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ALERT MEMORANDUM

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GUIDE TO BANK UNDERWRITING, DEALING AND BROKERAGE ACTIVITIES — 2014 EDITION

This Guide is about the capital markets activities of U.S. and foreign banks and bank holding companies in the United States. It describes the U.S. regulatory regime applicable to these activities and tries to highlight recent developments respecting the conduct of securities-related and other business under applicable banking and securities laws, including the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Gramm-Leach-Bliley Act, the Bank Holding Company Act, the Glass-Steagall Act and the International Banking Act. This Nineteenth Edition speaks as of September 15, 2014 and reflects a substantial re-writing and update from the 2013 edition.

This Guide devotes significant attention to the dramatic re-focusing of banking and securities regulation that the Dodd-Frank Act requires. Dodd-Frank-focused analysis is set out in Part I (Dodd-Frank summary, impact on Gramm-Leach-Bliley Act empowerments and preemption issues), Part II (risk management, municipal securities, "Volcker Rule" implications for proprietary trading and fund investment, hedge fund operations and derivatives), Part III (enhanced restrictions on a bank's covered transactions with its affiliates), Part V (loan trading), Part VI (private placement and related transactions), Part VII (private equity investments), Part VIII (investment advisory/management and related developments), Part IX (enhanced broker-dealer requirements), Part X (securitization developments), and Part XI (international linkages).

This Guide consists of 12 Parts, and is supplemented by a more detailed Table of Contents and Index of Defined Terms to make it easier to locate (and cross refer to) specific issues and areas of interest.

Part I discusses the framework, scope, implementation and evaluation of regulatory policies for the integration of investment and commercial banking activities. It provides an overview of U.S. and foreign bank and holding company securities-related activities, and outlines the applicable regulatory framework, and legislative/administrative measures for financial services convergence.

Part I addresses the Dodd-Frank Act and its attendant rulemakings, including its implications for the reshaping of the provision of financial services in the United States. Since Dodd-Frank's scope and rulemakings have evolved in the past year, Part I includes a significantly more detailed discussion of Dodd-Frank-related regulatory and market developments.

Dodd-Frank notwithstanding, the "bank charter" remains an enormously powerful and comprehensive organizational framework for the conduct of capital markets-related activities. Accordingly, Part I analyzes the "business of banking" and the various powers given to different types of entities engaged in U.S. banking, insurance and capital markets operations. It also discusses "preemption issues" applicable to bank (primarily national bank) capital markets activities (including in the context of Dodd-Frank).

In addition, Part I includes a detailed, issue-oriented analysis of the Gramm-Leach-Bliley Act, including the scope of the powers of financial holding companies, the scope of "complementary activities" which financial holding companies are permitted to conduct (particularly in respect of commodities businesses), evolution and application of "privacy" principles, and other significant recent legislative, regulatory and market developments related to Gramm-Leach's operation and implementation. Appendix A provides a current list of financial holding companies (domestic and foreign), as well as of financial subsidiaries of national banks.

In addition to Part I's summary, a more detailed substantive discussion of various provisions of the Dodd-Frank Act and the Gramm-Leach-Bliley Act has been organized topically and included in the various subsequent Parts of the Guide, all of which have been substantively revised.

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Part II goes to the heart of many of the most significant and far-reaching Dodd-Frank initiatives, including the Volcker Rule and the potential wholesale restructuring of U.S. derivatives markets.

Part II also discusses permissible trading and investment activities, ranging from U.S. federal, state, municipal and other "eligible" instruments (including auction-rate and other government securities markets), to "investment securities", specialized equity securities and "identified banking products". It analyzes powers at the financial holding company, bank holding company and bank levels, and addresses the Gramm-Leach-Bliley Act "push-out" provisions relating to bank dealer activities. It includes an enhanced discussion of bank/bank holding company capital-related developments, as well as of the expanding and revised regulatory framework applicable to state and municipal securities markets.

As noted, Part II analyzes the final form of the Volcker Rule relating to bank/bank holding company/financial holding company "proprietary trading" and "private equity and hedge fund" sponsorship and investment.

In addition, Part II discusses recent market and regulatory developments with respect to legal, compliance and "operational risk"-related aspects of bank capital markets activities, administrative, enforcement and litigation-related aspects of the management and operation of hedge funds and investment vehicles, and bank participation in "complex structured finance transactions".

Moreover, given the critical importance of derivatives activities to banking organizations, Part II updates the statutory, regulatory and market developments and initiatives respecting the legal structure for the issuance, trading and clearance of derivative products (including, in particular, energy, equity, emissions, credit, commodity, "event" and other derivatives). Dodd-Frank Act requirements applicable to "swap dealers" and "major swap participants" are given special attention.

Finally, the discussion of foreign exchange, precious metals and bullion activities has been expanded as well.

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Recognizing that, at this time, virtually every major investment bank has converted into, or been acquired by, a bank/financial holding company, Part III addresses securities underwriting and dealing empowerments relevant to bank/financial holding companies, and discusses various considerations (including under the Hart-Scott-Rodino Antitrust Improvements Act) relevant to the acquisition of investment banking firms by banking organizations.

Part III's detailed analysis of anti-tying considerations in the capital markets context reflects regulatory and industry evaluation of the Anti-tying Statute. Moreover, Part III contains an updated discussion of Sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W, including the applicable Dodd-Frank provisions and the most recent regulatory precedents.

For ease of reference, Appendix B provides an annotated text of the Operating Standards applicable to financial holding company/bank holding company securities operations. For historical context, it also retains an annotated version of the "Section 20 firewalls" (which could be applicable under some limited circumstances, notwithstanding the adoption of the Operating Standards).

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Parts IV and V focus on those instruments which are not themselves "securities" for most banking and securities law purposes.

Part IV discusses developments respecting certificates of deposit (CDs) and similar money market instruments -- including with respect to CD characterization as "non-securities" under securities and banking law, and SEC proceedings respecting "deposit-like" corporate/"prime" debt obligations.

Recognizing the increased focus on liquidity management and contingent funding, Part IV also addresses the marketing of different types of CD products, as well as ongoing issues with respect to equity- and commodity-linked CDs (both "interest-only at risk" and "principal at risk").

Part V addresses loan sales markets and highlights a number of significant recent regulatory and industry developments. It discusses accounting and securitization issues, increased regulatory focus on leveraged lending, and precedents and guidance with respect to the use or misuse of "inside information" in loan, loan participation and other credit-related transactions in the United States and the European Union.

Part V also analyzes recent statutory, regulatory and judicial precedents as to the status of loan "notes" and "participations" under Dodd-Frank and other federal banking and securities laws (including the Gramm-Leach-Bliley "push-out" provisions), as well as various grounds for assessing liability of a loan seller to a loan purchaser. It includes a checklist of suggested steps to increase the likelihood that a loan note/participation sale program will not be characterized as involving the trading or disposition of "securities".

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Parts VI through IX focus on an "activity analysis" of bank capital markets activities (i.e., an analysis of activities which fall short of "underwriting" or "dealing").

Part VI discusses "agency placement" and related activities. It reflects recent market and statutory/regulatory/administrative developments respecting private placement services (including under the "JOBS Act", and with respect to disclosure obligations and diligence responsibilities), and discusses the nature and type of these services provided by financial holding companies, bank holding companies and banks.

Part VII addresses merchant banking/private equity developments and empowerments in a number of different contexts. It discusses the Federal Reserve Board's Gramm-Leach-Bliley Merchant Banking Rules, and includes a detailed and contextual analysis of other private equity empowerments available to financial holding companies, bank holding companies and banks under the Bank Holding Company Act and other federal banking laws.

Part VII raises issues concerning the Dodd-Frank Act (referencing the "Volcker Rule" discussion in Part II), as well as concerning venture capital, SBIC, community/business development and other equity-related investments (in both the domestic and the international context). It also covers regulatory empowerments for real estate investment, management and brokerage. Significant recent bank regulatory and securities law requirements in the M&A advisory, "finder" and corporate finance context are given special attention, and their presentation has been enhanced and reorganized.

Part VII includes an expanded, reorganized and detailed discussion of private equity investments in regulated industries generally, and of concepts of "control" and "controlling influence" for regulatory purposes (including in the context of foreign bank investments in U.S. "critical infrastructure" that might trigger application of the Exon-Florio provisions of the Foreign Investment Act as administered by the Committee on Foreign Investment in the United States (CFIUS)).

Part VII also analyzes in detail the manner, scope and structuring of "control" and "non-control" investments in U.S. and foreign banking organizations and other depository institutions (referencing a related discussion in Part I). It addresses Federal Reserve Board and FDIC guidance concerning private equity investments in U.S. banks and bank holding companies.

Part VIII recognizes the enormous importance of compliance with the anti-money laundering and anti-terrorist financing provisions of the Bank Secrecy Act (BSA) and the USA PATRIOT Act, and with the economic sanctions/embargoes administered by the U.S. Office of Foreign Assets Control (OFAC). Key regulatory issues are addressed through descriptions of "red flags" and "best practices" regarding BSA/PATRIOT Act/OFAC compliance requirements. The continuing and aggressive nature of securities/bank regulatory/Department of Justice enforcement actions are given particular attention, and a new discussion is included of issues with respect to "virtual currencies".

In addition, Part VIII includes an expanded discussion of the Foreign Corrupt Practices Act (FCPA) and other anti-corruption/anti-bribery initiatives, and their implications for the provision of global financial services.

Part VIII also covers a broad range of private banking, fiduciary, mutual fund and asset management issues, and emphasizes the most recent developments respecting funds management and collective investment vehicles, including legislative and regulatory enhancements (under the Dodd-Frank Act and otherwise), enforcement actions (including in respect of "Ponzi schemes", and their impact on asset management, supervisory and control issues), and enhanced disclosure, code of ethics, director

responsibility and conflict-of-interest considerations. The discussion of securities law issues affecting asset management activities is streamlined and re-focused.

Appendix C enumerates the administrative services addressed by the Federal Reserve Board in various approvals respecting mutual fund-related operations, as well as the interrelationship between these approvals and other statutory and regulatory overlays.

Part IX discusses all types of agency (or agency-equivalent) intermediation by banking organizations in financial markets. It includes significant recent developments concerning "brokerage" and "riskless principal" activities, securities lending/repo services, broker-dealer "outsourcing", bank holding company/bank involvement in physically-settled commodity and energy-related transactions and other transactional activities. Special attention is given to the Dodd-Frank Act, as well as to Gramm-Leach-Bliley "push-out" provisions relating to bank broker activities.

In addition, as enforcement efforts -- by the SEC, FINRA and state securities regulators -- have increased in number and intensity, Part IX discusses current statutory, regulatory, compliance and examination issues relating to broker-dealer, analyst and other securities operations.

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Part X discusses ongoing developments from a bank capital markets perspective with respect to asset securitization. It includes an analysis of securitization issues under the Dodd-Frank Act, as well as information on ongoing regulatory and industry efforts with respect to securitization markets.

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Part XI discusses international securities linkages, focusing on significant recent developments with respect to the scope of capital markets activities permitted to U.S. and foreign financial institutions which involve cross-border transactions. Special attention is given to statutory and regulatory issues with respect to the relationship between a U.S. broker-dealer/investment adviser/asset manager/investment company and its foreign bank/securities dealer affiliates (including under the Federal Reserve Board's Regulation K, the SEC's Rule 15a-6 and extensive no-action letters and other regulatory precedents).

Part XI includes an expanded discussion of significant enforcement actions relating to cross-border securities, tax, funds management and banking-related linkages (including issues and recent judicial developments with respect to the extraterritorial reach and scope of U.S. statutory schemes). It also addresses the continuing globalization of securities, asset management and derivatives markets, as well as concepts of "mutual recognition" of foreign regulatory regimes.

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Part XII reflects the increased importance of alternative ways in which banking organizations intersect and interrelate in the provision of capital markets services, and highlights initiatives and developments with respect to joint ventures, "networking", "strategic alliance" and other "controlling" and "non-controlling" arrangements between and among banking organizations, securities firms and other business operations.

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This Guide would not have been possible without the extensive participation of a number of our colleagues, including Patrick Fuller (Parts I and XII), Colin Lloyd and Matthew Daigler (Part II), Allison Breault (Part III), Neil Markel (Part IV), Macey Levington (Part V), Tabitha Edgens (Parts VI and X), Meredith Leigh Mann (Part VII), Charles Thompson, Sarah Crandall and James Corsiglia (Part VIII), Benjamin Snodgrass and Clay Simmons (Part IX), and Steven Church (Part XI).

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While we gladly acknowledge the efforts and insights of all of our colleagues, responsibility for shortcomings in this Guide is, of course, ours alone.

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