

**Americas' Financial Services Regulatory Center of Excellence**  
January 2013

## 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

155\* final rules released to date

119\* proposed rules released to date

	January 10, 2013	November 19, 2012	Change
<b>Final rules</b>	155	149	6 final rules issued
<b>Proposed rules</b>	119	117	8 new proposed rules issued

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\*These numbers represent a rolling forward count. Six of the previously proposed rules have been finalized. Eight rules have been proposed, and one rule has extended already existing dates. This results in the 15 updates below.

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## OTC Derivatives

### SEC issues exemptive order for margining swaps and security-based swaps

The Securities and Exchange Commission (SEC) is seeking comment on a recently issued order that grants conditional exemptive relief from compliance with certain provisions of the Securities Exchange Act of 1934. The conditional exemptive relief would apply to a program to commingle and portfolio margin customer positions in cleared credit default swaps, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the Commodity Exchange Act. The SEC is requesting comment by February 19, 2013. [Click here](#) to read details.

#### Reading

- SEC Permits Portfolio Margining of Credit Default Swaps, December 28, 2012 – Morgan, Lewis & Bockius LLP
- SEC Issues Exemptive Order in Connection with Portfolio Margining of Cleared Swaps and Security-Based Swaps, December 12, 2012 – Katten Muchin Rosenman LLP

### CFTC finalizes rule for clearing determination for swaps

The Commodity Futures Trading Commission (CFTC) has issued a final rule to require certain credit default swaps and interest rate swaps to be cleared by registered derivatives clearing organizations. The rule is the first clearing determination by the CFTC under Dodd-Frank. Market participants will be required to submit a swap that is identified in the rule for clearing by a derivatives clearing organization as soon as technologically practicable, and no later than the end of the day of execution. The rule was finalized on December 13, 2012 and will be effective February 11, 2013. [Click here](#) to read final rule details.

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## **Reading**

- CFTC Issues Clearing Determination for Certain Interest Rate and Credit Default Swaps, December 26, 2012 – Paul, Weiss, Rifkind, Wharton & Garrison LLP

### **CFTC approves rule regarding transaction record keeping**

In accordance with Section 727 of Dodd-Frank, the CFTC adopted rules to implement a new framework for the real-time public reporting of swap transaction and pricing data for all swap transactions. The adopted rules apply to swap data record-keeping and reporting requirements for swap data repositories, derivatives clearing organizations, designated contract markets, swap execution facilities, swap dealers, major swap participants, and swap counterparties who are neither swap dealers nor major swap participants. The record-keeping and reporting requirements of this rule further the goals of the Dodd-Frank to reduce systemic risk, increase transparency, and promote market integrity within the financial system. [Click here](#) for more details.

### **SEC extends dates with submission process final rule**

The SEC previously adopted a rule which defines the process for submissions for review of security-based swaps for mandatory clearing and notice filing requirements for clearing agencies. The SEC is extending certain dates with respect to these requirements. The extension was issued and effective December 10, 2012. To read more regarding extension, [click here](#).

### **SEC issues a notice to extend current transaction rates**

The SEC has decided that the Section 31 rate applicable to specified securities transactions on the exchanges and in the over-the-counter market will remain at \$22.40 per million dollars until the SEC's regular fiscal budget is approved and firms are advised of the final date for implementing a rate change. [Click here](#) to read notice.

### **Swap dealers and swap participants face new SEC requirements**

The SEC is proposing capital and margin requirements for security-based swap dealers and major security-based swap participants (MSBSPs), segregation requirements for the swap dealers, and notification requirements with respect to segregation for both parties. The SEC also is proposing to increase the minimum netcapital requirements for broker-dealers permitted to use the alternative internal model-based method for computing net capital. The proposal is open for

comment until January 22, 2013. [Click here](#) to read proposal.

### **Reading**

- SEC: Proposed Rules for Security-Based Swaps, December 29, 2012 – Race to The Bottom.org

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## **Financial Stability**

### **Fed issues guidance for supervision framework**

The Federal Reserve Board (the Fed) has issued guidance relating to a new framework for the consolidated supervision of large financial institutions. The framework is intended to strengthen traditional microprudential supervision and regulation to enhance the safety and soundness of individual firms. It also incorporates macroprudential considerations to reduce potential threats to the stability of the financial system and to provide insights into financial market trends. [Click here](#) to read guidance.

### **Reading**

- Federal Reserve Announces New Framework for Supervising Large Institutions, January 3, 2013 – Nutter Bank Report

### **The FDIC and OCC issue statement regarding conversions of certain banks**

The Federal Deposit Insurance Corporation (FDIC), the Fed, and the Office of the Comptroller of the Currency (OCC) – together with the Conference of State Bank Supervisors have issued an Interagency Statement that outlines supervisory expectations for conversions of certain national banks or federal savings associations to state-chartered institutions and conversions of certain state-chartered banks or savings associations to national banks or federal savings associations. Section 612 of Dodd-Frank covers the restrictions on conversions of these institutions. [Click here](#) to read the Federal Institution Letter (FIL).

### **Fed proposes policy for company-run stress test**

The Fed has requested public comment on a policy statement on the approach to stress testing that would be used in connection with the supervisory and company-run stress tests conducted under the Fed's regulations and capital plan rule. Comments must be received by February 15, 2013. [Click here](#) to read details.

Separately, the FDIC has issued interim guidance to develop and distribute the stress tests required by Dodd-Frank. [Click here](#) to read interim guidance. The stress test final rule was published October 15, 2012. [Final rule \(October 15, 2012\)](#).

## **SEC finalizes rule regarding purchases of debt securities**

The SEC has adopted a new rule under the Investment Company Act of 1940 to establish a standard of creditworthiness in place of a statutory reference to credit ratings that Dodd-Frank removes. The rule will establish the standard of credit quality that must be met by certain debt securities purchased by entities relying on the Investment Company Act exemption for business and industrial development companies. Final rule has been effective since December 24, 2012. [Click here](#) to read final rule.

## **FDIC issues FIL regarding investments in corporate debt securities**

The FDIC has issued a 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 Section 939A of Dodd-Frank. [Click here](#) to read details.

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## **Consumer Protection**

### **Court ruling may impact CFPB future**

The court decision that has called the CFPB's past and future into question was handed down by the U.S. Court of Appeals for the D.C. Circuit on January 25. The court [ruled](#) that three appointments President Obama made to the National Labor Relations Board on January 4, 2012, failed to satisfy the Recess Appointments Clause of the Constitution. Some impacts include public policy ramifications that might lead the court to not move to invalidate prior regulations during this time period by the CFPB but likely prohibition of future regulations until director appointed. The possibility of going to the Supreme Court for ruling given precedent for presidential authority for recess appointments. The ability of Treasury to oversee until a CFPB director is confirmed.

## **Reading**

- Could Court Case Presage Changes at the CFPB – Wall Street Journal – January 30, 2013
- Canning vs. National Labor Relations Board (DC Circuit Court)
- Evans vs. Stephens (11th Court of Appeals 2005 decision)

## **CFPB issues notice regarding Fair Credit Reporting Act disclosures**

The Consumer Financial Protection Bureau (CFPB) has announced that the ceiling on allowable charges under Section 612(f) of the Fair Credit Reporting Act (FCRA) will remain unchanged at \$11.50 for 2013. The CFPB is required to increase the \$8.00 amount referred to in Section 612(f)(1)(A)(i) of the FCRA on January 1 of each year, based proportionally on changes in the Consumer Price Index for All Urban Consumers (CPI-U), with fractional changes rounded to the nearest 50 cents. The CPI-U increased 43 percent between September 1997, the date the FCRA amendments took effect, and September 2012. This increase in the CPI-U, and the rounding requirement, results in no change in the maximum allowable charge. [Click here](#) to read notice.

## **Proposed policy issued to encourage trial disclosure programs**

The CFPB is seeking comment on its proposed Policy to Encourage Trial Disclosure Programs, which is intended to carry out the CFPB's authority under Section 1032(e) of Dodd-Frank. Comments will be received until February 15, 2013. [Click here](#) to read the proposed policy.

## **Rule finalized regarding integrated mortgage disclosures**

The CFPB has amended Regulation Z (Truth in Lending) to delay implementation of certain new mortgage disclosure requirements in Title XIV of Dodd-Frank that would otherwise take effect on January 21, 2013. Instead, to avoid potential consumer confusion and reduce compliance burden for industry, the CFPB plans to implement these disclosures as part of the integrated mortgage disclosure forms proposed earlier this year, which combine certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. Accordingly, this rule, which has been effect since mid-November, exempts persons from complying with these mortgage disclosure requirements and provides that such exemptions are intended to last only until the integrated mortgage disclosure forms take effect. [Click here](#) to read details.

## **CFPB finalizes rules regarding consumer leasing/ consumer credit**

The Fed and the CFPB have issued final rules relating to the Consumer Leasing Act (CLA) by increasing the threshold for exempt consumer leases from \$51,800 to \$53,000, effective January 1, 2013. [Click here](#). The CFPB and the Fed also published final rules amending the threshold for exempt consumer credit transactions from \$51,800 to \$53,000, effective January 1, 2013. [Click here](#) to read the rule.

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## **Other regulatory hot topics**

### **Basel III delayed**

The Basel Committee on Banking Supervision has eased the pressure of the Liquidity Coverage Ratio proposals, which originally outlined the range of assets banks must hold as a buffer against the threat of collapse as well as extending the time limit on compliance. This amendment in addition to the delay of the final rule has increased the uncertainty around further revisions and the strength that Basel III will offer against bank collapse.

#### **Reading**

- Bloomberg – January 7, 2013 – Banks win 4-year delay as Basel Liquidity Rule loosened

### **SIFMA president comments on regulatory reform**

Securities Industry and Financial Markets Association (SIFMA) president and CEO **Tim Ryan** take a look back at 2012 and a look ahead this year in a recent Q&A.

#### **Reading**

- SIFMA Web site search for “Q&A: SIFMA President and CEO Tim Ryan on the state of the industry.”

### **Congressional use of federal securities laws to promote social and/or foreign policy change**

This trend is starting to take form and becoming an adjustment in how corporations report to the SEC and ultimately how they do business. Examples include Dodd-Frank's conflict minerals, and resource extraction payments disclosure requirements, which creates a new

form, Form-SD (Specialized Disclosures), to be filed annually with the SEC. In addition, the recently enacted Iranian sanctions legislation that imposes a new disclosure obligation directly on reporting companies that will have retroactive effect. The disclosure provision of the Iran Threat Reduction and Syria Human Rights Act of 2012, adds a new Section 13(r) to the Securities Exchange Act of 1934, is of the most immediate concern to companies with calendar fiscal years, because it applies to annual reports on Form 10-K (or Form 20-F for non-U.S. issuers) due to be filed after February 6, 2013.

## **Reading**

- SEC Disclosure and Corporate Governance Alert, January 8, 2013 – Weil Gotshal

## **SEC Chair steps down**

SEC Chair **Schapiro** stepped down on December 14, 2012. She is one of the longest-serving SEC chairpersons, having served longer than 24 of the previous 28. [Click here](#).

## **United States answers challenge on constitutionality of Dodd-Frank**

The U.S. government has responded to a federal court action filed by several parties, including a Texas community bank, which challenges the constitutionality of Dodd-Frank. The government argues that the action is not ripe since the claims of injury by the community bank, three states, and various advocacy groups fall far short of the imminent nonconjectural injury needed to confer Article III standing. In its response, the government claims that despite the allegations of unconstitutionality, “not one of the Dodd-Frank authorized actions that plaintiffs speculate might cause them harm has yet occurred.” The government asks the court to dismiss the claims as unripe for judicial resolution (*Big Springs National Bank of Texas v. Geithner*, DC DofC, No 1L12-1032).

## **FDIC announces official launch of regulatory calendar for community banks**

As part of its FDIC Community Banking Initiatives, the FDIC launched a draft online regulatory calendar to help community banks stay up-to-date on changes in federal banking laws, regulations, and supervisory guidance. The FDIC requested feedback from the industry on ways to improve the calendar and has revised it based on a review of the comments received.

The updated calendar is available [here](#).

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## KPMG thought leadership

### KPMG analysis of the FATCA final regulations

On January 17, 2013, the U.S. Treasury Department and the Internal Revenue Service (IRS) released for publication in the *Federal Register* final regulations under the Foreign Account Tax Compliance Act (FATCA) provisions.

KPMG's subject matter experts have conducted an initial review of these regulations to help clients better understand the scope and implications on their business.

This initial analysis of the FATCA final regulations reviews certain key provisions and provides observations concerning:

- Harmonization with intergovernmental agreements
- Relaxation of certain documentation and due diligence requirements
- An expanded scope of "grandfathered obligations"
- Liberalization of requirements for certain retirement funds and savings accounts
- Limited FFIs – continued transition rule

[Click here](#) to access this report.

Also, [click here](#) to visit KPMG's FATCA Essentials Web page.

Please join us for the TaxWatch webcast on February 1, 2013 at 11:00 a.m. EST to learn more about Final FATCA regulations. Replay will be available a week later.

### Title 7 Tracker available on CoE portal

[Regulatory Practice Letter – Evolving Perspectives on Regulation of Foreign Banking Organizations](#) – December 2012

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## Events the CoE is following

### **International Transformation: Unlocking Value and Executing Abroad**

February 27, 2013

The Standard Club, Chicago, IL

<http://www.themiddlemarket.com/conferences/international/>

February 26–27, 2013

Marriott Marquis, New York, NY

[Anti-Money Laundering and Financial Crimes Conference 2013](#)

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