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REVERSEinquiries

Structured and market-linked product news for inquiring minds.

SEC Commissioner Calls for Index Regulation

In a recent opinion piece published in *The New York Times*, Securities and Exchange Commission ("SEC") Commissioner Robert J. Jackson Jr. and a co-author cited examples of supposed discretion in various indices and the resulting potential cost to investors. The authors then called upon the SEC to study the issue and, if necessary, make recommendations to Congress.[1] The genesis of this seems to be an article in *The Wall Street Journal*, cited by the authors, in which it was alleged that MSCI Inc. bowed to pressure from the People's Republic of China in deciding to add domestic Chinese stocks to MSCI's Emerging Markets Index.[2] The WSJ article questioned MSCI's independence and internal processes for inclusion of index components. In response, MSCI said that its consultation process, used for inclusion of new index components, was transparent and objective, based on publicized criteria and handled by its editorial division, which is walled off from its commercial operations.

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With that, the authors of the NYT piece cited a number of potential areas of abuse that could cost investors, because various funds purchase or sell stocks as they track the holdings of an underlying index. But the authors seem to mix apples and oranges, and do not seem to realize that even the S&P 500® has a minimal amount of discretion in choosing new constituents. The authors imply that the SPX is an example of potential abuse of discretion: "[F]or instance, the stocks in the [SPX], which is tracked by mutual funds holding more than $1 trillion in assets, are chosen by committee. But these committees have enormous discretion."

Perhaps more fairly, the authors cite the rise of proprietary indices, pointing out that a single fund may create a proprietary index, resulting in the same managers running the fund as the index. Academic research is cited for this statement, but there is no indication as to whether the researchers considered whether there were procedures in place to prevent those marketing the fund from having any influence over the calculation of, or maintenance of, the index. With respect to exchange traded funds, in order to list an ETF on the NYSE Arca, the index underlying the fund would have to comply with the NYSE Arca Equity Rules. NYSE Arca Equity Rule 5.2-

[1] "What's Really in Your Index Fund?," *The New York Times*, Feb. 18, 2019.

[2] "How China Pressured MSCI to Add Its Market to Major Benchmark," *The Wall Street Journal*, Feb. 3, 2019.

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E(j)(3)(b)(1) requires that "[i]f the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a 'firewall' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor."

Next up is LIBOR manipulation and the resulting benchmark reform. The authors lament that while the Commodity Futures Trading Commission established a group to reform LIBOR, there is no such group overseeing stock market indices, at least in the United States. There is a disconnect in this argument too, because LIBOR involves obtaining quotes from a group of banks, while stock market indices take their prices from publicly available closing prices on an exchange. The former is and was susceptible to manipulation, the latter is not.

Although the authors state that "there are global standards for how indexes should be governed, American law remains remarkably silent on the subject," they failed to note that many indices, from benchmarks like the SPX down to proprietary indices, have been influenced by guidance from multinational groups and by non-U.S. regulators, such as IOSCO and ESMA-EBA. Many index sponsors include statements in their methodologies or on their websites that, although not bound by these non-U.S. regulations, their indices are operated in full or substantial compliance with those regulations, as they may apply.

LESSONS

Even if some of the claims made regarding discretion in the selection of index components may not be warranted, it is always useful for index sponsors, issuers and sellers of structured products and funds linked to indices to make sure that:

- The process for selecting index components is transparent and fully disclosed;
- That process is subject to, at most, a minimal amount of discretion;
- That process is not subject to interference by those selling the linked securities;
- The group in an organization, whether that organization is an index sponsor or an investment bank affiliated with the index, administering the index is sufficiently "walled off" from any sales personnel; and
- Any conflicts of interest between the index administrator, issuer or seller of the structured product or fund linked to the index are minimized and clearly disclosed to investors.

FINRA Investor Alert – High-Yield CDs as Marketing Ploys

On February 21, 2019, the Financial Industry Regulatory Authority, Inc. ("FINRA") reissued its alert on potential "bait-and-switch" sales tactics relating to high yield CDs. FINRA has received reports of promotions wherein investors are enticed by offers of CDs with above market yields and then pitched other, potentially riskier, high-commission products, such as annuities. This practice is distinguished from the legitimate practice of offering promotional rates on CDs to attract new customers. The full alert is available here.

FINRA Makes a Dispensation on Backtested Data to Open-End Investment Companies

FINRA has historically taken the position that the use of backtested, or pre-inception performance data ("PIP"), if used in a communication by a FINRA member to a retail investor, is a violation of the content requirements of FINRA Rule 2210(d) (Communications with the Public). FINRA believes that retail investors would unduly rely on PIP in making an investment decision. In 2013, FINRA issued an interpretive letter (the "ALPS Letter"), under which the use of PIP in communications to institutional investors related to exchange-traded products was permissible, subject to a set of strict requirements relating to presentation and use of the PIP.[3] FINRA has not issued any subsequent guidance on PIP, until now.

On January 31, 2019, FINRA issued a new interpretive letter relating to PIP. In the new interpretive letter (the "Foreside Letter"), the ALPS guidance on PIP was extended to institutional communications including PIP and relating to open-end investment companies registered under the Investment Company Act of 1940.[4] Similar to the facts in the ALPS letter, broker-dealers and investment advisers, each of which are institutional investors as defined in FINRA Rule 2210(a)(4), requested that Foreside Funds Services, LLC, a registered broker-dealer, provide PIP data on a newly-created proprietary index used as a benchmark for a fund.

In the Foreside Letter, FINRA cited the ALPS Letter and agreed to the use of PIP in these institutional communications. The usage and presentation requirements are substantially identical to those set out in the ALPS letter. FINRA also reiterated its position on prohibiting the use of PIP in FINRA member communications to retail investors.

Listing Exempt Securities

Q. What type of issuer has securities listed on a national securities exchange but is not registered under the Securities Act of 1933 (the "Securities Act") or the Securities Exchange Act of 1934 (the "Exchange Act")?

A. A bank required to file periodic reports under Sections 12(g)(1)(B) and 13(a) of the Exchange Act.

Once a security has been registered under Section 12 of the Exchange Act, the issuer of that security becomes subject to the reporting requirements of Section 13(a) thereof and must file periodic reports with the Commission. This triad of requirements (Securities Act registration, Exchange Act registration and Exchange Act reporting) underlies almost every listed security.

However, Section 12(i) of the Exchange Act provides a way for banks (not in bank holding company form), whose securities are exempt from registration under Section 3(a)(2) of the Securities Act, to list securities on a national securities exchange. Section 12(i) was adopted in recognition of the fact that certain banks and savings institutions were already subject to substantial oversight by banking regulators, and that the administration of the registration and reporting requirements of the Exchange Act was more appropriately addressed by those principal regulators. Under that section, a state non-member FDIC-insured bank would be

[3] FINRA Interpretive Letter to Bradley J. Swensen, ALPS Distributors, Inc., is available at: http://www.finra.org/industry/interpretive-letters/april-22-2013-1200am.

[4] FINRA Interpretive Letter to Meredith F. Henning, Foreside, is available at: http://www.finra.org/industry/interpretive-letters/january-31-2019-1200am

subject to Sections 12 (registration), 13 (reporting), 14 (proxy), 16 (beneficial ownership reporting) and the corporate responsibility and enhanced financial disclosures provisions of the Sarbanes-Oxley Act of 2002, but through the FDIC.[5]

Under Section 12(i) of the Exchange Act, a state non-member bank insured by the FDIC that either (i) voluntarily lists a security on a national securities exchange under Section 12(b) of the Exchange Act or (ii) has 2,000 or more shareholders and more than $10 million in total assets (*i.e.*, meets the requirements of Section 12(g)(1)(B)) would not be required to register that security under the Exchange Act. Because the securities of banks are exempt from Securities Act registration under Section 3(a)(2) thereof, registration under the Securities Act would not be required.

Although a listed bank issuer is free from the Securities Act and Exchange Act registration requirements, and would not have to file a Form 8-A for the listed security with the Commission, the reporting requirements of Section 13(a) of the Exchange Act would still be applicable, but would be administered by the FDIC. Section 12(i) directs the applicable regulatory agency to "make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection" and to issue regulations substantially similar to those in Sections 12, 13, 14, and 16 of the Exchange Act and the Sarbanes-Oxley requirements. For the FDIC, the relevant regulations can be found at 12 C.F.R. Part 335.

As a result, a bank with securities listed on a national securities exchange would file its Exchange Act reports with the FDIC under Section 335.211. Those reports would be on the usual Exchange Act forms (i.e., Form 10-Q and Form 10-K), but with the heading "Federal Deposit Insurance Corporation" in substitution of the Commission's name. A bank would not file these forms on the Commission's EDGAR system (Section 335.801(b)).[6]

Some examples of listed bank securities include First Republic Bank (NYSE symbol: "FRC") and Preferred Bank (Nasdaq symbol: "PFBC").

A POSSIBLE APPLICATION: EXEMPT EXCHANGE-TRADED NOTES

A bank that is subject to Section 12(g) of the Exchange Act and files Exchange Act reports with the FDIC is generally not a subsidiary of a bank holding company. But could a bank that is wholly-owned list securities under Section 12(b) of the Exchange Act? Could either of those two banks list an exchange-traded note ("ETN") on a national securities exchange?

Let's assume that the ETN meets the listing requirements of NYSE Arca Equity Rule 5.2-E(j)(6), and the bank meets the issuer tangible net worth requirements of NYSE Arca Equity Rule 5.2-E(j)(6)(A)(e). Issuers of ETNs are constantly issuing, or creating, new securities. For example, a typical ETN prospectus supplement will state that it relates to at least $50,000,000 of ETNs, but will disclose that at least $4,000,000 of ETNs were issued on the original issuance date at par and that the rest of the stated amount will be sold at market or negotiated prices from time to time. This continuous issuance results in recurring "restricted periods" for purposes of

[5] Section 12(i) of the Exchange Act also encompasses national banks and federal savings associations, with the Office of the Comptroller of the Currency as their principal regulator, and member banks of the Board of Governors of the Federal Reserve System, with the Board of Governors as their regulator. Although these and FDIC-insured state non-member banks are all encompassed by Section 12(i), for simplicity we discuss only the last group.

[6] A list of FDIC insured state non-member banks that file Exchange Act reports with the FDIC can be found at: https://goo.gl/i7Xsvt.

Regulation M. The restricted period for ETNs continues until the ETNs are called or mature or until the issuer ceases new creations.

During the restricted period, an ETN issuer could not redeem existing securities, or have its affiliated broker-dealer maintain a secondary market in the securities, without violating Regulation M, absent an exemption or no-action relief. The SEC's Division of Trading and Markets provided that exemptive relief in the Barclays Bank PLC Staff No-Action Letter (July 27, 2006) (the "iPath Letter"). Under the iPath letter, broker-dealer affiliates of ETN issuers could bid for or purchase ETNs in market-making transactions during their distribution of the ETNs without violating Rule 101 of Regulation M. The iPath Letter also permitted ETN issuers and their affiliates to redeem ETNs during the restricted period, without violating Rule 102 of Regulation M.

The iPath Letter, arguably, assumes an issuance of ETNs registered under the Securities Act, using Form S-3 or Form F-3, the issuer filing reports under the Exchange Act and an Exchange Act registration of the ETN.[7] Could the iPath Letter apply to an exempt bank issuer using Section 12(i) of the Exchange Act to list its ETNs on a national securities exchange and filing its Exchange Act reports with its principal bank regulator?

Here's where the difference between a subsidiary bank listing an ETN under Section 12(b) of the Exchange Act and a bank that is subject to Section 12(g)(1)(B) becomes important. The non-subsidiary bank could argue that, but for its exempt status, with a class of equity securities triggering registration under Section 12(g)(1)(B), timely filings of its Exchange Act reports and $75 million or more of its common equity held by non-affiliates, it would have been eligible to use Form S-3 (assuming the other form requirements were satisfied). In other words, because the bank meets the registrant requirements of General Instructions I.A. of Form S-3 and the liquidity requirement of General Instruction B.1. of Form S-3, but for its exempt status it could have made a primary offering of securities on Form S-3, such as an ETN, for cash.

Could a wholly-owned subsidiary bank that voluntarily lists a security, such as a fixed rate note, under Section 12(b) of the Exchange Act, make a similar argument for S-3 eligibility but for its exempt status? Let's assume that this bank wants to list an ETN in addition to the existing listed debt security. What would the S-3 eligibility analysis be?

If the subsidiary bank would have met the registrant requirements of General Instructions I.A. of Form S-3 but for its exempt status (subject to the Exchange Act reporting requirements, timely filing its reports and no defaults), it would have to find an available transaction requirement under General Instructions I.B. or I.C. If the bank is a wholly-owned subsidiary of a well-known seasoned issuer, the transaction requirement of General Instructions 1.B.2.(iii) would be available. If that requirement could not be met, another possibility would the transaction requirement of General Instructions 1.C.3. for majority-owned subsidiaries. That instruction requires that the parent meets the registrant and applicable transaction requirements and provides a full and unconditional guarantee of the subsidiary's non-convertible debt security (the ETN).

Although the two rationales above make for interesting technical arguments, one should not assume that the Staff of the Division of Trading and Markets would agree that the iPath Letter would apply in either situation. A bank relying on Section 12(i) and seeking to list an ETN should first contact the Staff of the Division of Trading and Markets to discuss the applicability of the iPath Letter to its offering.

[7] Barclays Bank PLC is a F-3 issuer.

LINKING A STRUCTURED NOTE TO THE EQUITY SECURITIES OF A LISTED EXEMPT BANK ISSUER

Following the rationale of the arguments above that a bank that is subject to the reporting requirements of Section 12(g) of the Exchange Act would be Form S-3 eligible but for its exempt status, could an issuer of a structured note link its note to the equity securities of that bank? The answer lies in the Morgan Stanley no-action letter, and whether form will rule over function.

In the Morgan Stanley no-action letter, the issue related to the type of disclosure required to be included concerning an underlying common stock issuer in the context of an offering of exchangeable securities.[8] The SEC Staff in its relief looked to the availability of public information about the underlying common stock issuer and determined that if the underlying issuer was eligible to use Form S-3 and the common stock was registered under Section 12 of the Exchange Act (*i.e.*, "Morgan Stanley eligible"), then the issuer of the exchangeable security could include abbreviated disclosure about the underlying common stock issuer.

An issuer seeking to link its structured note to the common stock of an exempt bank could make a very good argument that that common stock is Morgan Stanley eligible, even if the bank itself, while meeting S-3 eligibility requirements, is not required to register the stock on a Form S-3, given the availability of public information that complies with securities disclosure requirements.

German Securities Law: Revolution on the Horizon

Germany is the home base of Clearstream Banking AG, a highly sophisticated central securities depository ("CSD"), which operates as a German CSD and runs a fully electronic book-entry system. German securities law has traditionally relied on the use of global securities certificates within the vaults of the CSD, rather than generally subscribing to the idea of full dematerialization (i.e., the elimination of global certificates). Full dematerialization has been accepted in many European states, such as all the Nordic states, France, Italy and Switzerland.

This is about to change, triggering a revolution in German securities law.

The German Ministry of Finance recently announced that it is about to launch a legislative project that will introduce the legal framework for the optional issuance of fully electronic and dematerialized notes and bonds by private sector issuers. This project would eliminate the requirement to create physical certificates in order to issue bond and notes (a full dematerialization of share certificates might be introduced at a later point in time). While there is no intention to abolish the legacy system, it is likely that the market would prefer a dematerialized system once introduced, gradually rendering the legacy system obsolete.

The requirement to create physical certificates, which still mandatorily applies to the issuance of private sector securities (but had been abolished for the issuance of bonds and notes (such as *Bunds*) of the Federal Republic of Germany many decades ago), would be replaced by an entry into a public electronic securities register, which would be operated centrally by a federal agency and would be subject to supervision. The entry would contain all of the economic and legal details of the securities, such as the terms and conditions .

[8] Morgan Stanley & Co. Incorporated, June 24, 1996.

Once entered into the public register, the electronic bonds and notes would be legally treated as if they were normal negotiable instruments. This would be achieved either by way of a statutory fiction or by way of introducing a *sui generis* type of property right. Hence, property law principles would apply to the transfer of title. There would be a legal presumption that the holder of the registered title is the legal owner. As a consequence a *bona fide* purchaser would be fully protected, and a payment by the issuer to the registered holder would fully discharge the obligation. Furthermore, electronic bonds and notes would then be able to be introduced into and transferred via the clearing systems of CSDs, as is the case with traditional certificated bonds and notes.

In addition, the German legislator may also permit the issuance of electronic bonds and notes using block chain technology, in which case the block chain ledger would substitute for the electronic securities register, which would be otherwise required. In order to ensure investor protection, numerous issues are still under review and subject to further discussion:

- Are the ledger entries protected against falsification and manipulation?
- Should the general public be allowed to subscribe block chain securities or should this option be limited to institutional investors?
- If the general public may subscribe, should public subscription be channeled through credit institutions or other supervised entities as intermediaries, who would have to comply with certain advisory and disclosure duties to protect the general public?
- Should the issuer be allowed to operate the block chain ledger or should this task be entrusted to a third party subject to full supervision?
- Should the operation of a block chain ledger be treated as securities custody business, triggering certain licensing requirements? If so, which principles should be applied to determine the situs of the block chain ledger for regulatory and international private law purposes (if at all possible)?

While the public consultation is now fully under way, it is not yet clear when the first draft bill will be published. Given that there seems to be a high demand for dematerialized or even block chain structures in the securities market, it is likely that there will be sufficient momentum to convince the legislator to produce a draft bill sooner than later. The enactment of this legal framework would be good news for the German securities market, creating legal and regulatory certainty in a market that is driven by digitalization and technological innovation.

Refresher: Sales of Structured Products at Bank Branches – Networking Arrangements

Many broker-dealers engaged in the structured products industry are affiliates of large U.S. commercial banks, which have a significant customer base. This resource may be used by a broker-dealer to promote its services. For instance, a broker-dealer may use a portion of the space at a bank branch to offer its services. Bank employees may refer customers to the broker-dealer, typically in exchange for a referral fee under a referral arrangement. Under either arrangement, both the broker-dealer and the bank must be aware of, and comply with, FINRA Rule 3160 and Rule 701 of Regulation R under the Exchange Act, which govern these arrangements. In this article, we summarize some of the key requirements of these rules.

SCOPE OF REGULATION

Regulation R primarily addresses statutory exceptions that exempt a bank from being required to register as a "broker" under the Exchange Act, including banks that participate in the sale of structured products under networking arrangements. Specifically, Rule 701 permits a bank, subject to a variety of conditions, to pay a bank employee a higher than nominal, contingent fee for the referral of a bank customer to a broker-dealer. Rule 3160 regulates networking arrangements in which a broker-dealer conducts its services on or off the premises of a bank branch.

QUALIFICATION OF A BANK CUSTOMER

To qualify for the exemption under Rule 701, both the broker-dealer and the bank must have a reasonable basis to believe that the relevant bank customer is a high net worth customer or an institutional customer. For purposes of Rule 701, a high net worth customer is one that has at least $5 million in net worth (excluding its primary residence and associated liabilities). An institutional customer is an entity that has: (a) at least $10 million in investments, (b) $20 million in revenues, or (c) $15 million in revenues if the bank employee refers the customer to the broker or dealer for investment banking services. These thresholds are adjusted every five years for inflation.

QUALIFICATION OF A BANK EMPLOYEE

To qualify under Rule 701, the relevant bank employee:

- must be predominantly engaged in banking activities other than making referrals to a broker or dealer;
- must not be registered or approved, or otherwise be required to be registered or approved, under the qualification standards established by a self-regulatory organization, such as FINRA;
- must not be subject to the statutory disqualifications provided by Section 3(a)(39) of the Exchange Act; and
- must encounter the relevant customer in the ordinary course of the employee's assigned duties for the bank.

Before a referral fee is paid to a bank employee, the broker-dealer must determine that the bank employee is indeed qualified to receive the referral fee.

SUITABILITY ANALYSIS

Regardless how a bank customer is referred, the broker-dealer must perform an appropriate suitability assessment before paying the referral fee (or determine that the relevant customer has the ability to evaluate the relevant investment risk on its own, and is, in fact, exercising its independent judgment). Needless to say, for structured products, particularly those that are complex, the suitability analysis is likely to be more rigorous than that which may be undertaken for a more conventional financial product. The broker-dealer must inform the relevant bank customer if the broker-dealer determines that the transaction is not appropriate for the customer.

DISCLOSURE REQUIREMENTS

Both Rule 3160 and Rule 701 require that the relevant bank customer receive certain disclosures. Rule 701 requires that the bank to disclose to the relevant customer the name of the broker-dealer, that the bank employee is participating in an incentive compensation program for referring the customer, and that payment of this fee may be contingent on whether the referral results in a transaction with the broker-dealer. The bank usually discloses the above information in writing prior to the referral. Alternatively, the bank may disclose the information orally followed by a written disclosure, an obligation that can be delegated to the broker-dealer in the networking arrangement agreement.

Separately, Rule 3160 requires the broker-dealer to disclose in writing to the relevant customer that the broker-dealer services are being provided by the broker-dealer and not by the bank, and that the "securities products" purchased or sold in a transaction are:

- Not FDIC insured;
- Not bank guaranteed; and
- May lose value.

These disclosures must be made at or prior to opening a customer account with the broker-dealer. The broker-dealer must clearly indicate in its confirmations and account statements to the relevant customer that the broker-dealer services are being provided by the FINRA member.

COMMUNICATIONS WITH THE PUBLIC

In addition, the broker-dealer must make the same Rule 3160 disclosure discussed above in its communications with the public, including material published, or designed for use in media broadcasts, ATM welcome screens, billboards, signs, posters and brochures, that announce the location of a financial institution where broker-dealer services are provided by the member. Communications that are distributed by the member on the premises of a financial institution must also include these disclosures. Certain specified short-form presentations are exempt from this disclosure requirement.

ADDITIONAL REQUIREMENTS APPLICABLE WHEN OFFERING BROKER-DEALER SERVICES AT A BANK BRANCH

In addition, if a broker-dealer conducts its services on the premises of a bank branch, it must:

- clearly identify itself as the party providing the broker-dealer services;

- distinguish its broker-dealer services from the services of the bank;
- conduct its broker-dealer services in an area that clearly displays the FINRA member's name;
- to the extent practicable, operate its broker-dealer services in a location that is physically separate from the routine retail deposit-taking activities of the bank; and
- provide the required disclosures orally in addition to the written disclosure for any account opened on the premises.

These requirements are all designed to help ensure that a customer will not confuse the products and services offered by the broker-dealer with those of an FDIC-insured bank.

NOTIFICATION REQUIREMENT

The broker-dealer must promptly inform the bank of the following:

- if the broker-dealer determines that the relevant bank customer is not a high net worth customer or an institutional customer;
- if a bank employee is not a qualified employee; and
- if any associated person of the broker-dealer who is employed by the bank is terminated for cause.

WRITTEN ARRANGEMENT BETWEEN THE BROKER-DEALER AND THE BANK

The arrangement between the broker-dealer and the bank must be governed by a written agreement that addresses, among other things, the following:

- the responsibilities of the parties;
- compensation arrangements;
- access to the premises of the bank branch by supervisory personnel of the broker-dealer and representatives of the Securities and Exchange Commission and FINRA; and
- all broker-dealer obligations required by Rule 701.

GOOD FAITH COMPLIANCE

Rule 701 includes a cure provision that may apply if the bank has not made the required determination as to one or more customers if the bank acts in good faith and has reasonable policies and procedures in place designed to comply with Rule 701.

COMPENSATION OF A BANK EMPLOYEE

If a networking arrangement between a bank a broker-dealer complies with Rule 701, a bank employee may receive more than nominal compensation for a referral. However, if the parties do not rely on the exemption provided in Rule 701, no incentive compensation should be paid to a bank employee for the referral. Instead, the Exchange Act only allows a nominal fee that is not contingent upon the result of the referral.

- **Incentive Compensation.** Rule 700 of Regulation R generally defines incentive compensation as "compensation that is intended to encourage a bank employee to refer a customer to a broker or dealer or give the bank employee an interest in the success of a securities transaction at a broker or

dealer." This definition does not include discretionary bonus plans that are based on multiple factors and variables that include significant factors or variables unrelated to securities transactions at the broker-dealer. Rule 700 also excludes bonus plans that are based on the overall profitability or revenue of the bank, its non-broker-dealer affiliates or any operating units of these entities, as long as these affiliates or operating units do not predominately engage in the business of making referrals.

- **Nominal Referral Fee.** A number of alternative standards are permissible to determine whether a referral fee is nominal. For example, the standard can be based on a fixed amount, which is $25, adjusted periodically for inflation.
- **Contingency.** Rule 700 addresses circumstances in which a fee would be contingent, including contingent on whether the referral results in a purchase or sale of a security; whether an account is opened with a broker-dealer; whether the referral results in a transaction involving a particular type of security; and whether the referral results in multiple securities transactions.

Recent REVERSEinquiries Workshop White Papers

INDICES: THE GOOD, THE BAD AND KNOWING THE DIFFERENCE

An issuer comes to us and asks if it can link its debt security to an index. This seemingly simple question (if the index is the S&P® 500 Index, for example) progresses through layers of complication as the underlying index varies from a broad-based benchmark index (such as the SPX) to a proprietary index with a small number of constituents. In this *REVERSEinquiries* Workshop White Paper, we discuss the principal issues to consider.

UNIT INVESTMENT TRUSTS

As volatility increases, unit investment trusts ("UITs") may offer some benefits. As described in more detail in our REVERSEinquiries Workshop White Paper, a UIT is a pooled investment vehicle that invests in a fixed portfolio of securities for a specified period of time. A structured UIT may be used to provide investors with structured product type returns through a fund investment. Read our *REVERSEinquiries* Workshop White Paper.

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Upcoming Events

REVERSEinquiries **Workshop Series: Structured UITs and Repack Structures**

Join us for this REVERSEinquiries Workshop on **Monday, April 8, 2019** at Mayer Brown's New York Office. *Registration: 8am; Program: 8:30am – 9:45am ET.* **CLICK HERE TO RSVP.**

Offering exposure to structured product-like returns in different wrappers or through repackaging vehicles raise a number of concerns. We will discuss, among other things:

- UIT basics and structured UITs,
- Investment Company Act and tax issues arising in connection with UITs,
- Alternative repack structures,
- Volcker Rule, Investment Company Act and commodity pool issues arising in connection with repack structures, and
- Tax structuring considerations with repack structures.

Save the dates for our entire 2019 REVERSEinquiries Workshop series. For more information, please e-mail REVERSEinquiries@mayerbrown.com.

- April 29, 2019
  Certificate of Deposit Programs and Brokered CD Programs
- June 13, 2019
  New Product Governance and Post-Sale Reviews
- October 17, 2019
  ETNs and Daily Redeemable Notes
- November 14, 2019
  Platforms and Securities Law and Commercial Considerations

Our REVERSEinquiries Workshops are limited to 40 participants; Press is not permitted.

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Announcements

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

In our second issue, we look at Q4 2018.

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

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

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