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P R O C E E D I N G S

MR. GALLAGHER: Good morning, everyone. My name is Dan Gallagher. I'm a Partner and the Deputy Chair of the Securities Group at WilmerHale. I spent some time at the SEC. Before that, in-house roles, and I am proud and privileged to be the moderator of today's panel, What's Ahead in Bank Litigation and Enforcement.

As you're going to see pretty quickly, we have a pretty awesome panel here together for you and I'm going to ask each of the panel members to do a quick introduction of themselves. And then we're going to hop right into the substance of the panel. I'm going to turn it over to you, Mei Lin.

MS. KWAN-GETT: Okay. Thanks, Dan. Good morning, everybody. My name is Mei Lin Kwan-Gett. I am the Global Head of Litigation and Regulatory Investigations at Citigroup. Prior to Citi, I was the Litigation Partner at Willkie Farr and Gallagher. And prior to that, I was a Federal Prosecutor here in New York.

MR. MINER: So, good morning. I'm Matt Miner. I'm with the Department of Justice. I'm the Deputy

Assistant Attorney General overseeing the Fraud Section and the Appellate Section in the Criminal Division. Before returning to the Department about two years ago, I was in private practice for a period of time.

MR. ASHTON: I'm Richard Ashton, Deputy General Counsel for Litigation and Enforcement at the Federal Reserve Board. I'm a career Fed staffer.

MS. PETERSEN: Good morning. I'm Cara Petersen. I'm the Acting Enforcement Director at the Consumer Financial Protection Bureau. Before that, I was at the Federal Trade Commission doing consumer protection work and was in private practice for a number of years before that.

MS. VETA: Good morning. I'm Jean Veta. I'm a Partner at Covington and Burling, where I was born and raised and has spent my entire legal career, except for a few years in the Clinton Administration. And my entire practice focuses on compliance and enforcement issues involving financial institutions and their officers and directors.

MR. GALLAGHER: All right. Thanks, everyone, for those introductions. Rich, I don't know, there is

something about that, that career government thing sent a little shiver down my spine. But that's probably because I've been in and out of the revolving door so many times. But may God bless you for your public service.

Look, I think in panels like these, you know, oftentimes folks are very, very eager, and not to take away from myself or Jean or Mai Lin, but to hear from the government, what's going on, what are the priorities. What's been, you know, the environment in the current year and what are we looking forward to in the year coming up.

And so, I'd like to just go down and ask each of the government representatives, you know, what are the big issues you have tackled in 2019, the priorities there, and what are you thinking about going into 2020. And I'll ask Matt to kick that off.

MR. MINER: So, thank you, Dan. In terms of priorities, there is one priority that we remained focused on over the past few years, and it's really looking at the impact of fraud on elder victims. And so that continues both in the civil and in the criminal

arenas. It was something that the current Attorney General or the prior Attorney General felt very strongly about.

And in terms of priorities, that's one area. But when you talk about in priorities in terms of criminal enforcement, there are so many different program areas that are still vital. And even if you focus and make sure you have focus in a particular area to focus on a victim class, that doesn't mean that you aren't still pressing for it in, for example, Foreign Corrupt Practices Act investigations.

We made certain changes to ensure that we will continue to have a focus in certain areas. Within the fraud section, there are three litigating components, and one of those was named the Securities and Financial Fraud Unit. That's the same unit, though, that has prosecuted Takata, the diesel emissions cases, cases that were neither securities nor financial fraud cases.

And so we realized that there should be a management structure that reinforces the mission of each of the different prosecution priorities within that subunit. And so, there's a dedicated unit or subunit to

come out of these fraud investigation and prosecution securities fraud as well. Consumer fraud and regulatory deceit, something that ties into the cases that I mentioned. Procurement fraud as well, and then fraud on financial institutions to make sure that we have a focus on bank fraud, because that's something that is important, not just to us, but I think also to the market.

There's also been a press over the past few years preceding my tenure and really going back to 2016. And that is the transparency initiative of the Department of Justice to try to make clear that our power policies are going to be enforced, that they are digestible to the bar and to the market. And that when we're trying to encourage certain behaviors, we're not creating any sort of headwinds or obstacle through our policy. And that's manifested itself in a number of different policy reforms from the anti-piling on policy in the Justice Department Manual giving greater clarity about what our standards are when we apply corporate monitorships as part of resolution and when we don't.

The Inability to Pay guidance, that was

released earlier this year. So that when we're looking at a large criminal fine based upon the sentencing guidelines evaluating whether a company can actually pay that and if not are adjustments necessary. The FCPA and Corporate Enforcement Policies, of course, a very large one, building in concrete incentives for companies that come in and voluntarily self-disclose.

That's just an example of some of these, but it really has been a push in terms of policy priorities. Transparency would be one, even though it's not necessarily a prosecution or investigation priority.

MR. GALLAGHER: And now, I guess just this week, you have some news. Do you want to touch on that now, or --

MR. MINER: Sure, yeah. This was added to the Justice Manual just yesterday. In the FCPA Corporate Enforcement Policy, which for those who don't have any exposure to the Foreign Corrupt Practices Act, it is important to note that the Criminal Division applies the principles of that same policy to any of the corporate investigations and resolutions if a company in appropriate circumstances satisfies that. So, that

would apply, as well, in a securities fraud case, a bank fraud case, or health care fraud case as well in the Criminal Division.

But the changes are small. But they're clarifying changes that go to that point that I raised about obstacles. The first change is with regard to voluntary self-disclosure credit. Under the FCPA Corporate Enforcement Policy, a company that voluntarily self-discloses in a timely way, cooperates fully and remediates, is eligible for a up to a declination of prosecution with disgorgement of the profits or derived from the criminal misconduct.

That's a very concrete incentive. It's something that's intended to reward companies that come in and take those actions. It's also intended to be more transparent about what is available because we realize that those who are advising companies and those within companies need to make these decisions in concrete terms.

But the voluntary self-disclosure language we realized wasn't as clear as it should be. Timeliness is defined, but there was a piece in it. It's really the

third prong we spoke about, what level of information was required. And it spoke about all relevant information relating to the violation of law and as to individuals who were substantially involved in or responsible for the misconduct.

There was no sense of at what stage, a preliminary investigation, a preliminary look, an initial assessment, is that adequate. And so we added some clarifying language to make clear that when you come in with a voluntary self-disclosure you can qualify for the Policy. You just have to disclose what you know, all relevant facts that are known at the time of the disclosure. And if there's only been an opportunity for a preliminary investigation or an initial assessment, advise, put the appropriate caveats around it. We realize when people share information with the Department of Justice, they want to be fulsome and accurate, maybe want to change the story later. But the reality is sometimes you look at a piece of information and it can be a bit of a Rorschach test until you have the full scope of information.

And so we think that will help to alleviate

some of the tensions around what timeliness means and whether a company needs to undertake a full investigation before reporting.

The other piece relates to cooperation and some language that was in there that was a little bit clunky. It just spoke about if a company in providing proactive cooperation identifies or should identify opportunities for evidence to be gathered, including evidence that the government is not aware of, then the company should make the Department aware of it.

Well, there are a lot of problems with that whole language, including you can't know what the Department of Justice knows. You know what you provided the Department, but it's not as if you can ask in your grand jury investigation who you found, this or that, because we can't share it depending especially where that grand jury investigation is going. And so it was a little bit loaded in that sense.

And also the language should be aware of opportunities is also unclear, because either you're aware or you're not. If you're turning a blind eye, that's a different matter. And so the language was just

changed to make it more direct. If a company is aware of evidence, relevant evidence that's not in its possession, advise the government.

And the point of that clarification is really to give a couple of hypotheticals. You have a former executive whose electric company responsible for or somehow tied into misconduct, and you know that that person kept a set of hardcopy records in their home office. Their assistant brought records back and forth. They were oftentimes marked up. That would be helpful information.

Similarly, if you have a foreign bribery case or distributor who people within your company know or whoever may have been the whistleblower, they knew that the distributor maintained a discount book that was attributed to particular government officials in the way of briberies. Well, that's a record that's relevant. You don't have it. It would be helpful for us to know. And whether we can ever get that or not through mutual legal assistance or other means, it's helpful for the government to have.

But that's what we're trying to get out with

that language and we think the clarifications and the increased transparency should help companies better understand what we're trying to get and also not creating any headwinds to cooperation.

MR. GALLAGHER: That's really good stuff. And I should have said at the outset, folks, that you have the ability to send me questions and I can offer you anonymity and my own version of immunity. If you want me to ask the Matt the question, otherwise, you'll be left with the five minutes at the end where you have to stand up and let him see who you are when you ask a question. So, I would send them into me and, if they're good, I'll ask them.

Rich, do you want to talk about your priorities in the year that you just had, or --

MR. ASHTON: Okay. Yes, thanks. So, there are a couple things I thought I would mention. One enforcement priority for the Fed is actions against individual bankers. In recent years, we tried to increase efforts devoted to bringing formal actions against individual bankers who caused their institutions to engage in illegal or reckless conduct.

The standards under the banking law for removing individual bankers are high. But nevertheless, I think personal accountability has proven to be an effective deterrent in getting institutions to comply with legal requirements.

There have been a number of high profile investigations of large banking institutions recently, many of which have resulted in very significant dispositions, both criminal and civil. In these cases, we try to focus on individuals involved in that underlying conduct.

For an example, in 2015, Fed, along with the Justice Department and other regulatory agencies, took significant action against major FX trading banks for any trust-related abuses. In connection with that, we issued prohibition actions against three of individual traders who were involved in the conduct, and we have a pending contested case against a fourth banker.

There also was a recent settlement with JPMorgan Chase under the FCPA. One of the bankers involved in that conduct has been prohibited by the Fed. And another case is pending against an individual

involved in the business line.

A third example is the multiagency investigation involving Goldman Sachs in its role in the huge fraud at the Malaysian Investment Fund 1MDB. The Fed has taken action against two of the Goldman Sachs bankers who were involved in the particular deals at the heart of that problem. So this is a high priority issue and we expect to continue to vote resources in that area.

Aside from these large investigations, the Fed continues to pursue (inaudible) prohibition actions against individuals at all sized banks at any level who have by reason of their conduct shown that they can't be trusted to serve at a regulated institution.

So, therefore, we have brought actions against bankers who steal confidential business information from their employers, bankers who steal from their clients, loan officers who falsify transaction records for their own personal benefit.

So, if you look at this sort of the record over the past couple years, I think in contrast to what we have done historically, the number of enforcement

actions we brought against individual bankers is probably at an historic high. Although raw numbers are not always a good indicator of how effective your enforcement program is, I think it is an indication of the kind of resources that the Fed is committed to devote in that area.

A second priority I'll mention involves cyber security. So, obviously, that is a perennial concern with both banks and with regulators that need to protect customer data from hacking ransomware and just other types of loss of privacy is obviously extremely important.

We're seeing that more institutions are starting to outsource data storage and management functions, the third party providers that are not themselves regulated financial institutions. Under The Bank Service Company Act, the bank regulators have the authority to examine third party providers to the extent they are providing services that the bank would otherwise conduct itself.

How far this authority goes to conduct examinations I think is something that we're closely

looking at. Now is it something that we can look at sort of the structure at these third party providers, can we look at their overall compliance management program. It's something that I think is an issue that we need to consider.

Of course, the banks themselves, are responsible for managing the risk that their lenders present to them. But where you have situations where you have multiple banks that are using (inaudible) or a third party provider, I think there's a case where the regulators playing a larger role in the supervision of that entity.

And then the third priority I'll mention is the Bank Secrecy Act Reform, to let you know FinCEN Treasury has the authority to issue regs under the Bank Secrecy Act. The banking agencies have parallel regulations for some, but not all BSA requirements. But it's the banking agencies, not FinCEN, that does the exams, issues the criticisms to the institutions and, in some cases, takes the enforcement action.

So, at the Fed, I think our board members have been supportive of efforts to clarify and streamline

compliance requirements in this area. There is an interagency taskforce underway that includes the banking agencies and FinCEN that's looking at various reform efforts.

One of the things the taskforce is looking at to see if there are ways to make transaction monitoring and suspicious activity reporting, especially in the area of structuring more automated by using AI, for instance. The regulators are also looking at updating the BSA Exam Manual with the goal of trying to focus more on risk-based examinations. The agencies have issued a couple of statements on BSA Reform. One encouraging innovation on compliance efforts and another discussing how compliance resources can be shared between institutions.

On the enforcement side, the BSA is one area where the bank regulators are somewhat constrained by statute because we are required to bring a formal enforcement action in the case of serious deficiencies in the BSA compliance, in particular, if an institution fails to establish or maintain a BSA compliance program. I think just looking at the record, BSA and sanctions

compliance have been a significant part of our enforcement action. Whether the ongoing reform efforts will have an impact on these numbers I think remains to be seen. So, I think those are, you know, areas of priorities that we're thinking of at the Fed right now.

MR. GALLAGHER: Thanks so much, Rich. That's interesting stuff and good luck with all that. And I'm very interested, you know, your point on the third party service providers. That's been a source of tension now --

MR. ASHTON: Yes.

MR. GALLAGHER: -- I think since, you know (inaudible) started looking at those types of things and, you know, no easy path forward, I think.

MR. ASHTON: That's right.

MR. GALLAGHER: Yeah. Well, Cara, nothing is going on over at the CFPB, right? It's sort of tranquil time and you guys are just coasting easy, right? There's --

MS. PETERSEN: Okay, Dan. Yeah, thank you. So, Director Kraninger joined the CFPB at the end of 2018. And in April, she gave a speech that laid out her

approach to Consumer Protection. I thought I'd share a few highlights on how that, you know, translates into our work in enforcement.

But in her speech, Director Kraninger said enforcement is an essential tool that the Bureau has because, you know, consumer education, rulemaking, supervision, none of those tools will prevent all violations from occurring and there will always be some bad actors out there where compliance is an issue. And if we are, you know, engaged in a purposeful enforcement regime, we can prevent harm, make consumers whole, and right wrongs.

So, since Director Kraninger arrived, the Bureau has continued to vigorously enforce the law. We have brought 19 enforcement actions this year so far and are ligating over 20 matters in federal court. And the Directors authorized us to engage in settlement negotiations in a number of matters where we have, you know, multiple open investigations and continue to open additional investigations at a regular pace.

So, in terms of determining our priorities, you know, in enforcement, we continue to approach that

in a similar way consistent with the Director's stated goals of fostering compliance, deterring bad actors, and righting wrongs for consumers. So, you know, whether we prioritize the particular set of matters can depend on things like the level of consumer or market harm and our assessment of the need for specific or general deterrents.

So, we approach that by looking at things like consumer complaints. We look at whether we are getting whistleblower tips. We consider, you know, referrals and leads we get from other agencies, state and federal. We get information through the work of our examiners and in exams of institutions under our authority and generally gather information through industry and market developments.

So, we look at that information and really assess it through thinking about our statutory text. So, the CFPA lays out one of the primary functions of the bureau as taking appropriate enforcement actions to address violations of the Federal Consumer Financial Law. So, it lays out certain objectives within that language. And those include protecting consumers from

unfair, deceptive and abusive acts and practices, and from discrimination, making sure consumers are provided timely and understandable information to make responsible decisions, and ensuring the Federal Consumer Financial Law is enforced consistently in order to promote fair competition.

So, you know, we glean information from these sources. We think about the goals and objectives of the Bureau. And then our areas of focus are really driven from there.

So, we might take particular note or prioritize a particular set of issues where there are a particular group of consumers who are being harmed. So, for example, when service members, veterans, older Americans are involved, that might be a reason for us to prioritize a particular set of issues.

And, you know, you asked about 2019. In 2019, we had three matters involving high interest loans targeted at veterans and a number of matters involving small dollar lending, debt collection, student lending and debt relief. And then a number of other matters that really cover the waterfront where there were

particular issues going on from, you know, HMDA to the Electronic Fund Transfer Act, mortgage servicing, credit repair, credit cards.

So, you know, we are often reacting to issues that arise in the market and are trying to make consumers whole and right any wrongs that have occurred in light of violations of Consumer Financial Protection Laws.

One area of emerging focus for enforcement this year is the Bureau's Remittance Rule. The Consumer sends billions of dollars to recipients in foreign countries every year. Before the Dodd-Frank Act was enacted, remittances were largely outside of the scope of Federal Consumer Protection Law.

And then the Bureau issued a rule that became effective in October 2013 that generally requires certain fee disclosures, that consumers can cancel a remittance transfer for up to 30 minutes after a payment, and provides a mechanism for consumers to exercise certain error rights including requiring providers to investigate errors.

So, in October of 2018, five years after the

rule took effect, the Bureau issued a report about the remittance market and the effect of the rule and identified a number of things and talked about the effect of the rule. But one of the observations in that report was that the Bureau's examinations had uncovered a mixed level of rule compliance across the industry.

So, the Office of Enforcement took action in its first remittance transfer case a couple months ago in August. And that matter involved a remittance provider called BAXI Transfers that had engaged in several violations of the Remittance Rule and misrepresented that it wasn't responsible for errors by its agents.

So, I highlight that. It's just an emerging area of focus now that we're five years out from the rule's issuance and have some results from our examination work. It's a place where we have taken one enforcement action to date under that rule.

MR. GALLAGHER: That's a particular interesting one, Cara. I think for anyone who certainly has teenagers or, you know, maybe uses these new Venmo and other systems, it seems like something that'll be

completely exacerbated by technology as you guys try to come to grips with that. And so good luck with it as you do.

MS. PETERSEN: Thank you.

MR. GALLAGHER: Well, I think that's a great overview and a scene-setter for us to get into some of the more specific discussions. Again, folks, send questions in if you have them, but I'm going to start off talking about everyone's favorite topic, which is regulatory enforcement piling on, you know, and it's kind of fitting. We have the visual of all three regulators sitting here next to each other. But, you know, this is a perennial issue of sort of regulatory coordination, enforcement coordination, to set the stage here a little bit.

Of course, last year, in 2018, Rod Rosenstein announced the DOJ Policy on Coordination of Corporate Resolution Penalties, which, of course, encourages coordination on DOJ departments and other enforcement agencies to avoid multiple penalties for the same conduct. Also, in 2018, you have the FFIEC is showing a high level policy statement seeking to promote

notification of and coordination on formal enforcement actions amongst the federal banking agencies at the earliest practical date.

And then Rod was not done, you know, with his first pronouncement. He announced the creation of a Task Force on Market Integrity and Consumer Fraud, to include representatives from the SEC, DOJ, CFPD, and FTC, in an effort, again, to discourage piling on by coordinating with all levels of authorities to achieve a joint result.

So, there was a lot of activity, in particular last summer, a lot of discussion about moving away from what I think a lot of us saw, whether we are in government or in the private sectors as piling on, especially in the post-financial crisis era.

And so I'm just curious now, in your (inaudible) Matt, in particular, what's your view of how all that policy making, you know, the statements, how they influenced DOJ on the ground and in your investigations and coordination?

MR. MINER: So, I think that -- well, there was already an effort deployed before the policy was

formalized, at least in the fraud section, to try to have some coordination in the resolution space. Dan, you know from the SEC's perspective, there's long been and where there are parallel investigations and there's an inability to coordinate, sort of offsetting treatment of the criminal monetary penalty relative to the fine that the SEC would seek. And disgorgement would oftentimes be taken by the SEC and the Department would not seek disgorgement or forfeiture as part of that resolution. And so that relationship had been in place.

Certain foreign regulators had been working more with the Department in a coordinated way. And so, there had been this evolution towards more coordination.

The formalization and the policy is interesting. A lot of times you look at these policies and you think they're top-down. And this was one where it actually was in dialogue with the leadership of the fraud section at the time, Sandra Moser, where this was something that we discussed and took it up to the Deputy Attorney General at the time, Rod Rosenstein, and he thought it was a great idea. It was maybe the fastest policy change I have seen in the Department because it

just made sense.

And so how it's working in effect is I think that people are more mindful of it at the frontend. We're having discussions with counsel as part of the resolution discussions, the (inaudible) meetings, where if there is a parallel investigation or an investigation by a foreign regulator and we're coming to terms on an agreement and principle on our side, we've had the discussion about where are you with regard to X or Y country, and then should we coordinate or is that something that we should be working in an effort to do so.

And from our side, it can be a little bit easier. I think from the Department side where you have a criminal monetary penalty and you look at sentencing guidelines, it's easier, I think, to take a look at the fine amount that's projected. And then to say, okay, how are we going to credit among other regulators and whether it's a foreign law enforcement authority or otherwise, out of that, that pulls in.

And sometimes, it's only a partial crediting because, for example, if there's harm in a foreign

market and the bulk of a criminal monetary penalty should be paid in that market, what we have done is we have credited a portion or half of our fine amount over.

So, it's not entirely such that there's no overlay. But it's to try to be mindful of the fact that, in looking at this, you know, you're dividing up the fine. Everybody doesn't get their own fine.

And we realize the burden as well on companies. And sort of backing up to what I was talking about earlier, in the voluntary self-reporting context, if we want companies to come forward and voluntarily self-disclose, if we don't think about the parade of, I don't want to say horribles, but of penalties that can follow and the piling on that can occur and project that and actually demonstrate it to the market through our resolutions in enforcement efforts, then I think that we're going to lose in the front edge because no one is going to raise their hand with that thought. And for anyone who has been in that situation of talking to a company, whether in-house or outside, and you're speaking to boards, that is the concern.

Okay, fine. You're talking about one process,

one side. Well, how do we deal with this. How do we deal with that. And I think that the piling on, anti-piling on policy, and the efforts there should hopefully give more trust to the government in these resolution discussions and voluntary self-disclosure.

MR. GALLAGHER: So, Matt, that's very interesting and, I mean, it's good sound policy. You know, whether it's happening on the ground in every instance, it's a hard thing I would imagine at least from one office to patrol. But I'm curious on one issue that I think a lot of folks here are interested in. What if any ability do you have or what's the policy with respect to the states, state agencies, state regulators. I mean, that's where I think and I felt this pain of the SEC where you come in with the best intentions at the federal level and then one crazy state AG, you know, makes everybody look bad, not that that exists, there are AG folks here. I can tell you what states later. You know, and it harms your ability to seem reasonable and bring something in. And then as the company, right, the private entity, the notion of going ahead with a reasonable DOJ coordinated federal

settlement but leaving one state out there that could really come and get you at the end of the day makes your life a little harder. So, I'm just curious what -- how does that factor into that analysis as you pull through it?

MR. MINER: We do less on the criminal side with the State Attorney General. I know on the civil side there is more discussion. But that is probably the most challenging area when you're dealing with separate litigators outside of the federal system, even outside of the law enforcement regimes that are similar in foreign countries, when you're dealing with states, you're dealing with the private bar, and that's a lot harder.

Now, I will say this. One thing that we try to build into that is recognizing some of the significant financial (inaudible). I'm not using the term as a term of art as it's used in the Justice Manual. That's part of the reason for the inability to pay guidance that the Criminal Division developed and announced earlier this year. Because if a amenity is facing massive exposure and simply cannot pay based upon

the range of liabilities, we need to be mindful of that.

Now, the companies need to come in and they need to prove their case. They bear the burden in that. And there is the ability to adjust both in terms of payment over installments as well as a reduction. But I think that's one thing that we try to build in keeping that in mind.

MR. GALLAGHER: Yeah, that's great. So, Cara, what's your take? What's the view from CFPD on how the Task Force has been working on the ground for the past year or so?

MS. PETERSEN: Yes. So, the Task Force was created, like you mentioned, last year. And you know, I think everyone that's part of this Task Force recognizes and is committed to the concepts that cooperation is critical. Cooperation among, you know, different government agencies is critical in dealing with the sort of complex issues that come up in, you know, cases that involve, you know, fraud on the government, financial markets, or on consumers, and things like cyber fraud, or fraud targeting the elderly, or service members and the like.

So, you know, the Task Force has been meeting and working on various initiatives to further those goals. The Bureau is co-chair of the Task Force Consumer Protection Working Group along with the FTC and DOJ Antitrust Divisions and our new associate director of Supervision, Enforcement and Fair Lending is the Bureau's Working Group representative. So, we have certainly, you know, put senior level people into this effort because it's something that we are, you know, committed to, to ensuring it's successful.

So, we are discussing a number of proposed initiatives. None of them are based enough for announcement today. But, you know, we look forward to sharing those sort of details on a going-forward basis along with our, you know, other members of the Task Force.

MR. GALLAGHER: Thank you. Mei Lin, I'm interested in your view, hearing all this and being on the in-house side and, you know, Citi hasn't had any regulatory enforcement issues. But, you know, what are you thoughts based on what you're hearing? What's the in-house experience?

MS. KWAN-GETT: So, we do get a sense that is more information flowing among regulators than you're used to be. But I will say, in terms of announced resolutions, they don't see a sea change in the landscape. I think, in part, that's because of exactly what Matt said, which is this was sort of an involving process already. There's been actually some very nice resolutions between the DOJ and the SEC where it's very clear they're giving credit on one side or the other or declining to improve the fine because the DOJ already has.

But as Matt said, that's something we have seen from the DOJ and the SEC for many, many years. We are not hearing from regulators necessarily that they are, you know, not investigating because they know another regulator is or that they don't want documents because they've already gotten them from another regulator. They still want to investigate and still want the documents.

But again, it's early days for sort of these initiatives. I do think the trend is going in the right direction. We applaud the efforts that are being made

by the Justice Department and the FFIEC. And what we'd really like to see is more and more, sort of a groundswell of this because what you need is a critical mass, of course, as the regulators to all agree that this is the priority that they have and they will coordinate.

MR. GALLAGHER: And what's your sense? I mean, so often, and again we have this at the SEC where a high level policy announcement would come up from the Chairman of the Commission and sometimes to trickle down into the line and staff, doesn't happen exactly the way you want, where you have certain idiosyncratic groups spread across the country who don't quite get it. Are you feeling like there is lower level take-up on these policies in the day-to-day?

MS. KWAN-GETT: You know, I don't really have a sense of that either way. I think that actually policy is like these that get announced from the very highest levels. I think they permeate through the institutions pretty quickly. I think the more difficult part is just timing, right. Every regulator is sort of on their own timetable. And so you don't always know

and you need to coordinate with it, a given point and time, and it's not always obvious to the folks on our end, you know, who has an interest at any given point and time.

MR. GALLAGHER: So, Jean, I'm curious to get your reaction, both to the domestic situation, right. You just heard from, you know, Cara and Matt, but I'm also very curious to hear what you're encountering, what you think the issues are with respect to coordination when there's a foreign regulator involved in many of these investigations?

MS. VETA: Sure. And I just should say at the outset as those of you who have seen me on this panel before, my role, or I take on as my role as outside counsel to sort of add some of the questions or present some of the positions that frankly I think many of you in the audience are thinking, but think it might not be the most polite thing to ask our friends in the government.

MR. GALLAGHER: Jean, even with immunity, they're not sending me the questions.

MS. VETA: Right, right.

MR. GALLAGHER: How intimidating Rich is.

MS. VETA: Right. But with the utmost respect for the professionalism of our colleagues in the government, I may take some pokes at them. And on the domestic side, in addition to what Mei Lin was saying, you know, I think Matt's point about people trying to take a slice of the pie rather than they're own pie is probably right. But so, even if an institution is getting credit for the check they had to write to one agency for another, you know, that's not the only cost to the industry.

And the problem is when the same conduct say involving consumers is investigated by the Fed or the OCC as being a safety and soundness violation, and at that same time is being investigated by the Bureau as a violation of some consumer protection issue, and then similarly is being sometimes investigated by the Department of Justice, sometimes on the criminal side, more likely on the civil side, in terms of fraud.

And the cost of those investigations and the fact that the document request may not be exactly the same, so you're producing the same kind of general

universe of documents, but different slices of it to different agencies is enormously expensive, both in terms of actually cost, but also the time of management resources.

So, I, like Mei Lin, think it's a quite good step that the government agencies are trying to coordinate more. I really would encourage them to keep going down that road and really think about, gee, do we need to bring this under our statute when some other agency is addressing it under theirs. So, that's on the domestic side.

On the foreign side, it's incredibly complicated and especially for the banks in this room as most of you have a presence not only in the United States, but abroad. And again, sometimes, there is conduct that's being investigated either by a U.S. regulator or the Department of Justice and also a foreign regulator. And it really puts the institution in a difficult position.

And if it's a bank regulatory investigation say in a country in the EU, as well as in the U.S., we have found that it's often helpful to get permission,

for example, from the U.S. regulator to be able to disclose to the foreign regulator that the U.S. regulator is looking at it and vice versa. At least so that to the extent they're not talking to each other, you can hopefully get them to talk to each other so that there is a more unified approach to the investigation.

And the other issue that we find comes up frequently is when -- I'll take the example of a foreign regulator asking for information that the institution in the U.S. cannot give them, for example, SARS, or information that would be confidential supervisory information, or information that's privileged under U.S. law.

And what we -- again, it depends on the situation. But, for example, we had one case where the foreign regulator was asking for SARS and leaning on the bank to provide them. And finally, it was actually in talking to FinCEN about it, we persuaded the foreign regulator to talk directly to FinCEN to get it government-to-government and take the institution out of the middle of it.

It's more difficult when you're dealing with

issues like the attorney-client privilege where the privilege isn't recognized in foreign jurisdiction, and then you need to worry about if you really are compelled to turn over those documents, what that means for the protection of the privilege in the U.S., both with respect to the materials you turned over but also the broader subject matter waiver issues.

MR. GALLAGHER: That's great stuff.

MS. VETA: Yes.

MR. GALLAGHER: And, you know, from a practitioner's standpoint, again, it sounds easy and it's great to have these policy statements to give you the ability when you're negotiating with the government to kind of cite back to, but on the ground working through these things, you know, whether it'd be certain states here in the U.S. or foreign regulators, it's just hard to navigate. So, that's great stuff.

So, we're going to switch a little bit and talk about a few hot topics quickly to wake everyone up because I have no questions here to moderate. You guys are scared silly up there. Let's talk about something near and dear to a bunch of you that I saw you out last

night, cannabis and hemp. Maybe that's why you're not asking questions today. I can't believe we're talking about cannabis and hemp in all my years.

But anyway, so, marijuana has been fully or partially legalized in 43 states and D.C., surprise, surprise, D.C. Although Congress legalized hemp last year, and now we have to make distinctions between hemp and marijuana, there are regulators that are still trying to figure out how to respond to the state legalization of marijuana and whether -- and the fact that it remains illegal at the federal level.

There is, I think everyone here knows of the bill, the SAFE Act that passed the House in late September with bipartisan support, and the Senate has not yet considered it, and the bill would assure banks and credit unions that they won't be penalized by federal regulation for working with cannabis clients in states that do allow marijuana or hemp production and sales. And the bill would also require federal banking regulators to issue guidance on how financial institutions should serve the hemp industry.

So, Jean, I wanted you to be the first to kick

this off. What are the problems, and I'm guessing they're myriad, that banks and financial institutions face with respect to this move towards cannabis-related businesses. What are the considerations for these businesses?

MS. VETA: Right. And again, this is the topic where many of our clients are spending way more time trying to figure out how to wend their way through this issue than it should be taking. But as Dan was saying, it's 43, maybe now 44 states, and the District of Columbia where marijuana is legal in various forms, either medically or just recreationally.

On the other hand, it is a felony under the Controlled Substances Act to manufacture, distribute, or possess marijuana. And so it's an absolute prohibition under the Controlled Substances Act. And, as you all know, under the Money Laundering Control Act, it basically says that you can't engage in a financial transaction that would result in money laundering or the proceeds of some illicit activity. And one of those illicit activities would be an activity that's prohibited by, among others, the Controlled Substances

Act.

So, if one were to engage in a financial transaction involving a marijuana-related product, then there is the risk that one would set up a prosecution under the Money Laundering Control Act. So, that's a pretty -- and as we all know, under Federal Preemption Law, the federal law trumps the state laws. And so, the bank is in a very difficult position.

So, to deal with this dilemma, I think to their credit, the Justice Department and the bank regulators have been trying to give the industry some comfort. As we all know, there were the Cole Memos in I think 2013 and 2014 that said, unless you're really in, you know, kind of selling marijuana as part of some drug cartel, and if you're doing it in accordance with kind of a state regulatory regime, the Department of Justice is not going to consider that an enforcement priority.

And then those memos got withdrawn under sessions, but then Attorney General Barr in his confirmation hearing testified that going after legitimate businesses that were operating in compliance with state laws would not be considered an enforcement

priority. So that was comforting.

And then, similarly since then, has come up with specific guidance on filing SARS and they've got their three tiers of SARS, and you just kind of regularly every 90 days file SARS on these cannabis-related businesses.

But the problem is banks recognize that by doing this they're still violating federal law. So, most institutions have just said, you know what, we're not going to go there. And then the tricky question is not only will they not bank the dispensary that is perfectly legal under state law in which the dispensary is operating, but the bank gets nervous about making a loan to the strip mall owner in which the dispensary is located because the strip mall owner is getting rent proceeds from the dispensary which then is being used to pay the bank loan.

So, a lot of institutions won't even bank the strip mall owner. So, from a public policy perspective, I think all of us realize that doesn't make any sense. And I think probably the only way out is through Congress. But in the meantime, we keep hearing from the

federal bank regulators, you know, come talk to us about it. We'll try to work with you on this.

We had one client that was a fairly substantial institution that tried to do that and very senior people from that regulatory agency called a meeting with the institution's board of directors to say are you sure you want to do this. And so guess what the answer was there. They're rethinking their position.

But just things are changing. According to FinCENs 2019 marijuana banking update, which they now issue, the number of financial institutions banking cannabis-related businesses jumped 61 percent from a year ago. So, there are now 553 banks and 162 credit unions that are servicing the industry. Again, this is still a very small fraction. But I think the world is changing and we're going to need to do something to fix this.

MR. GALLAGHER: That's a great overview there, Jean. And I'll give my panelists a chance to react if anyone wants to weigh-in on what Jean said. Rich?

MR. ASHTON: Well, let me just add that probably the hottest of the hot topics of the Fed and

the other bank regulators right now is hemp. So, the 2018 Farm Bill decriminalized hemp, made it no longer a controlled substance for criminal purposes, and established a regulatory regime that was going to be run by the U.S. Department of Agriculture that would permit the processing and growing of hemp under various regulatory -- either the state gets approval for its program, or you can licensed from the USDA.

The USDA has issued interim regulations to implement the regulatory scheme and there is a lot of interest that we're seeing by banks that want to provide services to hemp producers and distributors. So, the banking agencies are working with FinCEN. We expect that there might be some guidance issued relatively soon that would help these institutions who want to do what now is perfectly legal under federal law.

And just on the -- I think Jean explained that, on the marijuana side, which is everything other than hemp, which is defined as that portion of the marijuana plant that has a very small percentage of the psychoactive ingredient in marijuana, for the rest of that, the FinCEN guidance on marijuana I think is still

probably the best thing that's out there.

I think from a policy point of view, what the Fed has told banks is the decision whether to bank a marijuana business in a state that's legal is a decision for the bank. If they choose to do that, they have to have the appropriate compliance mechanism related to that.

MR. GALLAGHER: So, 10 years ago at this conference, would you have thought you'd be hearing Rich talk about hemp versus cannabis versus psycho-reactive blah, blah, blah. Okay, unbelievable.

So, now, I'm going to skip over. We were talking about digital assets because we're hitting here and we're talking about cannabis and that. But Chairman Al made some pronouncements this week that I thought were pretty interesting, but it sounded to me kind of like it's under review.

MR. ASHTON: I think that's basically right. I mean, there's a lot of policy issues that are raised by the Facebook and we don't, as bank regulators necessarily have jurisdiction over all of that. So, there's other people, Congress and other regulators need

to look at it.

MR. GALLAGHER: I'm going to skip, and we're going to try to real quickly handle cooperation credit, because I think that's just a key piece of things folks want to hear. And then I am getting some questions in. So, I'll try to hit them very quickly. But, you know, in a nutshell, Matt, the revisions to the Yates Memo were announced by Rod. You know, they were, I mean, tweaks, but meaningful tweaks last year. Just curious, from your perspective, how again, from a policy perspective, how those have been playing out on the ground and what's the feeling of the DOJ?

MR. MINER: Sure, and I'm familiar with the development of those policy changes. It's played out I think without any impact on the prosecution side because the information that is sought is the information that is essentially asked for in the revised policy, information that's relevant relating to those who were either substantially involved in, right, or responsible for the misconduct at issue.

There may be follow-up dialogue at points about different individuals in their roles. But in

terms of a baseline for what you should be expecting from a company that's cooperating, that's core to what you really need. Who are the people who are either substantially involved in or responsible for the misconduct as opposed to all relevant information as to anyone.

And that I think, fairly or unfairly, raise questions about how much do we -- what temperature do we need to set as we boil the ocean. And I think that that also created some obstacles for companies that were considering voluntarily self-disclosing and cooperating. I think the expectation and what is useful to the prosecutors in the department, that hasn't changed, and the clarity has gone a long way to refining what we're actually seeking.

MR. GALLAGHER: Right. And Mei Lin, what's your take on that from an in-house, the practitioner perspective, you know, your weigh-in, how much cooperation, how much self-reporting, and things like that. Do you see a change based on the revisions to the Yates Memo?

MS. KWAN-GETT: So, I think everybody in this

room can agree that our default is always cooperation and self-disclosure. And so, it's really a matter -- and Matt addressed this not only in his most recent comments, but also earlier, it's a matter of what do you know and when. Obviously, our preference is to have our arms around a matter before we start telling others what it is, and things can evolve as facts come to light. So, that's always a concern.

So, it is nice to get a clarification as to what's expected and that it's okay to be very preliminary when you're going in. I guess one thing worth commenting on is the focus on individuals, you know, the DOJ, as Matt said, the policy has really been that. It was just sort of codified.

But it was very interesting that Rich led his remarks by talking about individual accountability. And we have seen that I think at the other regulators as well and globally, that actions are being brought not only against banks, but against individuals at banks sort of very deliberately. And we have seen the rise, obviously, of several individual accountability regimes in the UK and Hong Kong, and Australia, and I think it's

just going to increase.

MR. GALLAGHER: Well, I'm going to take these questions real quickly. There are about three minutes left. So, we're not going to open the mic. So, you do preserve your anonymity. And I'll ask each of the panelists here to be quick in their response.

Richard, what is the legal standard for determining a practice is unsafe and unsound? Does the standard require the practice to threaten the financial liability of the bank?

MR. ASHTON: So, I think what the courts have said is that it's a practice that, if continued, would threaten the financial stability of the defense and soundness of the institution at issue.

MR. GALLAGHER: Cara, Dodd-Frank gave CFPB exclusive authority to examine banks with more than 10 billion for compliance with consumer protection statutes. So, why are the banking agencies doing this today and not the CFPB? And it wasn't me. It's someone out there. I promised them earlier in prep calls that I wouldn't put them on the spot. But you guys are doing it, not me.

MS. PETERSEN: So, the Bureau, under the CFPA, you know, has authority to look at violations of consumer financial protection laws and to assess compliance with those laws through our exam work. The prudential regulators also have backup authority under the FTC Act to look at, you know, (inaudible) and other statutory compliance issues.

So, you know, this really just comes back to the coordination topics we talked about earlier. We work closely with those regulators to coordinate and try to work through the issues that have been identified today about asking for documents, you know, and from both regulators or approaching things in different ways from different agencies so that we can, you know, take a unified and coordinated approached.

MR. GALLAGHER: Rich, what do you think on that? I guess it's the flipside question and that comes to you?

MR. ASHTON: Yeah, I think that's right. When we're looking at individual enforcement actions, we do have the authority to bring actions under unfair and deceptive practice for the Trade Commission Act, the

single (a), but we always try to coordinate with the Bureau to make sure that there's not unnecessarily overlap.

And on the exam side, you know, we are responsible for sort of the overall compliance risk management of these large organizations and that's what our exams would be focused on.

MR. GALLAGHER: Jean, I have one minute for you to comment on that, if you'd like to?

MS. VETA: No, I think that's right.

MR. GALLAGHER: Okay. All right. Any other questions from the audience because, otherwise, I'm getting flagged down in the back, times up. This was really great. I'd like for you to thank the government representatives here today with me for their public service and their families. (Applause)

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