

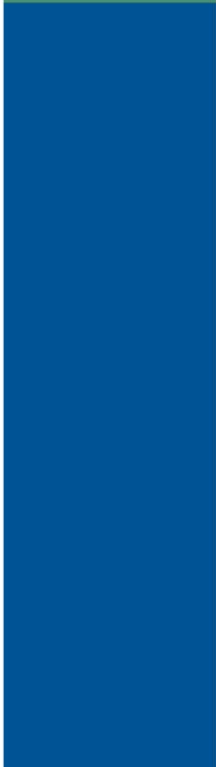


American  
Bankers  
Association

# Washington Update

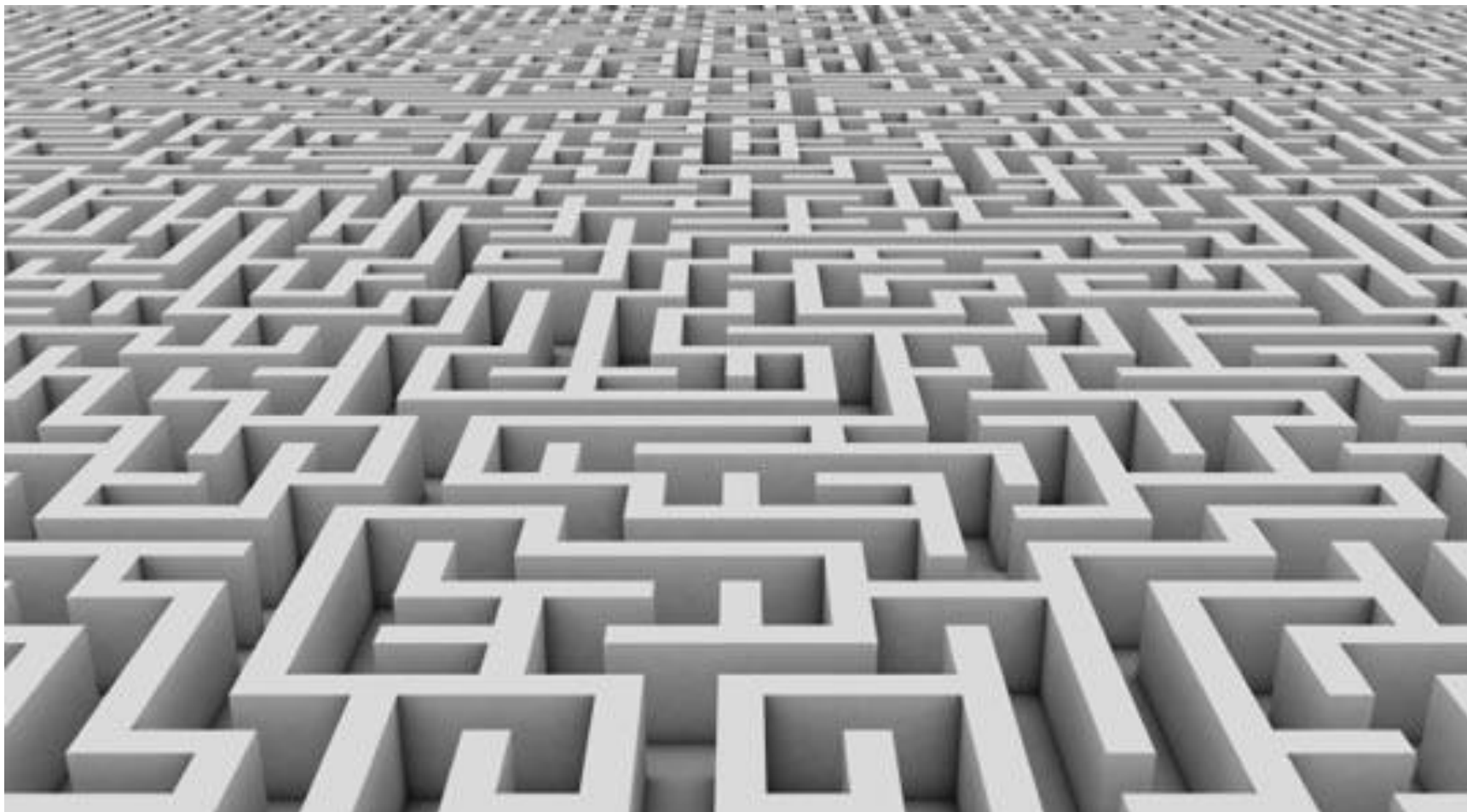
**April 29, 2013**  
**FIRMA Conference**

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# Regulatory Policy Landscape





# Regulatory Policy Landscape

- Only increasing in complexity
- U.S. participation in global bodies means advocacy has to happen at even earlier stages
  - BCBS, FSB, IOSCO; ABA participation through IBFed
- Foreign authorities more assertive
  - FSA – depositor preference threat to branching
- Domestic agencies proliferating, not consolidating
  - State banking departments, OCC, FDIC, FRB, CFPB, CFTC, SEC, MSRB, DOL, IRS, Treasury (FinCen, OFAC), FSOC, OFR





# Influencing Regulatory Policy

- Industry Concerns
  - Decreasing profit possibilities
  - Challenge to attract investors and raise capital
  - More adversarial relationship with regulators
  - Statutory requirements for interagency coordination or cooperation creates danger and opportunity
  - Need for Congressional intercession
- DFA is not going away
- Best chance to affect policy is through data showing likely impact on consumers
- This can help get past the “us vs. them” problem: customer and regulator
- Let’s not forget appropriate use of the courts

# 2012 Election



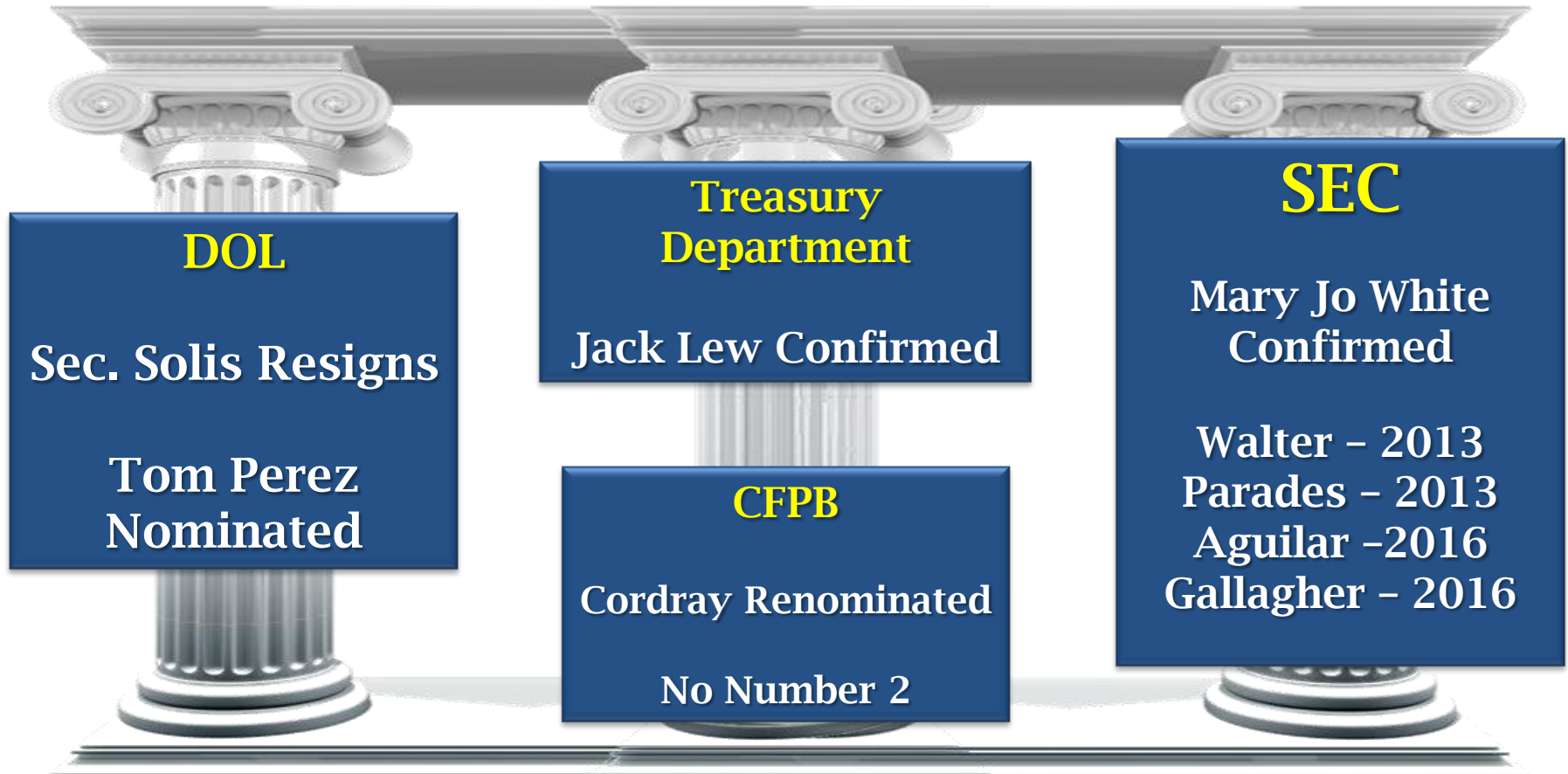


# Legislative Environment

- Remains unchanged
- Congress remains polarized and diverse
- Memory of financial crisis remains
- Bi-partisanship hard to come by, but only game in town
- Big picture economic issues loom
  - Debt Ceiling, Sequestration, Budget

# Administration Shuffle

Key banking agency leadership in place, but key vacancies only recently filled or remain .....







# What should you be paying attention to?

- Final Rules and Guidance
  - Regulation F-Final Remittance Rule
    - Custody accounts, investment management accounts
    - Exception for accounts established under bona fide trust agreement
  - SEC Unresponsive Payee Rule
    - Applies to “Paying Agents”: Custodians, investment advisers, indenture trustees, and those who receive payments from issuer and distribute payments to holders of security
    - “ Payments” include dividends, litigation proceeds
    - Must provide written notice to security holders who do not negotiate checks: (1) 7 months after check is sent or before next check sent
    - Exemption for Payments less than \$25
    - No effect on state escheatment laws



# What should you be paying attention to?

- Final Rules and Guidance
  - OCC Handbook on Unique Assets
    - Types on unique assets and hard-to-value assets:
      - Real estate, closely held businesses, mineral interests, loans and notes, life insurance, and collectibles
    - Risk associated with investing/holding these assets:
      - Management, ownership rules, valuation, marketability
    - Risk mitigation
      - Pre- and post-acceptance reviews
      - Annual reviews
      - Risk assessments
      - Audit/compliance

# What should you be paying attention to?

- Final Rules and Guidance
  - OCC proposal to add safeguards to address the risk of loss to short term investment funds (STIF)
    - ABA's Collective Fund Task Force submitted comments
    - Final Rule issued October 9 with an effective date of July 1, 2013
      - Installs safeguards designed to address risk of loss to a STIF's principal
      - Partly follows SEC MMMF treatment (60-day maturity requirement, shadow pricing, stress testing)
  - FATCA Final Rule
    - Requires information reporting to IRS by foreign financial institutions (FFI) with respect to U.S. person accounts
    - Foreign trust with corporate trustee= FFI
    - Rules for US person with “beneficial interest” in foreign trust



# What should you be paying attention to?

- Final Rules and Guidance
  - Swaps – end user
    - CFTC and SEC have issued rules that permit banks <\$10billion to be considered end-users
      - Means they are not required to clear swaps they enter into
  - Swaps – eligible contract participant
    - After October 12, 2012 all uncleared swaps must be entered into with ‘Eligible Contract Participants’
    - CFTC issued October 12, 2012 additional guidance on which customers may be considered ECPs
  - Reliance on credit ratings for investment securities
    - OCC issued final rule establishing due diligence requirements banks should follow in lieu of using ratings
    - Expect asset management examiners to be aware of this guidance



# What should you be paying attention to?

- Proposed Rules

- Capital

- Key Banker concerns regarding capital proposals:
      - Removal of AOCI filter creates capital volatility and hinders ability to manage liquidity and interest rate risk
      - Significantly increases required capital for mortgage assets and increases granularity of data needed to determine capital requirements
      - Eliminates Dodd-Frank TruPS grandfathering
    - Comment by state banking authorities helpful
    - Postponement of effective date by banking regulators
    - Opportunity for pressure on non-balance sheet businesses



# What should you be paying attention to?

- Proposed Rules
  - FSOC MMF Proposals
    - Proposed Recommendations
      - Floating NAV v. Stable NAV
      - Redemption Restrictions
      - Capital Buffer, Other Requirements
    - ABA comments
      - Importance of MMFs to Trust Departments
      - Need to first study 2010 SEC Reforms



# What should you be paying attention to?

## – Proposed Rules

### – SEC BD Standard of Care

- SEC Study on Broker-Dealer Standard
  - Concluded that B-Ds should be subject to same standard of care as RIAs when providing personalized advice to retail customers on securities
- Banker Concerns
  - Dilution of fiduciary brand
  - Multiple distribution channels
  - Customers confusion
  - Education vs. advice
- Ongoing work at SEC by a cross-divisional team
  - SEC release in March 2013 requests data; due July 2013



# What should you be paying attention to?

- Proposed Rules
  - Volcker
    - Timing and form
    - Any substantive changes?
    - Compliance for everybody
  - Temporary registration of municipal advisors
    - Who has to register as a municipal advisor?
    - Current deadline is September 30, 2013, but expect earlier action and advocacy
    - The SEC continues to have the view that banks should be within the scope of the registration requirement





# What should you be paying attention to?

- Watch Out For
  - CFPB in the banks
    - Rulewriting and Regulations – ALL BANKS
    - Enforcement – little focus to date on non-bank actors
    - Current Issues:
      - Recess appointment of Director Cordray
      - Proposed legislative changes – Board, Budget
      - Complaint database – driving focus to complaint monitoring by prudential regulators
      - CFPB Examinations - >\$10billion; spot checks on <\$10b
      - Nonbank Oversight Authority – now combined with bank supervision
      - Continued concern regarding potential for differential interpretation of the CFPB's rules – no rule yet has enough time to serve as a test



# What should you be paying attention to?

- Watch Out For
  - CFPB Elder Office
    - Inquiry into Elder Abuse
      - Financial advice to elderly
      - Designations and titles indicating expertise
    - Interest in Retirement Plans
  - IRS – Code Section 67(e): “Unbundling” of Trustee Fees
    - IRS proposal released in September 2011
    - Do not need to “unbundle” until a final rule is issued
    - No final rule yet

# What should you be paying attention to?

- Watch Out For
  - OCC Current Issues
    - Directed Trusts
      - State statutes and practices review
    - Conflicts of Interests
      - Examiner focus
      - Governance and use of proprietary product
  - Decanting of Trusts
    - State Decanting Statutes
      - Study group at the Uniform Law Commission
    - IRS interested in the gift, estate, and GST tax implications of decanting
    - In particular, looking at these scenarios:
      - Beneficiary's right or interest in trust has changed
      - New beneficiaries added
      - Grantor trust turned into non-grantor trust
    - IRS has suspended issuing Private Letter Ruling until it considers public comments



# What should you be paying attention to?

- Watch Out For
  - ERISA Definition of Fiduciary
    - DOL withdrew on September 19, 2011 its controversial proposal to re-define “fiduciary” under ERISA
    - No action to date
    - As initially proposed, customer choice in the IRA market would have been adversely impacted and consumers would have had difficulty obtaining sound, professional advise in retirement planning
    - Bipartisan concern expressed from the Hill
    - DOL Request for information to several industry trade associations
      - Clear response to Hill letters-focused on conflicts of IRA advisers
      - Requests information not available or difficult to compile
    - Still great energy at DOL for reproposal – now expected summer



# American Taxpayer Relief Act of 2012

- Estate/Gift Tax: \$5.25 MM exemption; 40% highest tax rate
- Capital Gains/Dividend Tax
  - 15% rate → between 15% and 39.5% income tax brackets
  - 20% rate → 39.6% income tax bracket
- Alternative Minimum Tax: Permanent fix
- IRA Charitable Deductions: Extended to 12/31/13



# Tax Reform on the Horizon?

- Proposals from House Ways and Means Committee
  - Wash Sales Rules
  - Lot Selection Methods
  - Treatment of Derivatives
- Senate Finance Committee Chairman Baucus comments on need for tax reform



# Continuing Themes

- Dilution and diffusion of the “fiduciary” brand
  - States competing for trust business
  - Further federal standards
    - OCC attention to state directed trustee statutes
    - ERISA re-definition of “fiduciary”
    - B-D Standard of Care uses “fiduciary” rubric
    - MSRB “fiduciary” standard for municipal advisors
    - Additional conduct standards from SEC/CFTC in swaps context
  - Expect confusion in the courts: What preempts?
  - Expect customer confusion



# Continuing Themes

- Micro-scrutiny by regulators
  - Dodd-Frank furthers statutory inflexibility
    - Durbin amendment fixing interchange fees
    - Imposition of ‘Super 23A’ under Volcker Rule
  - Trend to individual responsibility- e.g. for retirement, drives more protective rules and disclosure
    - DOL participant disclosure
    - SEC Standard of Care
  - Granular supervision drives need for more and better process
- Human Capital





# Other Federal Resources

- Government Websites
  - Federal Reserve Board  
<http://www.federalreserve.gov/newsevents/reform.htm>
  - Federal Deposit Insurance Corporation  
<http://www.fdic.gov/regulations/reform/index.html>
  - Securities and Exchange Commission  
<http://www.sec.gov/spotlight/dodd-frank.shtml>
  - Commodity Futures Trading Commission  
<http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>
  - Treasury Department  
<http://www.treasury.gov/initiatives/wsr/Pages/wall-street-reform.aspx>



# Questions?