



Americas' Financial Services Regulatory Center of Excellence
 April 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 regulatory change including 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**
- **KPMG Thought Leadership**
- **Events the CoE is following**

In the Regulatory Hot Topics section you will find news we are following. Due to copyright considerations, we may be unable to hyperlink to all articles. However, we included the information about the article, which may be found by performing an Internet search.

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Dodd-Frank Rule Making Progress

- 114 Final Rules released to date
- 116 Proposed Rules released to date

	April 12, 2012	March 8, 2012	Change
Final Rules	114*	106	8 final rules released
Proposed Rules	116*	118	6 proposed rules released

*These numbers represent a rolling forward count. Eight rules that were previously proposed have been finalized during this time, and six new proposals have been issued.

OTC Derivatives

Swap-terms defined – FINAL RULE

The Commodity Futures Trading Commission (CFTC) and the

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Securities and Exchange Commission (SEC) adopted a new rule to define a series of terms related to the over-the counter swaps market. Definitions of “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant” and “eligible contract participant,” among other terms, were outlined in the rule. Definition of these terms was described as a “foundational step in the establishment of the new regime to regulate trading for this significant market,” said SEC Chairman **Mary L. Schapiro**. “These rules clarify for market participants whether their current activities will subject them to comprehensive oversight in the coming months.” [Click here](#) for more information.

CFTC Issues No-Action Relief for Reports for Physical Commodity Swaps

The CFTC issued a letter to market participants that grants temporary no-action relief for reporting under the Commission’s “larger-trade reporting system” for physical commodity swaps. The relief from the rule that was put into effect in November is intended to allow market participants time to become fully compliant with the rules. The new deadline is July 2, 2012. [Click here](#) to read the CFTC’s statement on the matter.

Governance Requirements for SD and MSP – FINAL RULE

The CFTC finalized a rule that imposes certain duties upon swap dealers and major swap participants registered with the Commission. These governance requirements include risk management procedures, monitoring of trading to prevent violations of applicable position limits, diligent supervision, business continuity, disaster recovery, the disclosure and accessibility to regulators to obtain general information and antitrust considerations. [Click here](#) to read the final rule.

Exemptions for Security-Based Swaps – FINAL RULE

The SEC adopted a rule that provides exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for security-based swaps issued by certain clearing agencies. The new regulation would exempt transactions by clearing agencies in these security-based swaps from all provision of the Securities Act. The rule became effective April 16, 2012. [Click here](#) for to read the final rule.

Documentation and Timing for Mandatory Clearing – FINAL RULE

The SEC adopted a rule designed to increase customer access to clearing, to facilitate the timely processing of trades, and to strengthen risk management at the clearing member level. This initiative includes the requirement for documentation between a customer and a Futures Commission Merchant (FCM) that clears on behalf of the customer and the timing of acceptance or rejection of trades for clearing by derivatives clearing organization and clearing members. The requirement also enforces the risk management procedures of FCMs, swap dealers, and major swap participants that are clearing members. The rule becomes effective October 1, 2012. [Click here](#) to read the final rule.

Financial Stability

Federal Reserve clarifies conformance of Volcker rule – CONFIRMED

The Federal Reserve Board (Fed) clarified that U.S. banks will have at least until July 21, 2014 to ease into the Volcker rule's trading and investing crackdown, as regulators sought to address uncertainty on Wall Street that the restrictions would be strictly enforced starting this summer. The Fed also said it has the statutory authority to extend the compliance period for the yet-to-be-finalized implementing rule beyond that date if needed. The Volcker rule, mandated by the 2010 Dodd-Frank financial reform law, bans banks from trading with their own funds and greatly limits their ability to invest in hedge and private equity funds. It seeks to limit risk-taking by banks that have government backstops like federal deposit insurance. Regulators proposed a 300-page version of the rule in October, but have said they are unlikely to finalize it by the July 21, 2012 deadline. Banks were given a two-year "conformance period" under the law. [Click here](#) to read the press release.

Bank Assessments Defined and Adjusted – AMENDMENT TO FINAL RULE

The Federal Deposit Insurance Corporation (FDIC) proposed to amend its regulations to revise some of the definitions used to determine assessment rates for large and highly complex insured depository institutions. In announcing the amendment, the FDIC said the proposed amendments would result in more consistent reporting, better reflect risk to the FDIC, significantly reduce reporting burden, and satisfy some of the concerns voiced by the banking industry. [Click here](#) to read the proposal.

Annual Stress Test – EXTENDED

The FDIC, Fed and Office of the Comptroller of the Currency (OCC) are giving banks until April 30 to comment on proposed stress-testing requirements for the depository institutions they supervise. The proposed regulations would require, as appropriate, state nonmember banks and state savings associations supervised by the FDIC, national banks and federal savings associations supervised by the OCC and bank holding companies, savings and loan holding companies and state member banks supervised by the Fed with total consolidated assets of more than \$10 billion to conduct annual stress tests, report the results of such stress tests to their primary federal regulator, and publish a summary of the results of the required stress tests. For further information on the proposal, [click here](#).

Defining Financial Institutions – PROPOSED RULE

The Fed has issued a proposed rule to amend its notice issued on February 11, 2012 to establish requirements and define whether a company is "predominantly engaged in financial activities." By definition, the terms "significant nonbank financial company" and "significant bank holding company" are relevant as they are used throughout Title I of Dodd-Frank and other proposed rules. [Click here](#) to read the proposal.

Contract Requirements for Affiliate and Subsidiaries

of Covered Companies – PROPOSED RULE

The FDIC has proposed a rule to enforce contracts of subsidiaries or affiliates of a covered financial company whose failure would pose a significant risk to the financial stability of the United States despite contract clauses that purport to terminate, accelerate, or provide for other remedies based on the insolvency, financial condition or receivership of the covered financial company. As a condition to maintaining these subsidiary contracts in full force and effect, the FDIC as receiver must either: transfer any supporting obligations of the covered financial company that back the obligations of the subsidiary or affiliate under the contract (along with all assets and liabilities that relate to those supporting obligations) to a bridge financial company or qualified third-party transferee by the statutory one-business-day deadline; or provide adequate protection to such contract counterparties. [Click here](#) to read the proposal.

Consumer Protection and Mortgage Reform

Confidential Information Policies – PROPOSED RULE

The Consumer Financial Protection Bureau (CFPB or the Bureau) is requesting comment on proposed amendments to its CFPB rules. The proposed amendments address how confidential information that is received from persons providing personal data to the Bureau is handled. The proposal also would add a new section to the CFPB rules, which states that the submission by any person of any information to the Bureau in the course of the Bureau's supervisory or regulatory processes will not waive or affect any privilege that a person may claim with respect to such information under federal or state law as to any other person or entity. [Click here](#) to read the proposal.

Payday Lending Proposal – PROPOSED RULE

The CFPB is requesting comment on information obtained through the transcripts of a field hearing on payday lending that took place on January 19, 2012. Payday lending products are typically marketed to bridge a cash flow shortage between pay or benefit checks. Payday lending products generally have three features: the loans are small dollar amounts; borrowers must repay the loan quickly; and, they require that a borrower give lenders access to repayment through a claim on the borrower's deposit account. The Bureau is seeking information from experts and those in the market on determining an appropriate approach to protect consumers and ensure they have access to a small-loan market that is fair, transparent, and competitive. [Click here](#) to read the proposal.

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Other Regulatory Hot Topics

FSOC Describes Triggers for SIFI Nonbank Designation

The Financial Stability Oversight Council (FSOC) recently approved a final rule and interpretive guidance for designating systemically

important nonbank financial institutions (SIFI) for supervision by the Fed. There are three stages to the designation process. In Stage One, an entity must meet the first bullet AND one or more of the following 5 bullets:

- \$50 billion in total consolidated assets
- \$30 billion in gross notional credit default swaps outstanding for which a nonbank financial company is the reference entity
- \$3.5 billion of derivative liabilities
- \$20 billion in total debt outstanding
- 15-to-1 leverage ratio of total consolidated assets (excluding separate accounts) to total equity
- 10 percent short-term debt ratio of total debt outstanding with a maturity of less than 12 months to total consolidated assets (excluding separate accounts).

Stages Two and Three entail successively more company-specific and industry-specific evaluation of risks. A two-thirds vote of the Council, including an affirmative vote of its chairman, is required to make a determination to require the company to be subject to Fed supervision. The designation of financial market utilities has been finalized. A proposed rule on this topic is due out soon. For more information on this topic, [click here](#).

House Committee Releases Dodd-Frank Burden Tracker

The House Financial Services Committee has released a tool drawn from public information regarding estimated amounts of time required for compliance with the law. Quoting the Tracker, "Pursuant to the Paperwork Reduction Act (PRA), a rule published in the Federal Register with information collection requirements must include estimates for the labor hours needed for affected entities to fulfill new requirements set out by the rule."

Reading

- "House Financial Committee Unveils Dodd-Frank Burden Tracker," April 18 – *Bank Credit News*

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KPMG Thought Leadership

A Disputed Proposal: An Overview of the Financial Industry's Response to the Volcker Rule

In this report, KPMG provides a synopsis of some of the key issues and themes that have emerged following a detailed examination of the formal responses to the proposed regulations for the Volcker Rule from a wide range of investment banks, industry associations, and other influential players. We provide this report in the hope that it helps our

member firms' clients better understand the scope of this regulation, its potential impact on their business and what measures may need to be contemplated in order to comply. Please [click here](#) to view a PDF of the document.

A Transformational Approach to Managing Consumer Protection Risk

Consumer protection has become a top strategic and cultural driver in the aftermath of the financial crisis. Today's dynamic market environment is causing organizations to examine their current consumer risk-management program to identify potential benefits as well as drivers for change. KPMG outlines consumer protection triggers and KPMG's approach to consumer protection in key areas of an organization. Please [click here](#) to view the PDF document.

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Events the CoE is following

Federal Reserve Bank of Atlanta Financial Markets Conference – April 9, 2012

Chairman **Ben S. Bernanke** gave a speech addressing financial stability, SIFI, regulation of shadow banking, and monitoring financial stability. [Click here](#) to read his speech.

13th Annual U.S. Real Estate Opportunity and Private Fund Investing Forum – May 30, 2012

The Information Management Network (IMN) is holding its U.S. Real Estate Opportunity and Private Fund Investing Forum in New York.

Providing a chance for the real estate opportunity fund industry to meet, this conference will address the most pressing issues at the core of the industry and is a must-attend event. [Click here](#) for more information.

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