rule comes out, it may require reporting to begin during the conformance period

FRB Policy Statement: What Banking Entities Need to Do Now

- Adopt good faith planning efforts appropriate for their activities and investments to enable them to conform their activities to the final regs by the end of the conformance period
- Assess activities, investments, and relationships that are covered by the statute and final rule (when it is available)
- Develop/implement conformance plans that are as specific as possible on how the firms will conform their activities by 2014

Impact on Securitization Vehicles

- Issuers that can rely on 40 Act exemptions other than 3(c)(1) or 3(c)(7)
  - Issuer is not a covered fund so no restrictions (unless issuer itself is an affiliate of banking entity)
- Issuers that rely on 3(c)(1) or 3(c)(7) and don't meet a Volcker Rule exemption
  - Issuer is a covered fund
  - Banking entity may not invest or sponsor
  - No covered transactions permitted with a banking entity that sponsors or advises
- Issuers that rely on 3(c)(1) or 3(c)(7) but are exempt under *bona fide* asset management, loan securitization or ABS exemption
  - Issuer is a covered fund
  - Banking entity may invest or sponsor
  - No covered transactions permitted
  - Issues if covered fund is an affiliate of banking entity

Loan Backed Securitization Vehicles and ABS Issuer Exemptions

- Covered banking entity may hold ownership interest in or sponsor a covered fund that issues ABS if its assets are solely loans and related rights
- Covered banking entity may hold an ownership interest in or sponsor a covered fund that issues ABS to the extent of any amount required to be retained by it as a securitizer or originator under Section 941 of the Dodd-Frank Act

Alternative 40 Act Exemptions

Section 3(c)(5) – exempts issuers primarily engaged in ….

(A) purchasing or otherwise acquiring notes … and other obligations representing part or all of the sales price of merchandise, insurance or services, (B) making loans to manufacturers, wholesalers, retailers and purchasers of merchandise, insurance and services, or (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate

Alternative 40 Act Exemptions (cont.)

Section 3(c)(5)

Plus: 'primarily engaged' generally viewed to permit up to 40% non-qualifying assets (although it helps if the non-qualifying assets are closely related)

Minus: No-action letters have construed purpose narrowly as aimed at sales financing

- Clearly not permitted: true leases, general corporate loans, securities, credit card advances, royalties, structured settlements, tax liens
- Not clear if permitted: certificates, notes or other investments supported by obligations representing sales price (as described in (A)) or sales loans (as described in (B)). Are (A) and (B) as flexible in the type of investment as (C)?

Alternative 40 Act Exemptions (cont.)

Rule 3a-7 (Securitization Exemption) – exempts any issuer engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets (and in activities related or incidental thereto), and who does not issue redeemable securities if:

- Securities issued entitle holders to receive payments that depend primarily on cash flow from eligible assets
- Securities are either investment grade or sold only to IAIs, QIBs and persons involved in organization or operation of issuer
- Acquisitions and dispositions of eligible assets are not effected for the primary purpose of recognizing gains or decreasing losses resulting from market value changes
- Issuer appoints an independent trustee and provides trustee a perfected security interest unless all securities issued are 3(a)(3) exempt

Alternative 40 Act Exemptions (cont.)

Conduit Considerations (3a-7)

Scope of Eligible Assets: Financial assets that convert to cash in accordance with their terms together with related rights, such as servicing

- Liquidity and credit support are eligible assets
- Is a senior note issued to conduit secured by leases an eligible asset? Maybe
- Clearly the term is broader than the types of assets permitted under 3(c)(5)

Alternative 40 Act Exemptions (cont.)

Conduit Considerations (3a-7)

Appointment of Trustee and Secured Program

- May add cost, new rating agency review, etc.
- If CP not secured, may be tricky
- BUT not required if all securities issued meet 33 Act 3(a)(3) exemption

Requirements for 3(a)(3) CP

- Tenor cannot exceed 9 months
- Must arise out of or proceeds must be used for current transactions

Alternative 40 Act Exemptions (cont.)

What are current transactions?

SEC 1961 Release indicated proceeds cannot be used (a) to discharge debt unless the debt itself is 3(a)(3) exempt, (b) to purchase machinery or equipment, (c) to purchase or construct a plant, (d) to fund commercial real estate development or financing, (e) to purchase real estate mortgages or other securities, (f) to finance mobile homes or home improvements or (g) to purchase or establish a business enterprise

Alternative 40 Act Exemptions (cont.)

What are current transactions?

SEC no-action letters since the release (but none issued after 1989) significantly loosen the test:

- Current transaction limited to 5-year exposures (regardless of actual tenor of assets and regardless of whether 5-year exposure is at beginning, middle, or end of tenor)
- Can include 5-year exposures to equipment, construction, real estate, securities, LP capital calls, and acquisition financing
- Later letters even permitted no tracing of proceeds, relying instead on a "capacity" test
- Can purchase mortgage loans if only treat next 5 years of payments as eligible in capacity test
- Delinquent and defaulted assets are an issue (compare S-3 ABS definition)

Potential Changes to Investment Company Act of 1940 Sections 3(c)(5) and Rule 3a-7

- SEC concept release issued in August 2011 says staff is reviewing interpretive issues relating to 3(c)(5)
- More restrictive interpretations could affect securitization markets
- Dodd Frank 939A arguably requires a review of the ratings criteria in Rule 3a-7. Concept release included issuer structure and business requirements and perhaps certification by independent evaluator

Questions?

Carol A. Hitselberger
Partner
+1 704 444 3522
chitselberger@mayerbrown.com

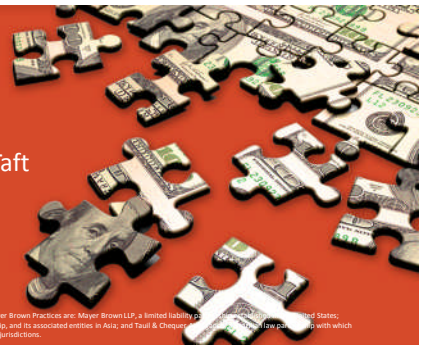
David R. Sahr
Partner
+1 212 506 2540
dsahr@mayerbrown.com

TAB 3

MAYER·BROWN

The Continuing Impact of Dodd-Frank

Developments in Bank Regulation



Scott Anenberg
Partner

Thomas Delaney
Partner

Jeffrey Taft
Partner

Nonbank SIFIs - Overview

- Section 113 of the Dodd-Frank Act authorizes FSOC to determine that a nonbank financial company (predominantly engaged in financial activities) should be subject to supervision by the Federal Reserve if material financial distress at nonbank financial company could pose a threat to the financial stability of the United States
- Three stage process for designation
  - Designation criteria intended to apply to all financial entities regardless of sector but many need more tailored criteria
  - Not clear at this point how many entities will be designated

Nonbank SIFIs - Stage 1

- Company advances to stage 2 if meets total consolidated assets threshold **and** any of the other thresholds:
  - Total consolidated assets – more than $50 billion
  - Credit default swaps outstanding - $30 billion in gross notational credit default swaps outstanding
  - Derivatives liabilities – $3.5 billion of derivatives liabilities
  - Total debt outstanding – $20 billion of outstanding debt
  - Leverage ratio – 15:1 ratio of total consolidated assets to total equity
  - Short-term debt ratio – ratio of total debt outstanding (w/ maturity of less than 12 months) to consolidated assets of 10%

Nonbank SIFIs - Stage 2

- In stage 2, FSOC will perform comprehensive analysis of potential for nonbank financial company to pose a threat to US financial stability
- Analysis based on a broad range of quantitative and qualitative information available to the FSOC through existing public and regulatory sources, and information obtained from the company voluntarily
- Consider the impact that resolving the company could have on US financial stability
- Consult with primary regulator of each significant subsidiary

Nonbank SIFIs – Stage 3

- In stage 3, each nonbank financial company will receive a notice that it is under consideration
- Notice will include a request that the nonbank financial company provide information that the FSOC deems relevant to the FSOC's evaluation
- Stage 3 analysis will build upon stage 2 analysis and include an evaluation of the company's resolvability
- FSOC must provide notice to company when its evidentiary record is complete and make a proposed determination within 180 days after the notice

Nonbank SIFIs –FSOC Determination

- FSOC may, by a vote of two-thirds of its members, make a proposed determination
- FSOC will provide written notice of the proposed determination to the company with explanation
- Company has 30 days to request nonpublic hearing before the FSOC
- FSOC has 60 days to make a final determination
- Company can contest final determination under Section 113 of the Dodd-Frank Act or bring an action in US district court for an order to rescind a final determination

Nonbank SIFIs – Significance of Designation

- Supervision by the Federal Reserve
- Subject to the prudential standards in Section 165 of the Dodd-Frank Act as modified by the Federal Reserve
- Possibly at competitive disadvantage to peer firms not designated as nonbank SIFIs

Section 165 – Enhanced Prudential Standards

- Requires the FRB to establish heightened prudential standards for all nonbank SIFIs and BHCs with total consolidated assets of $50 billion or more, including FBOs on a global basis ("Covered Companies")
- Includes heightened capital and leverage requirements, liquidity standards, single-counterparty credit limits, risk management, stress testing, debt-to-equity limits, and, in Section 166, an early remediation framework
- Proposed Regulation YY issued January 2012
  - Comments were due by April 30, 2012

Section 165 – Enhanced Prudential Standards

- Proposal currently addresses only US Covered Companies
  - The FRB will issue a separate proposal detailing how the various requirements under Section 165 will apply to non-US banks
- Significant pieces of the framework left to future proposals
  - Basel Committee's capital surcharge framework
  - Quantitative liquidity requirements
- Generally effective first day of the fifth quarter after adoption of final rule
  - Exceptions include stress testing and single-counterparty credit limits

Section 165 – Capital and Leverage Requirements

- All Covered Companies subject to FRB capital planning rule (adopted in December 2011)
  - Requires that a Covered Company maintain tier 1 common risk-based capital ratio above the 5% minimum
  - Requires a Covered Company to demonstrate robust capital planning processes that would allow continued operation under stressed conditions
- Reg YY will also implement capital surcharges based on Basel Committee's framework for G-SIBs
  - Details to be addressed in separate capital proposal

Section 165 – Liquidity

- Liquidity now a matter of formal regulation, not just guidance
- Proposal has the following key elements
  - Determine the Covered Company's liquidity risk tolerance
  - Liquidity buffer of highly liquid assets sufficient to "survive" for 30 days under stressed conditions
  - Cash flow projections
  - Monthly stress testing
  - Maintenance of contingency funding plan
  - Specific limits/monitoring/documentation
- Requires board/risk committee to approve risk management process and strategies and senior management to implement

Section 165 – Single-Counterparty Credit Limits

- Two limits
  - A Covered Company's "aggregate net credit exposure" to a single unaffiliated counterparty (including subsidiaries) limited to 25 percent of capital
  - More stringent limit of 10% of capital for "major" Covered Companies (more than $500 billion in total consolidated assets) on credit exposure to each other and any non bank SIFI
- "Counterparty" includes the United States, individual states, foreign sovereign entities, and individuals
- Limits apply on a consolidated basis at the holding company level

Section 165 – Single-Counterparty Credit Limits

- Capital stock and surplus is defined as total capital plus other loan loss reserves
- Credit exposure includes loans, repos, securities lending, credit derivatives and securities investments
  - Excludes uncommitted lines of credit
- Definition of "control" differs from Bank Holding Company Act
  - 25 percent voting securities
  - 25 percent equity
  - Consolidates for financial reporting purposes
  - Sponsorship or advice to a fund or vehicle alone would not be control

Section 165 – Single-Counterparty Credit Limits

- Calculation of aggregate net credit exposure
  - Determine gross exposure on credit transactions
    - Valuation issues re derivatives, repos and securities lending
  - Deduct "eligible" guarantees, collateral and credit and equity derivatives and certain bilateral netting agreements
- Attribution rule
- Companies that are Covered Companies at the rule's adoption must comply by October 1, 2013
  - Must meet requirements daily and submit monthly compliance reports to FRB

Section 165 – Risk Management and Risk Committee

- Covered Companies and publicly-traded BHCs with $10 billion or more in total consolidated assets must establish a risk committee of the board of directors to oversee enterprise-wide risk management
  - Covered Companies must appoint a Chief Risk Officer with appropriate independence and risk management expertise
  - Risk Committee must include at least one risk management expert
- The requirements would carry force of regulation, not just guidance
- Weakness in risk management or noncompliance with the rule could trigger the early remediation regime

Section 165 – Stress Testing

- Proposal provides for two stress testing requirements:
  - Supervisory stress tests
  - Company-run stress tests
- Both require forward-looking estimates of projected revenues, losses, reserves, and capital levels to evaluate whether Covered Company has sufficient capital
  - For each stress scenario, for each quarter over nine quarters
    - Three stress scenarios: baseline, adverse, severely adverse
- Frequency: annual (supervisory); semi-annual (company-run)

Section 165 – Stress Testing

- Reg YY builds on earlier FRB initiatives (CCAR and SCAP)
  - Stress tests expected to be integrated into a Covered Company's capital plan
- Little guidance on how FRB will evaluate a Covered Company's stress test results
  - Summary results will be made public
- FRB recently finalized stress testing guidance for companies (including branches and agencies of non-US banks) with $10 billion in total consolidated assets (effective July 23, 2012)
  - Not Dodd-Frank section 165; applies broadly to risk management stress testing, not just capital and liquidity stress testing

Section 166 –Early Remediation Framework

- As a Covered Company's financial condition deteriorates, a Covered Company will be subject to a regime of early remediation requirements that increase in stringency
- Level 1: Heightened supervisory review
  - Triggered by first signs of financial distress or material risk management weakness
- Level 2: Initial remediation
  - Restrictions on capital distributions, growth and acquisitions
  - Must develop action plan with FRB for improvement of the company's condition

Section 166 –Early Remediation Framework

- Level 3: Recovery
  - Formal written agreement with FRB to prohibit capital distributions, growth, acquisitions and new offices or business lines, and restrictions on compensation of senior management
  - Covered company must raise capital and take other measures to improve capital adequacy
  - FRB could impose other restrictions (removal of board, hiring of senior management, restricting transactions with affiliates) and require divestiture for noncompliance with agreement
- Level 4: Resolution assessment
  - FRB considers recommending Covered Company to be resolved under Orderly Liquidation Authority

Section 166 –Early Remediation Framework

- Triggering events for early remediation include:
  - Risk-based capital and leverage
  - Stress test results
  - Risk management weaknesses and deficiencies
  - Liquidity
  - Market indicators (including equity-based indicators and debt-based indicators)
- Two-way notice requirement: FRB must take action if Covered Company shows signs of financial distress, but Covered Company must also self-report
- Early remediation provisions effective one year from effective date of rule

Section 165 –Debt-to-Equity Limits

- Proposal establishes procedures to notify a Covered Company that FSOC has determined that it poses a grave threat to US financial stability and must maintain a debt-to-equity ratio of no more than 15:1
  - 180 days to comply
- The debt-to-equity limit should serve as a measure of last resort and will likely rarely, if ever, be used
  - A distressed Covered Company would be placed into FRB's early remediation regime to avoid becoming a "grave threat"

Affiliate Transactions/Sections 23A/B

- Key changes (D-F § 608)
  - Expands the definition of "affiliate" to cover investment funds where bank or affiliate acts as investment advisor
    - Currently, only registered investment companies deemed affiliate based solely on advisory relationship; for unregistered funds, bank or affiliate must also have more than 5% ownership interest and for REITs and other companies, must also sponsor
  - Expands definition of "covered transaction" to include:
    - Securities borrowing or lending transactions with an affiliate, and all derivatives transactions with an affiliate, to extent there is credit exposure
      - Codifies existing interpretations for securities lending/borrowing
      - Currently, only credit derivatives subject to restrictions
  - Subjects repurchase agreements to the collateral requirements of Section 23A
  - Credit transactions must be collateralized at all times, rather than just at the time of the transaction

Affiliate Transactions/Sections 23A/B

- Other changes
  - Eliminates exemption from numerical limits for transactions between bank and financial subsidiary
  - FRB to issue regulations or interpretations regarding the manner in which netting agreements should be taken into account in determining the amount of a covered transaction
    - Particularly important for securities lending/borrowing (not currently permitted) and derivatives
  - Scales back FRB's unilateral authority to issue exemptions
    - Regulations not orders
    - FDIC non-objection
  - Exemptive orders must be issued jointly by FRB and OCC (national banks) or FDIC (state banks)
    - FDIC can always veto based on risk to deposit insurance fund
  - Super 23A under Volcker Rule

Affiliate Transactions/Sections 23A/B

- Applicability to foreign banks
  - Changes will apply to US branches and agencies of foreign banks to the extent that an affiliate is subject to affiliate transaction restrictions under the FRB's Regulation W
- Changes to Sections 23A/B are effective in July 2012
- Implementation issues
  - Amendments to Reg W
  - Grandfathering/transitional relief
  - Measurement of derivatives exposure
  - Valuation/timing issues for life of transaction collateral requirement

Lending Limits (D-F Sections 610 & 611)

- Makes any credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction, a "loan or extension of credit" subject to the national bank lending limits and insider lending limits that apply to all insured banks and thrifts
- Permits an insured state bank to engage in derivative transactions only if its chartering state's lending limits law "takes into consideration" credit exposures from derivative transactions
- Changes to lending limits are effective in July 2012
- OCC implementation issues:
  - Measurement of derivatives exposure
  - Transitional relief

Financial Stability Considerations

- Key changes
  - Dodd-Frank requires the FRB (or other responsible agency) to take into consideration the risk to the stability of the US financial system (USFS) in the following contexts
    - BHC acquisitions of banks and non banks (D-F §§ 604(d) & 604(e))
    - Bank mergers (D-F § 604(f))
    - Large BHC/non bank SIFI acquisitions of large non-depository financial companies (D-F § 163)
    - Establishment or termination of US activities of a foreign bank that presents a risk to the USFS, unless their home country has adopted an adequate regulatory system to reduce risk to the USFS (D-F § 173)
    - FRB finding of a "grave threat" to the USFS as a basis (with FSOC approval) to impose significant restrictions (included forced divestitures) on a large BHC/non bank SIFI (D-F § 121)

Financial Stability Considerations

- Three types of analyses have been used by the FRB:
  - Summary conclusion
    - Green Dot (2011) ($322 million financial company acquiring $35 million bank)
    - Brookline (2011) ($3.1 billion BHC acquiring $1.6 billion BHC)
    - Banco do Brasil (2011) (foreign bank with US branches acquiring $83 million US bank)
    - Hana (2012) (foreign bank acquiring $626 million in US non bank assets of another foreign bank)

Financial Stability Considerations

  - Summary analysis of multiple factors
    - Mitsubishi UFG (2011) (acquisition of non-controlling interest in Morgan Stanley)
    - Westpac (2011) (foreign bank with US branches acquiring $11 billion US investment management firm)
    - ICBC (2012) (foreign bank acquiring $780 million foreign-owned US bank)
  - Detailed analysis of multiple factors
    - PNC (2011) ($263 billion FHC acquiring RBC Bank, a foreign-owned $27 billion US bank)
    - Capital One (2012) ($200 billion FHC acquiring ING Bank, FSB, a foreign-owned $92 billion US thrift)
    - First Niagara (2012) (OCC decision) ($33 billion BHC acquiring $11 billion of bank assets from HSBC's US bank subsidiary)

Financial Stability Considerations

- Detailed risk factor analysis
  - Quantitative factors – metrics measuring risk of damage to the US economy
    - Availability of substitute providers for any critical products or services offered by the resulting firm
      - Whether the firms engage in activities critical to the functioning of the USFS and if there are adequate substitute providers of those services were the combined firm to stop engaging in critical activities due to severe financial distress
      - For example, Capital One engaged in lines of business that constituted a small share of the nationwide market and it had numerous competitors in each of the activities in which it engaged

Financial Stability Considerations

- Detailed risk factor analysis (cont.)
  - Quantitative factors (cont.)
    - Contribution of the resulting firm to the complexity of the USFS
      - Whether the combined entity has a disproportionate share of complex assets or engages in activities such as core clearing and settlement for critical financial markets
    - Measures of the size of the resulting firm
      - While statutory 10% deposit/liabilities concentration limits are the permissible outer bounds, smaller sizes will still be reviewed for potential systemic risk
      - For example, while Capital One would become the fifth largest US bank by deposits, this concern was mitigated by its smaller market share in assets, liabilities, and leverage exposures (ranging from 1.1-1.6% of the USFS)

Financial Stability Considerations

- Detailed risk factor analysis (cont.)
  - Quantitative factors (cont.)
    - Interconnectedness of the resulting firm with the USFS
      - Whether, if the merged entity were to experience financial distress, it would create instability in the USFS through the transmission of its distress:
        - To counterparties directly;
        - Through the erosion of asset prices from a fire sale; or
        - By triggering contagion that results in a withdrawal of liquidity from other institutions
      - For example, Capital One's use of wholesale funding was less than 1% of the USFS wholesale funding usage and the transaction did not increase exposure to its large counterparties

Financial Stability Considerations

- Detailed risk factor analysis (cont.)
  - Quantitative factors (cont.)
    - Extent of cross-border activities of the resulting firm
      - Whether the firm's cross-border presence would create difficulties in coordinating a resolution or if the firm provides critical services whose disruption would negatively impact US macroeconomic conditions
      - For example, Capital One's only cross-border activities were Canadian and UK credit cards and the resulting entity would not engage in additional activities outside the US as a result of the transaction
    - All other factors that are relevant to a transaction

Financial Stability Considerations

- Detailed risk factor analysis (cont.)
  - Qualitative – risk of difficulty of resolving firm's failure
    - Opaqueness of an institution's internal organization
    - Complexity of an institution's internal organization
  - Holistic – viewing the factors in combination
    - Determination of whether the interaction of factors mitigates or exacerbates risks identified on an individual factor basis
    - Consideration of whether the transaction will create stability benefits
    - Analysis of whether enhanced prudential standards would offset potential risks

Financial Stability Considerations

- Safe harbors – rebuttable presumptions
  - Transactions may be presumed not to raise financial stability concerns when they will have only a *de minimis* impact on the institution's systemic footprint, such as:
    - Acquisition of less than $2 billion in assets
    - Resulting firm with less than $25 billion in assets
    - Corporate reorganization
  - However, these presumptions will only apply in the absence of evidence that the transaction would result in a significant increase in a risk factor

Unlimited Coverage for Noninterest-Bearing Transaction Accounts (D-F Section 343)

- 2-year extension of emergency TAG Program expires Dec. 31, 2012 (D-F § 343)
- Statutory changes to program
  - Mandatory not voluntary
  - No separate fee, but the FDIC considered cost of the program in determining deposit insurance assessments
  - Low interest-paying NOW accounts excluded
  - Attorney trust accounts originally excluded from Dodd-Frank coverage
    - Legislative fix on Dec. 29, 2010
  - Issues
    - Planning for potential expiration
    - Efforts to extend
      - Community banks
      - Status of economic recovery/banking industry
      - Low interest rate environment

Questions?

Scott Anenberg
Partner
+1 202 263 3303
sanenberg@mayerbrown.com

Thomas Delaney
Partner
+1 202 263 3216
tdelaney@mayerbrown.com

Jeffrey Taft
Partner
+1 202 263 3293
jtaft@mayerbrown.com

TAB 4

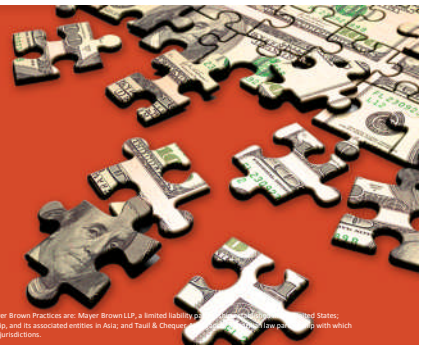
MAYER·BROWN

The Continuing Impact of Dodd-Frank

Mortgage and Mortgage-Backed Securities Litigation

Matthew Ingber
Partner

Michael Ware
Partner



Background

- Private label residential backed mortgage-backed securities issued between 2005-2007
- Private plaintiffs
  - Monoline insurers and RMBS trustees
  - RMBS investors
- Nature of claims
  - Reps and warranties
  - Fraud, federal securities laws, Blue Sky laws

Panel Outline

- "Put-back" claims
- Holders' securities claims
- Claims against RMBS trustees
- Governmental investigations
- Settlements: There will be no Ken Feinberg

Put-Backs – Reps and Warrants

- Representations and warranties made for the benefit of the trust (or insurer) by originators, sponsors, servicers and depositors
- Reps and warrant at the "transaction level" and at the "loan level" concerning:
  - The nature of the loans
  - The level of care applied in origination and underwriting
- Trusts' "sole remedy" in most instances for breach of loan-level rep is to compel the repurchase or replacement of the non-compliant loan

Put-Backs – Claims by Monolines

- Monoline insurers have filed some of the most ferocious litigation
  - Billions at risk on shortfalls in highly rated tranches of deals
  - Commercial Division of New York County and Westchester County Supreme Court
  - Plaintiffs assert fraud and fraud-like claims, and contract law claims relating to repurchase
- Can monolines get out of contacts by alleging fraud in the inducement?

Put-Backs – Claims by Holders

- Attempts by holders on their own to litigate rep-and-warrant claims have had little success
  - "No action" clauses, participation threshold
  - *Greenwich Financial v. Countrywide*: No "class action" exception to no-action clauses
  - *Walnut Place LLC v. Countrywide*: No-action clause bars put-back litigation by certificate holders absent, among other things, notice of an Event of Default

Put-Backs – Claims by Trustees

- The Trustee owns the claims
- Holders have been able to work through the Trustee
  - Countrywide settlement
  - Deal-by-deal, getting to the threshold, working the indemnification, appointing counsel and taking action

Put-Backs – Open Issues

- Sampling or loan-by-loan? Specific performance remedy requires a loan-by-loan decree
- Will plaintiffs have to prove loss causation on reps and warranties claims?
- Statute of limitation risk
- Will derivative claims fill the breach when the holder and the Trustee cannot reach agreement?
- Traps in the documents: Judge Magnuson in *MASTR Asset Backed v. WMC*

Holder Litigation Against Securities Issuers and Underwriters – Fraud and Fraud-Like Claims

- Main theories
  - Federal securities laws
  - Common law fraud and negligent misrepresentation
  - State Blue Sky laws

Holder Litigation Against Securities Issuers and Underwriters – Fraud and Fraud-Like Claims (cont.)

- Class action: Claims are only permitted on securities held by named plaintiffs; bar on class litigation of Blue Sky claims
- Securities Act of 1933: New claims under Sections 11 and 12(a)(2) no longer possible due to time limits (except maybe for certain federal plaintiffs)

Holder Litigation Against Securities Issuers and Underwriters – Fraud and Fraud-Like Claims (cont.)

- Exchange Act:
  - Limitations/repose 2/5
  - Rule 10b-5 requires pleading with "particularity" intentionally fraudulent misstatements, transaction- and loss-causation
- Common-law fraud claims present the same pleading challenges
- Negligent misrepresentation claims failing under New York law for absence of a relationship

Holder Litigation Against Securities Issuers and Underwriters – Fraud and Fraud-Like Claims (cont.)

- Blue Sky claims
  - Strict liability like the '33 Act
  - Generally more lenient periods of limitations and repose
  - Alternative loss causation? 96 widgets in a warehouse lost to fire

Claims Against RMBS Trustees

- Trust Indenture Act of 1939
- Fiduciary duty
- Breach of contract

Governmental Investigations

- SEC v. issuers
- State attorneys general v. trustees, issuers and others
- The new task force
- Bank regulators on servicing

Settlements

- Trustee claims
  - Countrywide
  - Deal-by-deal
- Holder securities claims
- Settlements with authorities
- ***There will be no Ken Feinberg***

Questions?

Matthew D. Ingber
Partner
+1 212 506 2373
mingber@mayerbrown.com

Michael O. Ware
Partner
+1 212 506 2593
mware@mayerbrown.com

TAB 5

MAYER·BROWN

The Continuing Impact of Dodd-Frank

Derivatives Regulation

Joshua Cohn
Partner

Ed Parker
Partner

David Sahr
Partner

Wall Street Transparency and Accountability Act of 2010

- Comprehensive regulation of swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants
  - Registration
  - Business conduct standards with counterparties, including enhanced protections for "special entities," such as ERISA plans and municipalities
  - Internal business conduct standards, including chief compliance officer, documentation standards, and portfolio reconciliation
- Mandatory clearing and trade execution
  - Process for CFTC/SEC review and designation of swaps for mandatory clearing
  - Exemptions for non-financial end-users and certain affiliates, captive finance subsidiaries
  - Any entity that accepts margin for cleared swaps/security-based swaps must be registered as a futures commission merchant ("FCM")/broker-dealer or security-based swap dealer. Segregation requirements apply to cleared swap collateral

Wall Street Transparency and Accountability Act of 2010

- Margin requirements for uncleared swaps
  - Limitations on unsecured threshold amounts, depending on counterparty type
- Swap data reporting, position limits, large trader reporting

Who Is a "Dealer?"

- Swap dealer ("SD") - a person who does any of the following:
  - Holds itself out as dealer in swaps;
  - Makes a market in swaps;
  - Regularly enters into swaps with counterparties as an ordinary course of business for its own account; **or**
  - Is commonly known in the trade as a dealer or market-maker in swaps; but
  - **Excluding** a person that enters into swaps for its own account, but not as part of a regular business

Who Is a "Dealer?" (cont.)

- Parallel statutory definition for security-based swap dealer ("SBSD")
- CFTC/SEC have adopted final regulations defining SD, SBSD and Major Participant ("MP")
- Indicia of dealer status: profit through providing liquidity; accommodating demand or facilitating interest; structuring and advice; regular clientele and active solicitation; acting as a market-maker on an organized exchange. In contrast, a "swap for the purpose of hedging, absent other activity, is unlikely to be indicative of dealing."

Who Is a "Major Participant?"

- Major swap participant ("MSP") - a non-dealer* who meets any of the following criteria:
  - Maintains a "substantial position" in swaps for any of the major swap categories, not including positions held for hedging or mitigating commercial risk or held by certain ERISA plans for hedging or mitigating plan risk;
  - Outstanding swaps create "substantial counterparty exposure" that could have serious adverse effects on the financial stability of the US banking system or financial markets; **or**
  - A financial entity that is highly leveraged, not subject to Federal bank capital requirements, and maintains a "substantial position" in any category of swaps
- A person can be a "vicarious" MP if it guarantees or is otherwise liable for another entity's swap obligations

*A dealer that has been granted limited designation (e.g., only for certain types of swaps) must consider whether its activities outside its dealer designation give rise to MP status.

Extraterritorial Impact

- Separate CFTC/SEC releases addressing extraterritorial issues have not yet been issued
- Final dealer/MP definitions are silent on counting or excluding swaps with non-US persons. Industry commentators suggest adopting Regulation S definition of US person
- Comments from non-US banks urge regulators to accommodate a variety of structural options

When Will it Be Effective?

- Both CFTC and SEC have adopted registration procedures
- Applications for CFTC registration must be submitted within 60 days of final definitional rules – final rules defining swaps and swap-based securities are expected in May or June
- CFTC and SEC have not yet issued promised releases concerning application of DF derivatives requirements to entities outside the United States

Push-Out of Swap Activities

- DFA Section 716 is intended to limit bank swap activities
  - Registered swap dealers (SD) and MSP may not obtain advances from the Fed discount window or other "federal assistance" (FDIC insurance)
  - This will impact those US depository institutions and US branches and agencies of foreign banks that have access to this federal assistance and whose activities would otherwise require SD or MSP registration
  - Affected swap activities could still be conducted in registered nonbank affiliates that do not have access to federal assistance, hence these activities get "pushed out" from the bank to its nonbank affiliate (subject to affiliate transaction restrictions)

Push-Out of Swap Activities

- Swaps and activities eligible for the safe harbor exemption for insured depository institutions
  - Interest rate and currency swaps
  - Other swaps based on instruments that banks can invest in directly such as precious metals, investment securities
  - CDS that are cleared
  - *Bona fide* hedging directly related to the bank's activities
- Swaps that are not eligible
  - Swaps based on commodities or equities that are not eligible for investment by a bank
  - CDS that are not subject to clearing

Push-Out of Swap Activities

- Effective date
  - Two years after effective date of the "Act"
  - Up to three-year implementation period for insured depository institutions
- Safe harbor exemption for foreign banks
  - Because of conference committee oversight, not available to uninsured branches of foreign banks
  - Senator Lincoln's colloquy recognizes this as an oversight
  - If no change to DFA, US uninsured branches need to push out all swap activities to an affiliate that would otherwise require registration

MAYER·BROWN

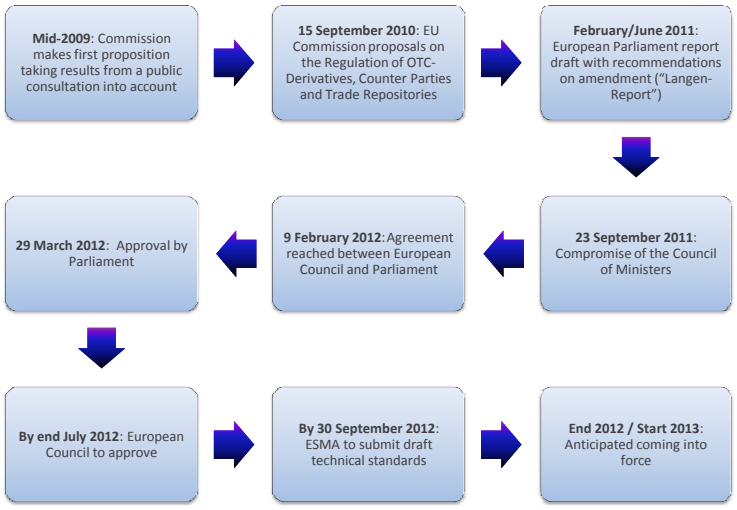
The European Market Infrastructure Regulation (EMIR) In The Context of Dodd-Frank

European Market Infrastructure Regulation (EMIR)

- Final version adopted by European Parliament on 29 March 2012
- Part of the G-20 agenda (April 2009)

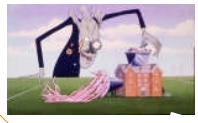
> "All standardised OTC derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end 2012 at the latest. OTC derivatives contracts should be reported to trade repositories."

EMIR: Timeline



EMIR: Overview

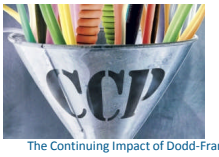
Mandatory Clearing and reporting of OTC derivative trades



Smooth transfer of existing market into central clearing and requirements for that clearing

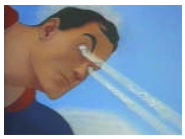
esma

Risk Management and rules for non-cleared transactions and their counterparties



Prudential and business requirements for CCPs

Authorisation and supervision of CCPs



EMIR: Clearing Critieria

Similar criteria to Dodd-Frank to determine which OTC derivatives should be cleared

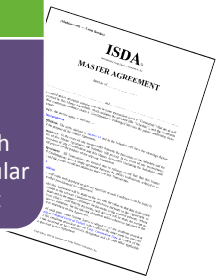
Volume and liquidity of the relevant class of derivative

Availability of pricing data

Clearing Criteria

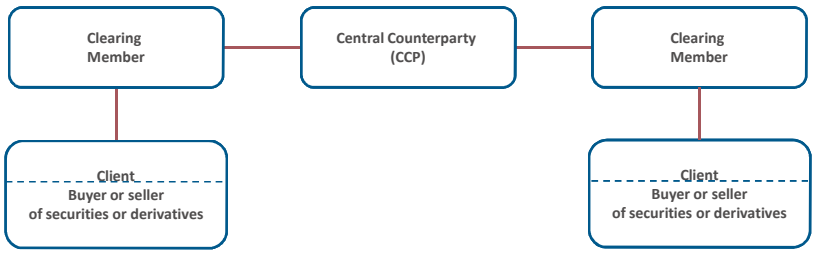
Impact on systemic risk and competition

Degree of standardisation with respect to the particular derivative contract



EMIR: Instruments and Entities Covered

- EMIR applies to "OTC derivative contracts," thereby excluding exchange-traded derivatives
- Title VII Dodd Frank applies to "swaps and security-based swaps" whether traded on or off exchange



EMIR: Clearing Obligation

- Mandatory clearing of all derivative contracts pertaining to a **class** that has been declared **subject to the clearing obligation** entered into between **relevant market participants** (Art. 4)

- **Class**: Sharing common and essential characteristics including at least the relationship with the underlying asset, the type of underlying asset, and currency of notional (Art. 2(6))
- **Subject to the clearing obligation**: ESMA able to identify classes that should be subject to the clearing obligation either: (i) after having received a notification from a competent authority that it has authorised a CCP to clear such a class; or (ii) on its own initiative (Art. 5)

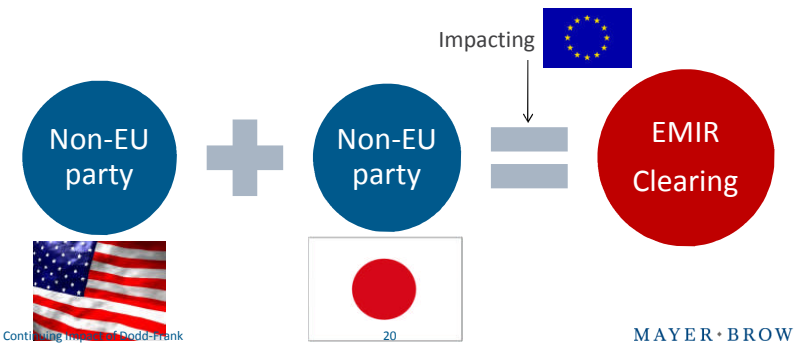
EMIR: Clearing Obligation

- Mandatory clearing of all derivative contracts pertaining to a **class** that has been declared **subject to the clearing obligation** entered into between **relevant market participants** (Art. 4)

  - **Relevant market participants (Art. 4)**:
    - Financial counterparties (Art. 2(8))
    - Non-financial counterparties (Art. 2(9))
    - Third country entities which would otherwise be subject to the clearing obligations if established in the Union

EMIR: Extraterritoriality

- EMIR extends to contracts between non-EU counterparties which have a "direct, substantial and forseeable effect" within the EU or where it "is necessary or appropriate to prevent the evasion of any provision of EMIR"
- But mechanism to avoid duplicative or conflicting rules (Art. 14)



Questions?

Joshua Cohn

Partner

+1 212 506 2539
jcohn@mayerbrown.com

Ed Parker

Partner

+44 20 3130 3922
eparker@mayerbrown.com

David R. Sahr

Partner

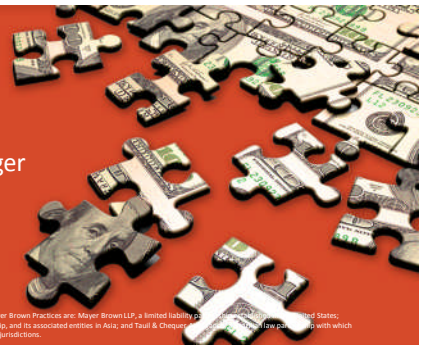
+1 212 506 2540
dsahr@mayerbrown.com

TAB 6

MAYER·BROWN

The Continuing Impact of Dodd-Frank

Breakout Session: Capital



Scott Anenberg
Partner

Carol Hitselberger
Partner

Historical Background

- Basel I risk-based capital framework
  - Issued by Basel Committee in 1988 and adopted in the United States in 1989
  - Capital requirements account for credit risk for first time
  - Modified in 2002 to add recourse rules and ratings-based approach for ABS
- Market risk rule
  - Issued by Basel Committee and adopted in the United States in 1996
  - Add-on to the Basel I (and later Basel II) risk-based capital requirements to cover "trading book" exposures
  - Applies to US banks/BHCs with trading activity that exceeds 10% of total assets or $1 billion

Historical Background (cont.)

- Basel II
  - Issued internationally by Basel Committee in 2004
  - Not adopted in the United States until late 2007, and then only the Advanced Approaches for largest US "core banks"
    - $250 billion in total assets or $10 billion in foreign exposure
    - Long qualification period; no US bank currently actually operating under Basel II
- US regulators proposed Basel I modifications (December 2006) and Basel II Standardized Approach for non-core banks (July 2008), but neither proposal was implemented
- Progress on US Basel II implementation slows due to financial crisis

Measures Adopted in Response to the Financial Crisis

- July 2009: Basel Committee issues "Basel 2.5"
  - Revisions to Basel II banking book treatment of securitizations
    - Resecuritizations
    - ABCP conduits
    - Pillar 2 (risk management, compensation) and Pillar 3 (disclosure) changes
  - Enhancement to the market risk/trading book framework
    - VaR modeling
    - Stressed VaR
    - Incremental risk charge

Measures Adopted in Response to the Financial Crisis (cont.)

- December 2009: Basel Committee issues "Basel III" proposal
  - Significantly increased capital requirements and narrower definition of capital
  - New quantitative liquidity standards
    - LCR: sufficient high-quality liquid assets to meet stressed 30-day liquidity needs
    - NSFR: sufficient longer-term and more stable funding sources based on asset composition
- June 2010: Basel Committee makes additional adjustments to market risk/trading book framework

Measures Adopted in Response to the Financial Crisis (cont.)

- July 2010: Dodd-Frank Act enacted in the United States; includes key capital-related provisions:
  - Collins Amendment
  - Capital plan and stress-testing requirements
  - Capital surcharge for SIFIs
  - 939A prohibition against the use of credit ratings
- December 2010 (supplemented in June 2011): Basel Committee adopts final text for Basel III
  - Phase-in of new minimum capital requirements over 6 years to begin by January 1, 2013

Recent Developments

- December 2010: US regulators issue proposed rules:
  - Basel 2.5 amendments to the US Market Risk Rule (except for provisions related to Dodd-Frank 939A prohibition on credit ratings)
  - Amendments to the Basel II Advanced Approaches for US core banks to comply with Collins Amendment capital floor
- June 2011: US regulators adopt final rule implementing Collins Amendment capital floor for US banks subject to Basel II Advanced Approaches
  - Replaces 3-year transitional sliding-scale floor tied to Basel I with permanent 100% floor tied to Basel I (or, as recently proposed, Basel II Standardized Approach)
- November 2011: Basel Committee issues final capital surcharge rule for "global systemically important banks" (G-SIBs or "Global SIFIs")
  - Additional CET1 requirement of 1% - 2.5% depending on systemic importance
  - Phased-in along with Basel III capital buffers from 2016 to 2019

Recent Developments (cont.)

- November 2011: FRB issues final rule requiring US BHCs with over $50 billion in assets to submit annual capital plans
- December 2011: US regulators propose amendments to outstanding US Market Risk Rule proposal (i.e., Basel 2.5) to comply with Dodd-Frank 939A credit ratings prohibition
  - Proposed credit rating alternatives: OECD country risk classifications for sovereign exposures, company-specific financial information for corporate exposures, and simplified supervisory formula approach for securitizations
- December 2011: US regulators propose enhanced prudential standards for SIFIs
  - Capital plan; stress tests; forthcoming proposal to implement a risk-based capital surcharge based on Basel Committee's G-SIB framework

Recent Developments (cont.)

- May 2012: Basel Committee proposes revised market risk framework based on "fundamental review" of trading book capital requirements
  - More "objective" boundary between banking and trading book to prevent arbitrage
  - More restrictive approval processes and constraints for internal models, including a "fall-back" Standardized Approach for banks using models
  - US regulators have signaled intent to follow suit
- June 2012: US regulators (1) adopt final rule implementing Basel 2.5 revisions and Dodd-Frank 939A compliance to the Market Risk Rule, and (2) issue 3 separate proposals:
  - NPR 1 – Basel III Minimum Capital Requirements, Definition of Capital and Capital Buffers ("Basel III NPR")
  - NPR 2 – Standardized Approach for Risk-Weighted Assets ("Standardized Approach NPR")
  - NPR 3 – Advanced Approaches and Market Risk ("Advanced Approaches NPR")

NPR 1 – Basel III NPR

- Would apply to all US banking organizations
- Minimum capital requirements consistent with international Basel III
  - 4.5% common equity tier 1 (CET1); 6% tier 1; 8% total capital (same)
  - 2.5% CET1 capital conservation buffer for all; countercyclical capital buffer up to 2.5% (initially set at 0 for exposures located in the United States) for Advanced Approaches banks
    - For countercyclical buffer, location of a securitization exposure is location of largest concentration of borrowers
  - Capital conservation buffer (plus countercyclical for AA banks) used as a condition to payment of capital distributions and discretionary executive officer bonuses
  - Supplementary minimum tier 1 leverage ratio (including off-balance sheet) of 3% for Advanced Approaches banks effective 2018
  - Corresponding changes to prompt corrective action categories

NPR 1 – Basel III NPR(cont.)

- Restrictive definitions of capital and stricter capital deductions also largely consistent with international Basel III (e.g., deductions from CET1 for MSRs and most DTAs, inclusion of unrealized losses on AFS debt securities (including Treasuries))
- Deduction of investments in capital instruments of unconsolidated financial institutions that exceed thresholds (including Volcker covered funds)
- Tighter restrictions on minority interests and REIT preferred
- Complex transition rules (but 1/1/2013 deduction of goodwill from CET1)

NPR 2 – Standardized Approach NPR

- Would apply to all US banking organizations
- Replaces US Basel I risk-based capital regime with one based in part on Basel II Standardized Approach (previously proposed but not adopted in the US)
- More granular risk-weight categories (e.g., residential mortgages subject to risk-weights from 35% to 200%)
- Potentially significant implications for securitization
- US Advanced Approaches banks would use the Standardized Approach to calculate Collins Amendment floor
- CRM: broader recognition of eligible guarantors (but not SPEs or monolines) and financial collateral generally per Basel II
- Detailed disclosure requirements for large ($50B +) non-AA BHCs (AA banks have their own)

NPR 3 – Advanced Approaches NPR

- Would apply only to US Advanced Approaches banking organizations
- Implements range of amendments to international capital standards adopted by Basel Committee
  - Use of stressed periods in models
  - Higher counterparty credit risk capital requirement to account for CVA
  - Capital requirements for cleared transactions with central counterparties
  - Increased capital requirements for exposures to other large ($100B) or unregulated financial institutions
  - Changes to securitization framework
- Would integrate the US Market Risk Rule (currently a separate appendix) into the agencies' comprehensive capital framework
- Additional disclosures

Proposed Rules – General Points

- Complete restatement of US capital rules; would eliminate often subtle differences in the capital rules of different US regulators
- Incorporates Dodd-Frank provisions: Collins floor and limits on trust preferred; 939A ratings ban; SLHCs; consideration of macroprudential factors
- Significant increase in minimum capital requirements; some already pushing for more
- Greater consistency among rules
  - Similar credit rating alternatives
  - OECD Country Risk Classifications for sovereign and bank exposures
  - Credit risk mitigation
- Burden on community banks
- Rules generally effective January 1, 2013, but subject to lengthy transition arrangements (full compliance by 2019 (some instruments to 2022))
  - Standardized Approach would not take effect until January 1, 2015, with opportunity to opt-in earlier

Final Market Risk Rule

- Applies to US banking organizations with trading assets and liabilities that exceed 10% of total assets or $1 billion
- Effective January 1, 2013
- Largely implements Basel 2.5 in the United States as well as DF 939A compliance
  - Subjects less liquid and difficult-to-value positions to the banking book risk-based capital rules, even if held in the trading book
  - Enhances the value-at-risk (VaR)-based measures, including stricter internal modeling requirements, and use of a stressed VaR measure
  - Incorporates earlier proposed measure for incremental risk
  - Requires use of a standardized method (subject to 20% floor) to calculate specific risk-capital requirements for certain debt positions and nearly all securitization positions
  - Comprehensive risk requirement for models-based correlation trading portfolio (8% down from proposed 15%)
- Credit rating alternatives generally track those used in NPRs

What's Left?

- Comment period and finalization of US regulators' comprehensive regulatory capital proposal of June 2012
- US capital surcharge for SIFIs under Dodd-Frank section 165
- Basel Committee and US "fundamental review" of trading book capital requirements
- Liquidity standards (Basel Committee revisions; US proposals)

Comparing Capital Ratio Denominators Under Current Rules (Modified Basel I), Standardized NPR, and Advanced Approaches NPR

Modified Basel I Denominator Components

- Asset risk weights
  - OECD sovereigns: 0%
  - OECD banks: 20%
  - Residential mortgages: 50%
  - Asset-backed securities (optional): ratings dependent
  - Everything else: 100%
- Sample capital calculation
  - $100 million corporate exposure
  - 100% risk weight = $100 million risk weighted assets (RWA)
  - Capital charge = $\frac{\text{Required Capital}}{\text{RWA}} = 8\%$
  - Capital charge: $8 million

Modified Basel I Denominator Components

- Off-balance sheet exposures
  - **Credit conversion factors**
    - Unfunded commitments under one year: [0% changed to 10% for US banks]
    - Unfunded commitments over one year: 50%
    - Guarantees: 100%
    - Assets sold with recourse: gross-up
  - **Sample capital calculation**
    - $1 billion long-term corporate loan commitment
    - 50% Credit Conversion Factor (CCF) x 100% (risk weight)
      $1 billion x 50% x 100% = $500 million
    - Capital charge = $\frac{\text{Required Capital}}{\text{RWA}} = 8\%$
    - Capital charge = $40 million

Standardized NPR Denominator

- Standardized total risk-weighted assets
  - Sum of:
    1. Total risk-weighted assets for general credit risk
    2. Total risk-weighted assets for cleared transactions and default fund contributions
    3. Total risk-weighted assets for unsettled transactions
    4. Total risk-weighted assets for securitization exposures
    5. Total risk-weighted assets for equity exposures
    6. If applicable, standardized market risk-weighted assets
       Note: No operational risk add-on
  - Minus

    Allowance for loan and lease losses not included in tier 2 capital

Adanced Approaches NPR Denominator

- Advanced Approaches total risk-weighted assets
  - Sum of
    1. Credit risk-weighted assets */
    2. Credit Valuation Adjustment risk-weighted assets
    3. Risk-weighted assets for operational risk
    4. If applicable, advanced market risk-weighted assets (i.e., advanced market risk measure x 12.5)
  - Minus

    Excess eligible credit reserves not included in tier 2 capital

*/ Credit – risk-weighted assets
1.06 x (total wholesale and retail risk-weighted assets plus risk-weighted assets for securitization exposures plus risk-weighted assets for equity exposures)

Key to Collins Application

All RBC ratios for Advanced Approaches banks are calculated using the lower of the ratio obtained by using the standardized total risk-weighted assets and the Advanced Approaches total risk-weighted assets

Implicit recognition that Collins second prong (no new risk-based capital requirements quantitatively lower than Modified Basel I as in effect on July 21, 2010) satisfied on overall basis by significantly higher capital required under Basel III/Basel II Standardized NPRs

Comparison of NPR RW Calculation Methods to Modified Basel I		
Risk-Weighted Asset Category	**Standardized NPR**	**Advanced Approaches NPR**
US gov't, agencies, GSEs, depository institutions, and public sector entities (PSES)	Unchanged (0% US, 20% GSE and US banks) • NB 50% RW for specific project PSE bonds (unchanged)	See wholesale, retail, equity or securitization exposure, as applicable*/
Foreign sovereigns, banks, PSEs	More risk-sensitive CRC measures (produced by OECD) – range is 0-150% 150% if in default; 100% unrated (banks one category higher)	See wholesale, retail, equity or securitization exposure, as applicable*/
Corporate	Unchanged - 100% (but now includes securities firms)	See wholesale, retail, equity or securitization exposure, as applicable
Residential Mortgages	More risk-sensitive based on loan quality and LTV (35-200% range; no PMI) (but still 0% or 20% if US guaranteed)	See wholesale, retail, equity or securitization exposure, as applicable
High-volatility commercial real estate	150% (unless meet supervisory LTVs and 15% borrower equity for life of loan)	See wholesale, retail, equity or securitization exposure, as applicable
Past-due	150% (non-sovereign) 90 days past due	See wholesale, retail, equity or securitization exposure, as applicable

*/ New correlation factor of 1.25 added to wholesale exposures to financial institutions with $100 billion or more in assets.

Comparison of NPR RW Calculations Methods to Modified Basel I		
Risk -Weighted Asset Category	**Standardized NPR**	**Advanced Approaches NPR**
Credit card and consumer	Unchanged (100%)	See wholesale, retail, equity, or securitization exposure, as applicable
Securitization	• Replaces RBA with SSFA or Gross-up approach (optional but consistently applied), otherwise 1250% • NB: 20% RW Floor in any case. • New 1250% RW penalty if bank can't demonstrate adequate diligence and understanding. • Look through for eligible ABCP Liquidity Facilities and for 2nd loss or better conduit exposure (with 100% floor)	• Replaces RBA with SFA SSFA only if SFA not available otherwise 1250% • NB: 20% floor • New 1250% RW penalty if bank can't demonstrate adequate diligence and understanding
Equity	More risk-sensitive treatment (Simple Risk-weighted Approach (SRWA) or if an investment fund, look-through), range is 0-600%	May use Internal Models Approach or SRWA

Comparison of NPR RW Calculations Methods to Modified Basel I		
Risk -Weighted Asset Category	**Standardized NPR**	**Advanced Approaches NPR**
Off-Balance Sheet Items	CCF raised from 0% to 20% for short-term commitments; 100% CCF for repo-style transactions; 100% CCF for credit-enhancing representation/warranty exposure even for early default/premium refund clauses	Some included in IMM*/ exposures; also factored into EAD (and then part of total wholesale and retail risk-weighted assets)
Derivatives	Removes 50% RW Cap; new potential future exposure calculations for credit derivatives; revised netting rules (incorporating AA criteria)	Similar to Standardized; includes capital requirement to account for CVA risk**/

*/ IMM means the internal models methodology based on a three-year period containing a stress reflected in credit default spreads of bank's counterparties.

**/ CVA, or credit valuation adjustment, means the fair value adjustment to reflect counterparty credit risk in valuation of an OTC directive contract.

Comparison of NPR RW Calculations Methods to Modified Basel I		
Risk-Weighted Asset Category	**Standardized NPR**	**Advanced Approaches NPR**
Cleared Transactions (not in Modified Basel I)	Includes capital requirement for transactions cleared through central counterparties – preferential treatment for qualifying CCPs	Generally same as Standardized
Unsettled Transactions (not in Modified Basel I)	100%-1250% depending on type of transaction and length of delay	Similar to Standardized

Advanced Approaches NPR

- Method to compute RW for wholesale exposures and retail exposures
  - Substantially same as Basel II US final rules
  - Bank must have approved internal risk-rating system to assess rating grades for each wholesale obligor and retail segment
  - RWs a function of:
    - PD (probability of default, based on at least 5 yrs data) (subject to .03 floor unless gov't guaranteed)
    - LGD (loss given default, based on at least 7 yrs severity data) (10% floor for unguaranteed resi-mortgage segments)
    - EAD (exposure at default, based on at least 7 or 5 yrs data for wholesale or retail, respectively)
    - M (for wholesale only, maturity) (must be between 1 and 5 years unless not part of bank's ongoing financing of obligor)
    - If defaulted, EAD multiplied by .08 then multiply total defaulted by 12.5 (or effectively, 1250%)

Comparison of Methods to Calculate Securitization Exposure RWs

What Is a Securitization Exposure?
(Same for Standardized and Advanced Approaches NPRs)

- Securitization exposure is an on- or off-balance sheet credit exposure (*including credit-enhancing representations and warranties*) arising from a traditional or synthetic securitization *or an exposure that directly or indirectly references such a securitization exposure* (italicized text is new)
- To qualify as a traditional securitization, a transaction must meet all four of the criteria listed below:
  1. All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties
  2. The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority
  3. Performance of the securitization exposure depends on the performance of the underlying exposures
  4. All or substantially all of the underlying exposures are financial exposures

What Is a Securitization Exposure? (cont.)

- Securitization Exposure "outs" when underlying exposures are owned by:
  - Operating companies
    - Companies that produce goods or provide services beyond the business of investing, reinvesting, holding, or trading in financial assets. Examples of operating companies are depository institutions, bank holding companies, securities brokers and dealers, insurance companies, and nonbank mortgage lenders. Accordingly, an equity investment in an operating company, such as a bank, generally would be an equity exposure under the final rule; a debt investment in an operating company, such as a bank, generally would be a wholesale exposure under the final rule

What Is a Securitization Exposure? (cont.)

- Small business investment companies (SBICs)
- Community development investment vehicles
- Other regulatory agencies "outs" as deemed appropriate (if, e.g., underlying exposures owned by an investment firm with unfettered control over its assets and liabilities)

- Securitization Exposure "outs" for investment fund (company whose assets are financial assets and has no material liabilities) collective investment fund, pension fund, or 40 Act regulated (new)
- Regulatory agencies can scope in transactions if appropriate

Resecuritization

- "Resecuritization"
  - A securitization exposure in which one or more of the underlying exposures is a securitization exposure
  - An ABCP exposure is not a resecuritization exposure if PWCE is not a resecuritization or all CP is fully supported by liquidity from sponsor

Operational Requirements for Securitizations (Same for Standardized and Advanced Approaches)

- If underlying exposures include committed revolvers and transaction includes an early amortization provision (other than one not related to asset or originator performance) then will not meet securitization criteria (new)
- GAAP de-recognition
- Bank has transferred credit risk to third parties
- Any clean-up call must be an eligible clean-up call

Ratings Based Approach (Modified Basel I - No Longer Applicable)

Long-Term Ratings*	Modified Basel I Risk Weights	Risk Weights Under Basel II US Final Rules		
		Granular Pool		*Non-Granular Pool*
		Senior Exposure	*Non-Senior Exposure*	
AAA	20%	7%	12%	20%
AA		8%	15%	25%
A+	50%	10%	18%	35%
A		12%	20%	
A-		20%	35%	
BBB+	100%	35%	50%	
BBB		60%	75%	
BBB-		100%		
BB+	200%	250%		
BB		425%		
BB-		650%		
B, below or unrated	RBA Not Available	Deduct from tier 1 and tier 2 capital		
Short-Term Ratings				
A-1	20%	7%	12%	20%
A-2	50%	12%	20%	35%
A-3	100%	60%	75%	75%

*** For investing banks, one rating is sufficient. If there are multiple ratings on a particular position, the lowest solicited rating governs.**

SSFA – Standardized and Advanced Approaches NPRs

- General Guidelines:
  - Data used must be most currently available and no more than 91 days old
  - If data not available, must use 1250% RW
  - RW is higher of (x) RW obtained per SSFA equation and (y) 20%

SSFA Parameters

K_G = Weighted average capital for underlying exposures (between zero and 1)

W = Ratio of delinquent underlying exposures to ending balance of underlying exposures (new)

A = Attachment point (when losses first are allocated to tranche) (includes subordinated tranches and funded reserves)

D = Detachment point (when total loss occurs — i.e., tranche thickness)

p = Supervisory calibration parameter = .5 for securitization and 1.5 for resecuritization

K_A = $(1 - W) \bullet K_G + (.5 \bullet W)$ (New)

- If $D \leq K_A$, then RW = 1250%
- If $A \geq K_A$ use SSFA equation
- If $A < K_A$ but $D > K_A$ then RW = weighted average of 1250% and RW per SSFA equation

SSFA Equation

$$K_{SSFA}\frac{e^{a*u}-e^{a*l}}{a(u-l)}$$

where,

$a = -\frac{1}{p - K_A}$

$u = D - K_A$

$l = A - K_A$

$e = 2.71828$ (the base of the natural logarithms)

$RW\ for\ exposure\ = K_{SSFA} \times 1{,}250\%$

Gross-Up Approach (Standardized Approach NPR only)

- Calculate RW of underlying assets allocable to exposure plus all senior positions

SFA – Advanced Approaches NPR Only

- The SFA capital requirement for a securitization exposure is UE (underlying exposure) multiplied by TP multiplied by the greater of (i) 0.016[1/]* T; or (ii) S[L+T] – S[L], where:

(i) $S[Y] = \begin{cases} Y & when\ Y \le K_{IRB} \\ K_{IRB} + K[Y] - K[K_{IRB}] + \frac{d \cdot K_{IRB}}{20}\left(1 - e^{\frac{20(K_{IRB} - Y)}{K_{IRB}}}\right) & when\ Y > K_{IRB} \end{cases}$

(ii) $K[Y] = (1-h)\cdot\left[(1-\beta[Y;a,b])\cdot Y + \beta[Y;a+1,b]\cdot c\right]$

(iii) $h = \left(1 - \frac{K_{IRB}}{EWALGD}\right)^{N}$

(iv) $a = g \cdot c$

(v) $b = g \cdot (1-c)$

(vi) $c = \frac{K_{IRB}}{1-h}$

(vii) $g = \frac{(1-c)\cdot c}{f} - 1$

(viii) $f = \frac{v + K_{IRB}^{\ 2}}{1-h} - c^2 + \frac{(1-K_{IRB})\cdot K_{IRB} - v}{(1-h)\cdot 1000}$

(ix) $v = K_{IRB} \cdot \frac{(EWALGD - K_{IRB}) + .25\cdot(1 - EWALGD)}{N}$

(x) $d = 1 - (1-h)\cdot(1-\beta[K_{IRB};a,b])$

[1/] 0.016 is almost three times the multiplier (0.0056) in the US version of Basel II for advanced approaches banks

SFA Parameters

TP = Tranche Percentage (ratio of bank's exposure to amount of tranche that contains such exposure)

K_{IRB} = Ratio of RBC for underlying exposure plus expected credit losses to UE

L= Credit enhancement level (ratio of (x) subordinated tranches to tranche that contains bank's exposure to (y) UE). May include funded reserve accounts and any first loss discount

T= Thickness (ratio of tranche containing bank's exposure to UE)

N = Effective number of exposures per formula

EWALGD = Exposure – weighted average loss given default per formula; assumes 100% LGD for each securitization exposure in a resecuritization exposure

- If $K_{IRB} \ge L+T$ the RW is 1250%

New Due Diligence Requirements
(Same for Standardized and Advanced Approaches)

- Failure to comply results in 1250% RW
- Bank must conduct analysis of risk characteristics prior to acquiring and document same within 3 business days after acquisition:
  - Material structural features, such as waterfall, triggers, credit enhancements, liquidity enhancements, market value triggers, servicer performance, and default definitions
  - Underlying exposure performance such as % of 30, 60, and 90-day past dues; default rates; prepayment rates; average-credit scores; average-LTVs; and diversification data
  - Market data such as bid-ask spread, price history, trading volume, implied market rating, and depth of market
  - If a resecuritization, performance information for underlying exposures
- Bank must review and update analysis at least quarterly

ABCP Specific Considerations

Relevant Definitions:

ABCP Program:	Program primarily for issuance of "investment grade" CP backed by underlying exposures held in a "bankruptcy remote" SPE NB: bankruptcy remote means would be excluded in bankruptcy "Investment grade" means entity has adequate capacity to meet financial commitments for projected life of exposure. Test is met if risk of default is low and full and timely repayment of principal and interest is expected
ABCP Program Sponsor:	A bank that: - Establishes an ABCP program - Approves sellers for program or - Administers program through marketing, placing debt, or reporting NB: An ABCP program sponsor is an "originating bank"
Eligible ABCP liquidity facility:	Liquidity facility with an asset-quality test at time of draw that precludes funding 90 days past due or defaulted assets (unless guaranteed by a sovereign with a 20% RW or less)

ABCP Specific Considerations

Special Rules:

Standardized and Advanced Approaches:	Off-balance sheet exposure to ABCP may be reduced to maximum amount available at any time
Standardized:	CCF of 50% for eligible ABCP liquidity facilities if SSFA does not apply. (If use SSFA, then 100% CCF)
Market Risk Rules:	Liquidity Facility may not be a covered position

Other Securitization Points

- No capital required under either Standardized NPR or Advanced Approaches NPR for eligible servicer advance facilities
  - Eligible servicer cash advance facility = servicer entitled to full reimbursement (unless limited to an insignificant amount for a particular exposure); reimbursement right is senior to all other claims; and servicer does not make advances if it concludes advance unlikely to be repaid
- Non-credit enhancing IOs have a 100% RW in both approaches
- All CEIOs have a 1250% RW in both approaches
- Gains on sale from securitization are deducted from common equity tier 1 capital under both approaches (new for non-AA banks)

Big Takeaways for Securitization

1. Basel III liquidity ratios not yet included but everything else is
2. All banks (not just advanced banks) affected
3. No ratings at all – Compare EU focus on improving ratings instead
4. For advanced banks, Basel II "floor" of 7% RW for AAA rated senior position is now effectively 20%
5. Advanced banks with lower-rated tranches may end up with lower capital charges than under Basel II (100% for BBB- through deduction for B or below)
6. Securitization treatment is punitive in some respects (e.g., 1250% for inadequate of diligence on a AAA rated prime auto security vs. 150% for defaulted Greek junk bonds with no diligence at all)
7. Resecuritizations are penalized; any support to ABCP conduits other than LAPAs or full support is likely a resecuritization

Questions?

Scott A. Anenberg
Partner
+1 202 263 3303
sanenberg@mayerbrown.com

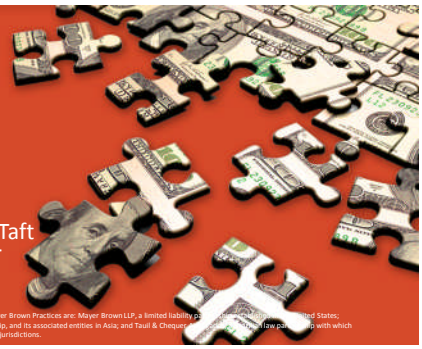
Carol A. Hitselberger
Partner
+1 704 444 3522
chitselberger@mayerbrown.com

TAB 7

MAYER·BROWN

The Continuing Impact of Dodd-Frank

Breakout Session: Consumer Financial Protection Bureau



Andrew Pincus
Partner

Richard Rosenfeld
Partner

Jeffrey Taft
Partner

Overview of Session

- Notable CFPB rulemakings, bulletins, and other issuances over the past year and expectations for the next six months
- Supervision and examination by the CFPB of non-depository institutions, including "larger participants" and those entities covered based upon a risk determination
- Enforcement of federal consumer protection laws by the CFPB and state attorneys general and the potential for additional private litigation
- Upcoming study regarding pre-dispute arbitration agreements and its potential impact

CFPB Background Information

- New federal agency placed within the FRB and funded by FRB but not subject to any oversight by FRB
- Jurisdiction over banks with $10 billion or more in assets and their affiliates and certain non-bank financial companies
- Supervision and examination of consumer financial products and services offered by large banks and affiliates
- Rulemaking authority under existing federal consumer financial laws (Truth in Lending Act (TILA)) and certain new federal authorities (e.g., unfair, deceptive or abusive acts or practices)
- Broad enforcement authority

Privileged and Confidential Supervisory Information

- Claimed attorney-client privilege for docs provided to CFPB
  - CFPB Bulletin 12-01: Supervisory Authority and Treatment of Confidential Supervisory Information (1/4/12)
  - Proposed regulation issued in March 2012 to address concerns
  - Federal banking agency protection (12 USC 1828(x))
  - Legislation to include CFPB in definition of "federal banking agency" has been introduced in Congress
- Actual treatment yet to be seen
- Treatment of confidential supervisory information
  - Sharing with state AGs and other third parties

Supervision and Examination Manuel

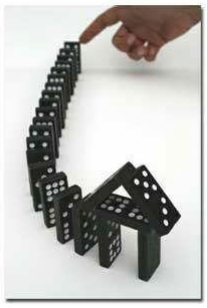
- Three main principles
  - Focus on consumers by examining risk to consumers when evaluating policies and procedures
  - Data driven by relying on analysis of available information about supervised institutions
  - Consistency in the enforcement of federal consumer financial laws and examination of depository and non-depository institutions
- Significance for institutions
  - New perspective
  - Risk-based approach

Outreach and Initiatives

- TILA/RESPA mortgage disclosures
  - Promulgate a single form with information required by TILA with the standard GFE estimate required by RESPA
  - Two forms posted to CFPB's website in May 2011; received over 13,000 comments; posted revised drafts for comment in June 2011; proposed regulation due by July 2012
- Credit card agreements
  - Form of simplified credit card agreement issued in December 2011
- Overdraft programs
  - Request for information regarding the impact of overdraft programs on consumers issued in February 2012

Forthcoming Rulemakings under Title XIV

- For most provisions, CFPB has until 18 months after Designated Transfer Date to issue final rule (January 21, 2013) and final rules must be effective no later than 12 months after issuance
- Mortgage originator standards
- Mortgage servicing standards
- High-cost mortgage loan requirements



Forthcoming Rulemakings under Title XIV (cont.)

- Ability to repay standard
  - No creditor may make a residential mortgage loan without making reasonable and good faith determination that the borrower has the ability to repay the loan
  - Creditor generally required to consider credit history, income, expected income, employment status, debt-to-income ratio, and other resources and verify the income of the borrower relied upon to qualify for the loan

Qualified Mortgage

- Safe harbor/presumption that a qualified mortgage meets the ability to repay standard
  - Statute has a detailed definition of qualified mortgage but CFPB has authority to expand or shrink the definition
  - Final rule is now expected in late 2012
  - Significant potential penalties if borrower does not have ability to repay
- Important for secondary market participants and securitizers because of relationship to "qualified residential mortgage" in risk retention rule and application of presumption/safe harbor to assignees

Unfair, Deceptive or Abusive Acts or Practices (UDAAPs)

- Section 1031 of Dodd-Frank Act provides CFPB with authority to prevent covered entities and service providers from committing or engaging in any unfair, deceptive, or abusive acts or practices in connection with a transaction involving a consumer financial product or service
- CFPB has the authority to issue regulations identifying certain unfair, deceptive or abusive acts or practices as unlawful
- Section 1031 provides some general guidance regarding unfairness and abusive
- Examination process includes assessment of UDAAP risks

CFPB Supervision of Non-Depository Institutions

- CFPB will exercise supervisory authority over any person who:
  - Offers or provides origination, brokerage, or servicing with respect to any residential real estate loan;
  - Is a "larger participant" in a market for other consumer financial products or services to be defined in a regulation;
  - CFPB has reasonable cause to determine, based upon complaints or information from other sources, that the person is engaging or has engaged in a pattern of conduct that poses undue risk to consumers with respect to a financial product or service;
  - Offers or provides any private education loan; or
  - Offers or provides any payday loan
- Other entities regulated by FTC and state regulators

Notice and Request for Comment on "Larger Participants" in Market for Financial Products and Services (June 2011)

- Issues for consideration in determining covered entities:
  - Criteria and thresholds
  - Data to measure criteria
  - Measurement dates and supervision time frames
- Markets to include:
  - Debt collection, money transmitting, debt relief services
  - Consumer reporting, prepaid cards
  - Consumer credit (auto finance, unsecured, secured cards)

Proposed Rule Defining Certain "Larger Participants"

- CFPB issued proposed rule in April 2012 covering two specific markets – consumer debt collection and consumer reporting
- Consumer debt collection
  - Broad definition of debt collection to include third-party collectors, law firms, attorneys, and debt buyers
  - Establishes $10 million in annual receipts as threshold
  - Approximately 175 entities (4% of all collection firms)
- Consumer reporting
  - Broad definition but excludes furnishing information to affiliates; furnishing information to consumer reporting agencies; and providing information to be used solely in decision regarding employment, government licensing, or residential leasing
  - Establishes $7 million in annual receipts as threshold
  - Approximately 39 entities (17% of all consumer reporting agencies)

Proposed Rule to Establish Authority Over Non-Depository Institutions Based Upon Risk Determination (May 2012)

- Proposed rule sets forth the procedures by which the CFPB may subject non-depository institution to its supervisory authority
  - CFPB would commence a proceeding by issuance of notice stating that CFPB may have reasonable cause to make risk determination with basis for the assertion
  - Institution would have reasonable opportunity to respond to notice in writing and also by telephone
  - Director would make final determination after considering recommendation
- Comments due by July 24, 2012

Enforcement Activity

- CFPB is actively considering numerous matters for possible enforcement actions
  - Examination process likely to generate additional enforcement actions
  - Enforcement actions could lead to private lawsuits and/or AG actions
- State AGs generally permitted to bring civil actions against non-depository institutions to enforce CFP Act or regulations
- State regulators can bring actions against an entity licensed, chartered, or doing business in their state, to enforce CFP Act or regulations

Coordination of Activites Amongst CFPB, Federal Banking Agencies and State AGs

- In January 2012, CFPB and FTC entered into Memorandum of Understanding for coordinating on enforcement actions against non-depository institutions and service providers
- CFPB required to coordinate its supervisory activities with those of the federal prudential regulators and state banking authorities
- In May 2012, CFPB and Federal Banking Agencies entered into Memorandum of Understanding for coordinating examinations of depository institutions

CFPB's Enforcement Rules

- In June 2012, CFPB issued a number of final rules related to its investigative and enforcement proceedings
  - Final rule regarding adjudicative proceedings
  - Final rule regarding notification process to state officials
  - Final rule related to investigations

Pre-Dispute Arbitration Agreements

- US Supreme Court decision in *AT&T Mobility v. Concepcion*
- Section 1028(a) of the Dodd-Frank Act requires CFPB to conduct a study and report to Congress concerning the use of pre-dispute arbitration agreements
- CFPB may impose restrictions or limits on the use of such agreements consistent with the findings of the study
- As a preliminary step in conducting the study, CFPB has requested specific suggestions from the public regarding the scope of the study, methods and sources of data
- Information required by June 22, 2012

Specific Questions Posed by CFPB

- The prevalence of arbitration clauses in consumer financial products and services;
- What claims consumers bring in arbitration against financial services companies;
- If claims are brought by financial services companies against consumers in arbitration;
- How consumers and companies are affected by actual arbitrations; and
- How consumers and companies are affected by arbitration clauses outside of actual arbitrations

Questions?

Andrew J. Pincus
Partner
+1 202 263 3220
apincus@mayerbrown.com

Richard M. Rosenfeld
Partner
+1 202 263 3130
rrosenfeld@mayerbrown.com

Jeffrey P. Taft
Partner
+1 202 263 3293
jtaft@mayerbrown.com

TAB 8

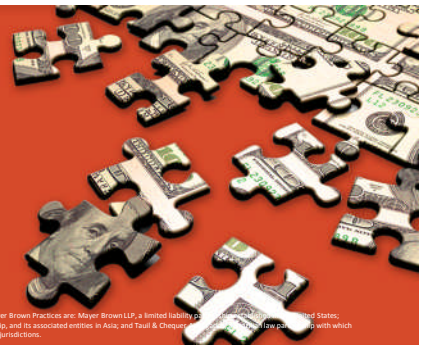
MAYER·BROWN

The Continuing Impact of Dodd-Frank

Breakout Session: Insurance

Lawrence Hamilton
Partner

Vikram Sidhu
Counsel



Agenda

The key aspects of the impact of Dodd-Frank on insurance companies:

- The Federal Insurance Office and Federal Advisory Committee on Insurance
- SIFI Designation
- Non-admitted and Reinsurance Reform Act (NRRA)
- Distinguishing insurance from swaps
- Application of the Volcker Rule to insurers

THE FEDERAL INSURANCE OFFICE AND FEDERAL ADVISORY COMMITTEE ON INSURANCE

Insurance-Specific Aspects of Dodd-Frank

- Title V framework
- Established Federal Insurance Office (FIO) July 22, 2010
  - FIO Director named – former Illinois director, Michael McRaith
- Federal Advisory Committee on Insurance (FACI) announced by Treasury
  - Purpose is to assist and advise FIO
  - Consists of 15 members and meets quarterly
- Several reports mandated
  - A study of state insurance regulation was due January 2012
- FIO and US Trade Representative empowered to negotiate "covered agreements" (international agreements that can preempt state law)
  - Possible topics (collateral; equivalence; IAIS ICP; ComFrame)
  - FIO participating in IAIS discussions to develop process for designating globally significant insurance companies

Current FACI Members

- Chairman: Brian Duperreault, President and CEO, Marsh
- Birny Birnbaum, Executive Director, Center for Economic Justice
- Michael Consedine, PA Insurance Commissioner
- Jacqueline Cunningham, VA Insurance Commissioner
- John Degnan, Senior Advisor to CEO, Chubb Corp.
- Loretta Fuller, CEO, Insurance Solutions Associates
- Scott Harrington, Professor, Wharton School of Business
- Benjamin Lawsky, NY Superintendent of Financial Services
- Thomas Leonardi, CT Insurance Commissioner
- Monica Lindeen, MT Insurance Commissioner
- Christopher Mansfield, SVP and GC, Liberty Mutual Group
- Sean McGovern, Director and GC, Lloyd's North America
- Theresa Miller, OR Insurance Administrator
- Michael Sproule, EVP and CFO, New York Life
- Bill White, DC Insurance Commissioner

Reports and Studies Mandated by Dodd-Frank

- Under Dodd-Frank, FIO is to make several reports to congressional committees:
  - Reports on US and global reinsurance market
    - By September 30, 2012, a report "describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States"
    - By January 1, 2013, and to be updated by January 1, 2015, a report describing the impact of Dodd-Frank Act on "the ability of State regulators to access reinsurance information for regulated companies in their jurisdictions"
  - Study and report on the regulation of insurance
    - By January 2012, a study and report to Congress on "how to modernize and improve the system of insurance regulation in the United States" → report is now overdue

SIFI DESIGNATION

Nonbank Systemically Important Financial Institutions (SIFIs)

- As noted by an earlier panel, nonbank financial companies may be designated by the Financial Stability Oversight Council (FSOC) for supervision and regulation by the Federal Reserve Board (FRB)
- On April 3, 2012, FSOC approved the final rule and interpretive guidance for determining when a nonbank financial company must be supervised by FRB as being systemically important to the financial stability of the United States
- Determinations to be on a case-by-case basis based on factors under Dodd-Frank sec. 113

FSOC Final Rule

- FSOC to use 3-stage process for designating nonbank SIFIs:
  - First stage review
    - Will consider uniform quantitative thresholds to measure size, inter-connectedness, leverage, liquidity risk, and maturity mismatch
    - To be subject to further review, a nonbank institution will need to have more than $50 billion in consolidated assets and meet at least one other quantitative threshold out of the following: $30 billion gross notional credit default swaps outstanding for which the institution is the reference entity, $3.5 billion in derivative liabilities, $20 billion of total debt outstanding, minimum leverage ratio of 15 to 1 of total consolidated assets (excluding separate accounts) to total equity, and 10 percent short-term debt ratio of total debt outstanding with a maturity of less than 12 months to total consolidated assets (excluding separate accounts)

FSOC Final Rule (cont.)

  - Second stage review
    - Nonbank institutions that are identified during the first stage will be subject to further qualitative review regarding their size, inter-connectedness, substitutability, leverage, liquidity risk, maturity mismatch, and a existing regulatory scrutiny
    - FSOC will consult with primary financial regulatory agencies with oversight of the nonbank institutions and their subsidiaries
  - Third stage review
    - Nonbank institutions that are identified for third stage review will be notified and will be requested to provide certain non-public information
    - FSOC will consider factors such as the complexity of the institution, its operations, and existing regulatory oversight
    - Opportunity for institution to contest consideration of proposed determination as SIFI by FSOC

Expectations for Nonbank SIFIs

- Initial set of nonbank financial companies expected to be designated as SIFIs before end of 2012 – however, likely will be a small number of companies with various others to be considered for future inclusion
- Some insurance holding companies may be included
- Uncertainty continues as does discussion of appropriateness of designating insurers as SIFIs
- Designation of global SIFIs by International Association of Insurance Supervisors (IAIS) may not correlate with FSOC's list – however, efforts to coordinate are underway between IAIS and FIO, NAIC, state regulators, and others

NON-ADMITTED AND REINSURANCE REFORM ACT

The New US Framework for Reinsurance Under Dodd-Frank

- The Dodd-Frank Act incorporated, as Subtitle B of Title V, the Nonadmitted and Reinsurance Reform Act ("NRRA")
- Elimination of extraterritoriality
  - Non-domiciliary states are prohibited from denying credit for reinsurance if the cedent's domiciliary state recognizes the credit and is either NAIC-accredited or has substantially similar financial solvency requirements
- Single state solvency regulation of reinsurer
  - Power to regulate reinsurer solvency now primarily belongs to the reinsurer's domiciliary state
- Effective date was July 22, 2011

The New US Framework for Reinsurance: NAIC Model Law and Regulation

- In October 2011, after years of deliberation, the NAIC approved amendments to the NAIC Credit for Reinsurance Model Law and Model Regulation
- One of the key provisions of the amendments is the departure from the requirement that unauthorized/ unaccredited reinsurers must post 100% collateral
- The Model Regulation creates a category of "certified reinsurers" that are subject to reduced collateral requirements based on ratings

The New US Framework for Reinsurance: NAIC Model Law and Regulation (cont.)

- Last-minute changes to the models at the NAIC fall 2011 meeting: concentration risk limits
  - A ceding insurer must notify the commissioner after reinsurance recoverable from any single assuming insurer or group of affiliated assuming insurers exceeds 50% of the ceding insurer's last reported surplus to policyholders
  - A ceding insurer must notify the commissioner after ceding to any single insurer or group of affiliated assuming insurers more than 20% of the ceding insurer's gross written premium in the prior calendar year
  - In both situations the notification to the commissioner should demonstrate that the exposure is safely managed by the ceding insurer

The New US Framework for Reinsurance: NAIC Model Law and Regulation (cont.)

- Last-minute changes to the models at the NAIC fall 2011 meeting: qualified jurisdictions list
  - NAIC will publish a list of jurisdictions that commissioners will consider when determining whether a reinsurer seeking to be "certified" is domiciled in a "qualified jurisdiction"
  - If a commissioner approves a jurisdiction as qualified that does not appear on the NAIC list of qualified jurisdictions, the commissioner must provide documented justification for approving the jurisdiction in question

The New US Framework for Reinsurance: NAIC Model Law and Regulation (cont.)

- Last-minute changes to the models at the NAIC fall 2011 meeting (cont'd)
  - "Effective date" language in Section 8.A(5) of the Model Regulation (based on a provision in New York's Regulation 20) provides that credit for reinsurance from certified reinsurers will apply only prospectively to risks assumed, losses incurred, and reserves reported from and after the effective date of certification of the reinsurer
  - This will limit the ability of reinsurers to reduce their collateral obligations on in-force business that is already reinsured and has existing collateral
  - E.g., Indiana recently amended its previously enacted statute to conform to the NAIC last-minute changes

Impact of the NAIC Amendments on Reinsurance

- NAIC has stated that the amendments to the models will be evaluated and potentially revisited in two years
- The amendments to the NAIC models will have an impact only to the extent that states choose to amend their laws and regulations to conform to the NAIC models
- Since the amendments establish a floor for collateral requirements, states that choose to maintain their current stricter requirements will still meet the NAIC's accreditation standard

Reinsurance – State Developments

- States that have already amended their credit for reinsurance laws and/or regulations:
  - Connecticut
  - Florida (P&C only)
  - Georgia
  - Indiana
  - Louisiana
  - New York
  - New Jersey
  - Virginia

Reinsurance – State Developments (cont.)

- Additional states that have legislation pending to amend their credit for reinsurance laws:
  - Delaware
  - Illinois
  - Missouri
  - Pennsylvania
  - Texas (bill introduced in 2011)

Elimination of Extraterritoriality for Reinsurance – e.g., New York

- Limited trust asset types.
  - New York: Reg 114 says must be N.Y. Ins. Law § 1404(a)(1),(2),(3),(8) or (10) assets
  - NAIC Model: All SVO listed admitted assets
- Permit "other forms of collateral approved by commissioner"
  - New York and California do not permit
  - NAIC Model and many states permit
- LOCs and trusts – required and permitted conditions
  - New York restrictive
  - NAIC Model and most states more liberal
- Not allow reinsurance of 100% of risks
  - New York interpretation of N.Y. Ins. Law § 1308(f)(1)(a)(i) – desk drawer rule that cannot cede more than 90%
- Life Credit for Reinsurance – mirror reserve requirement (New York Reg 20)

Reform of Regulation of Excess and Surplus Lines Insurance

- NRRA streamlined the patchwork of existing state-by-state regulation of excess and surplus lines in a manner designed to make it easier for large commercial purchasers to obtain insurance from companies not admitted to write insurance in their state
- Eligibility requirements for US-domiciled non-admitted insurers brought into line with the NAIC's Non-Admitted Insurance Model Act
- Eligibility for non-US-domiciled insurers is assured if the insurer is listed on the NAIC's Quarterly Listing of Alien Insurers

Who Can Broker Excess and Surplus Lines Insurance?

- No state, other than the insured's home state, may require a surplus lines broker to be licensed in that state in order to sell, negotiate, or solicit non-admitted insurance
- Beginning on July 21, 2012, no state can collect fees for licensing surplus lines brokers, unless it participates in the NAIC's national insurance producer database, NIPR

Who Can Purchase Excess and Surplus Lines Insurance? (cont.)

- Surplus lines brokers can place coverage with non-admitted insurers on behalf of purchasers that meet Dodd-Frank's definition of "exempt commercial purchaser" without satisfying any state requirement to conduct a due diligence search to determine if the insurance can be obtained from an admitted insurer
- Dodd-Frank's definition of exempt commercial purchaser is similar to the "industrial insured" definition that previously existed under some states' laws

Who Is an "Exempt Commercial Purchaser"?

- Employs or retains a qualified risk manager
- Had > $100,000 in P&C premium in past 12 months
- Meets at least one of the following criteria:
  - Possesses a net worth of $20 million
  - Generates $50 million in annual revenue
  - Employs more than 500 full-time employees or is a member of an affiliated group that employs more than 1,000 full-time employees
  - Is a not-for-profit organization or public entity that generates annual budgeted expenditures of $30 million, or
  - Is a municipality with a population in excess of 50,000

Who Gets to Collect Tax on Excess and Surplus Lines Insurance?

- Only the home state of an insured may impose a premium tax on insurance obtained from a non-admitted insurer
- States can enter into compacts to allocate among them the premium taxes paid to a home state, but brokers only need to remit tax to one state
- There are currently two competing compacts:
  - Non-admitted Insurance Multistate Agreement (NIMA)
  - Surplus Lines Insurance Multistate Compliance Compact (SLIMPACT)
- 24 states, representing 63% of premium volume, have enacted neither NIMA nor SLIMPACT

DERIVATIVE TRANSACTIONS WITH US INSURERS

Derivative Transactions with US Insurers: Overview

Entering into derivative transactions with insurance companies presents certain legal issues and considerations:

- Insurance companies are required to have derivatives use plans approved by their regulator
  - Example: N.Y. ISC. LAW § 1410(b)(3)
- Derivatives transactions do not enable the insurer to:
  - net down reserves; or
  - obtain risk based capital reduction/relief
- Historically, counterparties were hesitant to enter into derivatives with US insurers because:
  - uncertainty re setoff and close out netting in insurer insolvency, and
  - liquidation of collateral was subject to stay risk under state insurance insolvency law

Derivative Transactions with US Insurers: Current State Law – Model Act States

- In 1997 the NAIC adopted Section 46 ("Qualified Financial Contracts") of the NAIC Rehabilitation and Liquidation Model Act
- Provides counterparties to derivatives transactions with insurance companies protections similar to those under US Bankruptcy Code
- Now outlined in Section 711 of the NAIC Insurer Receivership Model Act (IRMA)
- The QFC Provisions allow (among other things):
  - Counterparties to exercise terminations rights, including close-out netting; and
  - Counterparties to avoid having collateral tied up in state insolvency or delinquency proceedings should an insurer become insolvent

Derivative Transactions with US Insurers: Current State Law – Model Act States (cont.)

- Adopted in the following states:

Arizona	Maryland	New York
Connecticut	Massachusetts	Ohio
Delaware	Michigan	Tennessee
Illinois	Minnesota	Texas
Indiana	Missouri	Utah
Iowa	Nebraska	Virginia
Maine	New Jersey	

- These are the 20 "good" states – i.e., QFC provisions benefit counterparties entering into derivative transactions with insurers domiciled in these states

Derivative Transactions with US Insurers: Current State Law – Non-Model Act States

- Setoff likely to be enforced for mutual debits and credits. Example:
  - "[i]n all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set-off and the balance only shall be allowed or paid...." Del. Ins. Code § 5927(a)
  - New York Court of Appeals has specifically upheld similar provision in the context of an insurance liquidation proceeding. *See, e.g.*, *Midland Ins. Co.*, 79 N.Y.2d at 264-65 (1992)

Derivative Transactions with US Insurers: Current State Law – Non-Model Act States (cont.)

- However, some uncertainty about early termination rights (as *ipso facto* clauses), leaving certain obligations "unmatured" and giving rise to potential for liquidator to cherry pick (AMBAC)
- Injunction order likely to prevent immediate liquidation of collateral
  - However, rights of secured creditors ultimately likely to be preserved
  - But, time it will take to obtain relief from injunction to seize/foreclose and liquidate collateral is unclear

INSURANCE VS. SWAPS UNDER DODD-FRANK

Distinguishing Insurance vs. Swaps Under Dodd-Frank

- Swaps regulation under Dodd-Frank Title VII
  - Definition of swap under section 721(a)
    - Excludes insurance
  - Regulatory line drawing – under Section 722(b), CFTC/SEC regulate swaps, which
    - "(1) Shall not be considered insurance; and
    - (2) May not be regulated as an insurance contract under the law of any State"
  - Distinguishing insurance vs. swaps
    - CFTC/SEC proposed swap definition rules and interpretive guidance released April 27, 2011 (Federal Register release May 23, 2011)
    - Opening line drawing attempt; comment letters; still awaiting final swap definition rules
  - Applicability to convergence products such as transformers

Distinguishing Insurance vs. Swaps Under Dodd-Frank (cont.)

The term swap . . . does not include an agreement, contract, or transaction that:

(a) By its terms or by law, as a condition of performance on the agreement, contract, or transaction:

1) Requires the beneficiary of the agreement, contract, or transaction to have an insurable interest that is the subject of the agreement, contract, or transaction and thereby carry the risk of loss with respect to that interest continuously throughout the duration of the agreement, contract, or transaction;

2) Requires that loss to occur and to be proved, and that any payment or indemnification therefor be limited to the value of the insurable interest;

3) Is not traded, separately from the insured interest, on an organized market or over-the-counter; and

4) With respect to financial guaranty insurance only, in the event of payment default or insolvency of the obligor, any acceleration of payments under the policy is at the sole discretion of the insurer; and

(b) Is provided:

1) By a company that is organized as an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner (or similar official or agency) of any State, or by the United States or an agency or instrumentality thereof, and such agreement, contract, or transaction is regulated as insurance under the laws of such State or of the United States

APPLICATION OF THE VOLCKER RULE TO INSURERS

Exemptions for Insurance Companies

- In drafting the Volcker Rule, Congress recognized the need to "appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws"
  - Trading by a regulated insurance company or an affiliate for the general account of the insurance company is specifically excluded from the prohibition against proprietary trading
  - Trading by a regulated insurance company for a separate account is also specifically excluded from the prohibition against proprietary trading, provided that all profits and losses are allocated to the separate account

Key Issues for Insurance Companies (cont.)

- Proposed insurance company exemptions cover only proprietary trading; insurance companies would be prohibited from investing in covered funds
  - Industry seeking expansion of the exemptions to permit covered fund investments, arguing that proposal is inconsistent with statute and congressional intent to accommodate insurance business
- Proposed definitions of "general account" and "separate account" create a gap where certain accounts may not be covered by either exemption
  - The proposed definition of "separate account" requires that all profits/losses inure to the benefit of the policyholder and not the insurance company, but there are some separate account structures where the company has some level of exposure
- Proposed definition of "covered fund" may include separate accounts
  - Agencies should clarify that insurance companies are not engaged in prohibited "sponsoring" of private funds via use of separate accounts
- Proposed recordkeeping, reporting, and compliance burdens would apply to insurance companies like other banking entities
  - The insurance industry argues that these should not apply to insurance companies based on existing state regulatory regimes

Questions?

Lawrence R. Hamilton
Partner
+1 312 701 7055
lhamilton@mayerbrown.com

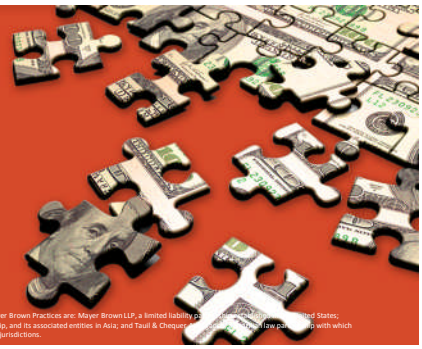
Vikram Sidhu
Counsel
+1 212 506 2105
vsidhu@mayerbrown.com

TAB 9

MAYER·BROWN

The Continuing Impact of Dodd-Frank

Cross-Border & International Issues



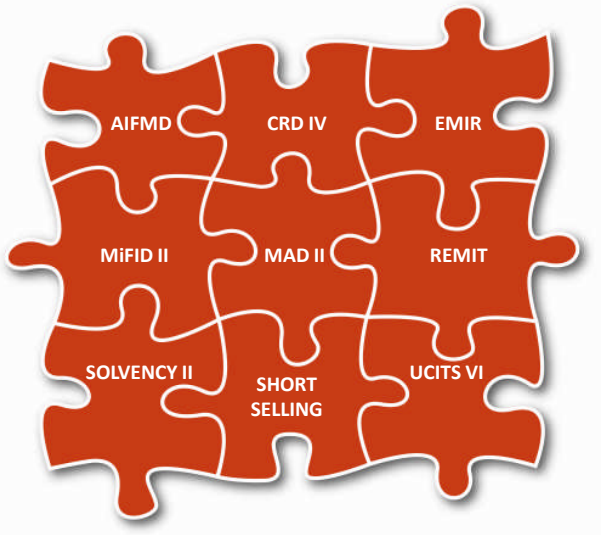
Marc Cohen
Partner

Jerome Roche
Partner

Update on European Regulatory Structure

- European Financial Supervisory Framework (since January 1, 2011)
  - European Systemic Risk Board
    - Monitors/assesses potential threats to financial stability at macro-economic level
  - European Supervisory Authorities (ESAs)
    - European Banking Authority
    - European Securities and Markets Authority
    - European Insurance and Occupational Pensions Authority
    - Micro-prudential supervision
    - ESAs work with national regulators and have powers of intervention
- Proposals for single cross-border banking supervisor
  - Includes a legislative proposal for a directive in relation to the recovery and resolution of banks (June 2012)

The European Puzzle



European Market Infrastructure Regulation (EMIR)

- September 2009: G20 commitment to reform OTC derivatives markets in response to financial crisis
- US response = Title VII of Dodd-Frank
- EU response = EMIR a regulation on over-the-counter derivative transactions, central counterparties (CCPs) and trade repositories
- Key elements
  - Clearing, reporting and risk mitigation of OTC derivatives including a requirement for all eligible contracts to be cleared through a central counterparty
  - Authorization and supervision of CCPs
  - Requirements for "interoperability arrangements" between two or more CCPs
  - Registration and surveillance of trade repositories (includes non-EU provisions)
- Timetable
  - Summer 2012: Council of the EU approval expected
  - 2012-2013: Practical implementation

Revisions to Markets in Financial Instruments Directive (MiFID II)

- MiFID regulates investment services and markets across the EU
- MiFID II = a new directive (requires national implementation) and a new regulation (directly applicable)
- Parallels in Title VII of Dodd-Frank
- Key elements
  - Increased scope: Changes to carve-outs and new investment services and financial instruments subject to regulation
  - Requirement for suitable/standardized OTC derivatives to be traded on an exchange, multilateral trading facility or an "organized trading facility" (a new category)
  - Increased transparency and transaction reporting requirements
  - Requirements for non-EU firms doing business with EU persons
- Timetable
  - October 2011: Proposals published
  - Currently: Each of EU Parliament and Council of the EU adopting their positions ahead of "trialogue process" with EU Commission
  - 2015: Earliest anticipated implementation

Revisions to Market Abuse Directive (MAD II)

- MAD is the EU framework for prevention and detection of insider dealing and market manipulation
- MAD II = A new directive (requires national implementation) and a new regulation (directly applicable)
- Parallels in Title VII of Dodd-Frank
- Key elements
  - Increases to scope to align with MiFID II including new markets, trading facilities and OTC derivatives
  - Changes to definition of "inside information"
  - Regulates extra territorial trading activity
  - Clampdown on abuse resulting from automated trading methods
  - New offense of "attempted market manipulation"
- Timetable
  - October 2011: Proposals published
  - Currently: Each of EU Parliament and Council of the EU adopting their positions ahead of "trialogue process" with EU Commission
  - 2015: Earliest anticipated implementation (to be implemented at same time as MiFID II)

Alternative Investment Fund Managers Directive (AIFMD)

- AIFMD is a new EU framework regulating the management and marketing of Alternative Investment Funds (AIFs) in the EU including an EU passport for managing AIFs and marketing them to professional investors throughout the EU
- AIFM is an entity appointed by or on behalf of an AIF responsible for portfolio management and/or risk management and AIFs cover many types of funds including hedge funds, private equity funds, commodity funds, real estate funds and investment trusts
- Key elements and timetable
  - From July 2013 (implementation date): All EU AIFM required to be authorized (different requirements for managing EU and non-EU AIFs) and EU AIFM of EU AIFs can only market in the EU using marketing passport (may be extended to EU AIFM of non-EU AIFs from 2015)
  - Non-EU AIFM of EU AIFs may be required to be authorized from 2015. Until then, US sponsors can manage EU AIFs without authorization
  - From 2013 to market under national private placement regimes non-EU AIFM will be required to comply with some elements of AIFMD including disclosure and reporting obligations and there must be co-operation agreements between regulatory authorities
  - In 2015 (at the earliest): Marketing passport may become available for non-EU AIFM
  - 2015 – 2018: May be possible for US sponsors to choose between using the marketing passport (if regime extended) and national private placement regimes
  - Anticipated that national private placement regimes will be phased out from 2018

Capital Requirements (CRD IV and Solvency II)

- CRD IV
  - A major package of reforms to the EU's capital requirements regime for credit institutions and investment firms
  - CRD IV = a new directive (requires national implementation) and a new regulation (directly applicable)
  - Main role of CRD IV will be to implement in the EU the key Basel III reforms including amendments to the definition of capital and counterparty credit risk and the introduction of a leverage ratio and liquidity requirements
  - Timetable: Commission intends CRD IV to come into force on January 1, 2013, with full implementation of their requirements by January 1, 2019; industry bodies have raised doubts as to whether the 2013 deadline is realistic.
- Solvency II
  - Capital adequacy regime for European insurance/reinsurance industry
  - Fundamentally reforms capital requirements - it establishes a more sophisticated, risk-based set of capital requirements across the EU, together with a modernized supervisory system
  - Timetable: EU Commission has recently proposed a transposition date of end of June 2013

Extraterritorial and Competitive Concerns Raised by Dodd-Frank

- Will US businesses head offshore?
- Will US derivatives regulation apply outside the United States?
- Will the Volcker Rule apply outside the United States?
- Do the anti-fraud and anti-manipulation provisions of the US federal securities laws reach beyond our borders?
- What about other Dodd-Frank provisions (e.g., the foreign private adviser exemption)?
- Is the US a "thought leader" on regulation?

How will Title VII Apply Outside the United States?

- CFTC requirements will apply to non-US activities that "have a direct and significant connection" with activities or commerce in the US or constitute evasion of rules
- SEC requirements will not apply to transactions outside US jurisdiction, unless evasion is occurring
  - "US jurisdiction" means use of "means and instrumentalities of interstate commerce" such as telephone, mail or e-mail
- Joint CFTC and SEC request for comment on study of international swap markets (76 Federal Register 44,508)
  - Comments were due by September 26, 2011

How Will the Volcker Rule Apply Outside the United States?

- For US based banking entities:
  - Volcker Rule applies globally to all affiliates
  - No exemptions for offshore activities
- For non-US based banking entities:
  - Volcker Rule applies globally to all affiliates
  - Exemption for activities conducted "solely outside the United States"

What Is "Solely Outside the United States" Under the Volcker Rule?

- For proprietary trading:
  - Non-US banking entity (and not controlled by a US banking entity)
  - No party to the transaction is a US resident
  - No one directly involved in the transaction is physically located in the United States
  - The transaction is executed wholly outside the United States
- For covered funds:
  - Non-US banking entity (and not controlled by a US banking entity)
  - No US affiliate or personnel may be involved in the offer or sale of an ownership interest in the fund
  - No ownership interest in such covered fund is offered for sale or sold to a US resident

Cross-Border Application of Section 10(b) of the Securities Exchange Act of 1934

- The decision in *Morrison v. National Australia Bank* (2010)
- Dodd-Frank Act Section 929P partially reverses *Morrison*
- Dodd-Frank Section 929Y directed the SEC to conduct a study re extraterritorial reach of Exchange Act Section 10(b)

Overview of *Morrison*

- F-cubed fact pattern – claims by *foreign* investors who bought shares in *foreign* corporations listed on *foreign* exchanges
- US Supreme Court held that Exchange Act Section 10(b) only applies to "transactions in securities listed on domestic exchanges and domestic transactions in other securities"
  - Presumption against extraterritoriality where Congress is silent
  - Equally applicable to SEC and private litigants

Post *Morrison* Decisions

- Cases dismissed:
  - F-cubed cases
  - US investors who purchased securities on non-US markets (even if transaction initiated in United States)
  - Cross-listed securities purchased on non-US market
- Cases permitted:
  - ADRs purchased on US exchanges
  - Defendant engages in non-US insider trading with respect to a US exchange-trade company by acquiring contracts for differences
- What is meant by "domestic transactions" (other than on an exchange)?
  - According to 2nd Circuit, a plaintiff "must allege facts suggesting that either irrevocable liability was incurred or title transferred within the United States"

Dodd-Frank Section 929P

- Authorizes SEC to exercise anti-fraud/anti-manipulation jurisdiction extraterritorially with respect to:
  - **Conduct** within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or
  - Conduct occurring outside the United States that has a foreseeable substantial **effect** within the United States
- Comparable to pre-*Morrison* conduct and effects test
- Not an express basis for private rights of action

Dodd-Frank Section 929Y

- Required SEC to solicit public comment to determine whether private rights of action should be available under same conduct and effects test that SEC uses
- SEC was tasked with considering the:
  - Scope of the private right of action
  - Implications on international comity
  - Economic costs and benefits
- SEC issued a report to Congress in April 2012 in which the staff "advanced" the following options:
  - Enactment of same test
  - Enactment of similar test but require demonstration that plaintiff's injury resulted directly from US conduct (which the SEC recommended *in amicus* brief for *Morrison*)
  - Enactment of same test but only for US resident plaintiffs
  - Enactment of the test with one of four other "supplements" or "clarifications"

Questions?

Marc R. Cohen
Partner
+44 (0) 20 3130 3494
mcohen@mayerbrown.com

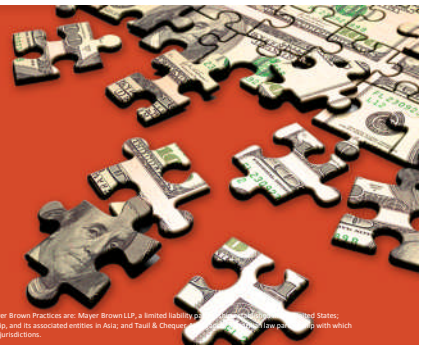
Jerome J. Roche
Partner
+1 202 263 3773
jroche@mayerbrown.com

TAB 10

MAYER·BROWN

The Continuing Impact of Dodd-Frank

Securitization



Barbara Goodstein
Partner

Jason Kravitt
Partner

Hypothetical 1: Risk Retention, Volcker Rule, Conflicts of Interest, and Regulatory Capital

- A US bank sponsors an asset-backed commercial paper conduit.
- The bank has relied on Section 4(2) of the Securities Act and 3(c)(7) of the Investment Company Act heretofore for exemptions from registration of the ABCP as securities or of the conduit as an investment company.
- The conduit issues ABCP with maturities between 1 day and 360 days.
- The bank supplies liquidity to the conduit in the form of liquidity asset purchase agreements and credit enhancement in the form of a letter of credit equal to at least 10% of outstanding ABCP issued.

Hypothetical 1: Risk Retention, Volcker Rule, Conflicts of Interest, and Regulatory Capital

- The bank has about 100 transactions in the conduit totaling about $20 billion.
- The assets securitized include mortgages, MBS, trade receivables, credit card receivables, retail auto receivables, wholesale auto receivables, equipment receivables, trade receivables, IP, premium finance receivables, and a senior tranche from a CLO designed to liquidate within 270 days where the underlying assets are MBS and FFELP student loans.
- The CLO was sponsored by a second bank. It structured the CLO, and chose assets for the CLO, with the aid of a hedge fund investor. It disclosed that aid in the offering memo. The assets include various loans from their workout portfolio. Unbeknownst to the group, in originations structuring the CLO in the bank sponsor of the CLO, another group in the bank, responsible for hedging risk for the bank as a whole, has shorted an index in which the AAA tranche of this CLO is a component.

Hypothetical 1: Risk Retention, Volcker Rule, Conflicts of Interest, and Regulatory Capital

- What issues would arise if the Volcker Rule is adopted as proposed for the bank sponsor of the conduit?
- What issues would arise if the Risk Retention Rule is adopted as proposed for the Conduit sponsor and its customers (some of whom are banks)?
- What would the risk based capital analysis be for the sponsor bank? What would it be for its bank customer securitizing credit cards or automobile loans?
- Would the proposed Conflict of Interest Rule be violated by the manner in which the CLO sponsor bank structured and offered the CLO?

Hypothetical 2: Disclosure and Rating Agencies

- Customer of a US bank is in the equipment finance business and owns a portfolio of mixed-size equipment leases and loans.
- Customer did a public registration of ABS in its equipment lease and loan portfolio on September 15, 2011, through a US bank as underwriter.
- Customer acquired another equipment finance company in November 2011.
- Customer fired all of existing management of new subsidiary and replaced it with new management.
- Customer has re-engaged a US Bank to go to market quickly through a shelf registration and takedown of ABS in a new portfolio which includes its leases and loans as well as those from its new subsidiary.

Hypothetical 2: Disclosure and Rating Agencies

- What are the key differences in the offering process for Customer under public offering requirements between its issuance in September 2011 and the one it files now? (Rule 193, Item 1111 under Reg AB, 15Ga-1)
- What would be the key additional differences assuming Regulation AB II is adopted as proposed? What would be the key differences under Reg AB II if the Customer did a 144A private placement instead of a shelf registration?
- Customer would like to use rating agency X to rate its securities.
- What are key differences in the rating agency process for this new offering from the offering launched in September? (17g-7)
- What would be the key differences assuming the Franken Amendment as proposed is adopted?

Questions?

Barbara M. Goodstein
Partner
+1 212 506 2264
bgoodstein@mayerbrown.com

Jason H.P. Kravitt
Partner
+1 212 506 2262
jkravitt@mayerbrown.com

TAB 11

MAYER·BROWN

Scott A. Anenberg

Partner

sanenberg@mayerbrown.com

Washington DC

T +1 202 263 3303

F +1 202 263 3300

"Frames issues in a business context and clearly illustrates the pros and cons of alternative strategies." *Legal 500 2011*

Scott Anenberg is co-head of the Firm's Financial Services Regulatory and Enforcement Practice. He has over 25 years of experience representing global and domestic commercial banks, thrifts, and other financial services companies, as well as their holding companies and affiliates, on a wide variety of strategic, regulatory, compliance, and enforcement issues before federal and state agencies. Scott has consistently been ranked by *Chambers USA* and *Legal500* and he is noted for being "client focused and proactive in identifying relevant regulatory proposals and explaining their impact," *Chambers USA 2011*.

He regularly advises banking and financial services clients on legislative and regulatory developments; geographic and product expansion; acquisitions and reorganizations; anti-money laundering, USA PATRIOT Act and Bank Secrecy Act compliance; preemption; privacy; transactions with affiliates; regulatory capital; consumer compliance; and electronic banking and commerce.

Earlier in his career, Scott worked for the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. He is also active in the firm’s Israel-related practice.

Experience

- Advising financial institutions on the strategic and operational implications of the "Dodd-Frank Wall Street Reform and Consumer Protection Act".
- Represented the sellers in the seventh largest US bank merger announced in 2008.
- Represented a foreign bank in several transactions designed to rationalize and consolidate its US operations, including precedent-setting transfers of its FDIC-insured branches to its US bank subsidiary made possible by first obtaining an innovative ruling from the FDIC under the Riegle-Neal Interstate Banking Act.
- Helped a federal savings bank in establishing the first-of-its-kind REIT subsidiary as a vehicle to issue tax-advantaged Tier 1 capital.
- Represented a foreign bank in US matters relating to its privatization and subsequent sale of its New York bank subsidiary.

- Advised the US subsidiary of a foreign bank in its acquisition from the FDIC of a failed Florida bank, culminating in a strategy designed to enable the bank to better serve its customer base and pursue new business opportunities in Florida despite that state's restrictive interstate banking laws.
- Represented a large insurance company in various regulatory and enforcement matters relating to its ownership of a thrift.
- Assisted several banks with reviews, internal investigations and potential enforcement actions related to anti-money laundering issues.
- Helped several foreign banks apply to establish branches, representative offices and agencies in the US.
- Helped a major financial services trade group obtain amendments to various aspects of the FDIC's regulations governing US branches of foreign banks.
- Represented domestic and foreign banking clients in establishing securities brokerage subsidiaries in order to comply with the "push-out" provisions of the Gramm-Leach-Bliley Act.
- Obtained the first official interpretation involving the application of FDIC deposit insurance rules to electronic banking products.

Education

- The George Washington University Law School, JD, with high honors, 1978.
- Washington University, BA, magna cum laude, 1975. Order of the Coif

Admissions

- District of Columbia 1978

Activities

- American Bar Association, Banking Law Committee
- Contributing Editor, Electronic Banking Law and Commerce Report (2000-2008)

News & Publications

- "Federal Reserve Board Approves Basel III Proposals and Market Risk Capital Rule," 8 June 2012
- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "Proposed Regulations Implementing the Volcker Rule," 20 October 2011
- "US Securities and Exchange Commission Adopts Large-Trader Reporting System," 9 August 2011
- "US FDIC and Federal Reserve Propose Rule on Resolution Plans and Credit Exposure Reports," 2 May 2011
- "Basel Committee Releases Final Text of Basel III Framework," 7 January 2011
- "Mayer Brown advise J.P. Morgan on purchase of Canary Wharf Group's 25 Bank Street building," 23 December 2010
- "Basel III Capital Ratios and Transition Periods Set, but Key Questions Remain," 17 September 2010
- "Basel III Capital and Liquidity Reforms Modified but Remain Largely Intact," 3 August 2010
- "Financial Reform and Securitization," 15 July 2010
- "The Volcker Rule: Proprietary Trading and Private Fund Restrictions," 30 June 2010
- "The Volcker Rule: Implications for Private Fund Activities," 10 June 2010

- "Foreign Account Tax Compliance Act of 2009," 20 April 2010
- "Basel Committee Proposes Significant Reforms to Regulatory Capital Framework," 13 January 2010
- "Technical Amendments to FDIC Rules Could Have Significant Impact on Uninsured US Branches of Non-US Banks," 10 September 2009
- "FDIC Adopts Modified Policy Statement on Private Equity Investments in Failed Banks," 26 August 2009
- "FDIC Proposes a Hard Line on Private Equity Investments in Failed Banks," 2 July 2009
- "Client Update: Obama Administration Proposes Comprehensive Changes to Financial Services Regulation," 18 June 2009
- "Chambers USA ranks 124 Mayer Brown lawyers; practices ranked in 55 national and state categories," 12 June 2009
- "Treasury Department Announces Specifics of Capital Assistance Program," 2 March 2009
- "Selected Regulatory Developments," *Electronic Banking Law & Commerce Report, Monthly Column*, 2000-2008
- "Mayer Brown Captures Appellate Victory for Chevy Chase Bank in Closely-Watched Case," 24 September 2008
- "E-Commerce in the Financial Services Sector: A Written Course in IT Law," *IBC Global Conferences Limited*, 13 October 2000
- "Traps for the Unwary Lender: State Law Issues Related to Internet Lending," *Electronic Banking Law and Commerce Report*, 1 September 1998

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Federal Financial Institutions Examination Council's Examiner Education Program, Participant in the Federal Financial Institutions Examination Council's Examiner Education Program; Frequent speaker on variety of financial services topics. , 2012
- Dodd-Frank: One Year Later, 27 July 2011
- Implementation of the Dodd-Frank Act – Implications for Internationally Headquartered Banking Organizations: Part 2: Implementation of Other Key Provisions of Dodd-Frank for International Banks, 12 April 2011
- Strategies for Dealing with Financial Asset Businesses and Portfolios – Part I: M&A of Financial Asset Businesses, 3 March 2011
- Basel III in Context: A Transatlantic Perspective, 13 January 2011
- 2010 IIB/CSBS Orientation Program, 20 July 2010 - 21 July 2010
- Private Equity Investments in Bank and Thrift Institutions: What is the Current State of Play?, 14 January 2010

MAYER·BROWN

Marc R. Cohen

Partner

mcohen@mayerbrown.com
London

T +44 20 3130 3494

F +44 20 3130 8943

Marc Cohen's practice includes litigation, banking and securities, regulatory, enforcement, legislative, and strategic counseling matters on behalf of global financial services firms. He focuses on addressing problems that require experience in several of the foregoing areas at the same time, such as private cross-border litigation with parallel regulatory or congressional investigations.

Marc works with all the US financial services regulators – the Federal Reserve, Treasury (OCC, OTS, FinCEN, OFAC), FDIC, SEC – and state banking and insurance departments, as well as with Congress. He also deals with non-US financial supervisors, including the UK FSA, German BaFin, and Swiss Federal Banking Commission.

Marc has extensive experience with anti-money laundering issues, including those involving the USA PATRIOT Act and politically exposed persons, as well as US economic (OFAC) sanctions. He is currently counseling several leading non-US-based institutions on adoption of their global sanctions policies.

Marc clerked for the Honorable José A. Cabranes in 1984-85.

Education

- Yale Law School, JD, 1984.
- Yale University, BA, 1981.

Admissions

- District of Columbia 1991
- Connecticut 1985

News & Publications

- "US Securities and Exchange Commission Adopts Large-Trader Reporting System," 9 August 2011
- "Mayer Brown strengthens London office Financial Services Regulation & Enforcement group with partner hire," 3 May 2011
- "US Treasury to Impose Requirement on US Correspondent Banks to Obtain Iran-Related Information from Foreign Banks," 29 April 2011

- "Two former directors of UK company convicted of breaching UN sanctions in connection with kickback payments to Iraq," February 2011
- "Morrison v. National Australia Bank: The U.S. Supreme Court and the Extraterritorial Application of U.S. Law," 6 September 2010
- "Anwendung des US-Börsengesetzes Securities Exchange Act auf Unternehmen außerhalb der U.S.A.," 29 June 2010
- "US SEC Amends Custody Rule for Registered Investment Advisers," 14 June 2010
- "Foreign Account Tax Compliance Act of 2009," 20 April 2010
- "US SEC Adopts Significant Changes to Custody Rule for Registered Investment Advisers," 21 December 2009
- "US SEC Proposes Significant Changes to Custody Rule for Registered Investment Advisers," 19 June 2009
- "Chambers USA ranks 124 Mayer Brown lawyers; practices ranked in 55 national and state categories," 12 June 2009
- "Chambers USA ranks 121 Mayer Brown lawyers; practices ranked in 63 national and state categories," 13 June 2008
- "How to Debank from the US Markets; Debanking: A Strategic Option for Foreign Banks in the US," *International Financial Law Review*, 1 May 1996
- "Commercial Bank Lending to LDCs: Balancing Bank Overexposure and Credit Undersupply," *8 Yale J. World Public Order 2011*, January 1, 1983

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012

MAYER·BROWN

Joshua Cohn

Partner

jcohn@mayerbrown.com
New York

T +1 212 506 2539

F +1 212 262 1910

Josh Cohn is the head of Mayer Brown's US Derivatives & Structured Products practice and co-leader of the global Derivatives & Structured Products practice. He concentrates his practice on derivatives and has extensive experience as U.S. counsel to the International Swaps and Derivatives Association (ISDA), and represents dealers and end-users in a wide range of transactions.

Prior to joining Mayer Brown from Allen & Overy, Josh was the Derivatives Counsel at Cravath Swaine & Moore in New York; a Senior Vice President and General Counsel at DKB Financial Products, Inc.; a First Vice President and Counsel at Security Pacific National Bank; an Associate at LeBoeuf, Lamb, Leiby & Macrae; and a Law Clerk at the U.S. Court of Appeals - Ninth Circuit, San Francisco, CA.

Josh is listed for derivatives law in the 2010 and 2011 edition of The Best Lawyers in America while the *IFLR 1000* and *The Legal 500* list Josh as one of the world's leading derivatives lawyers. Josh has been ranked in band 1 of *Chambers USA* since 2008. In 2010, sources noted his "great depth of experience and understanding of market trends." In 2008 and 2009, clients noted he "…is one of the greats in derivatives because of his extensive knowledge" and that he is "doubtless one of the best derivatives lawyers in the world."

Education

- New York University School of Law, JD
- Columbia College, BA

News & Publications

- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "Pay Practices Could Define Market Making Under Dodd-Frank," *Law360*, 31 May 2012
- "The New CFTC and SEC Swap "Entity" Definitions—Highlights," 30 April 2012
- "Lehman Bankruptcy Court Holds That Pre-Petition Collateral Transfers and Guaranties to Clearing Bank Are Safe Harbored," 26 April 2012
- "Dodd-Frank Title VII Rule Compliance Schedules – A Matrix," 19 January 2012
- "Dodd-Frank Title VII (Swaps) Effectiveness—July 16 and Beyond," 14 June 2011

- "End Users and OTC Energy Derivatives: Potential Impacts Under the Wall Street Transparency and Accountability Act of 2010," 27 August 2010
- "Comments Requested on Proposed “Key Definitions” of the Wall Street Transparency and Accountability Act," 23 August 2010

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- PLI’s Advanced Swaps & Other Derivatives 2011, 18 October 2011 - 19 October 2011
- Fundamentals of Swaps and Other Derivatives 2011, 17 October 2011
- Dodd-Frank: One Year Later, 27 July 2011
- Implementation of the Dodd-Frank Act – Implications for Internationally Headquartered Banking Organizations: Part 1: OTC Derivatives Regulation and the Volcker Rule, 5 April 2011
- Hot Topics in Insurance Regulation, 30 September 2010
- Greek Sovereign Default: What Happens Next?, 18 May 2010

MAYER·BROWN

Thomas J. Delaney

Partner

tdelaney@mayerbrown.com
Washington DC

T +1 202 263 3216

F +1 202 263 5216

Tom Delaney's practice is concentrated on banking and financial services matters, and especially on issues associated with the federal and state regulation of financial institutions. He advises clients on formation, acquisition, compliance, and cross-border concerns, with particular emphasis on anti-money laundering, the USA Patriot Act, OFAC, and international funds transfer matters. In addition, Mr. Delaney supervises internal investigations and defends financial services firms involved in supervisory enforcement proceedings, including investigations by the US Congress.

Mr. Delaney is respected for his insightful corporate and regulatory counsel and for his experience in providing comprehensive strategic advice to organizations facing regulatory or legislative infringement of business opportunity or potential damage to their reputations. He has been practicing law for more than 20 years, initially as an attorney with the US Treasury Department's Office of Thrift Supervision. Mr. Delaney entered private practice in 1991 and joined Mayer Brown in 2006. Prior to practicing law, he served on the staff of the Committee on Financial Services of the US House of Representatives and on the staff of the US Senate.

During the course of his career, Mr. Delaney has advised the full range of financial services firms that operate in the United States. He has successfully counseled organizations through the process of establishing or acquiring banks, thrift institutions, credit unions and US branches of foreign banks and then complying with the aspects of US law that relate to such operations. In recent years, one focus of his practice has been on representing internationally active firms, based in the US and abroad, and assisting such organizations to reconcile and comply with overlapping and potentially conflicting aspects of US and international law. *Chambers USA* 2008 found that Mr. Delaney "is applauded for 'taking a longer-term view and bringing a global prospective to matters.'" In addition to financial services firms, Mr. Delaney's counsel has been sought by foreign governments for guidance in establishing supervisory and enforcement systems that conform with US and international standards, including those specified by such bodies as the OECD's Financial Action Task Force.

Education

- American University Washington College of Law, JD, 1986.
- Georgetown University, BA, 1979.

Admissions

- District of Columbia 1995
- New Jersey 1987
- Pennsylvania 1987

Activities

- American Bar Association, Section of Business Law

News & Publications

- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "US FDIC and Federal Reserve Propose Rule on Resolution Plans and Credit Exposure Reports," 2 May 2011
- "The Foreign Account Tax Compliance Act and Its Implications to Non-U.S. Banks and Brokerage Houses," *Bloomberg*, 7 September 2010 (Vol. 3, No. 9 edition)
- "Foreign Account Tax Compliance Act of 2009," 20 April 2010
- "Foreign bank reporting law carries broad implications, Mayer Brown says," *BNA*, 19 April 2010
- "Mayer Brown Practices and Partners
  Ranked in 2010 Edition of IFLR1000," 9 October 2009
- "FDIC Adopts Modified Policy Statement on Private Equity Investments in Failed Banks," 26 August 2009
- "FDIC Proposes a Hard Line on Private Equity Investments in Failed Banks," 2 July 2009
- "Client Update: Obama Administration Proposes Comprehensive Changes to Financial Services Regulation," 18 June 2009
- "Chambers USA ranks 124 Mayer Brown lawyers; practices ranked in 55 national and state categories," 12 June 2009
- "National Regulatory System Proposed for US Insurance Industry," 14 May 2009
- "Treasury Department Releases Details on Public-Private Partnership Investment Program," 26 March 2009
- "International Financial Law Review ranks 20 Mayer Brown lawyers; 21 practices in IFLR1000," 6 November 2008
- "Chambers USA ranks 121 Mayer Brown lawyers; practices ranked in 63 national and state categories," 13 June 2008
- "U.S. Sanctions: The New Trans-Atlantic Challenges," 24 April 2007
- "Mayer, Brown, Rowe & Maw Announces Formation of Congressional Oversight Strategy Group," *Mayer, Brown, Rowe & Maw LLP*, 5 January 2007

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Update on the Recently Enacted FATCA and its Implications for Non-US-Based Financial Intermediaries, 15 September 2011
- Dodd-Frank: One Year Later, 27 July 2011

- Implementation of the Dodd-Frank Act – Implications for Internationally Headquartered Banking Organizations: Part 2: Implementation of Other Key Provisions of Dodd-Frank for International Banks, 12 April 2011
- Banking and Financial Services Mid Term Election Impact, 29 October 2010

MAYER·BROWN

Barbara M. Goodstein

Partner
bgoodstein@mayerbrown.com
New York

T +1 212 506 2264

F +1 212 849 5687

Barbara M. Goodstein is a partner in the Banking & Finance practice of Mayer Brown's New York office.

Barbara's experience consists of commercial and structured financing as well as restructuring of transactions for a wide range of asset types including auto, trade, health care, timeshare and lease receivables, CDO's and CLO's, sports franchises, intellectual property, transportation equipment (including aircraft, aircraft engines, railcars and vessels), technology equipment, medical equipment, communications and office equipment, construction equipment, and marine and inter-modal containers. She also has extensive debt workout and restructuring experience primarily representing senior creditors and syndicate groups, bondholders, and secured creditors both in and out of bankruptcy; foreclosures, DIP and exit financing; contested and consensual bankruptcy matters; and other financial and legal restructurings.

Barbara is a featured columnist for *The New York Law Journal's* "Secured Transactions" section and a Fellow of the American College of Commercial Finance Lawyers. She is a member of the Board of Editors of *Equipment Leasing Newsletter*. She previously served on the Board of Directors and Executive Committee of the Equipment Lease and Finance Association, the national trade association for the equipment finance industry.

Education

- New York University School of Law, JD
- Barnard College, Columbia University BA, cum laude with distinction

Admissions

- New York 1977

Activities

- American College of Commercial Finance Lawyers
- Association of Commercial Finance Attorneys
- American Bar Association, Section of Business Law, Commercial Law Subcommittee
- Equipment Leasing and Finance Association, Air, Rail and Marine Subcommittee (formerly a member of the Executive Committee and Board of Directors of the ELFA)

- Board of Editors, *LJN Equipment Leasing Newsletter*
- Alternate Director, American Securitization Forum

News & Publications

- "New Leveraged Lending Guidance," *New York Law Journal*, 7 June 2012
- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "Eurozone Crisis: Managing Your Exposure," 31 May 2012
- "Mayer Brown strengthens Banking & Finance practice in New York with arrival of partner Barbara M. Goodstein," 10 May 2012
- "The Euro Crisis: Implications For Loan Agreements," *New York Law Journal*, April 2012
- "Protecting Liens on Debtors' Commercial Tort Claims," *New York Law Journal*, February 2012
- "Bankruptcy Preferences: They Haven't Gone Away," *LJN's Equipment Leasing Newsletter (republished from New York Law Journal, December 2011)*, February 2012
- "Bankruptcy Preferences: They Haven't Gone Away," *New York Law Journal*, December 2011
- ""Bad Boy" Guaranties: Does the Punishment Fit the Crime?," *LJN's Equipment Leasing Newsletter (republished from New York Law Journal, October 2011)*, November 2011
- ""Bad Boy" Guaranties: Does the Punishment Fit the Crime?," *New York Law Journal*, October 2011
- "Subscription Loans to Private Equity Funds," *New York Law Journal*, August 2011
- "State Legislatures Consider UCC Article 9 Amendments," *LJN's Equipment Leasing Newsletter (republished from New York Law Journal, June 2011)*, August 2011
- "State Legislatures Consider UCC Article 9 Amendments," *New York Law Journal*, June 2011
- "Perfecting Liens on US-Registered Aircraft," *43 The Uniform Commercial Code Law Journal No. 2*, May 2011
- "Play Ball: Lending To Pro Sports Franchises," *New York Law Journal*, April 2011
- "Equitable Subordination Attacks on Secured Lenders," *LJN's Equipment Leasing Newsletter (republished from New York Law Journal, December 2010)*, March 2011
- "First Lien Lenders Beware: Drafting Points to Consider," *New York Law Journal*, February 2011
- "Equitable Subordination Attacks on Secured Lenders," *New York Law Journal*, December 2010
- "FAA Updates Its Procedures For Registration of Aircraft," *LJN's Equipment Leasing Newsletter (republished from New York Law Journal, October 2010)*, December 2010
- "FAA Updates Its Procedures For Registration of Aircraft," *New York Law Journal*, October 2010
- "When is a Lease of Personal Property a "True Lease"?," *LJN's Equipment Leasing Newsletter (republished from New York Law Journal, May 2010)*, September 2010
- "New ABA Model Intercreditor Agreement Offers Guidance," *New York Law Journal*, August 2010
- "When is a Lease of Personal Property a "True Lease"?," *New York Law Journal*, May 2010
- "Changes to New York Powers of Attorney: Caveat Creditor," *New York Law Journal*, April 2010
- "Rulings Pose Questions About Right to Credit Bid," *New York Law Journal*, February 2010
- "Forbearance Agreements Provide Breathing Space," *New York Law Journal*, December 2009
- "Limited Liability Company and Partnership Interest Liens and UCC Anti-Assignment Rules," *New York Law Journal*, September 2009
- "Enforcing Security Interests Under Article 9 of the UCC," *New York Law Journal*, July 2009
- "Texas Decision Raises Issues on Assignment of Perfected Interests," *New York Law Journal*, June 2009
- "Complex Structured Finance Transactions," *Equipment Leasing Today*, March 2007
- "The Credit Agency Reform Act: What Leasing Companies Need to Know," *LJN's Equipment Leasing Newsletter*, December 2006

- "Come "Hell or High Water" NorVergence Causing a Stir over Documentation," *LJN's Equipment Leasing Newsletter*, April 2005

Events

- Eurozone Crisis: Managing Your Exposure, 6 June 2012

MAYER·BROWN

Lawrence R. Hamilton

Partner

lhamilton@mayerbrown.com
Chicago

T +1 312 701 7055

F +1 312 706 8333

"is praised for his 'knowledgeable, thorough and prompt' approach" Chambers USA 2010

Larry Hamilton is a Corporate & Securities partner in the Chicago office. His practice is focused on mergers, acquisitions, and regulatory compliance of insurance companies and investment companies, both in the United States and in offshore markets. In addition, he regularly represents insurance company issuers in connection with public and private offerings of equity, fixed income and hybrid securities.

Larry has extensive experience negotiating directly with insurance regulators, helping clients overcome regulatory obstacles and gain approval for their proposed forms of business arrangements. Larry is also part of a dedicated internal Insurance Securitization group, which uses the combined talents of the firm's insurance and structured finance practitioners to ensure that transactions take into account the customs and expectations of both markets. He regularly advises US and European financial institutions on the insurance regulatory issues associated with complex capital market and derivative structures, including techniques such as credit derivatives, "transformer" vehicles, synthetic CDO bonds, collateral trusts and special purpose reinsurance companies. Larry is named a leading lawyer in *Chambers USA* 2011 and the 2010 edition praised him for his "*knowledgeable, thorough and prompt*" approach; according to *Chambers USA* 2009, he is "the standout name in the firm's insurance [transactional and regulatory] practice." Larry is listed as a leading lawyer in the 2009 *IFLR1000,* and named to the 2010 lists of *Illinois Super Lawyers* and "Best Lawyers in America." Larry joined Mayer Brown in 1996.

Experience

- Represented ACE Limited in the $2.4 billion purchase of Combined Insurance Company of America.
- Represented UnitedHealth Group Incorporated in the sale of the $1.8 billion life and annuity business of its Golden Rule subsidiary to OneAmerica Financial Partners, Inc.
- Represented Everest Re Group, Ltd. in connection with its migration to Bermuda and all of its subsequent public offerings of stock, debt and hybrid securities.
- Represented CNA Financial Corporation in the sale of its personal lines business to Allstate, the sale of its individual life insurance business to Swiss Re, the sale of its group benefits business to Hartford Life and the sale of its third-party claims administration business to Cunningham Lindsey US Inc.
- Represented Nestlé in the acquisition of Gerber Life Insurance Company from Novartis.
- Represented Argo Group International Holdings Limited in the sale of its US reinsurance subsidiary, PXRE Reinsurance Company, to Tawa Group plc.

- Advised GMAC on the 2008 restructuring of its insurance division and on the insurance regulatory aspects of the 2006 $14 billion sale of a 51 percent stake to a consortium led by Cerberus Capital Management.
- Advised a major US life insurance company in creating a combination of corporate structures and service contracts for the performance of a variety of support services from India. This outsourcing project was one of the first of its kind and scale in the insurance industry.
- Represented Endurance Specialty Insurance Ltd. in its formation, organization and development of its business structure and governance.
- Represented LaSalle Re Limited in its business combination with Trenwick Group Inc. to form a new Bermuda-based company, Trenwick Group Ltd.
- Advised American Farm Bureau Federation regarding the reconfiguration of the capital structure and governance of American Agricultural Insurance Company.
- Advised major insurance broker clients regarding regulatory requirements and disclosure best practices relating to broker compensation.

Education

- The University of Chicago Law School, JD, with honors, 1996. Joseph Henry Beale Prize for legal research and writing, Order of the Coif
- Harvard College, AB, summa cum laude, 1977. Phi Beta Kappa

Admissions

- Illinois 1996
- US District Court for the Northern District of Illinois 1996

Activities

- American Bar Association

News & Publications

- "Global Corporate Insurance & Regulatory Bulletin," May 2012
- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "Jumpstart Our Business Startups Act Makes Significant Changes to Capital Formation, Disclosure and Registration Requirements," 5 April 2012
- "Global Corporate Insurance & Regulatory Bulletin," March 2012
- "Global Corporate Insurance & Regulatory Bulletin," January 2012
- "Insurance Industry Group: Global Corporate Insurance & Regulatory Bulletin," 31 October 2011
- "Insurance Industry Group: Global Corporate Insurance & Regulatory Bulletin," 31 July 2011
- "Insurance Industry Group: Global Corporate Insurance & Regulatory Bulletin," March 2011
- "Dodd-Frank Act," *Informa UK Ltd*, 30 July 2010
- "Mayer Brown advises OneBeacon in sale of personal lines insurance business," 2 February 2010

- "US SEC Staff Offers Guidance On Exclusion of Shareholder Proposals from Company Proxy Statements," 30 October 2009
- "Mayer Brown Practices and Partners
  Ranked in 2010 Edition of IFLR1000," 9 October 2009
- "Chambers USA ranks 124 Mayer Brown lawyers; practices ranked in 55 national and state categories," 12 June 2009
- "Proposed Reform of the OTC Derivatives Market: Turning "Weapons" into Plowshares," *The Journal of Structured Finance*, Summer 2009
- "National Regulatory System Proposed for US Insurance Industry," 14 May 2009
- "Securities Update - SEC Adopts Mandatory Use of Interactive Data for Financial Reporting," 24 February 2009
- "International Financial Law Review ranks 20 Mayer Brown lawyers; 21 practices in IFLR1000," 6 November 2008
- "Securitization of Financial Assets," *Aspen Law & Business*, 2008
- "Mayer, Brown, Rowe & Maw LLP Advises Nestlé S.A. on $5.5 Billion Acquisition of Gerber Products Company and Gerber Life Insurance Company," *Mayer, Brown, Rowe & Maw LLP*, 12 April 2007

Events

- Insurance and Reinsurance Legal Developments: Financial Convergence & Global Regulatory Updates, 17 April 2012
- Perspectives on Transatlantic Insurance M&A, 16 November 2011
- Hot Topics in Insurance Regulation, 30 September 2010
- The Subscription Market under Fire: Broker Compensation and Conflicts, Mealey's 15th Annual Insurance Insolvency and Reinsurance Roundtable, 2008
- Monoline Insurance – Strategies For Managing Your Exposure and Counterparty Risk, Mayer Brown Seminar presented in New York and London, 2008
- IQPC's 2nd Insurance Linked Securities Summit, Chairman, New York, 2007
- Sarbanes-Oxley Act of 2002: An Overview, American Farm Bureau Lawyers Conference, 2003

MAYER·BROWN

Carol A. Hitselberger

Partner

chitselberger@mayerbrown.com
Charlotte

T +1 704 444 3522

F +1 704 377 2033

"Praised for being at the 'cutting edge on securitization issues,'"… "an 'absolutely brilliant lawyer'" Chambers USA

Carol Hitselberger serves on Mayer Brown's Partnership Board. She focuses her practice on financing matters. Her experience encompasses securitization and other structured financial products, including structuring domestic and cross-border commercial paper-funded securitization vehicles and securitizing trade receivables, credit card receivables, aircraft, leases, franchise portfolios, government contracts, trademark licenses, and various other financial assets. She has experience with synthetic leases and synthetic securitizations. Her work also includes representation of program sponsors, underwriters, placement agents, advisors, liquidity providers, credit enhancers and issuers in private placements, public offerings, and Rule 144A/Regulation S executions.

According to Chambers USA, Carol has been lauded by clients for her "superior thinking abilities and fantastic client-handling skills" (2007), as well as her "extensive knowledge of financial assets securitizations and ABCP conduits" (2008), emphasizing that "she knows conduits backwards and forwards" (2009). She has been ranked among the Category 1 Leading Individuals in Capital Markets: Securitization in Illinois (Chambers USA), ranked as a National Practice Team member in Capital Markets: Securitization (Chambers USA), and listed as a Leading Structured Finance Lawyer in the United States (Euromoney Expert Guides).

Education

- University of Pennsylvania Law School, JD, cum laude, 1989.
- Bryn Mawr College, AB, magna cum laude, 1986.

Admissions

- North Carolina 2010
- Illinois 1989

Activities

- American Bar Association

News & Publications

- "Federal Reserve Board Approves Basel III Proposals and Market Risk Capital Rule," 8 June 2012
- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "Proposed Regulations Implementing the Volcker Rule," 20 October 2011
- "Overview of the Proposed Credit Risk Retention Rules for Securitizations," 8 April 2011
- "US SEC Adopts Amendments to Rule 2a-7 Affecting Money Market Funds," 7 April 2010
- "FDIC Board Votes to Extend the Securitization Safe Harbor," 12 March 2010
- "Chambers Global Ranks 64 Mayer Brown Partners; Practices Ranked in 53 Categories in 2010 Edition," 10 March 2010
- "Basel II Modified in Response to Market Crisis," Winter 2010
- "A Peek at the Future of the FDIC Securitization Safe Harbor," 21 December 2009
- "US Bank Regulators Provide Only Transitional Risk-Based Capital Relief for Securitization Accounting Changes," 16 December 2009
- "As Accounting Rule Changes Loom, Time is Running Out to Modify Capital Requirements," *FinCri Advisor*, 29 November 2009
- "Crucial Transitional Relief Under the FDIC Securitization Safe Harbor," 12 November 2009
- "The Other Shoe Drops — US Bank Regulators React to Securitization Accounting Changes," 27 August 2009
- "Basel II Modified in Response to Market Crisis," 23 July 2009
- "Big Changes to Securitization Accounting," 22 June 2009
- "Chambers USA ranks 124 Mayer Brown lawyers; practices ranked in 55 national and state categories," 12 June 2009
- "Mayer Brown elects Bert Krueger as Chairman and 11 partners to leadership roles in new governance structure," 16 April 2009
- "Chambers Global Ranks 55 Mayer Brown Partners in 2009 Edition," 10 March 2009
- "International Financial Law Review ranks 20 Mayer Brown lawyers; 21 practices in IFLR1000," 6 November 2008
- "Carol Hitselberger to head the Finance Practice in Mayer Brown's Charlotte Office," 8 July 2008
- "Chambers USA ranks 121 Mayer Brown lawyers; practices ranked in 63 national and state categories," 13 June 2008
- "Securitization of Financial Assets," *Aspen Law & Business*, 2001

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Volcker Conformance Period and Impact on CP Conduits, 3 May 2012
- Industry Professional Seminars and Conferences, Regular speaker at industry professional seminars and conferences, including for Information Management Network and Strategic Research Institute., 1 January 2012
- Conflicts of Interest in Securitization Transactions, 20 October 2011
- Regular speaker at industry professional seminars and conferences, including for Information Management Network and Strategic Research Institute

MAYER·BROWN

Matthew D. Ingber

Partner

mingber@mayerbrown.com

New York

T +1 212 506 2373

F +1 212 849 5973

Matthew Ingber is a litigator who represents major corporations and individuals in complex, sensitive and high-profile matters. Matthew conducts a general litigation practice before state and federal courts and arbitration panels, with cases ranging from complex commercial disputes to civil and criminal securities fraud actions and cutting edge intellectual property matters. He performs internal corporate investigations on behalf of management and audit committees, represents issuers and underwriters in federal securities class actions, and represents individuals and corporations in connection with criminal investigations and related civil and administrative proceedings. Matthew has argued numerous dispositive motions and tried several cases in federal and state courts.

Matthew also has represented pro bono, among others, the NAACP in corporate governance matters, the City of New York, and individuals in asylum and civil rights actions.

Matthew joined Mayer Brown in 1998.

Experience

- Representing BNY Mellon in all aspects of litigation and SEC and CFTC investigations relating to the bankruptcy of Sentinel Management Group. Most recently, Matthew, as co-lead counsel, won a trial victory for BNY Mellon when a federal district judge, after a month-long bench trial on the bankruptcy trustee's $500 million claims for fraudulent and preferential transfers and equitable subordination, rejected all of the trustee's claims. (*Grede v. The Bank of New York et al.*, N.D. Ill. 2010)
- Won summary judgment for YouTube and its parent Google in a billion-dollar copyright infringement suit brought by Viacom in federal district court in New York. The *Washington Post* called the win "an immense legal victory" for Google, and the *New York Times* observed that "the ruling in the closely watched case could have major implications for the scores of Internet sites" that rely on user-generated content. (*Viacom et al. v. Google et al.*, S.D.N.Y. 2010)
- Won acquittal on all counts for NYSE Specialist Broker accused of securities fraud in two-week jury trial. *The Wall Street Journal* noted that the victory was the government's "first defeat in prosecutions of allegedly improper trading activity on the New York Stock Exchange." (*U.S. v. Scavone*, S.D.N.Y. 2006)
- Represented a multi-national corporation in connection with an internal investigation relating to irregularities in the management of employee benefit plans for the corporation's U.S. subsidiaries.
- Represented a leading education and finance company in connection with investigations of the student loan industry by the Attorneys General of ten States and various Congressional committees.

- Lead trial counsel in successful Section 1983 civil rights action against The State of New York.
- Represented a Big Four accounting firm in connection with litigation arising out of its audit of a company accused of orchestrating a $600 million Ponzi scheme.
- Represented a UK television auction channel in a trade secret misappropriation and breach of contract matter.
- Represented major soft-drink manufacturer in tortious interference and breach of contract matter.
- Won a motion to dismiss with prejudice for all defendants in a Rule 10b-5 class action, *In re eSpeed Securities Litigation*, No. 05 Civ. 2091 (S.D.N.Y. 2006).
- Won a motion to dismiss with prejudice for all defendants in a Rule 10b-5 action, *Abbad v. Amman*, 285 F. Supp. 2d 411 (S.D.N.Y. 2003); the decision was affirmed on appeal in *Abbad v. Amman*, No. 03-9169, 2004 U.S. App. LEXIS 21033 (2d Cir. Oct. 8, 2004).
- Won summary judgment for a major banking client in a lender liability action.

Education

- The George Washington University Law School, JD, with honors, 1998. Articles Editor, The George Washington Journal of International Law and Economics
- University of Pennsylvania, BA, magna cum laude with distinction, 1995.

Admissions

- US Court of Appeals for the Second Circuit 2010
- US District Court for the Northern District of Illinois 2009
- US Court of Appeals for the Tenth Circuit 2003
- US District Court for the Eastern District of New York 2000
- US District Court for the Southern District of New York 2000
- New York 1999

Activities

- Member, Board of Directors, The Legal Aid Society
- New York Lawyers for the Public Interest, Pro Bono Advisory Council, 2005 to date

News & Publications

- "Litigation: Notice anything new?," *InsideCounsel*, 31 May 2012
- "Litigation: Knowledge is power–for defendants," *Inside Counsel*, 10 May 2012
- "Litigation: Not much actual “say on pay” for shareholders," *Inside Counsel*, 26 April 2012
- "Litigation: Off-market securities likely no more domestic than their name suggests," *Inside Counsel*, 12 April 2012
- "Regulatory: Financial industry may get its wish to scrap the Volcker Rule," *Inside Counsel*, 15 March 2012
- "Litigation: SDNY Runs the Hurry-up Offense," *Inside Counsel*, 1 December 2011
- "Litigation: How the 2nd Circuit Opened the Door to Double Recovery," *Inside Counsel*, 17 November 2011
- "Litigation: Is FINRA Still Fine?," *Inside Counsel*, 27 October 2011

- "Litigation: Lost in Translation," *Inside Counsel*, 6 October 2011
- "Securities Investigations: Internal, Civil and Criminal," *Practising Law Institute*, October 2011
- "Litigation: Madoff and the SEC—A Loss for Private Litigants, With a Twist," *Inside Counsel*, 22 September 2011
- "Litigation: A 'Stern' Change in the Bankruptcy Landscape," *Inside Counsel*, 8 September 2011
- "Litigation: What Will Courts Say About 'Say-On-Pay'?," *Inside Counsel*, 25 August 2011
- "Litigation: Chasing Away Aiding and Abetting Liability," *Inside Counsel*, 11 August 2011
- "Litigation: Dodd-Frank: One Year Later," *Inside Counsel*, 28 July 2011
- "Mayer Brown Lawyers Win Two Asylum Cases," 9 June 2011
- "Litigation: Who is a Foreign Official Under the FCPA?," *Inside Counsel*, 2 June 2011
- "Litigation: Be Careful What You Ask for—You Might Have to Pay for it," *Inside Counsel*, 19 May 2011
- "Litigation: Materiality under the Securities Act," *Inside Counsel*, 5 May 2011
- "Litigation: Basic Principles," *Inside Counsel*, 21 April 2011
- "A Guide to the Guidance: A Primer on the UK Bribery Act's Newly Released Guidance," *Inside Counsel*, 1 April 2011
- "Between Whistle and Buzzer, There is Much to Be Done," *Inside Counsel*, 18 March 2011
- "Morrison Revisited – The Case That Keeps On Giving," *InsideCounsel*, 4 March 2011
- "An Unequal Playing Field?," *Inside Counsel*, 18 February 2011
- "Tracing Liability in the Aftermath of Madoff," *Inside Counsel*, 21 January 2011
- "2011: The Year of the Sheriff?," *Inside Counsel*, 7 January 2011
- "Wrapping Things Up for the Holidays," *Inside Counsel*, 24 December 2010
- "Legal Principles for Principals," *Inside Counsel*, 10 December 2010
- "Technology: Picketing Online – Has Protesting Become as Simple as Posting?," *Inside Counsel*, 26 November 2010
- "The 'Write' Way to Complain?," *Inside Counsel*, 12 November 2010
- "Give Us Your Tired, Your Poor, Your Aggrieved Foreign Securities Plaintiffs," *Inside Counsel*, 29 October 2010
- "The Privileged Few," *Inside Counsel*, 15 October 2010
- "There's No "I" in Pro Bono," *Inside Counsel*, 17 September 2010
- "Navigating the Shadowy Borderland Between Contract and Tort," *New York Law Journal*, 13 September 2010
- "Waiving (Goodbye to) Privilege Under Rule 502," *Inside Counsel*, 3 September 2010
- "Bank of New York Mellon Goes to Trial Over Sentinel," *BusinessWeek*, 19 April 2010
- "Mayer Brown Attorneys Secure Pro Bono Win for City of New York," 4 May 2009
- "Electronic Discovery Deskbook," *Practising Law Institute*, March 2009
- "Innocence Project Honors Mayer Brown," 12 May 2008
- "Is Booker a "Loss" for White-Collar Defendants?," 2/1/2008
- "Asher to Asher and Dust To Dust: The Demise of the PSLRA Safe Harbor?," *NYU Journal of Law & Business*, May 2005
- "Asher Roils PSLRA Safe Harbor," *New York Law Journal*, 22 February 2005
- "High Court Should Review Ruling on Securities Fraud 'Safe Harbor," *Washington Legal Foundation*, 3 December 2004

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012

- The Growing Bureaucracy: What Happens When They Knock on Your Door, Education Finance Council Annual Membership Meeting, 2011
- The Dodd-Frank Act's Impact on Securities Litigation and Enforcement - Chicago, 26 October 2010
- Managing the Preservation and Collection of Data on Custodians' Personal Email and Personal Devices, Managing the Preservation and Collection of Data on Custodians' Personal Email and Personal Devices, 2010
- International Discovery and Privacy, International Discovery and Privacy, 2009

MAYER·BROWN

Jason H. P. Kravitt

Partner

jkravitt@mayerbrown.com

New York
T +1 212 506 2622
F +1 212 262 1910

Chicago
T +1 312 701 7015
F +1 312 706 8161

"An incredible legal strategist and a fantastic leader."

"His academic and practical contribution to the field is outstanding,' say observers, adding that he 'wrote the book on securitization, literally' and 'has played a pivotal role in many regulatory initiatives.'" Chambers USA

Jason H.P. Kravitt is a partner based in New York at the international law firm of Mayer Brown, LLP, which is one of the 15 largest law firms in the world. He served as the Co-Chairman of the firm's Management Committee from June 1998 through June 2001 and served on that Committee form June 1997 until June 2009. Mr. Kravitt is also the founder of the firm's securitization practice (one of the most highly rated law firm securitization practices in each of the U.S., Europe and Asia, by Chambers Partners Rating Service ("Chambers") and all other law firm rating services) and senior partner in that practice, and participates in a variety of finance and regulatory related practices. Mr. Kravitt has participated in or chaired numerous professional and law school seminars and conferences on securitization and written numerous articles for legal journals and professional publications, is Editor of, and a contributing author to, the two-volume treatise, *Securitization of Financial Assets,* Aspen Law & Business (2d ed. 2011), generally accepted as the seminal treatise in the industry, is on the Advisory Boards of *The Financier, The Securitization Conduit* and *American Securitization* publications, is an Adjunct Professor of Law at each of Northwestern University Law School and New York University Law School, an Adjunct Professor of Finance at the Kellogg Graduate School of Management of Northwestern University, is a Fellow in the American College of Commercial Finance Lawyers and is a member of the Advisory Board to the Duke Global Capital Markets Center. Mr. Kravitt has been chosen by *Chambers* as one of the top 100 internationally prominent lawyers and one of the top securitization lawyers in New York City and by Euromoney Legal Media Group as one of the "Best of the Best" in Structured Finance for the U.S. He has also been listed in *Euromoney's Guides to the World's Leading Capital Markets Lawyers*. *Chambers* quotes industry observers as saying that "His academic and practical contribution to the field is outstanding," that he "wrote the book on securitization, literally" and "has played a pivotal role in many regulatory initiatives." Jason is listed as a "pre-eminent securitization lawyer" (*Chambers Global Guide*), and has been called a "landmark of the industry" (*Chambers USA* 2006) and "Jason Kravitt, who 'wrote the bible on securitization" (*Chambers USA* 2009). "An incredible legal strategist and a fantastic leader" (*Chambers USA* 2010) "Absolutely the number one lawyer in securitization" (Legal 500 2009 USA). "Commended for 'industry and regulatory knowledge, strength of counsel, and accuracy in prediction" (Legal 500 USA 2010). Jason was chosen by the *Financial Times* as one of the 10 most innovative lawyers in America in 2010 and as the best lawyer in securitzation in NYC by "Best Lawyers 2012 Lawyers of the Year."

Mr. Kravitt often represents industry groups such as large issuers of Asset-Backed Securities, sponsors of ABCP Conduits, SIFMA, the American Securitization Forum and the European Securitization Forum with regard to securitization regulatory initiatives, including, for example, the Basel Committee on Banking Supervision's Risk-Based Capital Consultative Papers, the F.F.I.E.C.'s Risk Based Capital projects, the F.A.S.B.'s Standards for Securitization, the F.A.S.B.'s Standard for Consolidation for SPEs, the S.E.C. amendments to Rule 2a 7 and the S.E.C.'s Regulation AB, and often helps to lead initiatives in the securitization industry during times of market or other stress. Mr. Kravitt is also one of the three founders and the former Deputy Chair of the U.S. Securitization Industry's premier trade association, the American Securitization Forum, and is a founder and the sole original member still serving on the Board of Directors of the European Securitization Forum.

Mr. Kravitt has helped the firm's clients to create some of the most significant securitization products used in the capital markets today, including the first partially enhanced multi-seller asset-backed commercial paper vehicle, in 1989, the first CLO, FRENDS, in 1988, and the Mortgage Partnership Finance Program for the Federal Home Loan Banks. Mr. Kravitt has worked for clients such as ABN, AIG, Ally Bank, Bank of America, Bank of New York Mellon, Barclay's Capital, BNP/Paribas, Calyon, CIBC, Citigroup, Commonwealth Bank of Australia, Credit Suisse, Deutsche Bank, EMI, GECC, GMAC, Goldman Sachs, HSBC, JP Morgan, Lehman Bros., Merrill Lynch, Morgan Stanley, PNC, Royal Bank of Canada, Societe Generale, UBS, Wachovia, Westpac, and similar banks and issuers throughout his career. Most recently, Mr. Kravitt was hired by the (i) Sponsoring Banks (Bank of America, Citigroup and JP Morgan) of the Master Liquidity Enhancement Conduit to help lead the structuring of that vehicle, designed to be a $100 billion rescue of the SIV industry and (ii) Citigroup and Morgan Stanley to help lead the structuring of Straight-A Funding LLC, the $60 billion conduit to help rescue the financing of Student Loans. He is also often hired to help financial institutions deal with serious regulatory issues or government investigations or to settle major litigation or potential litigation such as the Bank of New York Mellon's record-setting $8.5 billion settlement with Bank of America concerning 530 Countrywide RMBS trusts.

Mr. Kravitt has also served as Chairman of The Cameron Kravitt Foundation, a member of the Board of Managers of the Metropolitan Chicago YMCA, and a principal of Chicago United.

A Phi Beta Kappa graduate of The Johns Hopkins University in 1969 (where he has been Chairman of the Advisory Board to the Dean of the Krieger School of Arts & Sciences), Mr. Kravitt obtained his J.D. cum laude from Harvard Law School in 1972 and received a diploma in comparative law from Cambridge University in 1973.

Experience

- Creation of Straight-A Funding, LLC, a $60 billion asset-backed commercial paper conduit to finance the student loan industry with support from the Department of Education and the Federal Financing Bank.
- Creation of the form customer agreement documentation for the TALF program (and representing many of the primary dealers in their customer agreement negotiations) and several of the first TALF transactions.
- Represented industry groups such as large issuers of asset-backed securities, sponsors of ABCP Conduits, the Securities Industry and Financial Markets Association (SIFMA), and the European Securitization Forum with regard to securitization regulatory initiatives, including, for example, the Basel Committee on Banking Supervision's Risk-Based Capital Consultative Papers, the FFIEC's Risk-Based Capital projects, the FASB's new Standards for Securitization, SFAS #125 and #140, the FASB's Standard for Consolidation, Fin 46R, and SEC Amendments to Rule 2a-7 and Reg AB.
- Served as one of the organizers and senior officers of the securitization industry's trade association, the American Securitization Forum.

- Represented the Sponsoring Banks in structuring the $100 Billion SIV rescue vehicle, Master Liquidity Enhancement Conduit.
- Helped to create some of the most significant securitization products used in the capital markets today, including the first partially enhanced, multi-seller, asset-backed commercial paper vehicle in 1989 and the first CLO, FRENDS in 1988.

Education

- University of Cambridge, 1973. Diploma, Comparative Law
- Harvard Law School, JD, cum laude, 1972.
- The Johns Hopkins University, AB, 1969. Phi Beta Kappa

Admissions

- New York 2002
- Illinois 1974
- US Court of Appeals for the Seventh Circuit 1974

Activities

- The Johns Hopkins University Alumni Advisory Council, 1991-1997, Advisory Board to the Dean of the School of Arts & Sciences, 1999 to 2009; Chair 2006-2007
- The Johns Hopkins University Illinois Alumni Executive Committee, Chairman, 1990-1994
- The Cameron Kravitt Foundation, Director and Chairman, 1985 to date
- YMCA of Metropolitan Chicago, Board of Managers, 1999-2001
- Chicago United, Principal, 1997-2001
- Deputy Chair, American Securitization Forum
- Director, European Securitization Forum
- American Bar Association, Committee on Business Financing; Vice Chair Subcommittee on Securitization Litigation
- Chicago Bar Association Committees on Financial Institutions and Commercial Transactions
- Chicago Council of Lawyers
- New York City Bar Association, Subcommittee on Securitization
- Adjunct Professor of Law, Northwestern University School of Law
- Adjunct Professor of Finance, Kellogg Graduate School of Management of Northwestern University
- Fellow, American College of Commercial Finance Lawyers
- Advisory Board, The Financier and The Securitization Conduit, 1996 to date
- Advisory Board of The Securitization Conduit Publications
- Advisory Board, American Securitization
- Advisory Board, Duke University Capital Markets Center

News & Publications

- "Federal Reserve Board Approves Basel III Proposals and Market Risk Capital Rule," 8 June 2012
- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012

- "Legal 500 US ranks Mayer Brown in 32 categories, lists six practices in top tier and cites 16 “Leading Lawyers”," 31 May 2012
- "Proposed Regulations Implementing the Volcker Rule," 20 October 2011
- "Seven Mayer Brown partners named “Best Lawyers 2012 Lawyers of the Year”," 17 October 2011
- "Overview of the Proposed Credit Risk Retention Rules for Securitizations," 8 April 2011
- "What to Look for in Securitization Regulation in 2011," 30 March 2011
- "Courts Uphold MERS Serving as “Nominee” on Mortgage Instruments," 4 March 2011
- "Basel Committee Releases Final Text of Basel III Framework," 7 January 2011
- "US SEC Proposes Rules on ABS Warranty Repurchase Reporting," 6 October 2010
- "FDIC Adopts New Securitization Safe Harbors," 1 October 2010
- "Financial Reform and Securitization," 15 July 2010
- "Legal 500 US ranks Mayer Brown in 22 categories, lists 4 practices in top tier and cites 16 “Leading Lawyers”," 9 July 2010
- "FDIC Proposal Links Market Reform to the Securitization Safe Harbor," 18 May 2010
- "Summary of the US SEC’s ABS Rule Change Proposal," 21 April 2010
- "US SEC Proposes Massive ABS Rule Changes," 8 April 2010
- "US SEC Adopts Amendments to Rule 2a-7 Affecting Money Market Funds," 7 April 2010
- "FDIC Board Votes to Extend the Securitization Safe Harbor," 12 March 2010
- "Chambers Global Ranks 64 Mayer Brown Partners; Practices Ranked in 53 Categories in 2010 Edition," 10 March 2010
- "Basel II Modified in Response to Market Crisis," Winter 2010
- "Mortgage investors try to regroup after meltdown," *Associated Press*, 4 February 2010
- "Securitization of Financial Assets," *Aspen Law & Business (3rd ed.)*, 2010
- "A Peek at the Future of the FDIC Securitization Safe Harbor," 21 December 2009
- "US Bank Regulators Provide Only Transitional Risk-Based Capital Relief for Securitization Accounting Changes," 16 December 2009
- "Crucial Transitional Relief Under the FDIC Securitization Safe Harbor," 12 November 2009
- "FDIC extends securitization safe harbor," *Institutional Investor*, 12 November 2009
- "Mayer Brown Practices and Partners
  Ranked in 2010 Edition of IFLR1000," 9 October 2009
- "Moody's may bear brunt of rating agency mistrust," *Reuters*, 24 September 2009
- "Will the new accounting rules kill securitization?," *Source Media*, 21 September 2009
- "The Other Shoe Drops — US Bank Regulators React to Securitization Accounting Changes," 27 August 2009
- "Basel II Modified in Response to Market Crisis," 23 July 2009
- "Financial Regulation Reform and Securitization," 6 July 2009
- "Big Changes to Securitization Accounting," 22 June 2009
- "Chambers USA ranks 124 Mayer Brown lawyers; practices ranked in 55 national and state categories," 12 June 2009
- "Legal 500 US ranks Mayer Brown practices in 24 categories, lists 5 practices in top tier and cites 16 "Leading Lawyers"," 4 June 2009
- "Chambers Global Ranks 55 Mayer Brown Partners in 2009 Edition," 10 March 2009
- "International Financial Law Review ranks 20 Mayer Brown lawyers; 21 practices in IFLR1000," 6 November 2008
- "Credit Market and Subprime Distress: Responding to Legal Issues," November 2008
- "Legal 500 US ranks Mayer Brown practices in 27 categories, lists 6 practices in top tier and cites 13 "Leading Lawyers"," 17 June 2008

- "Chambers USA ranks 121 Mayer Brown lawyers; practices ranked in 63 national and state categories," 13 June 2008
- "Changing the Rules," *Mortgage Risk Magazine*, 2007
- "Securitization of Financial Assets (2nd Ed.)," *Aspen Law & Business*, 1996
- "Securitization of Project Finance Loans and Other Private Sector Infrastructure Loans," *The Financier*, February 1994
- "How Feasible Is the Securitization of Loans to Small and Medium-Sized Businesses," *Commercial Lending Review*, Fall 1993
- "Full Service Brokerage Activities and the Glass-Steagall Act," *The Review of Financial Services Regulation, Vol. 4, No. 7*, 6 April 1988
- "Combined Investment Advice and Securities Brokerage Activities: Full Service Brokerage Not a 'Public Sale' by Another Name," *The Ninth Annual Banking Expansion Institute*, 1988
- "Legal Issues in Securitization," *Journal of Applied Corporate Finance, No. 3, p. 61*, 1988
- "Defense Against Takeovers of Community Banks," *The National Law Journal, Vol. 9, p. 24*, 21 September 1987
- "Community Banks Can Deter and Defend Takeover Attempts," *The American Banker*, 25 March 1987
- "Mayer, Brown & Platt Financial Law Newsletter," 1986-1987

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Dodd-Frank: One Year Later, 27 July 2011

MAYER·BROWN

Edmund “Ed” Parker

Partner

eparker@mayerbrown.com
London

T +44 20 3130 3922

F +44 20 3130 8774

"an authority on complex OTC derivatives" Chambers UK 2012

Edmund Parker is head of the London office's Derivatives & Structured Products practice. He is also co-head of the firm's global Derivatives & Structured Products practice. He advises on complex OTC and structured credit, equity and commodity derivatives (including emissions trading), as well as insurance and pensions-linked derivative structures. He advises on distressed derivatives, together with our litigators and insolvency specialists; as well as advising on central clearing issues and derivatives regulation, together with our regulatory team.

Highly ranked as an individual, Ed ”is an authority on complex OTC derivatives, property and commodity derivatives” notes Chambers UK 2012. Legal 500 2011 again names Ed as a leading individual in derivatives and structured products and says that he is "willing to go the extra mile and gives clear, commercially focused advice". He "offers excellent levels of service, he has done a great job pushing the practice to the forefront among London firms" notes Legal 500 2010. He embodies its "fair, objective and rigorous approach" and “is well liked throughout the industry” (Legal 500, 2009). Chambers UK 2009 noted that he "would easily fit into any top-tier derivatives practice" and "has great expertise".

Ed has written extensively on derivatives matters (see "Publications"). He is the industry’s most widely published lawyer on the subject, with his views regularly sought by the press and on television. His written works include an acclaimed trilogy of derivatives books, consisting of, as sole author Credit Derivatives: Documenting and Understanding Credit Derivative Products, as sole editor Equity Derivatives: Documenting and Understanding Equity Derivative Products, and as co-editor Commodity Derivatives: Documenting and Understanding Commodity Derivative Products. He is currently co-writing a new book Equity Derivatives: A Practitioner’s Guide to the 2002 & 2011 ISDA Equity Derivatives Definitions, to be published late 2012. Ed is fluent in Spanish.

Education

- The College of Law, London, 1996. Legal Practice Course
- University of London, Queen Mary College, 1995. LLM, International Business Law
- Dundee University, 1994. LLB, (Hons)

Admissions

- England and Wales 1999

Activities

- Granted the Freedom of the Worshipful Company of Solicitors of the City of London
- Granted the Freedom of the City of London
- Member of PLC Finance (Practical Law Company) consultation board. Practical Law Company (PLC) is the leading provider of legal know-how, transactional analysis and market intelligence for lawyers. The consultation board comprises leading experts in Finance and related areas. They help to shape the service and are consulted on complex areas of law and emerging practice. Visit: http://finance.practicallaw.com/6-201-8986

News & Publications

- "Time to tighten the net on CDS?," *Financial News (subscription required)*, 21 May 2012
- "Derivatives desks prep for Greek exist," *IFR*, 21 May 2012
- "Traders resist calls to rewrite sovereign CDS documents," *Creditflux*, 1 May 2012
- "ISDA Master Agreement still needs tweaks," *Derivatives News*, 4 April 2012
- "DERIVATIVES: Judgement vindicates ISDA contract, but changes needed," *IFR*, 4 April 2012
- "Deutsche Börse's lawsuit and the banana market," *Financial News*, 26 March 2012
- "Lack of CDS compounds Greek bond pain," *Reuters*, 23 March 2012
- "Of plumbing and promises
  The back office moves centre stage," *The Economist*, 25 February 2012
- "Ministers step up fight to protect City from EU trading shake-up," *The Telegraph*, 14 February 2012
- "End of EU derivatives haggling sparks new concerns," *Reuters*, 10 February 2012
- "Derivatives Industry eyes UK Lehman appeal ruling," *Reuters*, 14 December 2011
- "Will they, won't they: Greek CDS trigger in question," *Reuters*, 26 October 2011
- "France's Sarkozy demands crackdown on commodity speculators," *China Post*, 16 June 2011
- "Why Emir and Mifid proposals go too far," *IFLR (subscription required)*, 2 June 2011
- "European Parliament recognises FX issues," *FX Week (subscription required)*, 30 May 2011
- "Antitrust rumblings over index ownership," *Financial Times (subscription required)*, 27 April 2011
- "Pension funds make last stand to avert clearing," *Euromoney (subscription required)*, April 2011
- "QCC Roils Options Market," *Markets Media (subscription required)*, 22 March 2011
- "Derivatives Regulation: Outlook for 2011 in the United States and Europe," *Derivatives Week*, 17 January 2011
- "Practical Derivatives: A Transactional Approach, (2nd ed.)," *Globe Business Publishing*, November 2010
- "E.U. Derivative Reforms: The Shape of Things to Come," *Legal Week*, 14 October 2010
- "Legal 500 UK ranks Mayer Brown in 49 categories, lists 2 practices in top tier and cites 18 "Leading Individuals"," 20 September 2010

- "EU Derivatives Reform," *Derivatives Week*, 20 September 2010
- "Financial regulation: Basel's buttress," *The Economist*, 16 September 2010
- "Derivatives Regulation: European Glee or a New Era of Global Regulatory Harmony?," 28 July 2010
- "Equity Derivatives:Documenting and Understanding Equity Derivative Products," *Global Law and Business*, July 2010
- "OTC Derivatives Regulation in 2010: What is it and what does it mean for Companies?," March 2010
- "S&P and Fitch Announce Special Designations for Structured Finance Ratings," 23 February 2010
- "2010: The Biggest Year in Derivatives Regulation Since 1733," *Mayer Brown*, 21 January 2010
- "Derivatives: their role in loan transactions," 13 January 2010
- "Cracks are emerging in transatlantic approach to reform," *Financial Times*, 6 January 2010
- "Securitization of Financial Assets," *Aspen Law & Business (3rd ed.)*, 2010
- "Regulating Derivatives: What's in Store for Europe and the US in 2010?," *Derivatives Week*, 28 December 2009
- "Mayer Brown advised SoFFin on the establishment of the first "bad bank" in Germany," 15 December 2009
- "Erste Bad Bank gegründet – Mayer Brown berät den SoFFin bei der Transaktion," 15 December 2009
- "Default swap reforms roiled as Aiful tests settlement," *Bloomberg*, 27 November 2009
- "Clearing – who decides?," *Financial Times*, 16 November 2009
- "Commodity Derivatives: Documenting and Understanding Commodity Derivative Products," *Globe Law & Business*, August 2010
- "Regulation of credit rating agencies in Europe," *Journal of International Banking & Financial Law*, July & August 2009
- "Proposed Reform of the OTC Derivatives Market: Turning "Weapons" into Plowshares," *The Journal of Structured Finance*, Summer 2009
- "EU Regulation of Credit Rating Agencies in Europe," 24 April 2009
- "The ISDA Master Agreement and CSA: Close-out Weaknesses Exposed in the Banking Crisis and Suggestions for Change," *Butterworths Journal of International Banking Law*, January 2009
- "Constant proportion debt obligations: what went wrong and what is the future for leveraged credit?," 30 November 2008
- "Mayer Brown Is Representing CIBC in $1.05 Billion Deal With Cerberus," 3 October 2008
- "Credit Derivatives: Documenting and Understanding Credit Derivative Products, 2007," October 2007
- "The 2003 ISDA Credit Derivatives Definitions," 6 March 2008
- "Practice Note: Credit Derivatives," February 2008
- "Credit Derivative Product Companies - A Primer," 28 January 2008
- "Mayer Brown is named "Securitisation Law Firm of the Year 2007" at the Global Derivatives and Securitisation Awards," 7 December 2007
- "Green Structured Products are Likely to Proliferate," *Mayer Brown*, 3 December 2007
- "Fair Wind for Eco ABS," June 2007
- "Anti-risk list: An Article on Using Derivatives to Manage the Deficits in Defined Benefit Pension Schemes," *The Lawyer*, 7 May 2007
- "Documenting credit default swaps on asset backed securities," 19 April 2007
- "Property derivatives documents due," 14 April 2007
- "Environmental ABS beckons," June 2007
- "Derivatives Uncovered: Swaps, Futures and all that Jazz," *PLC Magazine*, October 2005
- "Practice Note: 2003 ISDA Credit Derivatives Definitions," *PLC Magazine*, February 2008
- "ISDA's 2007 Property Index Derivatives Definitions: A Killer Application for the Property Index Derivatives Market?," *Real Estate Legal Alert*, May 2007

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Insurance and Reinsurance Legal Developments: Financial Convergence & Global Regulatory Updates, 17 April 2012
- Greek Sovereign Default: What Happens Next?, 18 May 2010
- Panel Discussion on Derivatives Regulation, 8 March 2010
- OTC Derivatives Market: An Update on Transatlantic Reform, 12 November 2009
- Proposed Reform of the OTC Derivatives Market: The Transatlantic Perspective, 17 September 2009

MAYER·BROWN

Andrew J. Pincus

Partner

apincus@mayerbrown.com

Washington DC

T +1 202 263 3220

F +1 202 263 5220

Andrew Pincus focuses his appellate practice on briefing and arguing cases in the Supreme Court of the United States and in federal and state appellate courts, as well as on developing legal arguments in trial courts.

Andy has argued 23 cases in the Supreme Court of the United States, four of them in the 2010 and 2011 Terms, including *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740 (2011). For his victory in *Concepcion*, Andy was named Litigator of the Week by the *American Lawyer* and Appellate Lawyer of the Week by *The National Law Journal*. Andy's work in *Concepcion* and successful defense of Chicago Mayor Rahm Emanuel's right to run for office were cited by the *American Lawyer* in its article naming Mayer Brown as one of the top six US litigation firms in the 2012 Litigation Department of the Year report.

A former Assistant to the Solicitor General in the United States Department of Justice (1984-1988), Andy co-founded and serves as co-director of the Yale Law School's Supreme Court Advocacy Clinic (2006-present), which provides pro bono representation in 10-15 Supreme Court cases each year.

According to *Legal 500*, Andy "is an 'excellent Supreme Court oralist'" (2011) and "is cited by clients as 'a total superstar' who is 'unbelievably smart,' and who 'objectively belongs on any list of leaders'" (2008). *Chambers USA* reports that Andy is "a superb lawyer who is involved in lots of influential cases" (2010) and "is commended for his 'masterful performances'" before the Supreme Court (2009). Andy's appellate experience has also won him recognition in *The Best Lawyers in America* (2006-2012).

Andy has filed briefs in more than 150 cases in the Supreme Court. His Supreme Court oral arguments are available here. A selection of his appellate briefs is available here.

Andy also advises clients on legislative and regulatory matters. In 2011, Andy testified before Congressional committees regarding patent reform legislation, the new Consumer Financial Protection Bureau, and the Supreme Court's decisions in cases involving businesses. Andy also successfully represented clients in connection with passage of the Private Securities Litigation Reform Act.

While serving as General Counsel of the United States Department of Commerce (1997-2000), Andy had principal responsibility for the Digital Millennium Copyright Act and the Electronic Signatures in Global and National Commerce Act. He also participated in formulation of policy concerning intellectual property protection, privacy, domain name management, taxation of electronic commerce, export controls, international trade, and consumer protection.

Before rejoining Mayer Brown, Andy served as General Counsel of Andersen Worldwide S.C. Following law school graduation, Andy was Law Clerk to the Honorable Harold H. Greene, United States District Court for the District of Columbia (1981-1982), after which he practiced with another major law firm in Washington.

Education

- Yale University, BA, cum laude, 1977.
- Columbia Law School, JD, 1981. Notes & Comments Editor, Columbia Law Review, James Kent Scholar; Harlan Fiske Stone Scholar

Admissions

- District of Columbia
- New York
- US Court of Appeals for the District of Columbia Circuit
- US Court of Appeals for the Eleventh Circuit
- US Court of Appeals for the Federal Circuit
- US Court of Appeals for the Fifth Circuit
- US Court of Appeals for the First Circuit
- US Court of Appeals for the Fourth Circuit
- US Court of Appeals for the Ninth Circuit
- US Court of Appeals for the Second Circuit
- US Court of Appeals for the Seventh Circuit
- US Court of Appeals for the Third Circuit
- US Supreme Court

Activities

- Andy served as a member of the Advisory Commission on Electronic Commerce established by the Internet Tax Freedom Act, 1999-2000

News & Publications

- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "Voting-Rights Surprise at High Court May Foreshadow Health Care," *Bloomberg*, 7 June 2012
- "California Appellate Court Issues Major Decision on Enforceability of Arbitration Agreements in Employment Context," 6 June 2012
- "A return ticket to SCOTUS? The 2nd Circuit declines to rehear AmEx decision," *Thomson Reuters News & Insight*, 31 May 2012
- "Legal 500 US ranks Mayer Brown in 32 categories, lists six practices in top tier and cites 16 “Leading Lawyers”," 31 May 2012
- "Enforceability of Arbitration Agreement in Antitrust Context Sharply Divides Second Circuit," 30 May 2012
- "'Concepcion,' one year later," *The National Law Journal*, 28 May 2012
- "Depends on how you define access," *Thomson Reuters News & Insight*, 25 May 2012

- "The Advantages of Arbitration," *New York Times DealBook*, 24 May 2012
- "Solicitor general's performance inspires both critics and defenders," *MSNBC*, 27 April 2012
- "Dukes-ing it out: Wal-Mart versus Concepcion, one year later," *Thomson Reuters News & Insight*, 27 April 2012
- "Health Care Law Oral Argument Preview," 14 March 2012
- "Concepcion and the Arbitration of Federal Claims," *Bloomberg Law*, 2 March 2012
- "Concepcion and the Arbitration of Federal Claims," *Bloomberg Law*, 29 February 2012
- "Federal Appeals Court Refuses To Enforce Agreement To Arbitrate Antitrust Claim On An Individual Basis," 10 February 2012
- "Barriers to Justice and Accountability: How the Supreme Court's Recent Rulings Will Affect Corporate Behavior," 28 June 2011
- "Supreme Court: 2010-11 term in review," *USA Today*, 27 June 2011
- "In these cases, the waiting is the hardest part," *National Law Journal*, 11 May 2011
- "U.S. Supreme Court Issues Opinion in AT&T Mobility LLC v. Concepcion," 28 April 2011
- "Law Experts Call For Flexible Patent Legislation," *National Journal*, 10 March 2011
- "LoL, BTW ... My Boss Is Monitoring Every Text That I Send, ;)," *ALM*, 19 April 2010
- "Stevens' Departure Leaves Big Shoes to Fill at High Court," *ALM*, 12 April 2010
- "Obama's statement on Stevens," *ALM*, 9 April 2010
- "Justices to Consider a Border Battle Over Lawsuits," *ALM*, 29 March 2010
- "US consumer protection proposals attacked," *Financial Times*, 18 March 2010
- "Top 10 lobbying fights over financial reform overhaul legislation," *The Hill*, 16 March 2010
- "House deal bolsters defense of preemption," *Source Media*, 11 December 2009
- "Eight Mayer Brown Partners named to Washingtonian's Top Lawyers List," 7 December 2009
- "Congress goes full bore on governance legislation," *Compliance Week*, 17 November 2009
- "Justices to study patents on business methods," *Wall Street Journal Online*, 9 November 2009
- "Can you patent an idea?," *CNBC*, 6 November 2009
- "Making Sausage," *The Deal*, 2 October 2009
- "Corporate Disputes Dominate the Docket as a New Justice Joins the Court," *ALM*, 28 September 2009
- "Preview of major business cases in Supreme Court's 2009-2010 term," *BusinessWeek*, 24 September 2009
- "The cert pool: Sotomayor joins it, lawyers attack it," *ALM*, 21 September 2009
- "Guest perspective: Sotomayor stumped only once," *Wall Street Journal Online*, 17 July 2009
- "Sotomayor may get hardball questions from her own party," *Wall Street Journal Online*, 10 July 2009
- "Andrew Pincus quoted on Ricci decision," *Multiple News Outlets*, 29 June 2009
- "A Different Approach to Antimonopolization Enforcement for the Obama Administration," 25 June 2009
- "Chambers USA ranks 124 Mayer Brown lawyers; practices ranked in 55 national and state categories," 12 June 2009
- "US Supreme Court Grants Certiorari in Bilski," 2 June 2009
- "Antitrust's Big Break," *BusinessWeek*, 11 May 2009
- "Mayer Brown Captures Victory at the Supreme Court in Immigration Law Case," 3 March 2009
- "Among business cases, pre-emption looms large," *The National Law Journal*, 22 September 2008
- "Many familiar faces to appear before justices," *The National Law Journal*, 22 September 2008
- "Chambers USA ranks 121 Mayer Brown lawyers; practices ranked in 63 national and state categories," 13 June 2008
- "*Legal Times* Quotes Mayer Brown Partner Andy Pincus On Supreme Court Patent Case," 9 June 2008

- "Mayer Brown on winning side in three Supreme Court decisions relating to federal preemption of state law," 26 February 2008
- "Mayer Brown Attorneys Named In *The Washingtonian's* Big Guns: 800 Top Lawyers," 28 November 2007
- "Mayer Brown Holds First Annual Pro Bono Awards Program," 15 November 2007
- "Southern Center for Human Rights Honors Mayer Brown For Guantanamo Work," 7 November 2007
- "Antitrust and the Roberts Court," *Antitrust Magazine*, Fall 2007
- "National Law Journal Quotes Andy Pincus in Article On Law School Supreme Court Clinics," 1 August 2007
- "NLADA Honors Mayer, Brown, Rowe & Maw For Guantanamo Work," 20 June 2007
- "Andy Pincus Quoted In *Washington Post* Commenting On Supreme Court Decision In *Sole v. Wyner*," 5 June 2007
- "*USA Today* Quotes Andy Pincus on Supreme Court Arguments," 10 April 2007
- "Andy Pincus Argues Important Constitutional Case in Supreme Court," 28 February 2007
- "Andy Pincus comments on the impact of Supreme Court decisions on the business community," 11 January 2007
- "Mayer, Brown, Rowe & Maw Announces Formation of Congressional Oversight Strategy Group," *Mayer, Brown, Rowe & Maw LLP*, 5 January 2007
- "Andy Pincus comments on the school desegregation cases," *Legal Times*, 4 December 2006
- "Under Threat - Supreme Court Should Tell Judges to Balance Equities Before Squashing Infringers with Injunctions," *Legal Times*, 27 March 2006

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- 24th Annual General Counsel Conference, 12 June 2012 - 13 June 2012
- *Concepcion* After One Year: The Changed World of Arbitration and Class Actions, 15 May 2012
- Arbitration after *AT&T Mobility v. Concepcion*: Judicial, Regulatory and Strategic Legal Responses to High Court's 2011 Ruling, 8 May 2012
- Affordable Care Act Cases, 2 April 2012
- Health Care Law Oral Argument Preview, 13 March 2012
- Prepping For Judicial Surgery: A Crash Course on Healthcare Reform In the U.S. Supreme Court, 13 March 2012
- Concepcion versus the NLRB: How Should Employers React to the NLRB's D.R. Horton Decision, 19 January 2012
- Consumer Financial Protection Bureau: The First Three Months and Expectations for the New Year, 17 November 2011
- Supreme Court and Business: Assessing this Term's Decisions and Looking Forward to Next Term's Docket, 29 June 2011
- Class Actions and Arbitration Agreements: The Impact of the Supreme Court's Decision in *AT&T Mobility v. Concepcion*, 4 May 2011
- Advertising Law & Public Policy Conference, 15 March 2011 - 16 March 2011
- Symposium on Intellectual Property, 3 March 2011
- Emerging Challenges Facing US Accounting Firms – Chicago, 24 February 2011
- Emerging Challenges Facing US Accounting Firms – New York, 15 February 2011
- Supreme Court and Business: Assessing this Term's Decisions and Looking Forward to Next Term's Docket, 8 July 2010

- Impact of the Supreme Court's "Honest Services" Ruling, 28 June 2010
- The Most Important Supreme Court Business Decision You Haven't Heard Of, August 03, 2009
- Drafting Enforceable Arbitration Agreements and Recent Trends in Arbitration Law, August 06, 2008

MAYER·BROWN

Jerome J. Roche

Partner
jroche@mayerbrown.com
Washington DC

T +1 202 263 3773

F +1 202 762 4226

Jerome Roche is a regulatory attorney whose practice focuses primarily on cross-border financial services matters. He has extensive experience counseling clients regarding the US federal securities laws, the Commodity Exchange Act, the Commodity Futures Modernization Act, the Gramm-Leach-Bliley Act, the USA PATRIOT Act, and the Dodd-Frank Act. According to Chambers USA 2011, Jerome is considered by clients to be "very quick on his feet." He also received a Martindale-Hubbell 2011 peer review rating of AV-Preeminent.

Prior to joining Mayer Brown in 2007, Jerome was an Associate General Counsel of TIAA-CREF and Chief Legal Officer of the firm's wholesale broker-dealer group (2005–2007). Earlier, he worked in the broker-dealer compliance and regulation group of another prominent law firm in Washington, DC (2000–2005) and, from 1997 to 2000, he served as Attorney-Adviser to the Securities and Exchange Commission's Division of Market Regulation.

Experience

- Addressing regulatory status questions for US and non-US financial institutions effecting transactions in, and providing advice with respect to, securities, commodities, foreign currency and derivatives;
- Drafting and implementing supervisory and compliance policies and procedures for regulated financial institutions;
- Counseling customers and other counterparties of US broker-dealers regarding customer protection rules, broker-dealer insolvencies, and the Securities Investor Protection Act;
- Seeking required approvals for mergers, acquisitions and restructurings of regulated financial institutions; and
- Guiding financial institutions and trade associations in complying with, and commenting on, rule-making efforts of the Securities and Exchange Commission, the Commodity Futures Trading Commission, Financial Industry Regulatory Authority, the National Futures Association, and other self-regulatory organizations.

Education

- Purdue University, BS, 1992.
- The University of Michigan Law School, JD, 1997.

Admissions

- District of Columbia 2000
- Illinois 1997

Activities

- National Hispanic Bar Association

News & Publications

- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "The New CFTC and SEC Swap “Entity” Definitions—Highlights," 30 April 2012
- "“Net Worth” Standard for Accredited Investors Further Amended by US Securities and Exchange Commission," 4 January 2012
- "Proposed Regulations Implementing the Volcker Rule," 20 October 2011
- "US Securities and Exchange Commission Adopts Large-Trader Reporting System," 9 August 2011
- "US Securities and Exchange Commission Adopts New Exemptions for Investment Advisers," 15 July 2011
- "Financial Reform and Securitization," 15 July 2010
- "US SEC Amends Custody Rule for Registered Investment Advisers," 14 June 2010
- "Foreign Account Tax Compliance Act of 2009," 20 April 2010
- "US SEC Adopts Amendments to Regulation SHO," 26 February 2010
- "US SEC Adopts Significant Changes to Custody Rule for Registered Investment Advisers," 21 December 2009
- "OTC Derivatives—In the Crosshairs of US Legislative and Regulatory Change Part III: An Update," 1 September 2009
- "US SEC Again Revisits the Regulation of Short Sales," 18 August 2009
- "US SEC Takes Additional Action to Address Short Sales," 29 July 2009
- "US SEC Proposes Significant Changes to Custody Rule for Registered Investment Advisers," 19 June 2009
- "US Securities and Exchange Commission Considers New Short Selling Regulation," 15 April 2009
- "International Financial Law Review ranks 20 Mayer Brown lawyers; 21 practices in IFLR1000," 6 November 2008
- "Regulation R: The Beginning of the End or the End of the Beginning for Bank Brokerage Activities?," *NC Banking Institute Journal*, Spring 2008
- "Mayer, Brown, Rowe & Maw Adds New Financial Services Partner," 22 March 2007
- "Broker-Dealer 101: An Introduction to the Law and Lore of Securities Brokers and Dealers," *The Investment Lawyer*, 1 July 2003
- "New Contours of Bank Securities Activities: The “Dealer” Push-Out Rules," *The Banking Law Journal*, May 2003
- "Safe Harbour for Swaps," *UK Risk and Reward*, December 2001
- "Broker-Dealer Regulation," *Practising Law Institute*,

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Lehman Bankruptcy and Client Monies, 10 May 2012
- Implementation of the Dodd-Frank Act – Implications for Internationally Headquartered Banking Organizations: Part 2: Implementation of Other Key Provisions of Dodd-Frank for International Banks, 12 April 2011
- Tax and Securities Law Issues Associated with Serving US Clients, Presented at the OffshoreAlert Conference in Miami, April 2011
- Understanding the New Financial Reform Legislation, 12 July 2010
- US Equity Market Structure, June 2010
- Broker-Dealer Fundamentals, Mayer Brown Investment Management and Regulatory University (May 2010, May 2009 and May 2008), 1 May 2010
- Managing the Risks in Serving US Clients: What Every Non-US Financial Institution Needs to Know in Today's Environment, October 21, 2009
- Short Selling: Upticks, Down-Bids and Circuit Breakers? Now What?, Presented as a webinar with Eric Finseth on behalf of the Practising Law Institute, October 2009
- Bloomberg TV, Subject matter expert on short selling issues., September 2008
- Short Selling: Has it Been Stopped Short? Now What?, Presented as a webinar with Eric Finseth on behalf of the Practising Law Institute, October 2008
- Dealer Overview, Presented at the ALI-ABA Broker-Dealer Conference, January 2005
- Regulation of Broker-Dealers, Presented as part of the DC Bar CLE Program, March 2003

MAYER·BROWN

Richard M. Rosenfeld

Partner

rrosenfeld@mayerbrown.com

Washington DC

T +1 202 263 3130

F +1 202 263 3300

Richard M. Rosenfeld is co-lead of Mayer Brown's US Securities Litigation & Enforcement group working from both the Washington, DC and New York offices.

Richard has nearly 17 years of experience practicing in the securities field, including more than a decade in government regulatory and enforcement positions. Most recently, he was asked to return to the government from private practice in the midst of the financial crisis to serve as Chief Investigative Counsel in the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP).

In his role at SIGTARP, Richard helped build and lead a team of top white collar, securities and bank fraud specialists tasked with conducting criminal and civil investigations into some of the most complex bank, securities and mortgage frauds in US history. He managed more than 80 lawyers, federal agents, accountants and analysts pursuing more than 150 investigations. Additionally, he led SIGTARP's involvement in several of the TARP-related bailout programs, including the investment management agreements for the more than $100 billion Public/Private Investment program.

In private practice, Richard represents financial institutions, funds, companies and individuals in a variety of business, regulatory and compliance issues. He advises on transactions, policies and procedures, investigations, regulatory enforcement and litigation before the SEC, other financial services regulators and the US Department of Justice. These matters typically involve allegations of fraud, whether it be financial reporting violations, insider trading, market manipulation, or other regulatory or compliance issues. Richard has substantial securities litigation experience in the federal courts, in addition to leading internal investigations and advising clients on regulatory compliance, corporate governance and other SEC-related issues.

Earlier in his career, he served in the Division of Enforcement at the SEC. During his time with the Commission, he handled some of the most complex securities frauds in SEC history and was detailed as a special prosecutor to multiple US Attorney's offices across the country to assist in matters involving cross border money laundering, tax evasion and securities, bank, mail and wire fraud. He ended his career with the Commission as the first and only internationally based SEC representative in London where he organized, managed and directed one of the largest multinational financial fraud litigations in SEC history and worked with the highest ranking regulators of several countries to address cooperation in international securities matters.

Richard was a partner at two prominent firms in London and Washington, DC prior to his return to the government to assist with the bailout.

Education

- Rutgers University, BA, with highest honors
- Cornell Law School, JD

Admissions

- District of Columbia 1997
- Connecticut 1995
- Maryland 1995

News & Publications

- "A Post-Morrison Standard For 'Domestic Transactions'," *Law360*, 10 May 2012
- "US Court of Appeals for the Second Circuit Clarifies Standard for “Domestic Transactions” Prong of *Morrison*," 23 April 2012
- "Southern District Court Rejects Plaintiffs’ Bid to Conceal Identities of Confidential Witnesses," 8 March 2012
- "Second Circuit Rejects Application of RICO to Foreign Criminal Enterprises," 8 February 2012
- "California District Court Dismisses Securities Claims Against Chinese Corporation for Failure to Plead Falsity," 21 December 2011
- "The Season of Subpoenas," 29 June 2011

Events

- 6th Annual Investment Management Regulatory University - Chicago, May 24, 2012
- 6th Annual Investment Management Regulatory University - New York, May 22, 2012
- The FSA’s Fine of Einhorn and Greenlight—What US-Based Traders Must Know About EU Insider Dealing Laws, 16 February 2012
- Accountants’ Liability: Current Challenges – Chicago, 1 February 2012
- Accountants’ Liability: Current Challenges – New York, 25 January 2012
- Consumer Financial Protection Bureau: The First Three Months and Expectations for the New Year, 17 November 2011
- Anti-Corruption Compliance for Private Equity and Hedge Funds, 8 November 2011
- Dodd-Frank: One Year Later, 27 July 2011

MAYER·BROWN

David R. Sahr

Partner

dsahr@mayerbrown.com
New York

T +1 212 506 2540

F +1 212 849 5540

David Sahr advises domestic and foreign financial institutions on establishing and expanding their operations in the United States as well as on related regulatory, enforcement and compliance matters. He represents banks and their affiliates before federal and state agencies, including the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Securities and Exchange Commission. He assists financial institutions in the development and sale of new products including compliance with state and federal banking, securities and commodities laws. David also advises and represents foreign banks on federal legislative developments affecting their US banking and non-banking operations.

Experience

- Represented a foreign bank in the establishment of a US bank subsidiary including obtaining regulatory approvals from the chartering authority, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System.
- Represented a foreign bank in acquiring a US energy trader including obtaining approval of the Board of Governors of the Federal Reserve System for authority to engage in activities that are “complementary” to activities that are financial in nature.
- Represented a foreign bank in complying with banking, securities and other laws in connection with the development and sale of complex financial products and structures.
- Represented foreign and domestic banks in complying with Bank Secrecy Act requirements and in responding to enforcement actions brought by federal banking agencies.
- Represented several foreign banks in establishing branches, agencies and representative offices in the United States.

Education

- Georgetown University, BS, magna cum laude, 1976.
- The London School of Economics and Political Science, MS, 1977.
- Georgetown University Law Center, JD, magna cum laude, 1982.

Admissions

- District of Columbia 1982

News & Publications

- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "The New CFTC and SEC Swap “Entity” Definitions—Highlights," 30 April 2012
- "Proposed Regulations Implementing the Volcker Rule," 20 October 2011
- "US Securities and Exchange Commission Adopts Large-Trader Reporting System," 9 August 2011
- "Dodd-Frank Title VII (Swaps) Effectiveness—July 16 and Beyond," 14 June 2011
- "US FDIC and Federal Reserve Propose Rule on Resolution Plans and Credit Exposure Reports," 2 May 2011
- "US Treasury to Impose Requirement on US Correspondent Banks to Obtain Iran-Related Information from Foreign Banks," 29 April 2011
- "Comments Requested on Proposed “Key Definitions” of the Wall Street Transparency and Accountability Act," 23 August 2010
- "Financial Reform and Securitization," 15 July 2010
- "The Volcker Rule: Proprietary Trading and Private Fund Restrictions," 30 June 2010
- "The Volcker Rule: Implications for Private Fund Activities," 10 June 2010
- "Foreign Account Tax Compliance Act of 2009," 20 April 2010
- "Bankaufsichtsrecht - Entwicklungen und Perspektiven," 15 December 2009
- "Technical Amendments to FDIC Rules Could Have Significant Impact on Uninsured US Branches of Non-US Banks," 10 September 2009
- "OTC Derivatives—In the Crosshairs of US Legislative and Regulatory Change Part III: An Update," 1 September 2009
- "FDIC Adopts Modified Policy Statement on Private Equity Investments in Failed Banks," 26 August 2009
- "FDIC Proposes a Hard Line on Private Equity Investments in Failed Banks," 2 July 2009
- "Client Update: Obama Administration Proposes Comprehensive Changes to Financial Services Regulation," 18 June 2009
- "Chambers USA ranks 124 Mayer Brown lawyers; practices ranked in 55 national and state categories," 12 June 2009
- "National Regulatory System Proposed for US Insurance Industry," 14 May 2009
- "Treasury Department Releases Details on Public-Private Partnership Investment Program," 26 March 2009
- "Equity Investments in Banks and Nonbanks," 22 October 2008
- "Chambers USA ranks 121 Mayer Brown lawyers; practices ranked in 63 national and state categories," 13 June 2008
- "Must Private Banking Be "Pushed" Out of Banks? - Implications of the SEC's Proposed Regulation B," *The Investment Lawyer*, September 2004
- "U.S. Anti-Money Laundering Legislation," *Law and Business Review of the Americas*, Fall 2002
- "The EC's Single Banking Market and Its Implications for the U.S. Financial System: Section C of the ABA's EC 1992: Reciprocity and Market Access Issure for Financial Services," *ABA Division for Professional Development*, 1992

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Volcker Conformance Period and Impact on CP Conduits, 3 May 2012
- Fundamentals of Swaps and Other Derivatives 2011, 17 October 2011

- Proposed Regulations Implementing the Volcker Rule, 11 October 2011
- Dodd-Frank: One Year Later, 27 July 2011
- Implementation of the Dodd-Frank Act – Implications for Internationally Headquartered Banking Organizations: Part 2: Implementation of Other Key Provisions of Dodd-Frank for International Banks, 12 April 2011
- Implementation of the Dodd-Frank Act – Implications for Internationally Headquartered Banking Organizations: Part 1: OTC Derivatives Regulation and the Volcker Rule, 5 April 2011
- Strategies for Dealing with Financial Asset Businesses and Portfolios – Part III: Joint Ventures and Restructurings for Financial Asset Businesses and Distressed Portfolios, 22 March 2011
- Hot Topics in Insurance Regulation, 30 September 2010
- Federal Reserve Compensation Guidance and Executive Compensation Under Dodd-Frank, 23 September 2010
- The Implications of the Volcker Rule, 17 June 2010

MAYER·BROWN

Vikram Sidhu

Counsel

vsidhu@mayerbrown.com
New York

T +1 212 506 2105

F +1 212 262 1910

Vikram Sidhu is Counsel in Mayer Brown's New York office. He focuses on insurance and reinsurance corporate and regulatory matters, mergers and acquisitions, and general corporate and commercial matters.

Vikram regularly assists clients on structuring and documenting complex transactions, including insurance and reinsurance arrangements, credit enhancements, financial reinsurance, new product development, run-off solutions and exit strategies, portfolio transfers, and mergers and acquisitions focusing on run-off, closed-block businesses and assumption transactions. He advises clients on various insurance regulatory issues, including licensing, change of control, credit for reinsurance, risk transfer, permissible investments under insurance investment laws and related collateralization requirements.

In addition, Vikram's prior broad-based experience includes various types of corporate and commercial transactions, such as mergers and acquisitions, corporate reorganizations, and commercial contracts (supply, distribution, agency, licensing and services agreements), as well as litigations, arbitrations and government investigations.

Experience

- Represented ACE Limited in its acquisition of Rain and Hail Insurance Service, Inc.
- Represented ACE Limited in its acquisition of Penn Millers Holding Corporation.
- Represented Guggenheim Life and Annuity Company in connection with its acquisition, through reinsurance, of $1.7 billion of policies and corresponding reserves and related assets from Standard Life Insurance Company of Indiana as part of Standard Life's court-ordered rehabilitation.
- Representing Guggenheim Partners, LLC in the acquisition of EquiTrust Life Insurance Company from FBL Financial Group, Inc. (pending).
- Represented Deutsche Bank Securities and Embarcadero Re as lead counsel and issuer's counsel in connection with a $150 million catastrophe bond, the proceeds of which collateralize a reinsurance agreement with the California Earthquake Authority.
- Represented reinsurance and insurance companies on all aspects of reinsurance transactions.
- Represented buyers and sellers of runoff portfolios and discontinued insurance businesses.
- Represented a joint venture formed by Mauritius-based affiliates of Walton Street Capital and Starwood Capital Group in the negotiation of a joint venture with Indian property developer, Shriram Properties Limited.
- Represented Creation Investments in its investment in the mobile banking technology sector in India.

Education

- Cornell University, BA, magna cum laude, 1997.
- Harvard Law School, JD, 2001.

Admissions

- New York 2002

News & Publications

- "Dodd-Frank Act," *Informa UK Ltd*, 30 July 2010
- "Another World: More Reinsurers are Dipping their Toes into the Microinsurance Market," *Best's Review, Vol. 110 Issue 4*, August 2009
- "The Rescue of AIG and the Impact on Insurance Regulation," *Journal of Reinsurance, Vol. 16 No. 3*, Summer 2009
- "US Federal Government's Financial Assistance for AIG: An Overview," *Corporate Rescue and Insolvency, Vol. 2.1*, February 2009

MAYER·BROWN

Jeffrey P. Taft

Partner
jtaft@mayerbrown.com
Washington DC

T +1 202 263 3293

F +1 202 263 5293

Jeffrey Taft is a regulatory attorney whose practice focuses primarily on banking regulations, bank receivership and insolvency issues, payment systems, consumer financial services, privacy issues and anti-money laundering laws. He has extensive experience counseling financial institutions, merchants and other entities on various federal and state consumer credit issues, including compliance with the Consumer Financial Protection Act, Truth-in-Lending Act, the Fair Credit Reporting Act, the Electronic Fund Transfer Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, the Real Estate Settlement Procedures Act, state and federal unfair or deceptive practices statutes, the Bank Secrecy Act, the USA PATRIOT Act, OFAC regulations and other anti-money laundering laws; and the creation and implementation of privacy and information security programs under Title V of the Gramm-Leach Bliley Act and state privacy laws.

Jeff regularly represents banks, bank holding companies, trust companies and other financial service providers on regulatory matters, including the development and operation of multi-state fiduciary, deposit and credit card programs. He has also advised merchants and financial services companies on issues relating to credit cards, debit cards, gift cards, wire and ACH transfers and other payment products.

Prior to joining the Washington, DC office of Mayer Brown in 1998, Jeff held a senior position with a prominent Ohio law firm.

Experience

- Advised several diversified financial services companies in connection with data security breaches and their security breach response plans and procedures.
- Represented several clients in evaluating alternative structures for delivering consumer financial services and chartering industrial loan corporations, thrifts and banks.
- Advised investment banks, and other secondary market participants on federal, state and local predatory lending laws and assignee liability.
- Advised several financial services companies on interest rate exportation, preemption and licensing issues in connection with their multi-state consumer lending programs.

Education

- Tulane University, BA, 1989.

- University of Pittsburgh School of Law, JD, cum laude, 1992.
- Harvard Law School, LLM, 1993.

Admissions

- District of Columbia 2001
- Ohio 1994
- New York 1993

Activities

- American Bar Association: Business Law Section, Cyberspace Law, Banking Law and Consumer Financial Services subcommittees
- New York State Bar Association: Business Law Section

News & Publications

- "Chambers USA 2012 ranks 124 Mayer Brown lawyers and ranks practices in 54 nationwide and state categories," 7 June 2012
- "Proposed Regulations Implementing the Volcker Rule," 20 October 2011
- "US FDIC and Federal Reserve Propose Rule on Resolution Plans and Credit Exposure Reports," 2 May 2011
- "Upcoming Action with Respect to the Orderly Liquidation Authority under the Dodd-Frank Act," 14 January 2011
- "Mayer Brown advise J.P. Morgan on purchase of Canary Wharf Group's 25 Bank Street building," 23 December 2010
- "FDIC Adopts New Securitization Safe Harbors," 1 October 2010
- "Many Trust Preferred Securities Will Cease to Qualify for Tier 1 Capital Under the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)," 12 July 2010
- "Is Data Breach Litigation a Continuing Threat?," 12 July 2010
- "Tip of the Month, June 2010 - Protecting Confidential Electronically Stored Information," 30 June 2010
- "FDIC Proposal Links Market Reform to the Securitization Safe Harbor," 18 May 2010
- "FDIC Board Votes to Extend the Securitization Safe Harbor," 12 March 2010
- "Chambers Global Ranks 64 Mayer Brown Partners; Practices Ranked in 53 Categories in 2010 Edition," 10 March 2010
- "Mayer Brown advises OneBeacon in sale of personal lines insurance business," 2 February 2010
- "Securitization of Financial Assets, Jason H. P. Kravitt, ed.," *Aspen Publishers*, 2010
- "Recent U.S. Financial Reforms Affecting Structured Finance: Missing the Mark or Too Soon to Tell," *Journal of Structured Finance*, Fall 2010
- "A Peek at the Future of the FDIC Securitization Safe Harbor," 21 December 2009
- "Crucial Transitional Relief Under the FDIC Securitization Safe Harbor," 12 November 2009
- "FDIC Adopts Modified Policy Statement on Private Equity Investments in Failed Banks," 26 August 2009
- "FDIC Proposes a Hard Line on Private Equity Investments in Failed Banks," 2 July 2009
- "Client Update: Obama Administration Proposes Comprehensive Changes to Financial Services Regulation," 18 June 2009
- "American Recovery & Reinvestment Act Significantly Impacts HIPAA," 12 March 2009

- "Treasury Department Announces Specifics of Capital Assistance Program," 2 March 2009
- "Other Emergency Economic Stabilization Act Provisions," *Practising Law Institute*, 2009
- "Related Financial Rescue Provisions, Chapter 7," *Practising Law Institute*, 2009
- "The Federal Financial Markets Rescue, Charles Horn, ed.," *Practising Law Institute*, 2009
- "Disclosure Better than Limiting Credit," 9 May 2008
- "Federal Reserve Board Issues Final Rule Addressing Mortgage Lending and Servicing Practices Under Regulation Z," *Real Estate Fin. J. 81*, Fall 2008
- "Credit Market and Subprime Distress: Responding to Legal Issues, Jon Van Gorp, ed.," *Practising Law Institute*, 2008
- "Changing the Rules," *Mortgage Risk Magazine*, November 2007
- "The Latest Attempt To Regulate Subprime Mortgage Lending: The Federal Banking Agencies Issue The Subprime Mortgage Lending Guidance," 31 October 2007
- "Truth in Lending," *American Bar Association Supplement*, 2007, 2008 and 2009
- "Federal Banking Agencies Issue Final Rules Regarding Medical Information," *Electronic Banking Law and Commerce Report*, January/February 2006
- "Compliance Obligations and Enforcement Actions under the USA PATRIOT Act," *60 Cons. Fin. L.Q. Rep. 316*, 2006
- "E-Commerce: Financial Products and Services, Brian W. Smith, ed.," *Law Journal Press*, 2001/supp. 2005
- "SEC Is in a Can't Win Position with Broker-Dealer Proposal," *American Banker*, 16 July 2004
- "The FACT Act: The Latest Attempt at Overhauling the Fair Credit Reporting Act and the Fairness and Accuracy of Consumer Reports," *The Banking Law Journal*, 1 March 2004
- "Customer Identification, Money Laundering Compliance and Safeguarding of Customer Information," *58 Cons. Fin. L.Q. Rep. 286*, 2004
- "An Overview of the Electronic Fund Transfer Act and Regulation E and their Application to E-Commerce," *57 Cons. Fin. L.Q. Rep. 198*, 2003
- "The Changing Landscape of Federal Money Laundering, An Overview of the USA PATRIOT Act and Related Developments," *57 Cons. Fin. L.Q. Rep. 108*, 2003
- "Federal Banking Agencies Issue Final Customer Identification Rules under the USA PATRIOT Act," *Real Estate Fin. J. 79*, Fall 2003
- "Internet-based Payment Systems: An Overview of the Regulatory and Compliance Issues," *56 Cons. Fin. L.Q. Rep. 42*, 2002
- "Bank Insurance Activities After the Gramm-Leach-Bliley Act," *54 Cons. Fin. L.Q. Rep. 306*, 2000
- "Financial Modernization in the New Millennium: Implementation of the Gramm-Leach-Bliley Act," *116 Bank. L.J. 689*, 1999
- "Changes to the Lending Process Necessitate Changes to Regulation B and the Equal Credit Opportunity Act," *53 Cons. Fin. L.Q. Rep. 156*, 1999
- "The Equal Credit Opportunity Act's Self-Testing Privilege: A Setback for Creditors," *115 Bank L.J. 671*, 1998
- "The Latest Attempt to Make the Fair Credit Reporting Act More Fair," *51 Cons. Fin. L.Q. Rep. 304*, 1997
- "Credit Screening: The Rest of the Story," *49 Cons. Fin. L.Q. Rep. 391*, 1995

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Staying Ahead of the Revolution: What's Next for Social Media?, 20 March 2012 - 21 March 2012
- Consumer Financial Protection Bureau: The First Three Months and Expectations for the New Year, 17 November 2011

- Data Breaches and Cyber Security — Navigating the Waters and Mitigating Risk for Financial Services and Other Industries, 11 August 2011
- Dodd-Frank: One Year Later, 27 July 2011
- Implementation of the Dodd-Frank Act – Implications for Internationally Headquartered Banking Organizations: Part 2: Implementation of Other Key Provisions of Dodd-Frank for International Banks, 12 April 2011
- Implementation of the Dodd-Frank Act – Implications for Foreign Banking Organizations, Institute of International Bankers Webinar, 1 April 2011
- Data Privacy: A Modern Day Mission Impossible?, 55th Annual Canadian Reinsurance Conference, April 2011
- What You Should Expect from the CFPB?, Source Media 23rd Annual Card Forum, April 2011
- Strategies for Dealing with Financial Asset Businesses and Portfolios – Part II: Structured Finance Alternatives for Financial Asset Businesses, 10 March 2011
- The Dodd-Frank Act: An Overview, George Mason University School of Law – Attorneys General Education Program, 1 March 2011
- The Consumer Financial Protection Act and the BCFP, UNC School of Law Festival of Legal Learning, 1 February 2011
- The Impact of the Orderly Liquidation Authority (OLA) on Finance Transactions, 27 January 2011
- FDIC Adopts New Securitization Safe Harbors, 7 October 2010
- Loan Modifications, Privacy and Other Federal Developments including the Dodd-Frank Act, Consumer Credit 2010, October 2010
- Securitization Reform: Will the Cure Kill the Patient, American Bar Association's Annual Meeting, August 2010
- Regulatory Developments Involving Credit Cards and Overdrafts, UNC School of Law Festival of Legal Learning, February 2010
- Financial Reform, 9th Banking and Finance Forum, Mecklenberg County Bar, North Carolina, November 2009
- Treasury Loan Modification Program Developments, Consumer Credit 2009, November 2009
- Panel Discussion and Reception: The Government as Your Investment Partner: Opportunities in Real Estate, Infrastructure, Distressed Debt Sales and More - September 21, 2009, 21 September 2009
- FTC Decision Jolts Collection of Customer Data, 22 July 2009
- The Financial Crisis: Legislative and Regulatory Responses, UNC Banking Law Institute, March 2009
- Where is Washington Headed, BNA Regulatory Reform Briefing, March 2009
- Overview of Federal and State Consumer Credit Laws, UNC School of Law Festival of Legal Learning, February 2009
- Know Your Customer, SAR, CTR, Identity Theft and USA PATRIOT Act Developments, Consumer Credit 2008, November 2008
- Financial Rescues and Failures, 8th Banking and Finance Forum, Mecklenburg County Bar, North Carolina, November 2008
- Getting Under the TARP: Selling Toxic Assets to the Government & Government Purchase of Bank Stock, American Fiduciary Network, October 2008
- Impact of the Credit Crisis on Banking Regulations: New Rules of the Road, American Fiduciary Network, October 2008
- Financial Institution Insolvency Issues, Consumer Debt Collection Loan Servicing and Bankruptcy, October 2008
- The Deal Perspective: Addressing Privacy and Security in Commercial Transactions, PLI's Ninth Annual Institute on Privacy and Security Law, July 2008
- Subprime Lending: Critical Legislative and Regulatory Developments, PLI Briefing, July 2008

- Overview of the Fair Credit Reporting Act and Recent Developments, UNC School of Law Festival of Legal Learning, February 2008
- Deceptive or Unfair Practices Involving the Sale and Marketing of Consumer Financial Products and Services, UNC School of Law Festival of Legal Learning, February 2008
- The Upheaval in the Subprime Market: The Direct and Indirect Effects of Same on the Structured Finance Market, January 22, 2008
- The Upheaval in the Subprime Market: The Direct and Indirect Effects of Same on the Structured Finance Market, Structured Finance Committee of the New York City Bar Association, January 2008
- Regulatory Developments, 7th Banking and Finance Forum, Mecklenburg County Bar, North Carolina, November 2007
- Privacy, Safeguarding and Information Data Security, Consumer Credit 2007, November 2007
- Legal, Regulatory and Compliance Issues, Mortgage Servicing Conference – Source Media, June 2007
- Subprime Mortgage Finance Public Policy, American Securitization Forum Annual Meeting, June 2007
- Fair Credit Reporting Act: Rights of Consumers and Obligations on Users and Furnishers of Credit Information, UNC School of Law Festival of Legal Learning, February 2007
- Update on the FACT Act, the USA PATRIOT Act, BSA, Anti-Terrorism and Related Issues, Consumer Credit 2006, November 2006
- Securitization Ethics and Professional Responsibility: Perspectives on the Appropriate Handling of Customer Data in Securitization Transactions, American Securitization Forum, July 2006
- Federal Preemption in Mortgage Lending and Finance and Privacy, FCRA, the FACT Act and Related Concerns in Mortgage Lending and Loan Servicing, Conference on Consumer Finance Law — Residential Mortgage Lending and Servicing, July 2006
- FACT Act Implementation, UNC School of Law Festival of Legal Learning, February 2006
- Information Security, Consumer Credit 2005, November 2005
- FACT Act Implementation, America's Community Bankers 2005 National Compliance and Attorneys Conference, September 2005
- Lessons From ChoicePoint and Lexis-Nexis, Stafford Publishing Teleseminar, August 2005
- Unfair or Deceptive Practices in the Sales, Marketing and Servicing of Consumer Financial Services and Products, UNC School of Law Festival of Legal Learning, February 2005
- The Impact of Predatory Lending Laws on Secondary Market Transactions and Participants, Consumer Credit 2004, November 2004
- Operational Risk, America's Community Bankers 2004 National Compliance and Attorneys Conference, September 2004

MAYER·BROWN

Michael O. Ware

Partner

mware@mayerbrown.com

New York

T +1 212 506 2593

F +1 212 849 5593

Michael Ware litigates antitrust, international and securities-and-derivatives cases in state and federal courts across the United States. He also represents companies and individuals in arbitrations and in investigations conducted by the SEC, the Department of Justice, the New York County District Attorney and other authorities.

Since Michael joined the firm in 1999, his antitrust cases have covered subjects ranging from hard-core cartels to unilateral activity to price maintenance under the Robinson-Patman Act. Michael has also had success representing broker-dealers and futures commission merchants against customers and counterparties, often in cases focused on brokerage operations. His international public and private law engagements have resulted in a number of landmark decisions.

Michael is broadly experienced in pre- and post-judgment remedies in the United States and overseas, and he represents maritime parties in attachment cases under Admiralty Rule B. He also advises regularly on international evidence gathering under the Hague Convention and under statutes such as 28 U.S.C. § 1782 and England's Evidence (Proceedings in Other Jurisdictions) Act 1975. Michael has defended scores of alleged class actions arising in various areas of substantive state, federal and international law, and he has handled more than a dozen centralization proceedings before the Judicial Panel on Multidistrict Litigation.

Experience

- *In re Vitamins Antitrust Litigation*. Court-appointed defense liaison counsel in major cartel litigation. Conceived, organized, briefed and argued all defendants' successful response to a novel request by plaintiffs in collateral litigation in Canada to obtain access to discovery materials generated under seal in the MDL proceedings. *In re Vitamins Antitrust Litig.*, 2001 WL 34088808 (D.D.C. March 19, 2001); *VitaPharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.*, [2001] 6 C.P.C.5th 245 (Ont. Super. Ct. Just.), *aff'd*, [2002] 159 O.A.C. 204 (Div'l Ct.), *aff'd sub nom.*, *Ford v. F. Hoffman-La Roche Ltd.*, [2003] 223 D.L.R.4th 445 (Ont. Ct. App.), *appeal dismissed*, [2003] 194 O.A.C. 199 (note) (Can.). Briefed and argued first-impression state-law damages question resulting in the substantial reduction of all defendants' exposure. *In re Vitamins Antitrust Litig. (Kellogg Co. v. BASF AG)*, 259 F. Supp. 2d 1 (D.D.C. 2003). Briefed and argued significant pre-CAFA appeal on diversity jurisdiction over class actions. *Crawford v. F. Hoffman-La Roche Ltd.*, 267 F.3d 760 (8th Cir. 2001). Coordinated and briefed successful dispositive motions in a number of state-law cases. *E.g., In re Vitamins Antitrust Litig. (Southeast Milk, Inc. v. F. Hoffman-La Roche, Ltd.)*, Misc. No. 99-197 (TFH) (D.D.C. Dec. 13, 2004) (Florida), *aff'd*, 183 Fed. Appx. 1 (D.C. Cir. 2006); *In re Vitamins Antitrust Litig. (Greene v. F. Hoffman-La Roche, Ltd.)*, 2001 WL 849928

(D.D.C. April 11, 2001) (Tennessee), *appeal dismissed*, No. 01-7093 (D.C. Cir. 2001); *In re Vitamins Antitrust Litig. (Basic Drugs, Inc. v. BASF Aktiengesellschaft)*, 2001 WL 34088809 (D.D.C. March 19, 2001) (Ohio); *In re Vitamins Antitrust Litig. (Watkins v. F. Hoffman-La Roche, Ltd.)*, 2001 WL 34088807 (D.D.C. March 13, 2001) (Alabama). Contributed to the briefing and preparation of the case in which the Supreme Court largely barred U.S. antitrust claims by foreign-market purchasers. *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004).

- *In re Chocolate Confectionary Antitrust Litigation*. Lead counsel for distributor dismissed before the onset of discovery from more than 60 class and non-class actions alleging price-fixing in the American chocolate bar market.
- *In re South African Apartheid Litigation*. Lead counsel for Fortune Global 100 company in litigation alleging that international companies operating in Apartheid-era South Africa thereby committed offenses against international law actionable under the Alien Tort Statute.
- *In re Austrian & German Bank Holocaust Litigation*. Principal author of petition leading to a rare writ of mandamus from the Court of Appeals requiring District Court to grant plaintiffs' motion to discontinue Holocaust-related claims in deference to the multinational Berlin Accords.
- *Russian Ministry of Defense v. New Hampshire Insurance Co.* Successful representation of Russian Army in New York action presenting disputed questions of international succession to Soviet military assets in Belarus.
- *Peregrine v. Segal*. Successful action by international commercial interests damaged in part by acts of the Burmese junta.
- *In re Smith Barney Fund Transfer Agent Litigation*. Pre-answer dismissal of action under SEC Rule 10b-5.
- *SEC v. Jones and Daidone*. Summary judgment on the eve of trial in enforcement action concerning investment advisors' dealings with mutual funds. 476 F. Supp. 2d 374 (S.D.N.Y. 2007).
- *Uni-Rty v. HSBC*. Lender liability action settled for a nominal payment during jury trial.

Education

- Yale University, BA, 1990.
- Fordham University School of Law, JD, 1995.

Admissions

- US Court of Appeals for the Third Circuit 2004
- US Supreme Court 2004
- US Court of Appeals for the Seventh Circuit 2003
- US Court of Appeals for the District of Columbia Circuit 2001
- US Court of Appeals for the Sixth Circuit 2001
- US Court of Appeals for the Eighth Circuit 2000
- US District Court for the District of Columbia 2000
- US District Court for the Eastern District of New York 1998
- US Court of Appeals for the Second Circuit 1997
- US District Court for the Northern District of Texas 1997
- US District Court for the Southern District of New York 1997
- New York 1996

News & Publications

- "Mayer Brown represents Ally Financial Inc. in connection with ResCap's Chapter 11 filing," May 15, 2012
- "Mayer Brown Advises Macquarie Group in Potential Take Private Transaction of Listed Fund," 17 June 2008

Events

- The Continuing Impact of Dodd-Frank, 26 June 2012
- Attorney-Client Privilege In Corporate Investigations, Association of the Bar of the City of New York, 2008
- Coordinating Simultaneous Private Antitrust Litigation in the United States and Canada, National Competition Law Section, Canadian Bar Association, Gatineau, Québec, 2006

TAB 12

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes

THE CONTINUING IMPACT OF
Dodd-Frank

Notes