

Americas' Financial Services Regulatory Center of Excellence
February 2012

In this issue: Dodd-Frank and Beyond – Quick Hits

This newsletter, published by Americas' Financial Services Regulatory Center of Excellence (CoE), is intended to provide an overview of a number of the key aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act or Dodd-Frank) across all industry lines impacted. This issue includes updates from the last 30 days on the following:

- Dodd-Frank – Final rules released (*Final rules are rules that are adopted*)
- Dodd-Frank – New proposed rules (*Proposed rules are rules suggested and may be open for comment*)
- Other regulatory hot topics
- Thought leadership
- Events the CoE is following

At the end of the summaries of most of the topics, we have identified some suggested additional reading. Due to copyright considerations, we have been unable to hyperlink to all articles; however, we have included the information about the article that can be easily found by performing an Internet search.

Dodd-Frank rule-making progress

- 104 final rules released to date
- 115 proposed rules released to date

	February 18, 2012	January 18, 2012	Change
Final rules	104	101	3 finalized rules released

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Proposed rules	115	112	3 proposed rules released
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*These numbers represent a rolling forward count.

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OTC derivatives

Commodity pool operators receive amended registration requirements – FINAL RULE

The Commodity Futures Trading Commission (CFTC) on February 9, 2012 issued a final rule that would require investment companies, such as mutual funds that invest in commodities, to register with the CFTC. In announcing the 4-1 vote, the agency said the rule would increase the CFTC's oversight of commodity pool operators (CPO)—an entity where funds from multiple investors are combined to trade or to invest—and commodity trading advisors (CTA). [Click](#) to read the CFTC new rule.

Additional reading

- “CFTC Amends Rules for CPO/CTA Registration,” *CFTC Law* – February 9, 2012

Cleared swap customer contracts – FINAL RULE

The CFTC adopted regulations to impose requirements on futures commission merchants and derivatives clearing organizations regarding the treatment of cleared swaps customer contracts and related collateral. The final rule requires that customer property and related collateral be maintained separately from futures commission merchants' and derivatives clearing organizations' assets. [Click here](#) to read the final rule. This rule will be effective April 9, 2012.

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Consumer protection

International bank transfers – FINAL RULE

Banks and other financial institutions that offer services to U.S. consumers to transfer money to individuals and businesses in other countries will now be required to disclose more information about fees and exchange rates. The new requirements are part of a final rule approved by the Consumer Financial Protection Bureau (CFPB) that amends Regulation E, which implements the Electronic Fund Transfer Act, to provide protections, including new disclosures, error resolution, and cancellation rights, to consumers who send international remittance

transfers. The rule was initially proposed by the Federal Reserve Board on May 12, 2011 Proposed rule (5/12/11). Richard Cordray, CFPB director, said that, with the new rule, “consumers will know the costs ahead of time and be able to compare prices. Transfer providers will also be held accountable for errors that occur in the process.” The final rule became effective February 7, 2012 and is available [here](#).

Additional reading

- “CFPB Issues International Money Transfer Rules,” *Credit Union Times* – January 23, 2012

International bank transfers – PROPOSED RULE

Coincident with the release of its final rule amending the remittance transfer provisions of Regulation E, the CFPB released a [proposed rule](#) requesting comment on whether a safe harbor should be adopted with respect to the phrase “normal course of business” in the definition of “remittance transfer provider.” This definition determines whether a person is covered by the rule. The proposal also requests comment on several aspects of the final rule regarding remittance transfers that are scheduled in advance, including preauthorized remittance transfers. The CFPB notes that any amendments to the final rule made as a result of this proposed rule would be made prior to the final rule’s implementation date. Comments are due on the proposed rule by April 9, 2012.

Additional reading

- “CFPB Issues Final Remittance Transfer Regulations Under Dodd-Frank Act,” *Payment Law Advisor* – February 1, 2012

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Financial stability (assets greater than \$10 billion)

Annual stress test rule – PROPOSED RULE

The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) have requested comment on a [proposed rule](#) that would implement Section 165(i) of the Dodd-Frank Act, requiring a national bank or federal thrift with total consolidated assets exceeding \$10 billion to conduct annual capital adequacy stress tests. This rule is similar to the rule proposed by the Federal Reserve released in late 2011.

Additional reading

- “OCC Proposes Stress Test Requirements for National Banks and Federal Savings Associations,” *Schulte Roth & Zabel LLP* – January 25, 2012

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Other regulatory hot topics

U.S. solicits the EU to play a role in FATCA – PROPOSED RULE

The U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued comprehensive proposed regulations implementing the information reporting and withholding tax provisions commonly known as the Foreign Account Tax Compliance Act (FATCA). The Treasury eased the burdens imposed on many banks and other financial institutions by a crackdown on Americans' offshore tax dodging, and enlisted five European governments to play a key role in the global effort.

Additional reading

- "Treasury and IRS Issue Proposed Regulations Under the Foreign Account Tax Compliance Act to Improve Offshore Tax Compliance and Reduce Burden," – *The U.S. Dept of Treasury* – February 8, 2012
- "U.S. Enlists 5 EU Nations in Offshore Tax Crackdown," *Reuters* – February 8, 2012
- "Initial impressions of provisions under the FATCA proposed regulations," – [TaxNewsFlash – United States](#) – February 8, 2012

Banks lobbying to exempt swap books

More than half of the derivatives trading business of Goldman Sachs, Morgan Stanley, JPMorgan Chase, Citigroup, and Bank of America could fall largely outside the requirements of the Dodd-Frank Act if they succeed in lobbying regulators to exempt their overseas operations. The banks have met with regulators, testified before Congress, and filed numerous letters contending that the rules are not globally aligned and thus the U.S.-based organization that do a lot of business overseas are disadvantaged because of the lack of global alignment of the regulatory structure to govern swaps.

Additional reading

- "Goldman Sachs Among Banks Fighting to Exempt Half of SwapBooks," *Bloomberg* – January 29, 2012
- "Bankers Air Fears Over Scope of Swap Rules," *Reuters* – February 8, 2012

Similarities in Dodd-Frank and SOX

A recently published essay by *ProPublica's* Jesse Eisinger draws parallels between The Sarbanes-Oxley Act of 2002 (SOX) and Dodd-

Frank, noting that “when SOX was passed, it was attacked – almost exactly like Dodd-Frank is today... But the result is that accounting at American companies is much cleaner today.” Dodd-Frank is more sweeping, more pilloried and more complicated than SOX. “But for all of the criticisms of Dodd-Frank... Few can sustain an argument in favor of a gigantic, self-serving and rapacious financial sector. Some kind of financial reform law was – and still is – needed.”

Additional reading

- “The SOX Win: How Financial Regulation Can Work,” *ProPublica* – February 8, 2012

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KPMG's thought leadership

[2011 LAVCA Summit and Investor Roundtable Summary](#)

An examination of the prospects for private equity firms investing in Latin America, at a time when the availability of resources, the structural changes made by Latin American governments, and the inherent risk of investing in an emerging market mean increased responsibility and scrutiny before making investment decisions.

Evolving Insurance Regulation 2012

KPMG's FS Centers of Excellence writes a global document addressing the regulatory changes in the Insurance market. [Click here](#) to read more.

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Events the CoE is following

Volcker Rule survey – Have we heard from you?

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