

Americas' Financial Services Regulatory Center of Excellence
April/May 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 recent updates 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

176* final rules released to date
136* proposed rules released to date

	April 8, 2013	February 18, 2013	Change
Final rules	176	165	11 final rules issued
Proposed rules	136	122	14 new proposed rules issued

*These numbers represent a rolling forward count. Fourteen rules have been proposed or extended comment period and Eleven rules have been final rules, orders, amendments or advisories. This results in the 25 updates below.

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CoE key contacts

- [Jim Low](#)
- [Meghan Meehan](#)
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- [Sara Ellison](#)
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OTC Derivatives

Amendments issued for solicitation and accepting swaps

The U.S. Commodity Futures Trading Commission (CFTC) is proposing to amend its regulations to clarify certain responsibilities of a swap dealer (SD) or major swap participant (MSP) regarding its employees who solicit, accept, or effect swaps in a clerical or ministerial capacity. Click here to read [Proposed rule \(4/8/13\)](#).

Alert for transactions of regional transmission organizations and independent system operators

The CFTC on March 29 issued a No-Action Relief letter to give regional transmission organizations and independent system operators time to enact certain tariff, protocol, or rate schedule changes and take other steps necessary to satisfy the conditions of the exemption granted to them and operate within the scope of that exemption. Click here to read <http://www.cftc.gov/PressRoom/PressReleases/pr6551-13>.

Amendments issued for FINRA Rule 6440 (Trading and Quotation Halt in OTC Equity Securities)

The U.S. Securities and Exchange Commission (SEC) approved amendments to Financial Industry Regulatory Authority (FINRA) Rule 6440 to clarify that FINRA may (1) initiate a trading and quotation halt in an over-the-counter (OTC) equity security upon notice of a foreign regulatory halt for news pending, including notice from a reliable third-party source; (2) continue to halt trading and quoting in such OTC equity security until notice from the appropriate foreign regulatory authority is received that it has or intends to resume trading in the security, even if the halt is longer than 10 business days; and (3) extend a halt initiated for an extraordinary event beyond 10 business days if it determines that the basis for the halt still exists. Click here to read issued <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p237995.pdf>.

SEC requests information regarding duties of brokers, dealers, and investment advisers

The SEC has requested data and other information that it would use as it reviews possible “alternative standards” of conduct for broker-dealers and investment advisers when they provide “personalized investment advice” about securities to their retail customers. The SEC also said it would use the information as it considers “potential harmonization of certain other aspects of the regulation of broker-dealers and investment advisers.” Click here to read [Request for data and other information \(3/7/13\)](#).

“SEC Requests Input for a Potential Uniform Fiduciary Standard of Conduct,”

March 12, 2013 – *Bingham McCutchen LLP*

CFTC issues exemptions for certain nonfinancial energy derivatives transactions

The CFTC has approved a final order that exempts certain nonfinancial energy derivative transactions between and amongst government-owned electric utilities and cooperatively owned electric utilities from most of the requirements of the Commodity Exchange Act. The entities eligible for the relief are not-for-profit electric utilities charged with a unique public service mission of providing their customers with reliable, affordable electric energy. Dodd-Frank directed the CFTC to provide such an exemption for certain transactions between certain electric utilities if it is in the public interest. Click here to read [Press release](#).

Swap dealer and major swap dealer

The CFTC has finalized regulations that would make clear that each SD, MSP, and other CFTC registrant with whom an associated person (AP) is associated is required to supervise the AP and is jointly and severally responsible for the activities of the AP with respect to customers common to it and any other SD, MSP, or other Commission registrant. Click here to read final rule <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-07755a.pdf>.

SEC proposes changes to FINRA Rule 4240

The SEC has approved an amendment to FINRA Rule 4240, which creates a pilot program regarding new margin requirements for certain credit default swaps. Any member firm planning to institute these new margin requirements must notify FINRA in advance. FINRA issued a different notice of filing and order granting approval with respect to the same rule on July 14, 2011. Click here to read [Proposed Rule \(3/14/13\)](#).

Reading

“SEC Approves on an Accelerated Basis FINRA Rule Change Relating to Margin Requirements for Credit Default Swaps,” April 2, 2013 – [Katten Muchin Rosenman LLP](#)

Expiration date changed for FINRA Rule 0180

FINRA has proposed to extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to July 17, 2013. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps. Click here to read [Notice \(4/5/13\)](#).

Advisory alert issued for swap data recordkeeping and reporting requirements

The CFTC has issued an advisory alert as a reminder of the April 10 compliance deadline for obtaining legal entity identifiers (LEIs). The Division of Market Oversight (DMO) and the Office of Data and Technology (ODT) of the CFTC issued this advisory to remind swap market participants of important obligations they have under the

Commission's swap data recordkeeping and reporting rules with respect to LEIs. Click here to read [Advisory alert](#).

Effective date correction for adaptation of regulations to incorporate swaps—records of transactions

The CFTC has issued a correction regarding a compliance date in a recent notice of final rulemaking in the Federal Register of December 21, 2012. The correction amends the Adaptation of Regulations to Incorporate Swaps – Records of Transaction. The correction became effective on April 9. The final rulemaking made certain conforming amendments to recordkeeping provisions of regulations to integrate them more fully with the new statutory framework created by Dodd-Frank. Click here to read details of [Final rule \(12/21/12\) Correction](#).

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Financial stability and capital requirements

Banks get three-month extension on living wills

Large U.S. banks have been given an additional three months by the Federal Reserve (The Fed) and Federal Deposit Insurance Corp. (FDIC) to submit “living wills”—documents that provide details on plans to be used in case of their insolvency. The announcement also provided details on the information the plans must contain. The documents, originally due July 1, are now due October 1.

Fed finalizes definition of financial institutions

The Fed has adopted a final rule that establishes the requirements for determining when a company is “predominantly engaged in financial activities.” The requirements will be used by the Financial Stability Oversight Council (FSOC) when it considers the potential designation of a nonbank financial company for consolidated supervision by the Fed. Click here to read [Final rule \(4/5/13\)](#).

Fed issues stress test results and approves the capital plans of 14 financial institutions

The Fed has approved the capital plans of 14 financial institutions in the Comprehensive Capital Analysis and Review (CCAR). Two other institutions received conditional approval, while The Fed objected to the plans of two firms. Click here to read [Press release \(3/14/13\)](#) and [Stress test results \(3/7/13\)](#).

Joint proposal to revise capital rules

The Fed, the Office of the Comptroller of the Currency (OCC), and the FDIC have proposed to revise the advanced approaches risk-based capital rule to incorporate certain aspects of “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems” (Basel III) that the agencies would apply only to advanced

approach banking organizations. The proposal also offers up other changes to the advanced approaches rule that the agencies believe are consistent with changes by the Basel Committee on Banking Supervision (BCBS) to its "International Convergence of Capital Measurement and Capital Standards: A Revised Framework" (Basel II), as revised by the BCBS between 2006 and 2009, and recent consultative papers published by the BCBS. The agencies also propose to revise the advanced approaches risk-based capital rule to be consistent with Dodd-Frank, including replacing references to credit ratings with alternative standards of creditworthiness consistent with section 939A. Additionally, the OCC and FDIC are proposing that the market risk capital rule be applicable to federal and state savings associations, and the Board is proposing that the advanced approaches and market risk capital rules apply to top-tier savings and loan-holding companies domiciled in the United States that meet the applicable thresholds. In addition, the proposal would codify the market risk rule consistent with the proposed codification of the other regulatory capital rules across the three proposals.

<http://www.federalreserve.gov/bankinfo/reg/srletters/sr1304.htm>

Fed proposes to add section to regulations based on Dodd-Frank

Section 806(a) of Dodd-Frank permits the Board of Governors of the Federal Reserve System to authorize a Fed bank to establish and maintain an account for, and through the account provide certain financial services to, financial market utilities that are designated as systemically important by the FSOCs. In addition, section 806(c) of Dodd-Frank permits a Reserve Bank to pay interest on the balances maintained by or on behalf of a designated federal market utility. The Board of Governors is proposing to add two new sections to Part 234 of Title 12 of the Code of Federal Regulations to implement these provisions of Dodd-Frank. [Notice of proposed rulemaking \(3/4/13\)](#)

Comment period extended for remediation requirements for foreign banks

The deadline for comments from the public on a proposed rule to implement the enhanced prudential standards and early remediation requirements established under sections 165 and 166 of Dodd-Frank for foreign banking organizations and foreign nonbank financial companies supervised by the Fed was extended to April 30. The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, risk management and risk committee requirements, single-counterparty credit limits, and stress test requirements. Click here to read [Extension of comment period \(2/27/13\)](#).

Company run-stress test template and documentation request

The OCC is soliciting comment on a proposed new regulatory reporting requirement for national banks and federal savings associations titled, Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of \$10 Billion to \$50 Billion under Dodd-Frank. The proposal describes the scope of reporting and the proposed reporting requirements. Click here to read [Press release \(3/15/13\)](#).

Consumer protection

CFPB finalizes amendment for electronic fund transfers

The Consumer Financial Protection Bureau (CFPB) amended subpart B of Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and the official interpretation to the regulation. The final rule amends Regulation E to conform to the EFTA amendment to eliminate a requirement that a fee notice be posted on or at automated teller machines, leaving in place the requirement for a specific fee disclosure to appear on the screen of that machine or on paper issued from the machine. Regulation E is amended by deleting the language requiring that disclosure. ATM operators will now only have to provide the on-screen or paper disclosure, which includes the amount of the fee to be charged and is provided before the consumer is committed to the transaction. Click here [Final rule \(3/26/13\)](#).

Initiative to promote student loan affordability

A notice has been issued for information from the public to determine options that would increase the availability of affordable payment plans for borrowers with existing private student loans. Section 1035 of Dodd-Frank establishes an ombudsman for student loans within the CFPB. The Ombudsman is responsible for making “appropriate recommendations” to the director of the CFPB, the Secretary of the Treasury, the Secretary of Education, and Congress. In October 2012, the ombudsman presented a report, which recommended that policymakers identify opportunities to spur refinance and modification activity in the private student loan market. This notice seeks information from market participants, consumers, and other stakeholders in order to provide more detailed information on ways to encourage the development of more affordable loan repayment mechanisms for private student loan borrowers. [Request for information \(2/27/13\)](#).

Defining larger participants of the student loan servicing market

A new rule has been proposed to allow the CFPB to supervise certain nonbank student loan servicers for the first time. This rule would bring new oversight to a rapidly growing market that has seen a rise in borrower delinquency in recent years. Click here to read [Proposed Rule \(3/28/13\)](#).

Limits of fees for credit card issuers

The CFPB has amended Regulation Z, which implements the Truth In Lending Act, and the official interpretation to the regulation, which interprets the requirements of Regulation Z. Regulation Z generally limits the total amount of fees that a credit card issuer may require a consumer to pay with respect to an account, limiting fees to 25 percent of the credit limit in effect when the account is opened. The final rule amends Regulation Z to apply the limitation only during the first year after account opening. Click here to read [Final](#)

[rule \(3/28/13\)](#).

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Other regulatory hot topics

Fed finalizes retail foreign exchange transaction rules

The Fed has finalized standards for banking organizations under its supervision that engage in certain types of foreign exchange transactions with retail customers. The rule establishes requirements for risk disclosures to customers, recordkeeping, business conduct, and documentation for retail foreign exchange transactions. Click [here](#) to read [Final rule \(4/9/13\)](#).

SEC issued proposed rule regarding self-regulating organizations

The SEC has proposed Regulation SCI, also known as Regulation Systems Compliance and Integrity, which would apply to certain self-regulatory organizations (including registered clearing agencies), alternative trading systems, plan processors, and exempt clearing agencies subject to the SEC's Automation Review Policy (collectively, "SCI entities"), and would require these SCI entities to comply with requirements with respect to their automated systems that support the performance of their regulated activities. [Proposed rule \(3/25/13\)](#)

U.S. companies that invest in a European equity subject to FTT tax compliance

Financial Transaction Tax (FTT) is not another tax compliance exercise. It will affect business models, transaction pricing, trading decisions, and most importantly the returns to end users such as pension funds, mutual funds, and life companies. The impact would extend to those non-EU financial institutions that trade with Europe. U.S. corporations need to pay attention to the movement and next steps. http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/index_en.htm

Reading

"9 Potential Impacts of the FTT on European Equities," March 21, 2013 – TABB Forum

SEC says social media OK for company announcements if investors are alerted

The SEC has issued a report that makes clear that companies can use social media outlets to announce key information in compliance with Regulation Fair Disclosure (Regulation FD) so long as investors have been alerted about which social media will be used to disseminate such information.

<http://www.sec.gov/news/press/2013/2013-51.htm>

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KPMG thought leadership

Corporate governance – issue brief – Dodd-Frank

Dodd-Frank has huge impacts across organizations including how we handle corporate governance. This issue brief addresses key points that should cause boards to review their governance processes. Click here to read [document](#).

Learn more about KPMG's Regional and Community Banking practice

KPMG offers wide range of services to the regional and community banking industry. This slip sheet outlines services for every day needs as well as advisory and strategic services for the current regulatory changes banks are facing. Click here to read [document](#).

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