

## [Banking and Finance Law Daily Wrap Up, WORTH NOTING—Other regulatory, legislative, litigation, and industry developments, \(Sept. 27, 2019\)](#)

Banking and Finance Law Daily Wrap Up

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By WK Editorial Staff

A weekly roundup of other items of interest to the banking and finance law community.

**BANKING OPERATIONS**—The Federal Deposit Insurance Corporation is [proposing to renew](#) a continuing information collection titled "Joint Standards for Assessing Diversity Policies and Practices." The information collection covers standards by which entities regulated by the FDIC voluntarily self-assess their diversity policies and practices and a template to assist with the self-assessment. Comments are due by Nov. 25, 2019.

**BANKING OPERATIONS**—Representatives Carolyn B. Maloney (D-NY), Chair of the House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, and Patrick McHenry (R-NC), Ranking Member of the House Financial Services Committee, have introduced [The Financial Transparency Act](#). The legislation is intended to make financial data more easily available and transparent by requiring financial regulatory agencies to better organize data and make the data available online as open data. The bill would require financial regulators to adopt a set of data collection and dispersion standards for the information they collect under current law, including the adoption of electronic forms to replace paper-based forms. All data would be made available in an open source format that is electronically searchable, download able in bulk and without license restrictions.

**BANK SECRECY ACT**—A bipartisan coalition of senators on the Senate Banking Committee have [introduced](#) legislation to improve corporate transparency, strengthen national security, and help law enforcement combat illicit financial activity being carried out by terrorists, drug and human traffickers, and other criminals. The [Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings \(ILLICIT CASH\) Act](#) would require shell companies—often used as fronts for criminal activity—to disclose their true owners to the Department of Treasury. It would also update decades-old anti-money laundering (AML) and combating the financing of terrorism (CFT) policies, by giving Treasury and law enforcement the tools they need to fight criminal networks. The announcement includes a [section-by-section analysis](#) and [summary](#). The legislation was introduced by Sens. Tom Cotton (R-Ark), Mark R. Warner (D-Va), Doug Jones (D-Ala), Mike Rounds (R-SD), Bob Menendez (D-NJ), and John Kennedy (R-La), Catherine Cortez Masto (D-Nev), and Jerry Moran (R-Kan).

**CONSUMER CREDIT**—Republicans in the House of Representatives have [selected](#) Rep. William Timmons (R-SC) to serve on the Financial Services Committee. According to Committee Ranking Member Patrick McHenry (R-NC) said that Timmons' experience as a small business owner "will make him a valuable addition to the Financial Services Committee as Republicans continue to work to find solutions for investors, consumers, and job creators of all sizes." Full House consideration of the Republican approved committee member is expected to take place this week. In response to the [announcement](#), many South Carolina banks showed their support for Timmons.

**CONSUMER FINANCIAL PROTECTION BUREAU**—The Consumer Financial Protection Bureau has announced that the [Filing Instructions Guide](#) (FIG) for data collected in 2020 is now available. The FIG is a technical resource to help financial institutions file Home Mortgage Disclosure Act data collected in 2020 and reported in 2021. In addition, the Bureau announced a new resource, the [Supplemental Guide for Quarterly Filers](#). This guide will help financial institutions required to file HMDA data quarterly beginning in 2020.

**DEBT COLLECTION**—Federal Trade Commissioner Rohit Chopra testified before House Financial Services Committee at a hearing on abusive debt collection practices. At the hearing, "Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices," Chopra mentioned accomplishments during his time at the Consumer Financial Protection Bureau as the CFPB's first Student Loan Ombudsman. He cited a report done by the CFPB that spurred an investigation into Navient, formerly known as Sallie Mae, and a \$60 million settlement from Navient for violating the Service members Civil Relief Act in a nationwide military family scam. The CFPB also found that companies collecting on defaulted federal student loans misrepresented key aspects of the student loan rehabilitation program and overstated how the program would improve a borrower's credit report. Chopra stated that the student loan distress is weighing on the economy, and is having a negative impact on the housing market. "I fear there will be continued consequences if we fail to act," [said](#) Chopra. With respect to the FTC, Chopra said that the agency "has unique jurisdiction to attack debt collection and discrimination issues in this market, and the agency should do so."

**DEPOSIT INSURANCE**—The Federal Deposit Insurance Corporation has published its September [Consumer News report](#). This issue features an article on prepaid cards and whether the money on the cards is FDIC-insured. The cards are FDIC-insured, the agency said, but there are some issues to consider. To protect their funds, consumers should ensure their cards are insurable and registered. Consumers also should note that having FDIC deposit insurance coverage does not cover funds if the card is lost or someone gains access to the card and steals the funds. The FDIC cautions that the information contained in the report does not apply to gift cards.

**DIRECTORS, OFFICERS AND EMPLOYERS**—The Consumer Financial Protection Bureau has added to its [executive team](#). Desmond Brown will serve as the Deputy Associate Director for the Consumer Education and Engagement Division. Brown first joined the Bureau as a program specialist for the Office of Financial Empowerment in 2012. Jason Brown will serve as Assistant Director for Research. He has 16 years of federal service, most recently as Associate Commissioner in Office of Research, Evaluation, and Statistics at the Social Security Administration. Karla Carnemark will serve as the Deputy Chief of Staff. She has more than 20 years of experience in public service, project management and government affairs. Ren Essene will serve as Chief Data Officer. She has served at the Bureau in a number of capacities since 2011, and previously worked at the Federal Reserve Board. Finally, Bryan A. Schneider will serve as Associate Director in the Supervision, Enforcement and Fair Lending Division. Schneider most recently served as the Secretary of the Illinois Department of Financial and Professional Regulation.

**DIRECTORS, OFFICERS AND EMPLOYERS**—The Office of the Comptroller of the Currency has [announced](#) that Jay Gallagher has been appointed as the Deputy Comptroller for Systemic Risk Identification Support and Specialty Supervision. In this new role reporting to the OCC's Chief Operating Officer, Gallagher will serve as a key advisor to the Committee on Bank Supervision and other OCC senior leaders, the Chief Operating Officer, and the Comptroller on supervisory program matters. He will provide executive direction and set goals and objectives for a portfolio of nationally chartered trust banks and non-bank service providers, as well as the Lead Expert and Compliance Officer program supporting Large and Midsize Bank supervision and systemic risk identification.

**FINANCIAL STABILITY**—In [remarks](#) to the Financial Stability Board Workshop on Pre-Positioning, Ring-Fencing, and Market Fragmentation held in Philadelphia, Pa., Randal K. Quarles, Vice Chair for Supervision at the Federal Reserve Board and Chair of the Financial Stability Board, discussed cross-border finance noting that it is "an essential part of the international economic infrastructure." He added, "Cross-border finance is a common good, and like any common good, sustaining it requires collective action from a range of parties." Quarles also noted, "Financial institutions need some certainty about the requirements they face by participating in cross-border activity. Supervisors need some certainty about safety and soundness, not just of the foreign banks they host, but of their domestic banks operating overseas." However, he cautioned that this certainty requires "trade offs" and when that certainty disappears, as in the case of the global financial crisis, "we may end up undermining our ultimate goal: maintaining a financial system that is resilient to unexpected shocks."

**OVERSIGHT AND INVESTIGATION**—The Office of the Inspector General of the Federal Deposit Insurance Corporation has released an [evaluation report](#) on the FDIC's Minority Depository Institution (MDI) Program. The objective of the evaluation was to examine the FDIC's actions to preserve and promote MDIs and assess whether the MDI Program is achieving its goals. The evaluation period is 2015 – 2017. During the period, the FDIC achieved the goals outlined in its MDI Policy Statement, the OIG found. The FDIC took steps intended to preserve and promote MDIs and the minority character of MDIs; provided technical assistance to MDIs; encouraged the creation of new MDIs; and provided MDI training sessions, education, and outreach efforts. However, the OIG determined that the FDIC failed to evaluate the effectiveness of some key MDI Program activities. Among other things, the OIG recommended that the FDIC further assess the effectiveness of its MDI training sessions, education, and outreach, including any benefits and value they provide.

**PRIVACY**—Senators Edward J. Markey (D-Mass), Richard Blumenthal (D-Conn), and Tina Smith (D-Minn) [announced](#) that they have reintroduced [legislation](#) to require accountability and transparency for data brokers that collect and sell personal information about consumers. The proposed "Data Broker Accountability and Transparency Act" (S. 2577) would allow consumers to access and correct their information; prohibit data brokers from engaging in discriminatory data use practices; and provide consumers with the right to stop data brokers from using, sharing, or selling their personal information for marketing purposes. The bill additionally would require data brokers to develop comprehensive privacy and data security programs and to provide reasonable notice in the case of breaches. The legislation would empower the Federal Trade Commission to establish a centralized website for consumers to view a list of covered data brokers and information regarding consumer rights.

**SECURED TRANSACTIONS**—6th Cir.: In an unpublished opinion, the U.S. Court of Appeals for the Sixth Circuit has affirmed the decision of a federal district court that a federal tax lien on the proceeds of the sale of a debtor's partnership interest was superior to a lender's unrecorded security interest in the proceeds. The lender, Kingdom Energy Resources (KER), had argued the Internal Revenue Service could not assert a tax lien on the debtor's partnership interest because "a security interest in a debtor's partnership interest is always protected against a subsequent judgment lien." However, the district court determined, and the Sixth Circuit agreed, that the IRS did not have a typical judgment lien on the partnership interest—it held a tax lien against the sale proceeds themselves. Although the lender had purchased the debtor's partnership interest, without a perfected security interest in the proceeds from the sale of the interest, the lender had no claim to the proceeds of the sale ([Bennett v. Bascom](#), Sept. 16, 2019, Batchelder, A.).

**SECURITIES AND DERIVATIVES**—The Office of the Comptroller of the Currency [reported](#) that bank and thrift trading revenue in the second quarter of 2019 was 9 percent higher than in the same quarter of 2018. However, it was nearly 20 percent less than in 2019's first quarter. The [agency's report](#) added that 42.5 percent of derivative transactions were centrally cleared during the quarter.

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Companies: Kingdom Energy Resources

IndustryNews: BankingOperations BankSecrecyAct ConsumerCredit CFPB CreditDebitGiftCards DebtCollection DepositInsurance DirectorsOfficersEmployers FederalReserveSystem FinancialStability KentuckyNews Loans MichiganNews OhioNews OversightInvestigations Privacy PrudentialRegulation SecuredTransactions SecuritiesDerivatives StateBankingLaws TennesseeNews