

Americas' Financial Services Regulatory Center of  
Excellence  
May 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

[116 Final rules released to date](#)

[121 Proposed rules released to date](#)

	May 17, 2012	April 12, 2012	Change
Final Rules	116	114	2 final rules released
Proposed Rules	121	116	5 proposed rules released

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\*These numbers represent a rolling forward count. Two of the 116 rules that were previously proposed have been finalized to date, some rules have extended comment periods and there have been 5 new proposals added.

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## OTC Derivatives

### Pre-Enactment Swap Data Recordkeeping and Reporting Requirements for Pre-Dodd-Frank and Transition Swaps – Final Rule – May 17, 2012

The CFTC approved a final [rule](#) on swap data recordkeeping and reporting requirements for counterparties to pre-enactment swaps, those swaps executed prior to passage of the Act, and transition swaps, those entered into between the law's enactment date and the applicable compliance date for swap data recordkeeping and reporting. The goal of the final rule for these swaps, collectively called historical swaps, is to specify what records must be kept and what data must be reported. The rule is also designed to ensure that historical swap data is available to regulators through swap data repositories.

### Commodity Options and Agricultural Swaps – Final Rule – April 27, 2012

The CFTC issued a final rule to repeal and replace current regulations concerning commodity options. This rule states a transaction must be within the trade option exemption, the option, the offeror (seller), and the offeree (buyer), as applicable, must satisfy certain eligibility requirements, including that the option, if exercised, be physically settled, that the option seller meet certain eligibility requirements, and that the option buyer be a commercial user of the commodity underlying the option, and certain other regulatory conditions. Click [here](#) to read the rule.

### Swap Data Repository Provisions – Proposed Rule – May 7, 2012

The Commodity Futures Trading Commission (CFTC) is requesting comment on the proposed provision that will provide guidance regarding the applicability of the confidentiality and indemnification provisions. The proposed interpretative statement clarifies that the provisions of Section 21(d) should not operate to inhibit or prevent foreign regulatory authorities from accessing data in which they have an independent and sufficient regulatory interest, even if that data also has been reported pursuant to the Commodity Exchange Act and CFTC regulations. Click [here](#) to read the proposed rule.

### Swap Push-Out Rule – Notice – May 10, 2012

The Federal Reserve Bank (The Fed, or Fed), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) issued guidance to provide clarity regarding the effective date of Section 716 of the Act with respect to entities for which each is the prudential regulator. This notice clarifies that the rule is effective two years following the date on which the Act is

effective (July 2012). Click [here](#) to read more about the rule in the Federal Register.

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## Financial Stability

### Standard of creditworthiness – Extended – April 19, 2012

The Securities and Exchange Commission (SEC or Commission) proposed to remove any references to credit ratings from its regulations and to substitute such standard of creditworthiness as the Commission determines to be appropriate. In this release, the Commission is proposing to amend certain rules and one form under the Securities Exchange Act of 1934 (the “Exchange Act”) applicable to broker-dealer financial responsibility, distributions of securities, and confirmations of transactions. The Commission also is requesting comment on potential standards of creditworthiness for purposes of Exchange Act Sections 3(a)(41) and 3(a)(53), which define the terms “mortgage related security” and “small business related security,” respectively, as the Commission considers how to implement Section 939(e) of the Act. Click [here](#) to read the proposal.

### Supervision and regulation of certain nonbank financial companies – Final Rule April 11, 2012

The Financial Stability Oversight Council (FSOC or Council) finalized a rule which determines how the Council will designate that a nonbank financial company shall be supervised by the Fed and shall be subject to prudential standards, in accordance with Title I of the Act, if the Council determines that material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States. Click [here](#) to read the rule.

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## Consumer Protection and Mortgage Reform

### Overdraft programs impact on consumers – Extended – April 25, 2012

The Bureau of Consumer Financial Protection (the Bureau or CFPB) has extended the comment period regarding the impact of overdraft programs on consumers. The overdraft notice posed several questions to understand: lower cost alternatives to overdraft protection; consumer alerts and information provided regarding balances and triggers; the impacts of changes to Regulations DD and E and Overdraft opt-in rates; the impact of changes in operating policies; the economics of the overdraft programs; and the long-term impacts on consumers. The comment period has been extended

from April 30, to June 29, 2012. Click [here](#) to read the proposal.

## Study of pre-dispute arbitration agreements – Comment Requested – April 24, 2012

The Bureau is preparing to conduct a study that will provide a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services. The Bureau is currently taking suggestions from the public to help identify the scope, sources, and methods of this study. Comments must be submitted on or before June 23, 2012. Click [here](#) to read the notice and request for information.

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## Other Regulatory Hot Topics

### JOBs Act attempts to simplify the regulatory requirements for emerging growth companies

The Jumpstart Our Business Startups Acts (JOBS Act) has several implications for corporations large and small. One implication that is widely discussed is the exemption of emerging growth companies from certain compensation-related regulatory requirements and greatly simplifies compliance with others. Emerging growth companies are exempt from the following requirements:

- Holding nonbinding shareholder votes on “say-on-pay” and “say-on-frequency”;
- Holding a nonbinding “say-on-golden parachutes” vote and to provide related disclosure; and
- Providing disclosure with respect to pay ratios and pay versus performance (Dodd-Frank requirements that are not yet effective because the SEC has not yet adopted implementing rules).

Emerging growth companies also are permitted to comply with the simplified compensation-related disclosure requirements that apply to small business issuers (i.e., those issuers with a public float of less than \$75 million) in lieu of complying with the more onerous requirements of Item 402 of Regulation S-K that apply to larger issuers. Click [here](#) to read JOBS Act.

Read More:

- “JOBS Act Delivers Fuel for Driving Up IPO On-Ramp,”  
May 15 – *CNBC*
- “The JOBS Act Loosens Regs for Companies,”  
April 5 – *Businessweek*

### European Banking Authority releases a discussion paper on RRP templates

In light of the Living Wills and Recovery and Resolution Plan requirement for systemically Important Financial Institutions, the

European Banking Authority has published a discussion [paper](#) on a template for recovery plans. This paper aims to encourage discussion and is designed to gather stakeholders' opinions at an early stage of the process. The discussion is open for comment until June 15, 2012.

## Community banks considering pooled asset sales

In efforts to shed a few problem assets, some community bank advisors are structuring asset pools that bundle loans from multiple banks to pitch to potential buyers. A recently published report indicated that an institution in New York is structuring a pool with at least \$20 million in loans that should close by mid-August, and that a Chicago-based institution is in the process of structuring at least two pools that would close in the third or fourth quarters. This trend is starting to pick up around the country as the smaller banks face regulatory challenges, liquidity, and available credit.

Read More:

- "Small Banks Warm Up to Pooled Asset Sales,"  
May 15 – *American Banker*
- "The Shadow Over Community Banking,"  
May 7 – *CFO.com*

## American Banks Association: Durbin Amendment's Small-bank Exemption Can't Work Long Term

In response to a recently published report by the Fed that compared information on the average debt-card interchange fees charged by payment-card networks, American Bankers Association (ABA) president and CEO Frank Keating said in statement that, "it's impossible for this initial report to fully reflect or predict the consequences of upending the marketplace with government price controls." Keating added that "while retailers pocket \$7 billion annually from lower interchange costs, their customers pay higher fees as institutions adjust to government-imposed losses in revenue. At the same time, many small businesses now face higher interchange rates for low-dollar transactions, a classic example of strange things that occur when government creates unnatural pressures to make up for lost revenue. The Durbin Amendment's primary beneficiaries continue to be big-box retailers who want to reap the benefits of our nation's payments system without paying for it or passing along their savings to customers as promised."

Read more:

- "Too Soon to Determine Durbin Amendment's Consequences,"  
May 2 – *ABA*
- "Community Banks Dodge Swipe-fee Bullet for Now."  
May 2 – *BusinessWeek*
- "Transaction Fees Lowered Due to Cap, Fed Reports,"  
May – *Merchant Account Guide*

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## KPMG Thought Leadership

### Dodd-Frank for Foreign Financial Institutions – Geared Up for Change?

We are pleased to announce the release of [\*Dodd-Frank for Foreign Financial Institutions – Geared Up for Change?\*](#) This report explores key challenges and critical areas of focus for foreign financial institutions arising from Dodd-Frank. As expected, US financial institutions – particularly banks, but also securities firms, investment advisers, fund managers, and insurers – face new challenges in the form of increased reporting, enhanced prudential requirements, extended fiduciary commitments, and more intensive supervision. What may not have been expected are the impacts to the foreign financial institutions. This report highlights the challenges that foreign financial institutions are facing as a result of US regulations.

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### FACTA Challenges differ by industry segment

While the regulations for the Foreign Account Tax Compliance Act (FATCA) are in proposed form, they provide sufficient guidance to assist affected organizations in developing strategic and operational plans to help ensure FATCA compliance by the phased-in effective dates, which begin July 1, 2013 (July 1, 2012 for foreign financial institutions). The challenges that organizations may face in implementing FATCA requirements differ, in part, on their industry. In the following *FATCA: Challenges and Insights* articles, KPMG LLP highlights key issues the proposed regulations present to the following groups. Click each one for more information.

- [Asset managers](#)
- [U.S. and foreign banks](#)
- [Infrastructure funds](#)
- [Insurance companies](#)
- [Pension funds](#)
- [Private equity funds](#)
- [Real estate funds](#)

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## Events the CoE is following

### Senate Banking Committee to Hold Dodd-Frank Hearings and Discuss Final Volcker Rule Language – May–June 2012

The Senate Banking Committee announced that, as part of its oversight of the implementation of Dodd-Frank, it will hold hearings in the next few weeks with key financial regulators – including hearings on the Volcker rule. Click [here](#) to read a recent statement from the committee on the hearings.

## Timely and Comprehensive Compliance Information and Insights from FDIC – June 5, 2012

The FDIC's Division of Depositor and Consumer Protection has announced a June 5 hearing on third-party compliance risk management. Presenters will discuss compliance risk management and examination and oversight of third-party relationships, including the FDIC's 2008 Guidance for Managing Third-Party Risk (FIL-44-2008), the FDIC's 2012 Revised Guidance on Payment Processor Relationships (FIL-3-2012), and examples of practices that could raise compliance concerns. Institutions are invited to submit questions in advance of the teleconference to [BankerTeleconference@fdic.gov](mailto:BankerTeleconference@fdic.gov)

## FCPA Issues in 2012: Dodd-Frank & Beyond – Whistleblower Provision – June 1, 2012

Presented by Capstone Advisory Group – Two hour live webcast to discuss the latest issues and developments surrounding the impact of the DFA on FCPA enforcement and compliance. For more information click [here](#).

## Hearing by the Committee on Financial Services “The Impact of the Dodd-Frank Act: Understanding Heightened Regulatory Capital Requirements – May 18, 2012

The Financial Services Committee hosted a hearing to discuss the impact of Dodd-Frank and capital requirements associated with the prevailing rules from regulators. For more information click [here](#).

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