BANKING/ FINANCE

# Wall Street Wants to Conquer China. Here's What May Go Wrong


Citigroup had 25 commercial banking outlets in China as of last April, down by half from the end of 2015.

**Bloomberg News**

China's financial opening could be a classic case of be careful what you wish for.

The opportunity of making inroads in the world's second-largest economy is prompting the likes of Goldman Sachs Group Inc. and JPMorgan Chase & Co. to detail expansions that some estimate will see $1 trillion plowed into China. Plans to throw open the $45 trillion market were expedited last week after China said it will hasten the entry for securities firms, rating companies and credit-card providers as part of a trade deal with the U.S.

Yet, a bevy of hurdles still promise to complicate the efforts of U.S. banks and financial services firms. China is home to the world's four largest banks by assets, the biggest global fintech company and other formidable competitors. Its tightly controlled system is opaque and arbitrary when it comes to licenses, and the regulation burden is heavy. Recruiting talent has already proved tricky with experienced local executives often preferring state-backed companies.

"It'll be tough for foreign companies to crack the domestic market, owing to how entrenched the incumbents are," said Nick Marro, the Hong Kong-based global trade lead at the Economist Intelligence Unit.

### COMPETITION

The market is vast and difficult to navigate. It's loaded with more than 130 brokerages, thousands of state-backed lenders, big insurance conglomerates and massive financial technology firms with entrenched customer bases. Industrial and Commercial Bank of China Ltd. — the largest — has more than 600 million retail clients. It along with its peers oversee $3.2 trillion of wealth management products, making them the nation's biggest asset managers.

Commercial banking presents a sobering picture. After decades of a limited opening, foreign lenders saw their market share fall to 1.3% in 2017 from 2.4% a decade ago, prompting some to cut branches. Citigroup Inc. had 25 outlets in China as of April last year, down by half from the end of 2015, while HSBC Holdings Plc saw its loss in the China retail banking and wealth management unit widen in 2018 from a year earlier, according to their annual reports.

Wealth managers have hardly fared better. Since an opening three years ago, BlackRock Inc., Man Group Plc and 20 other firms licensed to run private securities funds for high-net-worth individuals manage just 0.2% of China's $362 billion in hedge fund assets.

### APPROVALS & REGULATIONS

Waiting for approvals to do business can be a tortured affair. JPMorgan and Tokyo-based Nomura Holdings Inc. waited more than 10 months for a green light to take majority control of local securities firms. Morgan Stanley is still awaiting a decision on an application submitted in August.

The process is also shrouded in secrecy, and layers of regulation. An application can be rejected without explanation or just left sitting with regulators. Debt rating company Moody's last year shelved its plan to take control of China's largest ratings company amid regulatory inaction, people with knowledge of the matter have said.

The trade deal offers some respite for those struggling through the slow process. China has pledged to review banking licenses on an "expeditious basis," accept applications from credit card companies within five working days of submission, review and approve credit raters in 90 days, and treat U.S. asset managers the same as Chinese companies when granting licenses.

"Having clearer timelines is quite positive, because in the end it boils down to China's willingness to actually dole out these approvals," said Marro.

### TALENT HUNT

The biggest hurdle could be finding enough qualified people.

Goldman wants to double its staff over five years, with UBS Group AG is in the midst of a similar plan for its investment banking business. Nomura is looking to get to 500 employees in China by 2023 and JPMorgan has signaled it's adding staff, expanding by a third its office space in China's tallest skyscraper.

"All of us are trying to get to 100%, so the race for talent is going to be significant," said Todd Leland, co-president of Goldman's Asia-Pacific operations outside of Japan, in a recent interview. "Whether or not you're able to compete and compensate people and find the right individuals that are a fit, that's by far the biggest challenge."

MIAMIBEACH

## NOTICE BY THE CITY OF MIAMI BEACH, FLORIDA, OF THE CITY'S INTENT TO USE THE UNIFORM METHOD OF COLLECTION OF NON-AD VALOREM ASSESSMENTS

NOTICE IS HEREBY given that the City of Miami Beach ("City") intends to use the uniform method for collecting the non-ad valorem assessments to be levied by the City pursuant to Section 197.3632, Florida Statutes, with regard to the Biscayne Beach Security Guard Special Taxing District ("Special Taxing District"). The City Commission will hold a Public Hearing on this matter on **February 12, 2020 at 2:01 P.M.** at City Hall, 1700 Convention Center Drive, 3rd Floor, Commission Chambers, Miami Beach, Florida, 33139.

The purpose of the Public Hearing is to consider the adoption of a Resolution authorizing the City to use the uniform method of collecting non-ad valorem assessments to be levied by the City pursuant to Section 197.3632, Florida Statutes. The City intends to use the uniform method for collecting non-ad valorem assessments after the transfer of control of the Special Taxing District from Miami-Dade County to the City in accordance with Section 18-3.1 of the Miami-Dade County Code.

The City may levy non-ad valorem assessments for the purpose of the continued operation and maintenance of the Biscayne Beach Guard Special Taxing District, including but not limited to the making of infrastructure and security improvements. The area or boundaries of Biscayne Beach Security Guard Special Taxing District are as follows:

> A portion of Sections 3, Township 53 South, Range 42 East, Dade County, Florida; being more particularly described as follows:
>
> Lots 1 thru 52, Block 15; and Lots 5 thru 58, Block 16 of "Biscayne Beach Second Addition" according to the Plat thereof, as recorded in Plat Book 46 at Page 39.
>
> All the aforementioned plats being recorded in the Public Records of Dade County, Florida.

The City intends to use the uniform method of collecting non-ad valorem assessments for a period of more than one year. This non-ad valorem assessment will be levied by the City for the first time; however, Miami-Dade County has previously levied the non-ad valorem assessment for the Special Taxing District.

The City's non-ad valorem assessments shall be subject to the same discounts and penalties, and the issuance and sale of tax certificates and tax deeds, for non-payment as for the non-payment of ad valorem taxes. The non-payment of such non-ad valorem assessments will subject the property to the potential loss of title.

INTERESTED PARTIES may appear at the Public Hearing, or be represented by an agent, to be heard regarding the use of the uniform method of collecting such non-ad valorem assessments, or may express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This item is available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This item may be continued and, under such circumstances, additional legal notice need not be provided.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, a sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

City of Miami Beach
Rafael Granado, City Clerk
305-673-7411

1/15-22-29 2/5 20-26/0000450703M

MIAMIBEACH

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NOTICE IS HEREBY given that the City of Miami Beach ("City") intends to use the uniform method for collecting the non-ad valorem assessments to be levied by the City pursuant to Section 197.3632, Florida Statutes, with regard to the Allison Island Security Guard Special Taxing District ("Special Taxing District"). The City Commission will hold a Public Hearing on this matter on **February 12, 2020 at 2:00 P.M.** at City Hall, 1700 Convention Center Drive, 3rd Floor, Commission Chambers, Miami Beach, Florida, 33139.

The purpose of the Public Hearing is to consider the adoption of a Resolution authorizing the City to use the uniform method of collecting non-ad valorem assessments to be levied by the City pursuant to Section 197.3632, Florida Statutes. The City intends to use the uniform method for collecting non-ad valorem assessments after the transfer of control of the Special Taxing District from Miami-Dade County to the City in accordance with Section 18-3.1 of the Miami-Dade County Code.

The City may levy non-ad valorem assessments for the purpose of the continued operation and maintenance of the Allison Island Guard Special Taxing District, including but not limited to the making of infrastructure and security improvements. The area or boundaries of Allison Island Security Guard Special Taxing District are as follows:

> A portion of Sections 11, Township 53 South, Range 42 East, Dade County, Florida; being more particularly described as follows:
>
> Lots 2 thru 52 of "Indian Creek Subdivision" according to the plat thereof, as recorded in the Plat Book 31 at page 75.
>
> All the aforementioned plats being recorded in the Public Records of Dade County, Florida.

The City intends to use the uniform method of collecting non-ad valorem assessments for a period of more than one year. This non-ad valorem assessment will be levied by the City for the first time; however, Miami-Dade County has previously levied the non-ad valorem assessment for the Special Taxing District.

The City's non-ad valorem assessments shall be subject to the same discounts and penalties, and the issuance and sale of tax certificates and tax deeds, for non-payment as for the non-payment of ad valorem taxes. The non-payment of such non-ad valorem assessments will subject the property to the potential loss of title.

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PRACTICE FOCUS / BANKRUPTCY

# Possibility of Applying Fraud-Specific Discovery Rule to FDCPA Suits Left Open

**Commentary by Charles M. Tatelbaum and Brittany Hynes**

On Dec. 10, 2019, the U.S. Supreme Court ruled 8-1 that the one-year filing deadline for Fair Debt Collection Practices Act (FDCPA) lawsuits is determined from when the alleged violation occurs, not when it is discovered. The case was an appeal of the U.S. Court of Appeals for the Third Circuit's ruling in *Rotkiske v. Klemm*, 890 F.3d 422 (3d Cir. 2018), where the court found that the statute of limitations starts to run when the defendant violates the FDCPA. This resolution will greatly benefit creditors and those collecting debts for the creditors.

Tatelbaum

Hynes

In 2008, a debt collector sued Kevin Rotkiske due to defaulted credit card debt and attempted to serve him at a prior address. At such address, an individual unknown to Rotkiske accepted service on his behalf. As a result, the debt collector eventually withdrew its lawsuit after it was incapable of locating Rotkiske personally.

BOARD OF CONTRIBUTORS

In 2009, the debt collector filed a second lawsuit against Rotkiske, again serving the complaint on an individual unknown to Rotkiske at the same address. Because the debt collector chose not to withdraw the suit the second time around, it received a default judgment after Rotkiske failed to answer.

On June 29, 2015, Rotkiske filed his FDCPA action alleging that the debt collector wrongfully collected a default judgment on a debt. According to his complaint, Rotkiske only became aware of the lawsuit and the judgment when he was applying for a mortgage in September 2014, as every notice was sent to his previous mailing address. In the district court, the debt collector argued that the claim was barred by the statute of limitations. Rotkiske responded by arguing that the FDCPA is subject to the discovery rule.

According to the discovery rule, the statute of limitations for specific actions does not start to run until the plaintiff knows or has reason to know of the injury giving rise to the claim. Therefore, under Rotkiske's theory, the one-year statute of limitations did not start until September 2014, which would have made his lawsuit timely. However, the district court rejected his argument finding that the statutory language is clear in suggesting that the one-year time period starts on "the date on which the violation occurs." The district court's ruling was then affirmed by the Third Circuit.

Notably, the Supreme Court considered the operation of the discovery rule in a 2001 ruling involving the Fair Credit Reporting Act. *TRW v. Andrews*, 534 U.S. 19. The Supreme Court reversed a Ninth Circuit ruling by holding that the discovery rule, if to be applied at all, must be justified by the "text and structure" of the statute. Applying that standard, both the Fourth and the Ninth Circuit have ruled that the limitation period for the FDCPA is subject to the discovery rule, generating an apparent divide among lower courts when the Third Circuit held the contrary in the *Rotkiske* case.

When it agreed to review the *Rotkiske* case, the Supreme Court seemed to be driven to settle the circuit split and to establish conformity to the use of the FDCPA's limitations period. Nevertheless, when analyzing the case, the Supreme Court upheld the Third Circuit's ruling by deciding that Rotkiske brought his FDCPA claim too late. Applying a strict textualist reading to the statute by basing the words "violation" and "occurs" on their dictionary definitions, Justice Clarence Thomas stated that the statute "unambiguously sets the date of the violation as the event that starts the one-year limitations period." He further recognized that it is Congress who determines the limitations, and therefore its intent should not be second guessed by the court.

Thomas went on to discuss the use of the "discovery rule" in situations involving fraud, known as the "fraud-based discovery rule," which differs from the traditional equitable tolling doctrine. In the majority opinion, the court reasoned that while the fraud-based discovery rule may apply, Rotkiske failed to preserve the issue before the Third Circuit nor raised it in his petition for certiorari.

In her dissenting opinion, Justice Ruth Bader Ginsburg affirmed the Third Circuit and believes Rotkiske preserved the issue on appeal and adequately raised the question in the certiorari petition. According to Ginsburg, "the ordinary applicable time trigger does not apply when fraud on the creditor's part accounts for the debtor's failure to sue within one year of the creditor's violation."

Meanwhile, in a concurring opinion, Justice Sonia Sotomayor agreed with the majority's opinion that Rotkiske had not preserved the "equitable, fraud-specific discovery rule" and simply mentioned, "nothing in today's decision prevents parties from invoking that well-settled doctrine." As a result, Sotomayor's concurring opinion is the most compelling for future litigation on the FDCPA's statute of limitations.

The decision in *Rotkiske* resolves a split among federal circuit court of appeals by putting an end to the application of the traditional discovery rule in FDCPA cases. This ruling eliminates an ambiguity for creditors and their representatives attempting to collect a debt to the detriment of creditors seeking to assert rights and remedies under the FDCPA. However, the fraud-specific discovery rule may have a narrow application to FDCPA claims. It seems Rotkiske just did not plead the required elements to claim fraud, as the bar is higher to allege a fraudulent act and he did not allege that the debt collector purposely hid the debt collection lawsuit from him.

**Charles M. Tatelbaum is a director and Brittany Hynes is an associate at Tripp Scott in Fort Lauderdale.**

## BANKING/ FINANCE

# Startups See a Market in Renting Couches by the Month

SETH WENIG/ASSOCIATED PRESS

**Furniture-rental startups Feather, Fernish and others aim to rent furniture to millennials, such as Zachariah Mohammed, left, and Pete Mancilla, with their dog Remy, who don't want to commit to big purchases or move heavy furniture and are willing to pay for the convenience.**

**by Joseph Pisani**

Zachariah Mohammed's living room is filled with stuff he doesn't own.

He pays $200 a month for the sofa, side table, bar cart, dining table and four chairs in his living room. It's worth it, the 27-year-old New Yorker says. If he needs to move, which he's done twice in the last 12 months, he won't need to lug a sofa across the city or worry if it will fit in a new place. The furniture-rental startup, Feather, will swap out items for something else.

"We don't want to be stuck with a giant couch," says Mohammed, a social media manager at a software company, who lives with his partner and their dog, Remy.

Feather, Fernish and other companies aim to rent furniture to millennials who don't want to commit to big purchases or move heavy furniture and are willing to pay for the convenience. It's part of a wave of rental culture that includes Rent the Runway, focused on women's designer clothing, and even Netflix and Spotify, which let you stream from a huge catalog rather than buy individual TV show episodes, movies or songs.

"They're moving a lot. They're changing jobs a lot," says Thomas Robertson, a marketing professor at the Wharton School of the University of Pennsylvania, describing the types of people who would use the services. "Why would you want to be saddled with furniture?"

The furniture-rental companies target high-income city dwellers who want a $1,100 orange love seat ($46 a month) or $980 leather bench ($41 a month) — but only temporarily. The furniture itself is a step up from Ikea.

"I'm 32 years old and have lived in 25 different places, five different countries, 12 different cities," says Chan Park, who co-founded online furniture rental company Oliver Space last year. He constantly bought and discarded cheap furniture. Then he moved to a furnished rental apartment in Singapore.

"It was probably the first time my adult life that I felt like I was truly at home," Park says.

These startups are in just a handful of coastal cities, with few users, but seek to grow. They offer furniture from Crate & Barrel, West Elm and smaller brands.

Others are renting out home goods, too. Rent the Runway recently added West Elm pillows and quilts. Ikea is testing a rental service in several countries outside the U.S., including Switzerland and Belgium.

Renting may make sense for a generation that sees "life as transient," says Hana Ben-Shabat, the founder of Gen Z Planet, a research and advisory firm that focuses on the generation born between the late 1990s and 2016.

Young people today get married and buy homes later than they used to, and young people move more than older people do. Still, millennials are moving less than previous generations did at their age, and Americans overall are moving less.

Moving her furniture from New York to Los Angeles would have cost Clarissa Wright $3,000. Instead, she gave away most of what she owned, traveled in Europe for two months and then rented a couch, bed, mattress, bar stools and other furniture in her new place, for $255 a month. Feather delivered and assembled everything in one day.

Wright, a 28-year-old marketing consulting for fashion and beauty brands, says she can switch out the furniture, add more stuff, move to a new apartment or city. But right now, she doesn't know what the future holds.

"I don't think too far ahead," she says.

That comes at a price. Critics have called the furniture-rental business exploitative in the past. Stores like Rent-A-Center target low-income shoppers who can't afford to buy a fridge or couch outright and charge higher prices overall than competitors.

Some of the new batch of furniture renters charge for membership, and there are fees for late payments or for furniture that is badly damaged. Customers can keep furniture if their monthly payments add up to full price. Prices are the same at West Elm and Crate & Barrel, but you could buy more cheaply directly from the store if there's a sale.

"If people think this is the best way to buy a couch, they are wrong," says Margot Saunders, the senior counsel at the National Consumer Law Center. "They should recognize that they are paying for the convenience of renting."

**Joseph Pisani reports for the Associated Press.**

# FOCUS LATIN AMERICA

## Judge Refuses to Second-Guess Family Separations at Border

**by Elliot Spagat**

A U.S. judge ruled the Trump administration is operating within its authority when separating families stopped at the Mexico border, rejecting arguments that it was quietly returning to widespread practices that drew international condemnation.

The American Civil Liberties Union argued that the administration was splitting families over dubious allegations and minor transgressions, including traffic offenses.

It asked the judge in July to rule on whether the government was justified in separating 911 children during the first year after the judge halted the general practice in June 2018.

U.S. District Judge Dana Sabraw indicated he was uncomfortable second-guessing government decisions to separate children on grounds that parents were considered unfit or dangerous, or in other limited circumstances such as criminal history, communicable diseases and doubts about parentage. He found no evidence that the government was abusing its discretion.

"It is an invitation that is potentially massive in scope, invades an area that is particularly within the province of the executive branch to secure the nation's border, and goes beyond this court's class certification and preliminary injunction orders, which were focused on the administration's practice of separating families at the border for the purpose of deterring immigration, and failing to reunify those families," Sabraw wrote in a 26-page decision.

In a partial victory for the ACLU, the judge said the government must settle any doubts about parentage before separating families by using DNA tests that deliver results in about 90 minutes.

The ruling was a rare instance of the San Diego judge siding with the administration. In June 2018, he halted the practice of separating families under a "zero tolerance" policy to deter illegal immigration and ordered that about 2,800 children be quickly reunited with family. Lack of adequate tracking systems at the time made reunification a monumental task.

ALEJANDRO CEGARRA/BLOOMBERG NEWS

**The American Civil Liberties Union argues that the Trump administration was splitting families over dubious allegations and minor transgressions, including traffic offenses.**

The judge later ordered the administration to identify more than 1,500 additional children who were separated earlier in Trump's presidency, starting in July 2017. The government is providing information to the ACLU, which, in some cases, has volunteers going door to door in Guatemala.

The ACLU said it was considering its next move.

"The court strongly reaffirmed that the Trump administration bears the burden if it attempts to separate families based on an accusation that the adult is not the child's parent," said ACLU attorney Lee Gelernt. "We are evaluating the decision to determine next steps on how to ensure that children are not separated from their parents based on minor infractions."

The Justice Department didn't immediately respond to a request for comment.

The judge noted that the administration acknowledged it erred by separating a mother who needed emergency surgery and a father who was HIV-positive. He rejected the ACLU's contention that some accusations of gang affiliation were unfounded, saying that the government relies on "objective evidence, not allegations or intuition."

**Elliot Spagat reports for the Associated Press.**

## UN Envoy for Colombia: Peace Depends on Stopping Killings

**by Edith M. Lederer**

The U.N. envoy for Colombia warned that peace won't be achieved if former combatants who laid down their weapons and social leaders continue to be killed.

Carlos Ruiz Massieu said Sunday's announcement by Colombian authorities that they thwarted a planned attempt to kill Rodrigo Londono, who had been the top military commander of the country's largest rebel group and now heads its legal political party, "underscored the risks" facing former rebels "and the peace process itself."

He told the U.N. Security Council it also underscores "how crucially important it is to guarantee … security" of former rebels from the Revolutionary Armed Forces of Colombia or FARC.

Ruiz Massieu stressed that "perpetrators of attacks against social leaders and former combatants must be brought swiftly to justice, including both material and intellectual authors." He also stressed that "more effective measures are still imperative to protect these individuals, and their communities."

Colombia's Foreign Minister Claudia Blum told the council that the recent thwarting of the plan to attack FARC's Londono "is the result of robust measures which are being adopted by the government."

U.N. Secretary-General Antonio Guterres said in his recent report to the Security Council that 2019 was the most violent year for former FARC fighters since it signed a peace deal with the government in 2016.

**Edith M. Lederer reports for the Associated Press.**