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Reforming Regulatory Reform:  
What to Expect from the New  
Leaders at the Financial  
Regulatory Agencies

Gibson Dunn Webcast  
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# Reforming Regulatory Reform: Overview

1. U.S. Board of Governors of the Federal Reserve System (FED); Office of the Comptroller of the Currency (OCC); Federal Deposit Insurance Corporation (FDIC)
  2. U.S. Securities and Exchange Commission (SEC)
  3. U.S. Commodity Futures Trading Commission (CFTC)
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# Reforming Regulatory Reform: Banking Agencies

U.S. Board of Governors of the Federal Reserve System (FED)

Office of the Comptroller of the Currency (OCC)

Federal Deposit Insurance Corporation (FDIC)



# Banking Agency Leadership Changes

- **Announced Resignations**

- Fed Governor Daniel Tarullo
- Fed Vice Chair Stanley Fischer
- Fed General Counsel Scott Alvarez
- Comptroller Thomas Curry

- **Nominees Pending**

- Randal Quarles – Fed Vice Chair for Bank Supervision
- Joseph Otting – Comptroller of the Currency

- **Key Staff Appointment**

- Mark Van Der Weide – Fed General Counsel

- **Open Appointment**

- Chair of the FDIC
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# Tarullo's Farewell and Administration Priorities

- **Governor Tarullo's April 2017 "Departing Thoughts"**
  - \$50 billion/\$10 billion asset thresholds were set "too low"
  - That "community banks are subject at all to some of the Dodd-Frank rules seems unnecessary."
  - "Several years of experience have convinced me that . . . as it has been drafted and implemented, the Volcker Rule is too complicated."
- **Trump Treasury Report (June 2017): A Financial System That Creates Economic Opportunities**
  - Advocates, among other things:
    - raising \$50 billion/\$10 billion asset thresholds;
    - greater transparency in CCAR;
    - narrowing the application of Liquidity Coverage Ratio and Single Counterparty Credit Limits;
    - delaying U.S. implementation of the Net Stable Funding Ratio and Fundamental Review of the Trading Book;
    - requiring living wills only from organizations that meet a raised asset threshold for enhanced prudential standards, and filings only every two years; more notice and comment in the living will process; and
    - revisiting the Volcker Rule.
- **OCC Request for Public Input on the Volcker Rule**

# Similar Developments

- **Fed Governor Powell Testimony to Senate Banking Committee (June 2017)**
  - “[A] good time to assess the effectiveness and efficiency of [the Dodd-Frank] reforms.”
  - Guiding principles: (1) protect core elements of reforms for largest banking firms; (2) tailor requirements to size, risk, and complexity; (3) assess whether we can adjust regulation in common-sense ways that will reduce unnecessary regulatory burden; (4) strive to provide appropriate transparency to supervised firms.
- **FDIC Chairman Gruenberg Testimony to Senate Banking Committee (June 2017)**
  - “The Agencies are developing a proposal to simplify the generally applicable capital framework,” including: (1) replacing the framework’s complex treatment of HVCRE exposures; and (2) simplifying the current treatment of mortgage servicing assets, certain deferred tax assets, regulatory capital instruments issued by financial institutions, and minority interest.
  - Agencies are “jointly reviewing the examination process, examination report format, and examination report preparation process” to lower regulatory burdens
- **Volcker Agencies’ July statement relating to foreign excluded funds**
- **Fed and FDIC extension of living will filing deadlines for 23 institutions until December 2018**
- **August 2017 proposals on supervisory expectations for boards of directors and new large bank rating system**

# Congressional vs. Agency Action; Supervisory Process

- The foregoing slides show the existence of a consensus that implementation of Dodd-Frank has gone “too far.”
- The question for the next few years will be to what extent the three main players involved in financial regulation – Congress, the banking agencies’ legal divisions, and their supervision and examination teams – will reach a similar consensus on the *extent* of Dodd-Frank overreach.
- Outside of repeal or substantial rewriting of the original Dodd-Frank statute, the federal banking agencies have significant discretion:
  - Prudential regulation generally
  - Basel III implementation
  - Exemptions under the Volcker Rule
  - Corporate governance requirements
- There remains the issue that, frequently, multiple agencies are required to work together.
- In addition, whatever reform is deemed prudent as a regulatory matter must be carried forward by examiners: as a practical matter, the extent of reform will depend not only on revisited regulations, but on the approach of supervision and examination staff.

# Reforming Regulatory Reform: SEC

## U.S. Securities & Exchange Commission *2017-2018 Agenda*



# SEC Leadership: Recent & Proposed Changes

- **Current Composition**

- Chairman Jay Clayton
- Commissioner Michael Piowar (a Republican whose term expires in 2018)
- Commissioner Kara Stein (a Democrat whose term expired in June 2017)

- **Two Nominees Pending**

- Hester Peirce – Republican seat
- Robert Jackson – Democratic seat

- **Key Staff Appointments**

- Experienced lawyers appointed as heads of divisions
- Experienced SEC staffers appointed to Chairman Clayton's executive staff



# Chairman Clayton's Agenda

- **July 2017 Remarks Setting Forth Agenda**

- Reviewed eight principles to guide tenure as SEC Chair

- Principles include:

- Analysis of long-term and cumulative effects of small regulatory changes;
    - Evolution of the SEC alongside changing markets;
    - Retrospective review of adopted rules; and
    - Consideration of costs of compliance.

- Key actions to implement principles include:

- Ongoing emphasis on fraud in enforcement actions;
    - Analysis of cybersecurity matters; and
    - Need to address capital formation barriers.

*"I am not comfortable that the American investing public understands the substantial risks that we face systemically from cyber issues . . . . I'd like to see better disclosure around that."*

SEC Chairman Clayton,  
remarks on September 6, 2017

# Anticipated SEC Staff Actions and Possible Rulemaking

- **Pay Ratio Rules: What to Expect**
  - **Reg Flex Agenda – July 2017**
    - Long-Term Actions List: pay-for performance (Section 953(a)), clawbacks (Section 954), hedging (Section 955), clawbacks of incentive compensation at financial institutions (Section 956), universal proxy cards and board diversity disclosures.
    - Not binding; preamble is as of March 2017.
  - **FY 2018 Budget Request & Legislation**
  - **Other Potential Rulemaking Topics**
    - Shareholder Proposals
    - Universal Proxy Cards
  - **Corp Fin Guidance**
    - Compliance & Disclosure Interpretations
    - Staff Legal Bulletins
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# Reforming Regulatory Reform: CFTC

## U.S. Commodity Futures Trading Commission *2017-2018 Agenda*



# CFTC Leadership: Recent Changes

- Commissioners
  - J. Christopher Giancarlo (Republican) was confirmed to become Chairman on August 3, 2017
    - Chairman Giancarlo had been an Obama appointee as Commissioner, and President Trump nominated him to be permanent Chairman
  - Sharon Bowen (Democrat), who was appointed by Obama, has announced she will be resigning; expected timing is by the end of September
  - New Commissioners Brian Quintenz (Republican) and Russ Behnam (Democrat) were sworn in over the last couple of months
  - President Trump has nominated one additional Commissioner, Dawn Stump (Republican), and it is expected that he will nominate another Democrat to take Commissioner Bowen's soon-to-be vacated spot (timing is expected before the end of the year)
- Recent Senior Staff Changes
  - Director, Division of Market Oversight
  - Director, Division of Enforcement
  - Director, Division of Clearing and Risk
  - Director, Division of Swap Dealer and Intermediary Oversight
  - General Counsel
  - Chief Market Intelligence Officer (a new position)
  - Chief Economist

# CFTC 2017-2018 Agenda: Streamlining Regulations

## CFTC 2017-2018 Agenda: Streamlining Regulations

- Project K.I.S.S. (“Keep It Simple, Stupid”)
  - Agency-wide review of CFTC rules, regulations and practices to make them simpler, less burdensome and less costly
  - CFTC has called for recommendations from the public: the open comment period ends September 30, 2017
- What we expect:
  - We expect that a large number of industry trade associations and stakeholders will provide comments
  - Likely comment areas include:
    - Trading on swap execution facilities
    - Position limits
    - Substituted compliance and cross-border transaction issues
    - Revisions to reporting rules
    - Scope of clearing exemptions and treatment of certain products

*Project KISS is NOT about identifying rules for repeal or even rewrite. What it IS about is taking our existing rules as they are and applying them in ways that are simpler, less burdensome and less of a drag on the economy.*

-CFTC Acting Chairman Giancarlo,  
remarks before the Montana Ag Summit, June 1, 2017

# CFTC 2017-2018 Agenda: Review of Swap Reporting Rules

- Division of Market Oversight (DMO) – Review of Swap Reporting Rules
    - DMO announced in July that it will begin a comprehensive review of the CFTC’s swap data reporting regulations with two goals in mind:
      - 1) to ensure that the CFTC receives accurate, complete and high quality swaps data; and
      - 2) to streamline reporting, reduce messages that must be reported, and right-size the number of data elements that are reported to meet the CFTC’s priority use-cases for swaps data.
    - As part of this review, DMO released a “Roadmap to Achieve High Quality Swaps Data” which highlighted the key phases of the CFTC’s review: (1) Review of SDR Operations; (2) Harmonizing Data Elements; and (3) Review of Reporting Workflows.
    - DMO sought public comments on this Roadmap, which were due on August 21, 2017.
  - What we expect:
    - We expect the CFTC to start focusing on the SDRs initially.
    - They have been involved in the CPMI-IOSCO working groups and we expect them to coordinate any changes to what is going on in those discussions.
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# CFTC 2017-2018 Agenda: FinTech

- Through FinTech, the CFTC is looking to address three fundamental issues:
  - How the CFTC should leverage FinTech innovation to make it a more effective regulator;
  - How FinTech can help the CFTC identify rules and regulations that need to be updated for relevance in digital markets; and
  - The role of the CFTC in supporting U.S. FinTech innovation in CFTC regulated markets
- The CFTC has implemented two initiatives directed at improving and studying the intersection between markets and technological developments: LabCFTC and CFTC 2.0



# CFTC 2017-2018 Agenda: LabCFTC

- LabCFTC
  - LabCFTC is the focal point for CFTC FinTech policy consideration and development and supports President Trump's call to transform the federal government into a modern, digital service provider
  - LabCFTC is aimed at helping the CFTC:
    - Cultivate a regulatory culture of forward thinking;
    - Become more accessible to emerging technology innovators;
    - Discover ways to harness and benefit from FinTech innovation; and
    - Become more responsive to rapidly changing markets.



# CFTC 2017-2018 Agenda: CFTC 2.0

- CFTC 2.0
  - CFTC 2.0 is the CFTC's goal to deploy emerging technology to keep pace with the markets it oversees and to transform the CFTC into a 21st century digital regulator
  - The CFTC wants to strengthen its understanding of new technologies and adopt them in support of its mission to oversee the derivatives markets
  - A new FinTech Director began in mid-July

*We will establish an internal CFTC 2.0 FinTech/RegTech innovation lab to better understand new technologies and to identify potentially useful applications. We will look to explore ways to use FinTech to enhance CFTC functions and duties.*

-CFTC Acting Chairman Giancarlo,  
remarks before the New York FinTech Innovation Lab, May 17, 2017

# CFTC 2017-2018 Agenda: Focus and Timing

- Expected Areas of Focus
    - Swap Dealer *De Minimis* Threshold
    - Calculation of Margin (*i.e.*, 10-day liquidation period)
    - Access to Clearing
    - Revisions to Swap Execution Facility Rules
    - Revisions to Reporting Rules
    - Finalizing Swap Dealer and Major Swap Participant Capital Rules
    - Addressing Cross-Border Application of CFTC Rules
    - Substituted Compliance Determinations
    - Position Limits
  - Anticipated Timing
    - Now that the CFTC has four Commissioners, it is possible we may see some proposals come out this fall; however, it is important to note that at the present time the Commission is split (2 Republicans and 2 Democrats).
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# Arthur S. Long

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*Arthur S. Long is a partner in the New York office of Gibson, Dunn & Crutcher, where he is a Co-Chair of Gibson Dunn's Financial Institutions Practice Group and a member of the Securities Regulation Practice Group. Mr. Long focuses his practice on financial institutions regulation, advising on the regulatory aspects of M&A transactions; bank regulatory compliance issues; Dodd-Frank issues, including the regulation of systemically significant financial institutions (SIFIs) and related heightened capital and liquidity requirements; resolution planning; and Volcker Rule issues with respect to bank proprietary trading and private equity and hedge fund operations. In addition, Mr. Long has significant experience with bank securities offerings and issues particular to foreign banks operating or seeking to operate in the United States.*

At Gibson Dunn, in addition to counseling both non-U.S. and U.S. financial institutions on financial regulatory compliance issues, Mr. Long has advised on such publicly disclosed transactions as:

- GE Capital's sale of its retail bank deposit program to Goldman Sachs, the first expansionary transaction by a globally systemically important bank (G-SIB) since the Financial Crisis;
- Grupo Financiero Ficohsa's purchase of Citigroup's banking and credit card operations in Honduras and Nicaragua; and
- Green Dot Corporation's acquisition of the Santa Barbara Tax Products Group, a provider of tax-related financial products.

Prior to joining Gibson Dunn, Mr. Long practiced with Davis Polk & Wardwell LLP for 16 years. During the Financial Crisis, he provided advice in connection with:

- The Federal Reserve Bank of New York's emergency loan to American International Group, Inc.;
- Her Majesty's Treasury's plan to provide support to the U.K. banking system, including obtaining relief from the U.S. Bank Holding Company Act for the U.K. government-controlled company that was the majority shareholder of the Royal Bank of Scotland Group plc and Lloyds Banking Group plc;
- Morgan Stanley's becoming a bank holding company and confirming its global operations to the Bank Holding Company Act; and
- Citigroup's proposed rescue of Wachovia Corporation and FDIC assistance.

Mr. Long advised Banco Santander, S.A. in connection with its acquisition of Sovereign Bancorp, Inc., which resulted in protested applications to the Federal Reserve Board, the Office of Thrift Supervision and the New York State Banking Department. He also advised one of the first-round filing international banks on its resolution plan required by Section 165 of the Dodd-Frank Act.

Mr. Long served as law clerk to U.S. Supreme Court Justice Clarence Thomas from 1997 to 1998, and to Judge J. Michael Luttig of the U.S. Court of Appeals, Fourth Circuit from 1993 to 1994. In 1993, he graduated *magna cum laude* from Harvard Law School, where he served as the Supreme Court Editor for the *Harvard Law Review*. He received his A.B. *magna cum laude* from Harvard College in 1989.

# Elizabeth A. Ising

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*Elizabeth Ising is a partner in Gibson Dunn's Washington, D.C. office and Co-Chair of the firm's Securities Regulation and Corporate Governance practice group. She also is a member of the firm's Hostile M&A and Shareholder Activism team and Financial Institutions Practice Group. She advises clients, including public companies and their boards of directors, on corporate governance, securities law and regulatory matters and executive compensation best practices and disclosures. Representative matters include advising on Securities and Exchange Commission reporting requirements, proxy disclosures, director independence matters, proxy advisory services, board and committee charters and governance guidelines and disclosure controls and procedures. Ms. Ising also regularly counsels public companies on shareholder activism issues, including on shareholder proposals and preparing for and responding to hedge fund and corporate governance activism. She also advises non-profit organizations on corporate governance issues.*

In 2017, Chambers USA recognized Ms. Ising as a top Securities: Regulation attorney. She was also selected for inclusion in the 2018 edition of *The Best Lawyers in America*. Ms. Ising was named to *Who's Who Legal: M&A and Governance 2016* and *2017*, which were based on independent client and peer surveys by *Who's Who Legal*. In 2017, Ms. Ising was elected as a fellow of the American College of Governance Counsel. In addition, *BTI Consulting* named Ms. Ising to its 2016 *BTI Client Service All-Stars* list. The list features an "elite group of attorneys recognized by clients for client service excellence." She is a member of the Advisory Board of Northwestern University's Securities Regulation Institute and previously was named a "Rising Star of Corporate Governance" by Yale School of Management's Center for Corporate Governance and Performance.

Ms. Ising previously was Vice Chair of the Proxy Statements and Business Combinations Subcommittee of the Federal Regulation of Securities Committee of the ABA and is a member of the Society of Corporate Secretaries and Governance Professionals. She previously served as Chair of the Corporate Finance Committee; Corporation, Finance and Securities Law Section of the District of Columbia Bar as well as a member of the National Advisory Board and co-chair of the Washington, DC chapter of the Women in Law Empowerment Forum.

Ms. Ising graduated with high honors from the University of North Carolina at Chapel Hill School of Law in 2000. She was a member of Order of the Coif and was inducted into the James E. and Carolyn B. Davis Society. Ms. Ising was also a published member of the *North Carolina Journal of International Law and Commercial Regulation*. Ms. Ising is admitted to practice in the State of North Carolina and in the District of Columbia. She is a chair of Gibson, Dunn & Crutcher's Washington, D.C. Diversity Committee and co-chair of the LGBT Committee.

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*Carl E. Kennedy is Of Counsel in the New York office of Gibson, Dunn & Crutcher. He is a member of the firm's Financial Institutions, Energy, Regulation and Litigation, Securities Regulation and Corporate Governance, Investment Funds and Public Policy Practice Groups. Mr. Kennedy applies his prior financial services and government experience to assisting clients with myriad regulatory, legislative, compliance, investigative and litigation issues relating to the commodities and derivatives markets.*

Prior to joining Gibson, Dunn & Crutcher, Mr. Kennedy was an Executive Director and Assistant General Counsel at J.P. Morgan Chase in its Corporate and Investment Bank Legal Department. In that role, he was responsible for providing legal advice and support to J.P. Morgan's macro markets and clearing businesses on a variety of legal and regulatory matters, including issues relating to the implementation of regulations promulgated under Title VII of the Dodd-Frank Act and other global derivatives regulatory reforms.

Prior to working at J.P. Morgan, Mr. Kennedy served as Special Counsel and Policy Advisor to Commissioner Scott O'Malia at the U.S. Commodity Futures Trading Commission (CFTC), where he advised the commissioner on a full range of legal, regulatory and policy matters before the CFTC. Also while at the CFTC, Mr. Kennedy was Legal Counsel in the Office of the General Counsel, where he played a key role in the commission's adoption of several rulemakings and other guidance implementing the Dodd-Frank Act. Of note, Mr. Kennedy was the primary drafter of a number of CFTC rulemakings and other CFTC guidance, including the cross-border application of the CFTC's swaps regulations, the CFTC's process for determining block trade thresholds for swaps and several privacy-related rulemakings under Title X of the act.

Earlier in his career, Mr. Kennedy was Legal Counsel at Managed Funds Association (MFA), which represents the hedge fund industry on U.S. and international legislative and regulatory policy issues. While at MFA, Mr. Kennedy primarily monitored, analyzed and commented on regulatory and legislative developments related to OTC derivatives reform, including advocacy leading up to the passage of the Dodd-Frank Act. Mr. Kennedy began his legal career in the business and tax practices at large law firms in Philadelphia and Washington, D.C.

Mr. Kennedy graduated in 2000 from both Temple University School of Law and Temple University School of Business, receiving his J.D. and M.B.A. Mr. Kennedy received his B.A. in 1997 from Temple University, graduating *magna cum laude*. His bar admissions include Pennsylvania and the District of Columbia.

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