

MAYER | BROWN



# **2021 STRUCTURED PRODUCTS LEGAL, REGULATORY AND MARKET BRIEFING**

MAY 13, 2021

# Agenda

**Panel 1** | 4:30pm – 5:00pm EDT

**INNOVATIONS IN ESG-LINKED STRUCTURES**

**Panel 2** | 5:00pm – 5:30pm EDT

**LATEST DEVELOPMENTS IN STRUCTURED  
INVESTMENTS TRADING AND TECHNOLOGY**

**Panel 3** | 5:30pm – 6:00pm EDT

**UPDATE ON THE LIBOR TRANSITION, ARCC  
DEVELOPMENTS, THE IBOR PROTOCOL AND THE  
NEW YORK STATE LEGISLATION**

**Panel 4** | 6:00pm – 6:30pm EDT

**SEC, FINRA AND CFTC REGULATORY ANNOUNCED  
PRIORITIES & ENFORCEMENT EXPECTATIONS  
UNDER THE BIDEN ADMINISTRATION**

# The US Structured Investments Market

## 2021 Structured Products Issuance

1/1/2021 to 3/31/2021

**Total: \$22.825 billion in 6764 deals**

Month	Amount	Share of Total
January	\$8.094 billion in	2275 deals 35.46%
February	\$6.898 billion in	2204 deals 30.22%
March	\$7.833 billion in	2285 deals 34.32%
<b>Total</b>	<b>\$22.825 billion in</b>	<b>6764 deals</b>

## 2020 Structured Products Issuance

1/1/2020 to 3/31/2020

**Total: \$21.544 billion in 6010 deals**

Month	Amount	Share of Total
January	\$7.028 billion in	1906 deals 32.62%
February	\$7.231 billion in	1943 deals 33.57%
March	\$7.285 billion in	2161 deals 33.81%
<b>Total</b>	<b>\$21.544 billion in</b>	<b>6010 deals</b>

# Innovations in ESG-Linked Structures

## **Timo Pfeiffer**

Chief Markets Officer, Solactive  
AG

## **Stanislas Varis**

Managing Director, Head of  
Cross Asset Structuring, Americas,  
Crédit Agricole CIB

## **Fei Wang**

Senior Financial Officer,  
The World Bank Treasury

# The Case for ESG Indices


**Pensions&Investments**

NEWS DATA INSIGHTS MULTIMEDIA EVENTS CAREERS RESEARCH CENTER

July 02, 2020 01:25 PM

## Global ESG-data driven assets hit \$40.5 trillion

**Bloomberg**



Markets

## End of Era: Passive Equity Funds Surpass Active in Epic Shift

By [John Gittelsohn](#)  
September 11, 2019, 11:21 AM EDT Updated on September 11, 2019, 3:31 PM EDT

# Examples for ESG-based Index Construction



## Exclusions

- Solactive ISS Screened Series



## Rating/Best-In-Class

- Solactive ISS Prime Series



## Climate

- Solactive ISS EU Paris-aligned & Climate Transition Benchmarks
- Solactive right. 2°C-aligned Series
- Solactive Green Bond Series



## Impact

- Solactive ISS SDG Series
- Solactive Development Bank Bond Series
- Solactive Green Bond Series

# World Bank Sustainable Development Bonds

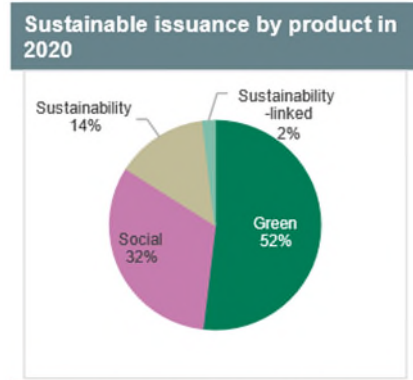
Connecting Investors to Purpose



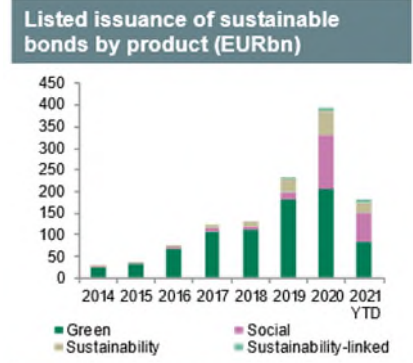
- The World Bank's **purpose** is to end extreme poverty and promote shared prosperity.
- World Bank bonds are **sustainable investment** opportunities that fund its development activities, including working with members to tackle COVID-19.
- The International Bank of Reconstruction and Development (IBRD)'s **AAA/Aaa rating** is based on its strong balance sheet and capital, conservative financial policies and risk management, and support from 189 member countries.
- The World Bank offers investors a **broad range of products** ranging from benchmark bonds to tailor-made notes designed to suit specific investor needs.
- The World Bank works with partners to build sustainable capital markets by promoting transparency.

# Sustainable Market

- **Green bonds:** Use of proceeds is exclusively dedicated to financing environmental projects
- **Social bonds:** Use of proceeds is exclusively dedicated to financing social projects or aimed at addressing or mitigating a specific social issue
- **Sustainability bonds:** These are bonds that finance both environmental and social projects
- **Sustainability-linked bonds:** These are bonds whose financing costs can vary, often through step-up or step-down coupons, according to the issuer's capacity to achieve specific Sustainability Performance Targets. Use of funds is not earmarked to a particular green or social project/category.



Source: Credit Agricole CIB, Bloomberg



Source: Crédit Agricole CIB, Bloomberg. Excl. US Munis and mortgages



# Latest Developments in Structured Investments Trading and Technology

## **Biju Kulathakal**

Chief Executive Officer,  
Halo Investing, Inc.

## **Garrick Stavrovich**

Head of Product Development, The  
National Association of Securities Dealers  
Automated Quotations (Nasdaq), Inc.

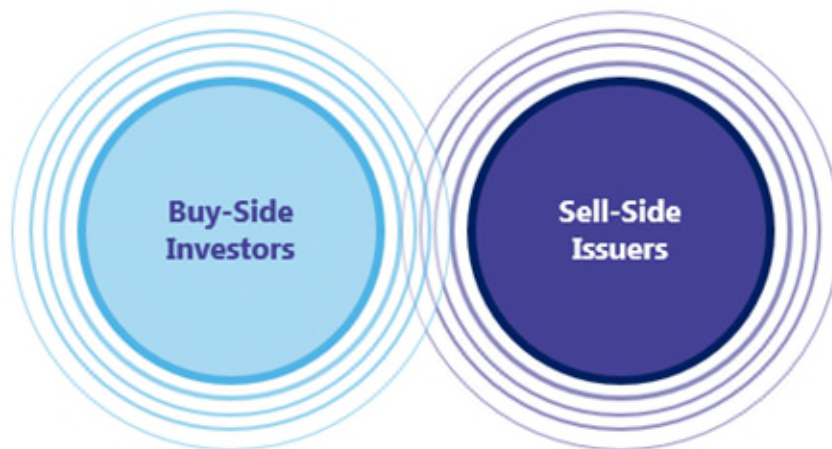
# Halo is redefining the market for structured notes

## A DIGITAL PLATFORM TO FIND & MANAGE STRUCTURED NOTES FOR CLIENTS

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### PROTECTIVE INVESTING MARKETPLACE:

- Personalized Options
- Full Education Suite
- Lower Fees & Inv. Minimums



### ISSUER AUTOMATION

- Efficient Distribution
- Automated Tools
- Built to Scale

For investment professional use only – not for public distribution.

# Tech in the market

- Market overview and today's technology role in the market
- Technology objectives
  - Reduce friction - Smaller deal size/customization
  - Reduce issuance/distribution costs
  - Bring new entrants into the market
  - Make it available to retail
- How is technology achieving these objectives so far?
  - Examples of new distribution (RIAs)
  - Increasing automation for banks
- What's next?
  - Price dissemination
  - Straight through processing
  - More involvement by insurance carriers, funds and corporates
  - Doc generation – Simplified
  - New types of issuers (corporates/insurance co.)

# NFN Objective



**ENHANCED DISCOVERABILITY**

Each product is registered with a unique ticker symbol to help increase discoverability on market data platforms and financial web portals.

**TRANSPARENCY**

Use performance and valuation data to better position investment products against peers to gain wider market visibility.

**AMPLIFIED REACH**

Reach 100 million-plus institutional and retail investors through NFN's connectivity.

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# NFN History

- Originally launched in 1984 as 'Mutual Fund Quotation Service'
- Over 35,000 investible products to over 100 million investors
- Searchable products on one of the largest distribution channels
- Daily access to transparent fund-level data to several audiences



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## NFN's Expanded Scope for Structured Products Today

- The Nasdaq Fund Network can now register, assign a symbol and disseminate structured products pricing information to over a million users in the investment community.
- Nasdaq works directly with structured products issuers to register their instruments with NFN.
- Providing the issuer with a searchable ticker for their structured product that would be discoverable across RIA platforms, institutional vendors, distributors and online portals - just like a mutual fund, ETF, collective investment trust or stock

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# Update on the LIBOR Transition, ARCC Developments, the IBOR Protocol and the New York State Legislation

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# LIBOR Transition

## ▪ Deals with Fallbacks

- ICE/FCA March 5 announcements
  - [IBA Sets LIBOR Publication Cessation Dates and Triggers a LIBOR Transition Event \(Legal Update\)](#)
- Benchmark Transition Event/Index Cessation Event for **ALL** LIBOR currencies and tenors
- Cessation effective from December 31, 2021 for all LIBOR currencies and tenors **EXCEPT** overnight and 1-, 2-, 3-, 6- and 12-month USD LIBOR for which cessation will be effective only after June 30, 2023
- SOFR Spread Adjustments “Fixed” and published by Bloomberg
  - See the [IBOR Fallbacks Technical Notice](#)
- FCA likely to require IBA to continue publication of “synthetic” 1-, 3- and 6-month GBP and JPY LIBOR and *MAY* consider the same for common USD LIBOR tenors



# LIBOR Transition

## ■ Legacy Deals without Adequate Fallbacks

### – NYS Legislation

- [The New York LIBOR Legislative Solution Becomes Law](#) (*Eye on IBOR Transition blog alert*)
- [Legislating LIBOR: New York State Poised to Enact LIBOR Transition Assistance Law to Facilitate “Tough Legacy” Contract Transition](#) (*Legal Update*)
- [US ARRC Proposes a New York State Legislative “Solution” for Legacy LIBOR Contracts Without Adequate Fallbacks—But What Does It Actually “Solve”?](#) (*Legal Update*)

### – Proposed Federal Adjustable Interest Rate (LIBOR) Act of 2021

- [Recent Congressional Hearing Indicates that Federal LIBOR Transition Assistance Law Increasingly Likely](#) (*Legal Update*)

### – Similar legislative (UK) and regulatory (EU) solutions elsewhere

- [Update on the Proposal for a Governmental IBOR Transition in the European Union](#) (*Legal Update*)
- [Promised UK ‘Tough Legacy’ Legislation Released; HM Treasury Issues Supporting Policy Statement](#) (*Legal Update*)

- These solutions significantly reduce the related litigation risk (and related liabilities), but other risks remain (*e.g.*, effective hedging and funding “basis”)

# LIBOR Transition

## ▪ **Replacement Rate(s) Other than SOFR**

- SOFR is the ARRC Preferred Replacement Rate
  - *BUT* term SOFR unlikely to be available by December 31, 2021
- CME has announced and is publishing [a term SOFR product](#)

# LIBOR Transition

## ▪ Replacement Rate(s) Other than SOFR

- SOFR is the ARRC Preferred Replacement Rate
  - *BUT* many market participants have been vocal about the potential different behavior of SOFR (an overnight secured “risk-free” rate), especially in market distress when compared to how LIBOR (an unsecured term rate) might have behaved
- Market has responded with several proposed more “credit sensitive” alternative replacement rates:
  - [Ameribor](#)
  - [Across-the-Curve or AXI](#)
  - [Bloomberg Short Term Bank Index or BSBY](#)
  - [ICE Bank Yield](#)

# ARRC Developments

- ARRC continues to set “best practices”
  - [US Alternative Reference Rates Committee Proposes Using a 30-Day Average of the SOFR in Advance for Certain Asset-Backed Securities](#) (*Legal Update*)
- Important ARRC bank regulatory recommendations remain outstanding
  - [ARRC Provides Recommendations to US Prudential Banking Regulators to Facilitate USD LIBOR Transition to SOFR](#) (*Legal Update*)

# Outstanding Legacy LIBOR FRNs: What to do?

- On April 7, 2021, the New York “legislative solution” for legacy USD LIBOR contracts became Article 18-C of the New York General Obligations Law. Article 18-C is primarily aimed at USD LIBOR contracts, securities or instruments (*e.g.*, FRNs, loans, securitizations and mortgages) with the 2006 ISDA Definitions LIBOR fallbacks, or no fallback provisions at all, and which are governed by New York law.
- Article 18-C has no effect on USD LIBOR FRNs that have the ARRC recommended fallback provisions to SOFR, nor does it have any effect on non-USD LIBOR FRNs.
- When Article 18-C came into law, the polling provisions in USD LIBOR FRNs were deemed null and void and without any force or effect. This will have no practical effect on legacy USD LIBOR FRNs because the polling provisions would only be looked to once USD LIBOR ceases (December 31, 2021 for 1-week and 2-month USD LIBOR, and June 30, 2023 for all other USD LIBOR tenors) and, at that point, Article 18-C would automatically change the USD LIBOR provisions to the ARRC recommended fallback provisions to SOFR.
  - Potential Trust Indenture Act issue, but potentially solved by future Federal law
  - What about non-USD LIBOR legacy FRNs?

# What should issuers tell legacy FRN holders?

- Although FRNs do not have a notice provision for an interest rate change due to a change in law, issuers should notify holders in advance of the upcoming change in interest calculation.
- The NY General Obligations Law will change USD LIBOR to the ARRC fallbacks to SOFR.
  - The first fallback is Term SOFR, which may not exist by July 1, 2023
  - The second fallback is “Compound SOFR”
  - There are four ways to calculate Compound SOFR
  - If an issuer chooses payment delay, that could come as a surprise to holders
- ARRC best practices:
  - For outstanding LIBOR FRNs with a discretionary replacement to an industry accepted standard replacement rate (SOFR), the ARRC recommends notifying holders six months prior to the first reset date of the replacement rate and the related adjustment spread.

# 2020 ISDA Fallbacks Protocol: Infrastructure

## ISDA 2020 IBOR Fallbacks Protocol

Last Updated: May 13, 2021

Number of Parties: 14062

### Protocol:

Covered Arrangements, Amendment and Adherence.

### Supplement:

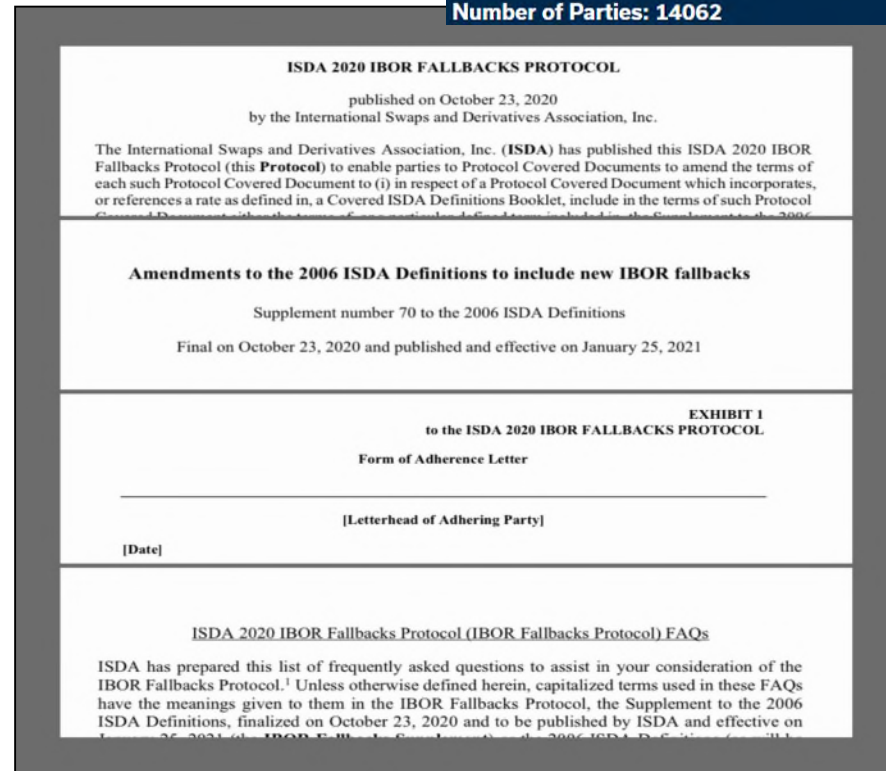
Amendments to Transition to RFR

### Adherence Letter:

How you adhere to the Protocol

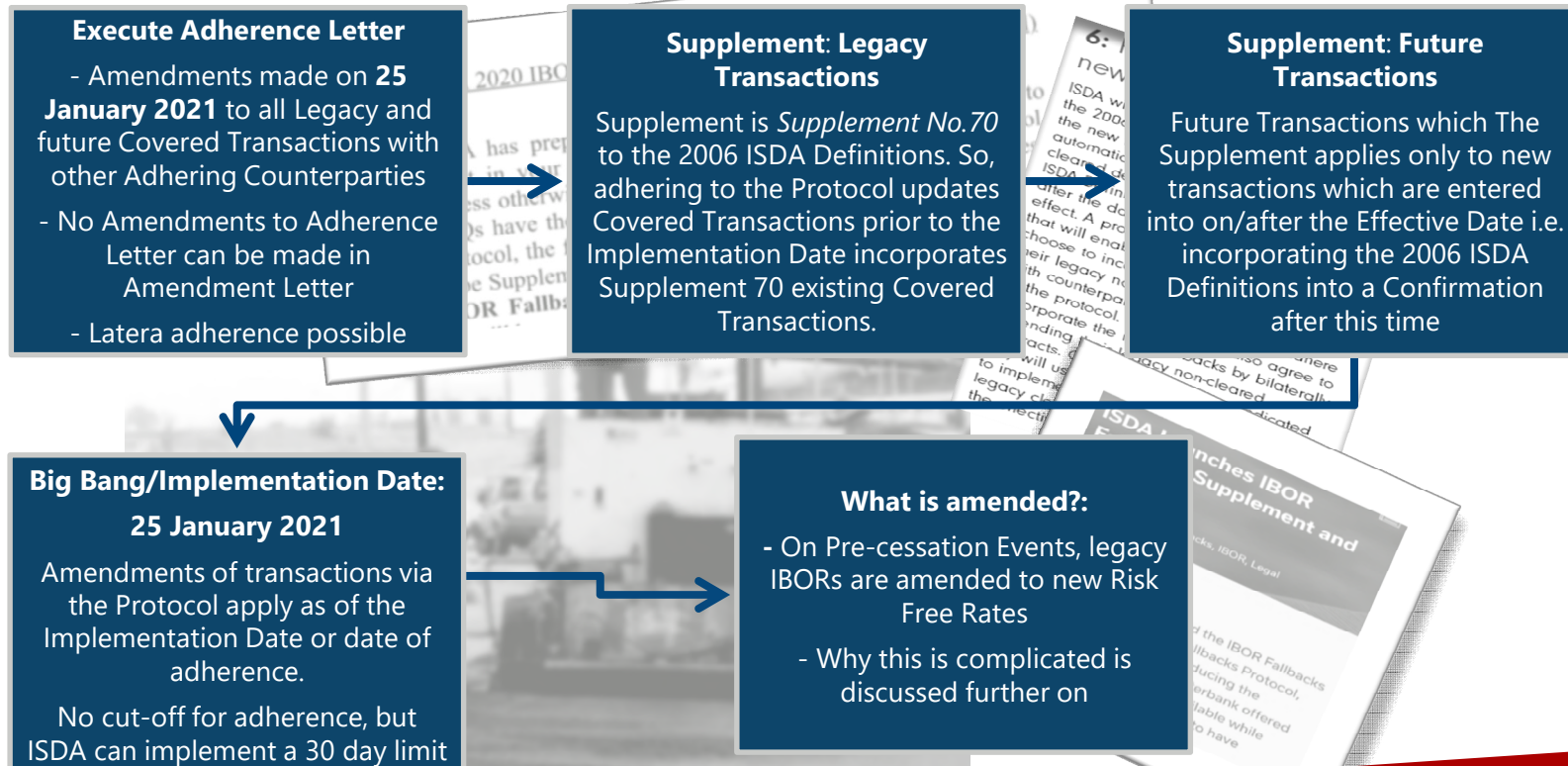
### FAQ:

Many answers you need



# How do the Protocol and Supplement work?

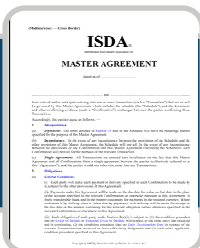
## High Level



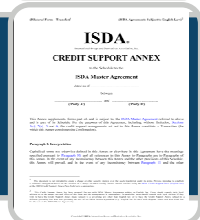


# What are the Protocol's covered arrangements?

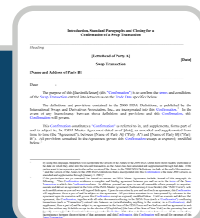
The Protocol covers three categories of documentation:



**“Protocol Covered Master Agreements”** are ISDA Master Agreements or **“Additional Master Agreements”** (see next slide and note discussion on Covered ISDA Definitions Booklets).



**“Protocol Covered Credit Support Documents”** are an ISDA Credit Support Document or an Additional Credit Support Document entered into between two Adhering Parties.



A **“Protocol Covered Confirmation”** are a Confirmation entered into between two Adhering Parties and includes a confirmation which supplements, forms part of and is subject to, or is otherwise governed by, a Master Agreement and incorporates a Covered ISDA Definitions Booklet.

# ISDA Fallbacks Protocol: Inclusion of Non-ISDA documents

## *Additional Credit Support Documents*

- (a) 2007 FBF Collateral Annex;
- (b) 1997 ABF Collateral Annex;
- (c) AFB/BBF Addendum to the ISDA 2016 Credit Support Annex for Variation Margin (VM);
- (d) 2008 Credit Support Appendix to the Swiss Master Agreement for OTC Derivative Instruments published by the Swiss Bankers Association;
- (e) 2015 Credit Support Appendix to the Swiss Master Agreement for OTC Derivative Instruments published by the Swiss Bankers Association;
- (f) Credit Support Appendix for Variation Margin to the Swiss Master Agreement for OTC Derivative Instruments published by the Swiss Bankers Association.

## *Additional Master Agreements*

- (a) 2001 FBF Master Agreement relating to Transactions on Forward Financial Instruments;
- (b) 2007 FBF Master Agreement relating to Transactions on Forward Financial Instruments;
- (c) 2013 FBF Master Agreement relating to Transactions on Forward Financial Instruments;
- (d) 1994 AFB Master Agreement for Foreign Exchange and Derivatives Transactions;
- (e) 2007 AFTL/BBF Master Agreement for Loans of Securities;
- (f) 1997 AFTL/BBF Master Agreement for Loans of Securities;
- (g) 2007 FBF Master Agreement for Repurchase Transactions;
- (h) 1994 AFTB Master Agreement for Repurchase Transactions with Delivery of Securities;

Helpfully, ISDA has produced a “**List of Non-ISDA Documents for inclusion in Protocol**”, which confirms that various Non-ISDA Documents, can also be covered by the Protocol, such as the GMRA; GMSLA; the 2007 FBF Master Agreement for Repurchase Transactions; the 2013 Spanish Master Agreement (CMOF); and the 2013 Swiss Master Agreement.

# SEC, FINRA and CFTC Regulatory Announced Priorities & Enforcement Expectations Under the Biden Administration

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# Overview of SEC Enforcement

- Former CFTC Chairman Gary Gensler was sworn in as SEC Chairman on April 17
- The number of enforcement actions filed in 2020 are down from 2019. We expect a more active enforcement docket in 2021.

Enforcement Actions Filed in Fiscal Years 2015 to 2020						
	FY 2020	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
Standalone Enforcement Actions	405	526	490	446	548	508
Follow-On Admin. Proceedings	180	210	210	196	195	167
Delinquent Filings	130	126	121	112	125	132
<b>Total Actions</b>	<b>715</b>	<b>862</b>	<b>821</b>	<b>754</b>	<b>868</b>	<b>807</b>

- Acting Chair Lee re-authorized senior officers in the Enforcement Division to issue Formal Orders of Investigation.

# SEC Enforcement Topics of Interest

- Climate Change, ESG, and Disclosure
  - New ESG Task Force in Division of Enforcement
- Digital Assets
  - How will *SEC v. Ripple* change the landscape?
- Regulation Best Interest and Form CRS
- Continued COVID-19 Focus
- Cooperative Enforcement – SEC, CFTC, DOJ

# FINRA Enforcement Topics of Interest

- Regulation Best Interest, Form CRS, Sales Practices, and “Gamification”
- Capital and Margin, Liquidity and Credit Risk Management
- Best Execution, Payment for Order Flow, and “Zero Commission” Trading
- Anti-Money Laundering (AML) Risk
  - Microcap, SPACs, restricted foreign markets
- Cybersecurity and Technology Governance Risk, Business Continuity

# Several Key CFTC Priorities

- ESG/Climate Change — Establishment of “Climate Risk Unit”
- Enhanced Virtual Currency Focus
- Focus on Novel Event Contracts
- Increased Coordination with the SEC
- Continued Robust Enforcement
- Continued Coordination with the DOJ

# Relevant DOJ Enforcement Priorities

- Individual Accountability
- Beneficial Ownership
- Market Manipulation
- Cryptocurrency



# Additional Resources

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## VISIT OUR DERIVATIVES BLOG

# *The Long and Short of It*

**MAYER BROWN'S BLOG PROVIDES COMMENTS AND ANALYSIS ON THE LATEST  
LEGAL AND REGULATORY DEVELOPMENTS IN DERIVATIVE PRODUCTS.**

*The Long and Short of It* blog uses its global lens to cover everything from topical ISDA developments and the divergence between EU and UK derivatives regulation post-Brexit, derivatives regulatory capital issues, to US and Asia derivative regulatory developments and the implementation of global margin rules.

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### EYE ON ESG

#### THE EYE ON ESG BLOG IS DESIGNED

to provide practical guidance to global businesses and clients amid the important and growing impact of ESG issues on their institutions and businesses, as well as the latest updates on new ESG-related developments.





**AT THE  
CROSSROADS:  
CFTC AND DOJ  
ENFORCEMENT**

**INTRODUCING A NEW WEEKLY VIDEO SERIES**

hosted by Mayer Brown partners Matt Kluchenek and Glen Kopp.  
Each episode discusses a topic at the intersection of enforcement by the CFTC the DOJ.



**ACCESS EPISODE 1 HERE**  
**INSIDER TRADING IN THE  
COMMODITIES/DERIVATIVES  
MARKETS**



**ACCESS EPISODE 2 HERE**  
**JOINT VS. PARRALLEL  
INVESTIGATIONS**



**ACCESS EPISODE 3 HERE**  
**THE 5TH AMENDMENT AND  
SRO PROCEEDINGS**

# Additional IBOR Resources



- [IBOR Transition Task Force](#)

*Mayer Brown is uniquely positioned to advise financial institutions and other affected market participants on how to navigate the complex IBOR transition, with a task force comprised of nearly 100 partners globally.*

- [IBOR Transition Digest](#)

*Mayer Brown's compendium of global regulatory and market news as well as insights on the complex issues confronting financial market participants as they plan to transition from LIBOR and its variants to replacement benchmark interest rates.*

- [IBOR Transition Webinars](#)

*Hosted by Mayer Brown, these are detailed discussions and insights—in a digestible format—on a range of topics from setting and executing an effective IBOR Transition strategy to assessing the impact of IBOR issues on specific financial products.*



### **THE EYE ON IBOR TRANSITION BLOG**

enables our global, cross-practice IBOR experts to keep market participants abreast, in real time, of continuing regulatory and legislative announcements, trade group tools, and the status of market transition.

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