

# FINANCIAL REGULATORY DEVELOPMENTS FOCUS

In this week’s newsletter, we provide a snapshot of the principal U.S., European and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructure providers, asset managers and corporates.

[Click here](#) if you wish to access our Financial Regulatory Developments website.

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## Bank Prudential Regulation & Regulatory Capital

### **US Consumer Financial Protection Bureau Issues Information Request for Civil Investigative Demands**

On January 26, 2018, the U.S. Consumer Financial Protection Bureau published a notice in the Federal Register requesting public comment regarding the agency's Civil Investigative Demands (CID) processes. Further to statements issued by CFPB Acting Director Mick Mulvaney, the request for information provides an opportunity for the public to provide comments aimed at improving and streamlining the CID processes for consumers and financial institutions. The request for information asks for comment regarding a number of aspects of the CFPB's CID processes, including suggestions for modifying or updating CID processes, proposed improvements to how information is conveyed to entities that receive CIDs and suggestions regarding the timing and deadlines under the existing CID framework. Comments are due by March 27, 2018.

The CFPB's Information Request is available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-01-26/pdf/2018-01435.pdf>.

### **US Federal Banking Regulators Announce Favorable Community Reinvestment Act Consideration to Aid Areas Affected by Hurricane Maria**

On January 25, 2018, the U.S. Board of Governors of the Federal Reserve System, the U.S. Office of the Comptroller of the Currency and the U.S. Federal Deposit Insurance Corporation announced that the agencies will give favorable consideration under the Community Reinvestment Act for bank activities that helped with revitalization and stabilization of the U.S. Virgin Islands and Puerto Rico, which were designated as major disaster areas because of Hurricane Maria. The agencies announced that financial institutions located anywhere in the United States, including outside of the affected areas, will receive favorable CRA consideration for their community development activities concerning affected areas and individuals, provided that the institution has been responsive to the CRA needs of its own assessment area. The agencies clarified that favorable CRA consideration will be given to institutions that aid affected areas and individuals—including those who have been displaced and relocated outside of the affected areas—regardless of census information or the personal income of the individual being assisted. The agencies did, however, note that greater weight will be given to activities that assist areas and individuals that are of low and moderate income.

The interagency statement regarding the announcement is available at: <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180125a1.pdf>.

### **US Consumer Financial Protection Bureau Issues Final Rule Regarding Prepaid Accounts**

On January 25, 2018, the CFPB published a final rule that amends the regulations implementing the Electronic Funds Transfer Act (Regulation E), the Truth in Lending Act (Regulation Z), and corresponding official interpretations. The final rule makes a number of modifications to these regulations, including changes to error resolution requirements and limited liability provisions, which will now apply after a consumer's identity has been verified, designed to promote prompt registration of prepaid cards by individuals. In addition, the final rule clarifies how the prepaid rule applies to credit cards linked to digital wallets, which promotes consumer use of digital wallets, while providing the same protections that apply to traditional credit card accounts. The final rule also delays the effective date of these provisions until April 1, 2019.

The CFPB's final rule is available at: [http://files.consumerfinance.gov/f/documents/cfpb\\_prepaid\\_final\\_rule\\_2018-amendments.pdf](http://files.consumerfinance.gov/f/documents/cfpb_prepaid_final_rule_2018-amendments.pdf).

## Consumer Protection

### **UK Financial Conduct Authority Provides Reassurance for Manufacturers of Packaged Retail and Insurance-based Investment Products**

On January 24, 2018, the U.K. Financial Conduct Authority issued a public statement on the Packaged Retail and Insurance-based Investment Products Regulation, which took effect on January 1, 2018.

The PRIIPs Regulation requires manufacturers of PRIIPs to prepare and publish a stand-alone, standardized Key Information Document for each of their PRIIPs. Those advising retail investors on PRIIPs, or selling PRIIPs to retail investors, must provide the retail investors with a KID in good time before the transaction is concluded.

The information to be included in a KID is set out in Regulatory Technical Standards and includes information on risks, performance scenarios, costs and other pre-contractual information. Some PRIIPs manufacturers have expressed concerns to the FCA that the “performance scenario” information required in the KID may in some cases (and for valid reasons) appear too optimistic and have the potential to mislead consumers. This would contravene the regulatory obligations of those manufacturers to act in the clients’ best interests and to ensure communications are fair, clear and not misleading. The FCA has confirmed that, where a PRIIPs manufacturer has concerns that the “performance scenario” information might be misleading, the manufacturer may provide explanatory materials to put the calculation in context and set out its concerns for investors to consider. The FCA also invites sellers of, or advisers on, PRIIPs to consider how best to address similar issues, for example by providing additional information in communications.

The FCA statement is available at: <https://www.fca.org.uk/news/statements/statement-communications-relation-priips>.

## Cyber Security

### **New York State Department of Financial Services Reminds Institutions of Upcoming Deadline for Cybersecurity Certification**

On January 22, 2018, New York State Department of Financial Services Superintendent Maria Vullo issued a press release reminding regulated entities and licensed persons of the NYDFS’s upcoming February 15, 2018 compliance certification deadline under New York’s cybersecurity regulation that was implemented in March of 2017. New York’s cybersecurity regulation generally requires: (i) that regulated entities establish, review and assess cybersecurity policies and procedures designed to protect consumer data; (ii) that regulated entities have a Chief Information Security Officer; and (iii) that the policies and procedures are approved by an entity’s board of directors or a senior officer. Covered entities and individuals will be required to submit the certification, which attests to compliance with New York’s cybersecurity regulation for 2017, through the NYDFS’s cybersecurity portal. The press release also provides a link to a series of frequently asked questions regarding the cybersecurity regulation generally, and the upcoming filing deadline, including which subparts of the regulation are applicable to this year’s certification, and those that will be applicable to the 2019 certification. Superintendent Vullo also announced that the cybersecurity evaluation will be incorporated into all NYDFS examinations of regulated entities.

The full text of the press release and link to frequently asked questions regarding the cybersecurity regulation are available at: <http://www.dfs.ny.gov/about/press/pr1801221.htm>.

## Enforcement

### **US DOJ, Commodity Futures Trading Commission Charge Three Banks and Multiple Individuals in Spoofing Schemes**

On January 29, 2018, the U.S. Department of Justice and Commodity Futures Trading Commission announced enforcement actions against three banks and multiple individuals involved in alleged commodities fraud and spoofing schemes.

Each of the banks settled civil CFTC charges relating to manipulation of the price of precious metals futures contracts traded on the Commodity Exchange, Inc. through spoofing techniques (including placing an order with the intent to cancel before execution), and by trading in a manner designed to trigger customer stop-loss orders. The three banks were each ordered to pay a civil monetary penalty, which ranged from \$1.6 million to \$30 million. According to the orders, all three banks cooperated throughout their respective investigations.

Additionally, the DOJ and CFTC announced criminal and civil charges against various individuals. These individuals allegedly engaged in various spoofing and manipulative and deceptive schemes in various precious metals and other futures markets. In its continuing litigation, the CFTC is seeking a range of civil monetary penalties, disgorgement, and permanent injunctions against further violations of the Commodity Exchange Act and CFTC regulations, along with trading and registration bans for several of the individuals.

The DOJ's press release is available at: [https://www.justice.gov/opa/pr/eight-individuals-charged-deceptive-trading-practices-executed-us-commodities-markets?\\_sm\\_au\\_=iVVB45PsTTVjRndM](https://www.justice.gov/opa/pr/eight-individuals-charged-deceptive-trading-practices-executed-us-commodities-markets?_sm_au_=iVVB45PsTTVjRndM).

The CFTC's press release is available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7681-18>.

### **Department of Justice Issues Letter Limiting Use of Agency Guidance in Civil Enforcement Actions**

On January 25, 2018, U.S. Associate Attorney General Rachel Brand issued a letter regarding the use of agency guidance, defined in the memo as "any agency statement of general applicability and future effect...that is designed to advise parties outside of the federal Executive Branch about legal rights and obligations," as a tool for civil enforcement actions. In the letter, Ms. Brand references a November 16, 2017 memo from U.S. Attorney General Jeff Sessions entitled "Prohibition of Improper Guidance Documents." The letter from Ms. Brand reiterates that guidance documents may not be used to circumvent the notice-and-comment rulemaking process. The letter also highlights that DOJ personnel are prohibited from using agency guidance documents as a means to require that regulated entities take or refrain from any action not otherwise mandated by law or regulation, and that non-compliance with agency guidance should not in and of itself result in an enforcement action. The letter notes that while agency guidance may be used for other purposes, such as showing that the financial institution had knowledge regarding its obligations under law or regulation, DOJ personnel should not use non-compliance with agency guidance as presumptive or conclusive evidence that a financial entity violated the underlying law or regulation.

The full text of the DOJ letter is available at:

[https://www.justice.gov/file/1028756/download?utm\\_medium=email&utm\\_source=govdelivery](https://www.justice.gov/file/1028756/download?utm_medium=email&utm_source=govdelivery).

### **US Commodity Futures Trading Commission Charges My Big Coin Pay, Inc. and Its Founders with Fraud and Misappropriation of Customer Funds in Virtual Currency Scheme**

On January 24, 2018, the CFTC announced the filing of an enforcement action charging Nevada-based firm My Big Coin Pay, Inc. and its founders with operating a scheme through which they fraudulently offered the sale of a virtual currency, known as "My Big Coin." This enforcement action follows two CFTC enforcement actions against other fraudulent virtual currency schemes within the preceding week.

The My Big Coin Pay, Inc. complaint alleges that from January, 2014 to January, 2018, the defendants fraudulently solicited more than \$6 million from customers throughout the United States by making false and misleading claims that My Big Coin was actively being traded, was backed by gold and could be used anywhere MasterCard credit cards were accepted. The defendants also allegedly misrepresented My Big Coin's daily trading price in reports on its website, when no daily trading price existed because My Big Coin was not actively being traded. Additionally, the complaint alleges that any payouts customers did receive were a result of a Ponzi scheme in which My Big Coin Pay, Inc. used funds from other customers to pay off previous investors.

The complaint alleges that the defendants used the funds to purchase a home, antiques, fine art, jewelry, luxury goods, furniture, interior decorating, travel and entertainment. In its suit, the CFTC is seeking civil monetary penalties, restitution of customer funds, rescission of transactions entered into with My Big Coin Pay, Inc., disgorgement of ill-gotten gains, trading and registration bans for the defendants and permanent injunctions against further violations of the federal commodities laws.

The CFTC's press release is available at: [http://www.cftc.gov/PressRoom/PressReleases/pr7678-18?\\_sm\\_au\\_=iVVB45PsTTVjRndM](http://www.cftc.gov/PressRoom/PressReleases/pr7678-18?_sm_au_=iVVB45PsTTVjRndM).

The CFTC's complaint is available at:

<http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfmybigcoinpaycomplt011618.pdf>.

Shearman & Sterling's latest cryptocurrency update is available at:

<https://www.shearman.com/perspectives/2018/01/cryptocurrencies-us-regulatory-attention>.

## Financial Crime

### **European Supervisory Authorities Deliver Opinion on Benefits, Risks and Challenges of Innovative Customer Due Diligence Solutions**

On January 23, 2018, the Joint Committee of European Supervisory Authorities published an Opinion addressed to EU national regulators to develop a common understanding of the appropriate use, by credit and financial institutions, of innovative methods to meet Customer Due Diligence obligations.

All firms that are subject to the Fourth Money Laundering Directive must put in place effective policies and procedures, including effective CDD procedures, to address the risk that their businesses may be used for money laundering or for terrorist financing purposes. 4MLD is "technology neutral" and does not set out specific steps or procedures that must be followed for CDD. There is scope, therefore, for new ways to verify customers' identity, for example non-face-to-face verification using traditional identity documents (such as passports) through portable devices or verification via centralized databases. Innovative means such as artificial intelligence are also increasingly used for monitoring customer relationships, for risk assessment and in decision-making processes.

The ESAs recognize that innovative solutions can improve the effectiveness and efficiency of AML/CFT controls and firms often use innovative solutions to meet demand for improved customer experience and costs savings. The ESAs believe that firms should not be prevented from using such solutions, provided that proper safeguards have been put in place to mitigate the ML/TF risk associated with the firm's business relationships and risk profile. The ESAs' Opinion highlights additional factors that national regulators can take into account when assessing the adequacy of any proposed use of innovative CDD solutions. These

include: oversight and control mechanisms; the quality and adequacy of CDD measures; the reliability of CDD measures; delivery channel risk; and geographical risks.

The Opinion is available at: [https://esas-joint-committee.europa.eu/Publications/Opinions/Opinion%20on%20the%20use%20of%20innovative%20solutions%20by%20credit%20and%20financial%20institutions%20\(JC-2017-81\).pdf](https://esas-joint-committee.europa.eu/Publications/Opinions/Opinion%20on%20the%20use%20of%20innovative%20solutions%20by%20credit%20and%20financial%20institutions%20(JC-2017-81).pdf).

## Payment Services

### European Commission Hints at Future Changes to the Second Electronic Money Directive

On January 25, 2018, the European Commission published a report to the European Parliament and the Council of the European Union on the implementation and impact of the second Electronic Money Directive, known as 2EMD. 2EMD establishes a legal framework for the issuance and redemption of e-money and covers the rights and obligations linked to the redemption of funds by consumers, the licensing of e-money institutions and the prudential requirements applicable to e-money institutions, which updates the regime under the first Electronic Money Directive to align it with requirements on payment institutions under the revised Payment Services Directive. It applies to e-money service providers in the EEA. The regime has been sparsely used in practice, with few firms operating under its auspices.

2EMD requires the Commission to assess its implementation and impact and to propose legislative changes, if appropriate. The report was due on November 1, 2012, however, the Commission delayed its publication because a majority of member states had failed to transpose 2EMD into their national laws by the transposition date of April 2011. The Commission also wanted to take into account the impact of PSD2, which includes numerous cross-references to 2EMD.

The Commission is of the view that 2EMD has mostly achieved its objective of removing barriers to market entry. The Commission notes that improvements could be made to the existing regulatory framework in the short to medium term through guidance on the classification of products as e-money, the application of the limited network provision and the distinction between an agent and a distributor in the context of e-money. In addition, harmonizing certain provisions, in particular the optional waiver for small e-money institutions, should be considered in the long term as well as the development of an intermediate category of a 'large limited network', which would only be subject to certain parts of 2EMD. The Commission's view is that any revision to 2EMD should only be acted upon once more is known about the impact of PSD2 and the 4MLD on e-money institutions.

The report is available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-41-F1-EN-MAIN-PART-1.PDF>.

The annex to the report is available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-41-F1-EN-ANNEX-1-PART-1.PDF>.

## Recovery & Resolution

### US Board of Governors of the Federal Reserve System and US Federal Deposit Insurance

On January 29, 2018, the U.S. Board of Governors of the Federal Reserve System and FDIC announced that they have provided feedback to 19 non-U.S.-based financial institutions on their 2015 resolution plans, and the Federal Reserve Board provided links to the feedback letters that were issued to each of these 19 financial institutions. The agencies noted in the announcement that given the limited complexity of these

financial institutions' U.S. operations, the agencies will further tailor their expectations for the upcoming resolution plan submissions by these institutions, which are due no later than December 31, 2018.

The Federal Reserve Board press release and feedback letters for each of the banks are available at: <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180129a.htm>.

## Shadow Banking

### **UK Financial Conduct Authority Proposes Handbook Changes to Implement the European Money Market Funds Regulation**

On January 24, 2018, the FCA launched a consultation on necessary changes to its Handbook for the functioning of the Money Market Funds Regulation, which came into force on July 21, 2017. Although the MMF Regulation is directly applicable under EU law, some areas of the U.K. regulatory framework will need to be changed to ensure they align with it. The FCA's consultation sets out proposals to make certain amendments to the Handbook to ensure that it is consistent with the requirements of the MMF Regulation. The FCA also proposes to introduce application fees for the authorization of MMFs and periodic fees to help meet the cost of supervising MMFs' adherence to the MMF Regulation.

The MMF Regulation is one of a range of EU policy measures to address risk arising from so-called "shadow banking," which is the term often used to refer to credit intermediation by entities and activities outside the banking sector. The financial crisis revealed that some MMFs were vulnerable during periods of high market turbulence, during which it was difficult for these funds to maintain liquidity and stability, particularly in the face of investor runs. Consequently they could pose a serious risk of contagion in the wider financial system. The MMF Regulation strengthens, in particular, the quality and liquidity of the asset portfolios held by MMFs. It also establishes, for some of these funds, capital buffers in order to cover the gaps in valuation associated with fluctuations in their asset value.

The MMF Regulation will apply to new MMFs from July 21, 2018 and to existing MMFs from January 21, 2019. Comments on the consultation are invited by March 23, 2018.

The Consultation (FCA CP18/04) is available at: <https://www.fca.org.uk/publication/consultation/cp18-04.pdf> and the online response form is available at: <https://www.fca.org.uk/cp18-04-response-form>.

## People

### **Jerome Powell Confirmed as Next Chair of the US Board of Governors of the Federal Reserve System**

On January 23, 2018, the U.S. Senate voted 84-13 in favor of confirming Jerome Powell as the next Chair of the U.S. Board of Governors of the Federal Reserve System. During the confirmation vote, Chairman of the U.S. Senate Committee on Banking, Housing and Urban Affairs, Mike Crapo, delivered a statement in favor of Mr. Powell's nomination. Mr. Crapo stressed the importance of the position of Federal Reserve Board Chair, and praised Mr. Powell for his prior experience, regulatory and market knowledge and track record.

Mr. Crapo's statement at Mr. Powell's confirmation vote is available at:

<https://www.banking.senate.gov/public/index.cfm/republican-press-releases?ID=AF14C900-0973-49A5-B735-ACF8963E8D84>.

### **Senate Banking Committee Holds Hearing for Three Financial Regulatory Agency Nominees**

On January 23, 2018, the United States Senate Committee on Banking, Housing and Urban Affairs held a hearing for three individuals whose nominations to U.S. federal financial institution regulator positions are

pending. The nominees and their respective positions are: Ms. Jelena McWilliams to be Chairperson and a Member of the Board of Directors of the U.S. Federal Deposit Insurance Corporation; Dr. Marvin Goodfriend to be a Member of the U.S. Board of Governors of the Federal Reserve System; and Mr. Thomas E. Workman to be a Member of the U.S. Financial Stability Oversight Council.

A transcript of Ms. McWilliam's prepared statement is available at:

[https://www.banking.senate.gov/public/\\_cache/files/a3ea8970-8a2e-41e7-8214-68fe95fc0d54/01BCEF856CF7963D6EF346770378BAA7.01-23-18-mcwilliams-testimony.pdf](https://www.banking.senate.gov/public/_cache/files/a3ea8970-8a2e-41e7-8214-68fe95fc0d54/01BCEF856CF7963D6EF346770378BAA7.01-23-18-mcwilliams-testimony.pdf).

A transcript of Dr. Goodfriend's prepared statement is available at:

[https://www.banking.senate.gov/public/\\_cache/files/5c1aa0a3-fb8f-4657-b197-f598a14eeb82/8A4712631DCC78F6A3926F969EA4E0EB.01-23-18-goodfriend-testimony.pdf](https://www.banking.senate.gov/public/_cache/files/5c1aa0a3-fb8f-4657-b197-f598a14eeb82/8A4712631DCC78F6A3926F969EA4E0EB.01-23-18-goodfriend-testimony.pdf).

A transcript of Mr. Workman's prepared statement is available at:

[https://www.banking.senate.gov/public/\\_cache/files/fa541761-06b0-4fe7-92af-30900a8bdc7b/E0AD6FCF6297A1A224D3A59114FD6B6E.01-23-18-workman-testimony.pdf](https://www.banking.senate.gov/public/_cache/files/fa541761-06b0-4fe7-92af-30900a8bdc7b/E0AD6FCF6297A1A224D3A59114FD6B6E.01-23-18-workman-testimony.pdf).

## Upcoming Events

February 5, 2018: Public hearing on EBA discussion paper on EU implementation of the revised market risk and counterparty credit risk frameworks

February 19, 2018: PRA and FCA New Bank Start-up Unit Seminar

February 19, 2018: Joint EBA and ESMA public hearing on consultations on draft RTS and ITS under the STS Regulation

March 22, 2018: U.K. Government's second annual International Fintech Conference

## Upcoming Consultation Deadlines

February 2, 2018: Bank of England consultation: Procedure for the Enforcement Decision Making Committee

February 2, 2018: FSB consultations on proposed guidance on principles of bail-in execution and on the funding strategy elements of an implementable resolution plan

February 5, 2018: Basel Committee consultation on a proposed technical amendment to the Net Stable Funding Ratio

February 5, 2018: FCA consultation: Industry Codes of Conduct and Discussion Paper on FCA Principle 5

February 9, 2018: EBA consultation on draft RTS on the methods of prudential consolidation under the CRR

February 15, 2018: Comments due on the Federal Reserve's proposed guidance on supervisory expectations for boards of directors and its proposed new rating system for large financial institutions

February 21, 2018: FCA consultation on transitioning FCA solo-regulated firms and individuals to SM&CR (CP 17/40)

February 21, 2018: FCA consultation on transitioning insurers and individuals to SM&CR (CP 17/41)

February 21, 2018: FCA consultation on the duty of responsibility for insurers and FCA solo-regulated firms under the SM&CR (CP 17/42)

February 21, 2018: PRA consultation—extending the SM&CR to insurers (CP 28/17)



February 23, 2018: European Commission proposals to revise the prudential regime for investment firms

February 26, 2018: European Commission consultation on SME listing

February 27, 2018: PRA consultation on authorization and supervision of international banks (CP29/17)

February 27, 2018: PRA consultation on authorization and supervision of international insurers (CP30/17)

February 28, 2018: European Commission consultation on supervisory reporting requirements

February 28, 2018: ESMA consultation on draft guidelines on the requirement for CCPs to adopt anti-procyclicality margin measures

March 5, 2018: Comments to Federal Reserve Board's Proposed Regulation M Revisions due

March 5, 2018: Comments to Federal Reserve Board's Proposed Call Report Revisions due

March 6, 2018: PRA consultation on proposed updates to the Pillar 2 reporting requirements

March 6, 2018: PRA consultation on model risk management principles for stress testing

March 9, 2018: Basel Committee discussion paper on the regulatory treatment of sovereign exposures

March 9, 2018: ESMA consultation on draft RTS under the new Prospectus Regulation (ESMA31-62-802)

March 15, 2018: Comments to Federal Reserve Board's proposed guidance clarifying risk management supervisory expectations for large financial institutions due

March 15, 2018: EBA Discussion Paper on EU implementation of the revised market risk and counterparty credit risk frameworks

March 15, 2018: EBA consultation on draft RTS for risk retention under STS Regulation

March 15, 2018: EBA consultation on draft RTS on homogeneity of underlying exposures in STS securitizations under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on the content and format of the "Simple, Transparent and Standardized" notification under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on disclosure requirements, operational standards, and access conditions under the STS Regulation

March 19, 2018: ESMA consultation on draft technical standards on third-party firms providing STS verification services under the STS Regulation

March 23, 2018: Basel Committee consultation on revised principles for supervisory and bank stress testing

March 23, 2018: FCA consultation on Handbook changes for implementation of the Money Market Funds Regulation.

March 27, 2018: Comments to CFPB's Civil Investigative Demands request for information due

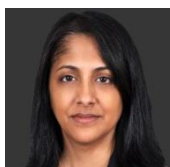
April 9, 2018: PRA consultation on MREL reporting requirements

**THIS NEWSLETTER IS INTENDED ONLY AS A GENERAL DISCUSSION OF THESE ISSUES. IT SHOULD NOT BE REGARDED AS LEGAL ADVICE. WE WOULD BE PLEASED TO PROVIDE ADDITIONAL DETAILS OR ADVICE ABOUT SPECIFIC SITUATIONS IF DESIRED. IF YOU WISH TO RECEIVE MORE INFORMATION ON THE TOPICS COVERED IN THIS PUBLICATION, YOU MAY CONTACT YOUR USUAL SHEARMAN & STERLING REPRESENTATIVE OR ANY OF THE FOLLOWING:**

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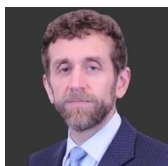
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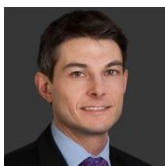
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