

Americas' Financial Services Regulatory Center of Excellence
December 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.

Dodd-Frank Rulemaking Progress

149* final rules released to date

117* proposed rules released to date

	November 19, 2012**	September 28, 2012	Change
Final rules	149	144	Five final rules issued
Proposed rules	117	120	Two new proposed rules issued

*These numbers represent a rolling forward count. Five of the previously proposed rules have been finalized. One final rule has been issued that was not a proposal. Four proposals have been extended or reopened. Two new proposals have been issued. Three items are not rules and not counted in the table above (guidance statements, FIL, or speeches.) This results in the 15 separate updates covered below.

**There were four finalized rules and six proposed rules or determinations since November 19th, these will be summarized in our next newsletter.

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OTC Derivatives

SEC finalizes clearing agency standards

The Securities and Exchange Commission (SEC or Commission) adopted a new rule that establishes minimum requirements regarding how registered clearing agencies must maintain effective risk management procedures and controls as well as meet the statutory requirements under the Securities Exchange Act of 1934 (Exchange Act) on an ongoing basis. The rule will be effective January 2, 2013. [Click here](#) to read Final rule.

Reading

“SEC Adopts New Risk Management Rules for Clearing Agencies,” October 22 – *Reuters*

Joint rule proposed to establish margin and capital requirements for covered swap entities

Five federal agencies reopened the comment period on a proposed rule to establish margin and capital requirements for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the agencies is the prudential regulator, as required by sections 731 and 764 of Dodd-Frank. The comment period—which originally ended July 11, 2011—was reopened to November 26, to allow interested persons more time to analyze the issues and prepare their comments in light of the consultative document on margin requirements for noncentrally cleared derivatives recently published for comment by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions. [Click here](#) to read the notice of the reopening of the proposal comment period.

CFTC finalizes conforming changes to integrate into Dodd-Frank

Dodd-Frank establishes a comprehensive new statutory framework for swaps and security-based swaps. Dodd-Frank repeals some sections of the Commodity Exchange Act (CEA), amends others, and adds a number of new provisions. Dodd-Frank also requires the Commodity Futures Trading Commission (CFTC) to promulgate a number of rules to implement the new framework. The CFTC has proposed and finalized numerous rules to satisfy its obligations under Dodd-Frank. This rulemaking makes a number of conforming amendments to integrate the CFTC's regulations more fully with the new framework created by Dodd-Frank. The rule will be effective January 2, 2013. [Click here](#) to read final rule.

CFTC issues guidance on swap data repositories

The CFTC has proposed an interpretative statement to provide guidance regarding the applicability of the confidentiality and indemnification provisions included in section 21(d) of the CEA. The new language stipulates that the Act should not 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 CEA and CFTC regulations. The CFTC on October 22, 2012 issued final interpretative guidance to, under certain circumstances, exempt foreign regulators from the indemnification and confidentiality provisions in Dodd-Frank.

[Click here](#) to read the interpretative statement.

SEC proposes capital requirements for broker-dealers

The SEC is proposing capital and margin requirements for security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs), segregation requirements for SBSDs, and notification requirements with respect to segregation for SBSDs and MSBSPs. The Commission also is proposing to increase the minimum net capital requirements for broker-dealers permitted to use the alternative internal model-based method for computing net capital. Comments will be received through January 22, 2013.

[Click here](#) to read the proposed rule.

CFTC finalizes adjustments for civil monetary penalties

The CFTC is amending its rule that governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties assessable for violations of the CEA and CFTC rules, regulations, and orders. The rule became effective October 25, 2012. [Click here](#) to read final rule.

SEC proposes rule on principal trades with advisory clients

The SEC is proposing to amend rule 206(3) – 3T under the Investment Advisers Act of 1940, a temporary rule that establishes an alternative means for investment advisers that are registered with the SEC as broker-dealers to meet the requirements of section 206(3) of the Investment Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. The amendment would extend the date on which rule 206(3) – 3T will sunset from December 31, 2012 to December 31, 2014. [Click here](#) to read proposed rule.

SEC and CFTC request comment on study to determine whether stable value contracts fall within the definition of a swap

The SEC and CFTC reopened the comment period for a study to determine whether stable value contracts (SVCs) fall within the definition of a swap. The study is required by the Dodd-Frank Act. The original comment period for the study closed on September 26, 2012. The SEC and CFTC did not complete the study pending adoption of final rules further defining the terms “swap” and “security-based swap.” The SEC and CFTC are considering the study in light of the recent adoption of these final rules. Accordingly, the SEC and CFTC reopened for 30 days the time period (through November 1, 2012) to solicit comments. [Click here](#) to read the notice about reopening of comment period.

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Financial Stability

Fed finalizes stress-test rule for \$50-billion-plus institutions and FDIC finalizes stress-test for smaller institutions

The Federal Reserve Board (The Fed or the Board) has adopted a final rule to implement the stress test requirements for covered companies with total consolidated assets of \$50 billion or more. Furthermore, implementation of the stress testing requirements for bank holding companies that did not participate in the Supervisory Capital Assessment Program is delayed until September 2013. The Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) also finalized a rule regarding stress testing for smaller institutions (assets of more than \$10 billion). [Click here](#) to read the final rule and the [press release issued November 15, 2012](#) for \$50 billion plus institutions.

The FDIC, however, will delay implementation of the annual stress test requirements under the final rule for institutions with total consolidated assets of more than \$10 billion but less than \$50 billion until September 30, 2013. [Click here](#) to read FDIC and OCC final rule for institutions with assets greater than \$10 billion final rule.

FDIC issues a financial institution letter for non-interest bearing accounts

Temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts (NIBTAs) has been provided by the FDIC, including coverage on interest on lawyer trust accounts. The coverage is scheduled to expire on December 31, 2012. Absent a change in law, beginning on January 1, 2013, the FDIC no longer will provide separate, unlimited deposit insurance coverage for NIBTAs at insured depository institutions, which are encouraged to provide advance notice to affected depositors. [Click here](#) to read financial institution letter. [There was in interesting editorial piece in the FT on Wednesday morning that we might want to separately make available to the practice as it had some relevant observations on the impact of transitioning this “coverage”]

FDIC finalizes enforcement rule on subsidiary and affiliate contracts for covered companies

The FDIC has issued a final rule that implements part of Dodd-Frank which permits the FDIC to enforce contracts of subsidiaries or affiliates of the covered financial company 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 or affiliate 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. The final rule sets forth the scope and effect of the authority granted under Dodd-Frank, clarifies the conditions and requirements applicable to the receiver, addresses requirements for notice to certain affected counterparties, and defines key terms.

[Click here](#) to read final rule.

OCC proposes rule regarding retail foreign exchange

The OCC is proposing to amend its retail foreign exchange rule for transactions with bank common trust funds, bank collective investment funds, and insurance company separate accounts, and is making technical corrections to the rule. [Click here](#) to read proposed rule.

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Consumer Protection

CFTC proposes new regulations on futures commission merchants

The CFTC is proposing to adopt new regulations and amend existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants. The proposal also addresses certain related issues concerning derivatives clearing organizations and chief compliance officers. Comments are due January 13, 2013. [Click here](#) to read.

CFPB defines “larger participant” in consumer financial markets

The Consumer Financial Protection Bureau (CFPB) has amended the regulation defining larger participants of certain consumer financial product and service markets by adding a new section to define larger participants of a market for consumer debt collection. The final rule facilitates the supervision of nonbank covered persons active in that market. The CFPB has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. The rule is effective as of January 2, 2013. [Click here](#) to read final rule.

CFPB releases prepared remarks on electronic fund transfers (Reg E)

The CFPB released the transcript of a speech given by the director of the CFPB, Richard Cordray, regarding Regulation E. In August 2012, Regulation E was amended adopting the remittance transfer and safe harbor with respect to the phrase “normal course of business” in the definition of “remittance transfer provider.” For more information on the directors prepared remarks [speech \(October 16, 2012\)](#) and [final rule which was issued August 8, 2012](#).

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Other regulatory hot topics

Postelection landscape

Many in the financial services industry awaited the election to determine what was on the horizon for their business. With President Barak Obama remaining in office and a Democratic-controlled

Senate, it is likely that many of the recently implemented or proposed regulations are “here to stay.”

- **KPMG Replay: Postelection Legislative Landscape – November 16, 2012**
- **American Banker: It’s Time for Bankers to Make Peace with Dodd-Frank – November 14, 2012**
- **Compliance Week: Election Results Could Lead to a Swifter Rulemaking – November 13, 2012**

U.S. delays Basel III and liquidity requirements

U.S. financial institutions will not be required to start complying with Basel III capital and liquidity requirements by January 1, 2013 according to a recent joint statement issued by the Fed, the FDIC, and the OCC. More than the 2,000 comment letters have been filed with the three banking agencies raising issues with a June proposal to adopt Basel III in the United States. Regulators did not provide a target on when they expected the rules to come into effect.

The package of rules is designed to improve the quality and quantity of capital and liquidity that banks of all sizes must hold to prevent a repeat of the financial crisis. For more information please see the [Fed's Press Release](#) and the Statement of the FDIC Deputy Director French on examining the impact of the [proposed rule](#).

Reform law results in more than 1,500 private fund advisers registration

While some private fund advisers previously registered with the SEC voluntarily, Dodd-Frank mandates that all hedge fund and private fund advisers register. This mandatory registration has given the SEC its first comprehensive look at advisers to these types of funds. Including the 2,557 private fund advisers who had registered previously, a total of 4,061 advisers to one or more private funds are now registered with the SEC. [Click here](#) to read full press release.

FCPA Guide released

The SEC and the Department of Justice (“DOJ”) have released [A Resource Guide to the U.S. Foreign Corrupt Practices Act](#). The 120-page guide provides a detailed analysis of the U.S. Foreign Corrupt Practices Act (FCPA) and closely examines the SEC and DOJ approach to FCPA enforcement.

SEC receives more than 3,000 whistleblower tips

Over the past year, the SEC received more than 3,000 whistleblower tips from all 50 states and from 49 countries, according to the agency's [2012 Annual Report on the Dodd-Frank Whistleblower Program](#).

Dodd-Frank will be assessed by Bipartisan Policy Group

The Bipartisan Policy Center (the Center) will launch its financial regulatory reform initiative, which will assess Dodd-Frank’s effectiveness and recommend improvements in a report expected next fall. The reform initiative breaks the law into five parts:

- Systemic risk, which will evaluate the role of the Financial Stability and Oversight Counsel (FSOC) and the process of designating financial institutions as systemically important
- Failure resolution, which will include a look at living wills and the orderly liquidation authority
- Capital markets, including the Volcker rule
- Consumer protection
- Regulatory architecture, which will tackle the thorny question of consolidating various agencies.

The Center is recruiting former regulators, academics, and other specialists to serve on each group. The mission of the Center is to bring Republicans and Democrats together to find solutions to intractable policy issues facing the economy as well as various sectors like health-care and energy. The group hopes to have its first report out next spring and then release one a month through the summer on each of the five areas. A final, comprehensive report is expected in the fall. [Click here](#) to read more about Bipartisan Group to Assess Dodd-Frank.

Revised standards of creditworthiness for investment securities

The FDIC has issued a Financial Institution Letter (FIL) to remind FDIC-supervised institutions of recent regulatory changes regarding the permissibility of certain investment activities. On June 4, 2012, the OCC adopted a final rule and related guidance that removes references to credit ratings in OCC regulations pertaining to investment securities ([77 FR 35253 and 35259](#)) consistent with Dodd-Frank section 939A. Under part 362 of the FDIC's regulations, insured state banks generally are prohibited from engaging in an investment activity that is not permissible for a national bank under OCC regulations, including the requirements of the OCC final rule. [Click here](#) to read financial institution letter.

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KPMG thought leadership

[Conflict Minerals and Beyond – Part two: A more transparent supply chain](#)

[Conflict Minerals and Beyond – Part One: Time to Develop a Compliance](#)

[Strategy – Article by Jim Low in Financial Executive International magazine](#)

[New Light on Old Truths: Consumer Protection and Good Business Sense](#)

We are pleased to announce the **Community Banking Outlook Survey**. This report includes both a snapshot of current conditions and impressions of what the near future may hold for this sector. The survey confirmed what we understand community banks have been struggling with over the past several months: community

banking executives face significant challenges from regulatory compliance costs, capital requirements, and net interest margin compression. In addition, troubled mortgages remain a problem and organic loan growth is slow. [Click here](#) to download a PDF copy of the publication.

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Events the CoE is following

[KPMG TaxWatch – November 12 – Replay](#)

[Postelection Legislative Landscape – November 16 – Replay](#)

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