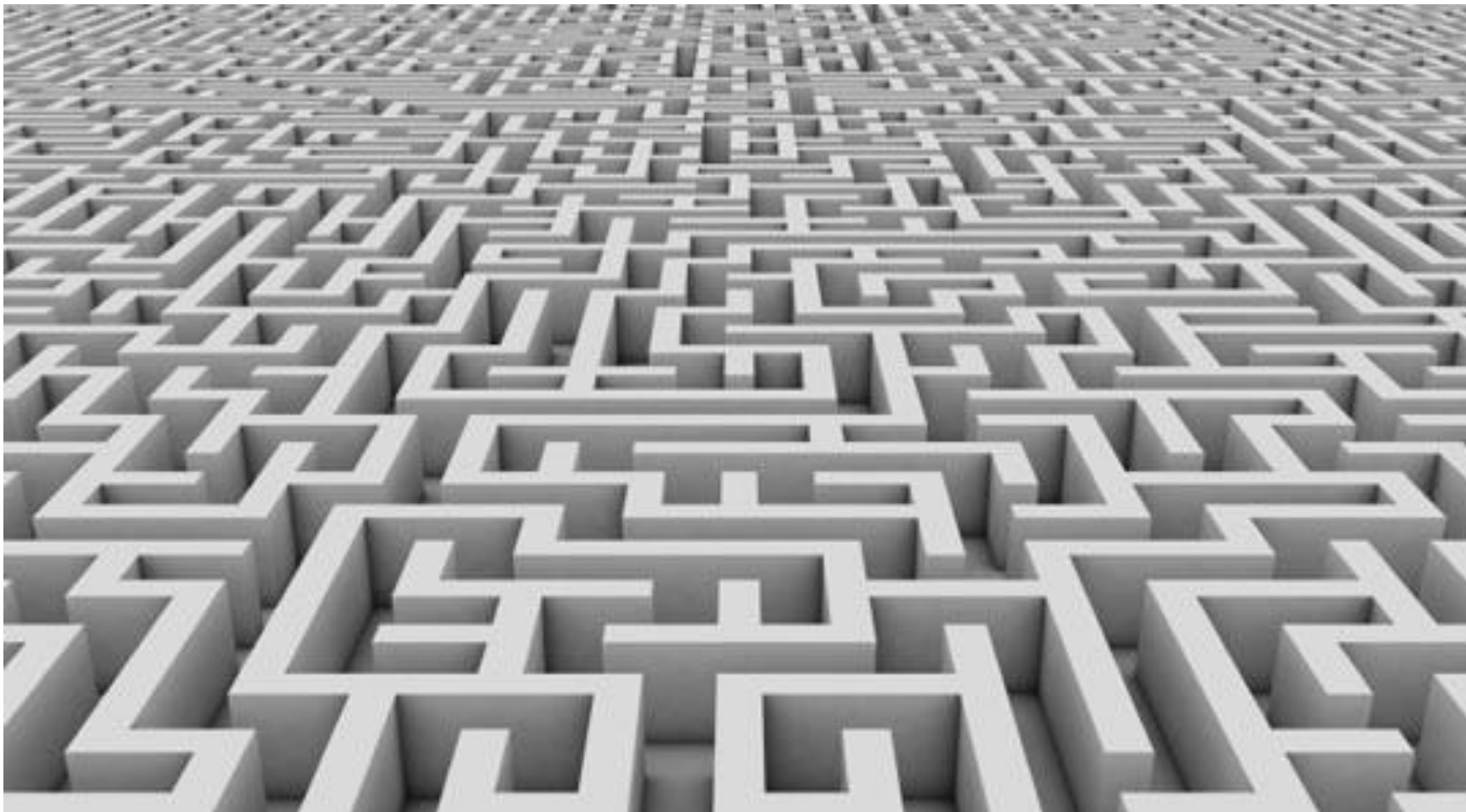


Washington Legislative & Regulatory Update

FIRMA Risk Management Training Conference
April 29, 2014

Cecelia Calaby
Center for Securities, Trust and Investments

Regulatory Policy Landscape





Regulatory Policy Landscape

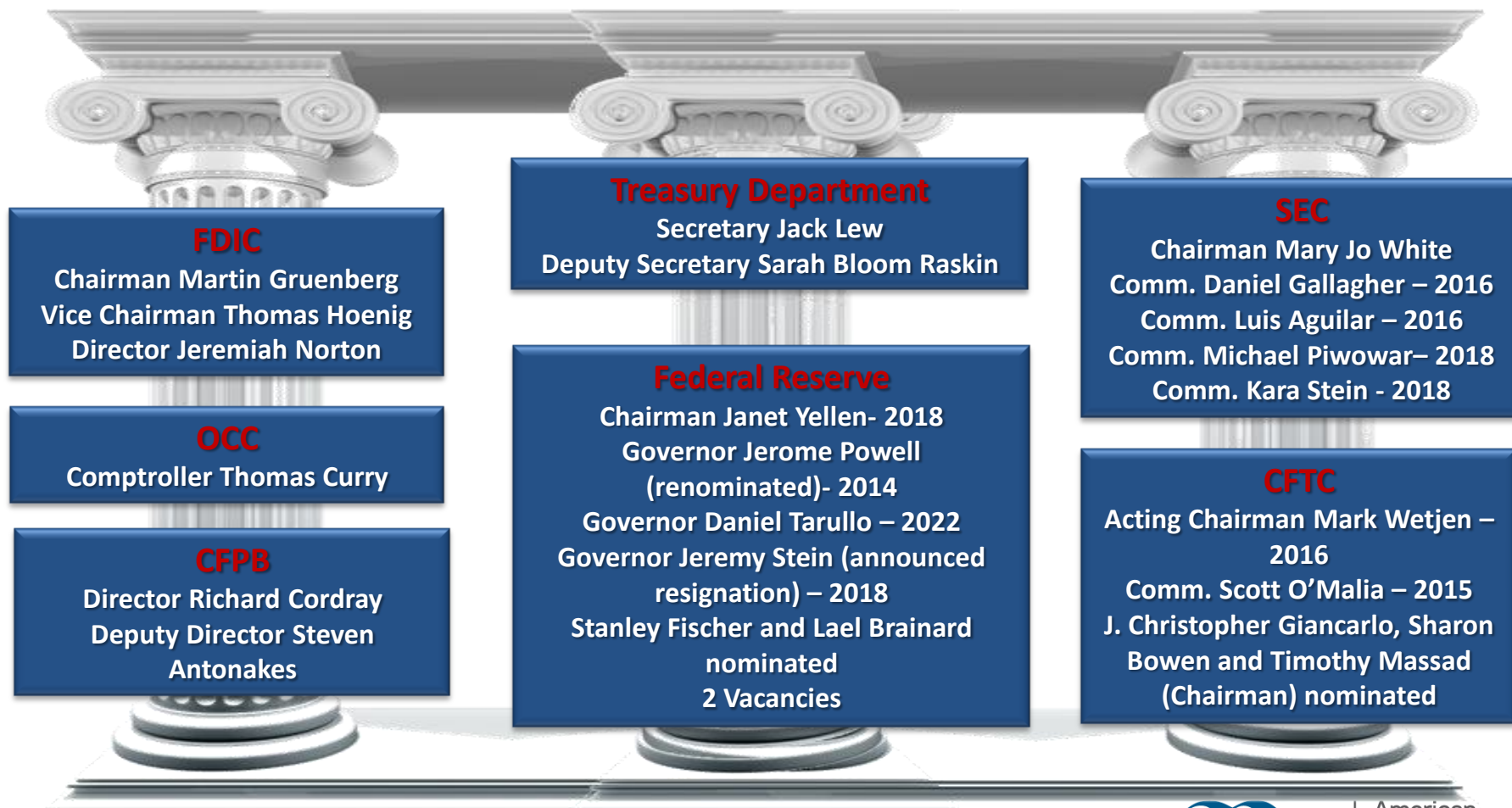
- Only increasing in complexity
- The securities and commodities regulators are in the banks
- No one is herding the principals
- Little attempt to assess impact holistically
- Post-crisis drive for harmonized approaches means advocacy has to happen at even earlier stages
 - BCBS, FSB, IOSCO; ABA participation through IBFed
- Regulators still fighting perception of capture



Influencing Regulatory Policy

- Industry Concerns
 - Decreasing profit possibilities
 - Challenge to attract investors and raise capital
 - Relationship with regulators evolving
 - Statutory requirements for interagency coordination or cooperation creates danger and opportunity
 - Need for Congressional intercession
- Best chance to affect policy is through data showing likely impact on consumers

Federal Agency Leadership





Legislative Environment

- Congress polarized and divisive
- Memory of financial crisis remains
- Bi-partisanship hard to come by
- Little energy for DFA or financial regulatory reform

DFA – SEC Municipal Advisor Registration

ARE YOU PROVIDING ADVICE THAT REQUIRES REGISTRATION?

Is it regarding:

- Issuance of Muni Securities
- Municipal Derivatives
- Guaranteed Investment Contracts (GICs)
- Investment Strategies
 - Proceeds
 - Muni Escrow Investments
- Municipal Derivatives

YES

Is an Exemption available?

- Banks:
 - Extensions of credit (loans)
 - Deposit Accounts
 - Sweep Accounts
 - Indenture Trustee
- Responses to RFPs or RFQs
- Independent Municipal Advisor
- Registered Investment Advisor
- Underwriter
- Swap Dealers and Commodity Trading Advisors
- 529 Plans

Are you making a:

- Recommendation
- Suggestion
- Pitch

YES

NO

Are you providing:

- Education
- Advertising

YES

NO

NO
REGISTRATION
NEEDED

YES

NO

MUNICIPAL
ADVISOR
REGISTRATION
REQUIRED



DFA – SEC Municipal Advisor Registration

- Municipal advisor registration
 - Final rule issued; temporary registration available through July 2014
 - MSRB proposals issued regarding:
 - Fiduciary duty (comment period closed);
 - Supervisory and compliance obligations (comment period open until April 28); and
 - Professional qualifications (comment period open until May 16)
 - Final registration phased-in starting July, 2014 using temporary registration file numbers for phase-in dates



DFA – SEC Municipal Advisor Registration

- Municipal advisor registration (cont.)
 - FAQs for brokers and investment advisers issued; more to come
 - FAQs for banks pending, covering banking and fiduciary issues
 - MSRB fiduciary duty proposal problematic especially with respect to ‘principal’ restrictions
 - MSRB professional qualifications proposal follows BD scheme and may prove problematic for bank trust departments
 - Similarly, MSRB supervisory and compliance proposal follows BD scheme and may prove problematic for bank trust departments



DFA – Volcker Rule

- Volcker rule
 - Final rule issued December 10, 2013
 - The rule closely hews to the statute; so, statutory challenges have become implementation challenges
 - Five agency agreement proved to be a challenge and will continue to be regarding interpretive and implementation issues
 - Immediate impact felt in the covered funds aspects of the final rule
 - Banking entities holding TruPS CDO's faced immediate and certain writedowns
 - Addressed by all five agencies following ABA lawsuit
 - Banking entities holding CLOs face fire sale divestitures
 - Fed took action April 7 with a 2-year extension of the conformance period specifically for CLOs



DFA – Volcker Rule

- Volcker rule (cont.)
 - Proprietary trading issues mostly localized in the larger banks; however many more banks are captured and beginning to realize it
 - State banks with equity investment authority may have to create compliance programs or divest
 - The conformance period is insufficient
 - The way forward is not clear:
 - Although the ‘interagency task force’ is up and running, it is opaque
 - Examinations and metrics review entirely uncertain
 - No compliance guidance available, and two of the five agencies have no history of issuing examiner guidance



DFA: SEC Money Market Fund Proposal

- Alternative One
 - Floating NAV for Institutional Prime Funds
 - Stable NAV for Government Funds and Retail Prime Funds
- Alternative Two
 - “Fees” and “gates” on Prime Funds that do not meet certain liquidity requirements
- Additional Disclosures
 - On sponsor support, material events, etc.
- ABA membership interests diverse but common themes:
 - Either key element makes the product unattractive for current use
 - Neither key element fixes the policy concerns regarding runs and interconnectivity
- SEC recently re-opened comment on staff analyses

Report on Senior Designations for Financial Advisers

- Conclusion: Variety of designations indicating expertise in the provision of financial advice to seniors is confusing to the public
- Recommendations to SEC and other policy makers to improve:
 - dissemination of information about senior designations;
 - standards for the acquisition of senior designations;
 - standards for senior designee conduct; and
 - enforcement related to the misuse of senior designations

Managing Someone Else's Money Guides

- Four booklets for individuals acting
 - Under powers of attorney
 - As court-appointed guardians
 - As trustees, and
 - As government fiduciaries (Social Security representative payees and VA fiduciaries)
- Booklets focus on
 - Duties
 - How to avoid scams and financial exploitation
 - Where to go for help



DFA - Office of Financial Research

Report on *Asset Management and Financial Stability*

- FSOC requested study on asset management industry and its vulnerabilities that could “pose, amplify, or transmit threats to financial stability.”
- Reports looks at
 - Redemption risk in collective investment vehicles
 - Use of leverage and how it may increase the potential of fire sales of assets
 - Data gaps on asset management industry
 - Bank common and collective investment funds



DFA – Standard of Care for Broker Dealers

- SEC “Uniform Fiduciary Standard”
 - Broker-dealers would be subject to standard of care and loyalty to customers
 - Roundtable decision forcing SEC to “go slow”
 - SEC issued RFI (Request for Information) asking for benefits and burdens of proposal
 - RFI fleshes out SEC’s thinking
 - Prospects for release/passage



Tax - Section 67(e), “Unbundling” Fee Rule

- September 2011 proposal looks to whether an individual would commonly/customarily incur a particular expense; if yes, must unbundle and subject to 2% floor.
- If trustee fee imposed on a non-hourly basis (e.g., assets under management), only need to “unbundle” the portion of fee for investment management services
- Unbundled portion subject to the 2% floor
- IRS: no requirement to “unbundle” trustee fees until a final rule is issued. No final rule issued yet.



Tax - Cost Basis Reporting of Debt

- Brokers must presume that taxpayer elected to amortize taxable bonds, unless told otherwise
- Short-term debt instruments are exempt from reporting
- Brokers must transfer detailed information to receiving broker if account moves to new institution
- Reporting commences on debt acquired:
 - After 1/1/14 for fixed maturity date/yield debt
 - After 1/1/16 for complex debt



DOL - Lifetime Income Disclosure

- DOL ANPR (May 7, 2013)
- Required Disclosures:
 - Snapshot approach: current amount = lifetime income stream at “normal” retirement age (NRA)
 - Projection approach: current dollar value of projected account balance at NRA
 - Shown as estimated monthly payments
- Assumptions Key
- ABA Comment Letter (Aug. 7, 2013)
 - Regulatory mandate unnecessary; premature to impose one particular format
 - Investor education/participant initiative best way to modify retirement savings habits
 - Give to participants DOL-generated charts on savings amounts and lifetime income streams and refer them to DOL online tools & calculators



DOL - Fiduciary Under ERISA

- DOL Fiduciary (Re-)Proposal
 - Would expand meaning of “fiduciary” under ERISA for investment advice
 - DOL withdrew proposal September 2011
 - Re-Proposal release now slated for 2014
 - GAO Report on IRA rollovers – March 2013
 - Prospects for release/passage



Fiduciary - All Eyes on Valuation

- IRS: New IRA Forms 5498 and 1099-R
- DOL: OIG Performance Report
- SEC: Selecting Alternative Investments
- OCC: Unique and Hard to Value Assets Handbook



Fiduciary - OCC Bulletin on Vendor Management

- Responsibility of board and senior management: ensure that 3rd party activity is performed in safe and sound manner and in compliance with applicable laws
- Elements of Appropriate Risk Management
 - Proper due diligence in selecting a third party
 - Monitoring of third party's activities and performance
 - Independent reviews of risk management process
- Vendors include tax software/preparation companies, RIAs, appraisers




Fiduciary - Part 9 Developments

- OCC Revisions to Part 9
 - OCC looking to update fiduciary regulation
 - Issues:
 - treatment of “directed trustees”
 - treatment of assets held in custody by third party
 - use of electronic media for reports, communications, consents
 - interplay of Part 9 with state trust statutes
 - Proposal may come out in 2014



Fiduciary – Social Media

- Use in wealth management – slow adoption because
 - Lack of regulatory guidance until December 2013
 - Confidential nature of client-advisor/beneficiary-trustee relationship and communications
 - Use of third party platforms (e.g., Facebook)
- Excellent forum to educate beneficiaries (particularly the very young not-yet-vested beneficiary) about money management
- Potential forum for maintaining relationships with clients
 - A client's posting on Facebook or Twitter about a life event (e.g., pending nuptials, pregnancy, job relocation, retirement) can prompt the advisor to extend an invitation for an off-line conversation about wealth needs and estate planning.



Fiduciary – Social Media; ABA & FFIEC Resources

Additional Sample Policies:

<http://socialmediagovernance.com/policies/>

Also visit the ABA Professional Networks: Compliance & Marketing

FFIEC Final Guidance - December 2014

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-17/pdf/2013-30004.pdf>

ABA Summary of FFIEC Guidance

<http://www.aba.com/Compliance/Regulatory/Documents/SAABAMemoFFIECSocialMedia2013Dec.pdf>



Fiduciary – Social Media; FINRA Resources

FINRA Regulatory Notice 11-39:

Social Media Websites and the Use of Personal Devices for Business Communications
(August 2011)

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p124186.pdf>

FINRA Regulatory Notice 10-06:

Guidance on Blogs and Social Networking Web Sites (January 2010)

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p120779.pdf>

FINRA Regulatory Notice 07- 59:

Supervision of Electronic Communications; Guidance Regarding the Review and
Supervision of Electronic Communications (December 2007)

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p037553.pdf>



Fiduciary – Social Media; SEC Resources

SEC Press Release 2013-51:

“SEC Says Social Media OK for Company Announcements if Investors Are Alerted”

(April 2, 2013)

http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171513574#.UtmZ_tlo7ct

Investment Management (IM) Guidance Update, No. 2013-01:

Filing Requirements for Certain Electric Communications

(March 2013)

<http://www.sec.gov/divisions/investment/guidance/im-guidance-update-filing-requirements-for-certain-electronic-communications.pdf>

SEC Release Nos. 34 58288; IC 28351,

Commission Guidance on the Use of Company Web Sites

(August 2008)

<http://www.sec.gov/rules/interp/2008/34-58288.pdf>

SEC Release No. 34 47806

Electronic Storage of Broker Dealer Records

(May 2003)

<http://www.sec.gov/rules/interp/34-47806.htm>