

Americas' Financial Services Regulatory Center of Excellence
June/July 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 may find citations to 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

*137 proposed rules released to date

	June 14, 2013	April 8, 2013	Change
Final rules	176	167	9 final rules issued
Proposed rules	137	136	1 new proposed rule issued

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OTC derivatives

FDIC issues a financial institution letter regarding interest rate and credit default swap contracts

New mandatory clearing requirements for certain interest rate and credit default swap contracts took effect on June 10 for all state nonmember institutions. These requirements apply to any covered transaction entered into on or after June 10, unless the end-user exception or inter-affiliate exemption under the Commodity Futures Trading Commission's (CFTC) rules applies. This financial institution letter applies to all institutions supervised by the Federal Deposit Insurance Corporation (FDIC) that enter into interest rate and credit default swaps. Institutions with total consolidated assets of \$10 billion or less may opt for an exception or exemption from mandatory clearing under certain circumstances. Please refer to the CFTC's rules or guidance for more information.

[Financial Institution Letter \(6/7/13\)](#)

Federal reserve offers guidance on swaps push out rule

The Federal Reserve Bank (Fed) issued guidance, which reminds institutions that they need to consider new swap clearing rules developed by the CFTC. The DFA makes it unlawful for any person, including a financial institution to engage in a swap if the CFTC determines such swap is required to be cleared, unless the person submits the swap for clearing to a registered derivatives clearing organization. This guidance applies to all institutions it supervises that participate in interest rate and credit default swaps, including institutions with total consolidated assets of \$10 billion or less. Banks with total consolidated assets of \$10 billion or less may be eligible for a clearing exception in the CFTC's rules.

[Guidance \(6/7/13\)](#)

Rules proposed regarding cross-border security-based swap activities

The Securities and Exchange Commission (SEC) has issued rules and guidance relating to cross-border security-based swap transactions. The rules have been anticipated by the industry because of the multiple, regulatory regimes that are in play as part of the global derivatives market. The new cross-border rules are meant to take a comprehensive approach in the application of a section of Dodd-Frank dealing with certain registration obligations of security-based swap dealers (SBSDs), major security-based swap participants (MSBSPs), SBS clearing agencies, SBS execution facilities, and SBS swap data repositories (SDRs).

[Proposed rule \(5/23/13\)](#)

Reading:

- **SEC Issues Proposed Rules on Cross-Border Security-Based Swap Activities, Shearman & Sterling, June 3, 2013**

CFTC issues advisory on how to report block trade volume data

The CFTC's Division of Market Oversight has issued an advisory to instruct

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reporting markets how to report block trade volume data as required under CFTC Regulation 16.01(d), which recently was amended in order to clarify certain provisions relating the recording of volume data from each trading session. This advisory clarifies information about changes to a coding standard developed by the CFTC's Office of Data and Technology, which will have an impact on how affected organizations must report data. Click [here](#) to read the announcement.

Exemptions for security-based swaps finalized

The SEC has affirmed recent amendments to its Rule 19b-4 in connection with filings of proposed rule changes by certain registered clearing agencies, and it is expanding on those amendments in response to comments received. The SEC also is making technical modifications to the general instructions for Form 19b-4. The amendments and the modifications to the instructions are intended to streamline the rule-filing process in areas involving certain activities concerning nonsecurity products that may be subject to duplicative or inconsistent regulation as a result of certain provisions under Section 763(b) of Dodd-Frank.

[Final rule \(4/9/13\)](#)

SEC and CFTC proposals reopened for comment

The following 12 proposals have been reopened for more input and comments from the industry:

- Anti-manipulation rules for security-based swaps – Click here – [Reopening of comment period \(5/23/13\)](#)
- Reporting and dissemination of security-based swaps – Click here – [Reopening of comment period \(5/23/13\)](#)
- Trade acknowledgement and verification of security-based swap transactions – Click here – [Reopening of comment period \(5/23/13\)](#)
- Ownership limitations and governance requirements for security based– swap clearing agencies – Click here – [Reopening of comment period \(5/23/13\)](#)
- Clearing agency standards for operation and governance – Click here – [Reopening of comment period \(5/23/13\)](#)
- Business conduct standards for security-based swaps – Click here – [Reopening of comment period \(5/23/13\)](#)
- Exception to mandatory clearing of security-based swaps – Click here – [Reopening of comment period \(5/23/13\)](#)
- Security-based swaps data repository registration duties and core principles – Click here – [Reopening of comment period \(5/23/13\)](#)
- Registration and regulation of security-based swap execution facilities – Click here – [Reopening of comment period \(5/23/13\)](#)

- Registration of securities-based swap dealers and major security-based swap participants – Click here – [Reopening of comment period \(5/23/13\)](#)
- Sequencing of the compliance dates for final rules applicable to security-based adopted pursuant to the SEA and Dodd-Frank – Click here – [Reopening of comment period \(5/23/13\)](#)
- Capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants and capital requirements for broker-dealers – Click here – [Reopening of comment period \(5/23/13\)](#)

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Financial stability and capital requirements

Fed approves final Basel III rule

On Tuesday, July 02, 2013, the Fed approved a final Basel III rule. The purpose of the rule is to help ensure banks maintain strong capital positions that will enable them to continue lending to creditworthy households and businesses even after unforeseen losses and during severe economic downturns. The Fed-approved rule is very close to the proposed rule from June 2012.

As of this writing, the FDIC has provided notice that it will consider the matter as an interim final rule on July 9, 2013 and the OCC expects to review and consider the matter as a final rule by July 9, 2013.

The banking agencies carefully reviewed the comments received on the proposal and made a number of changes in the final rule, in particular to address concerns about regulatory burden on community banks. For example, the final rule is different from the proposal in terms of risk weighting for residential mortgages, the regulatory capital treatment of certain unrealized gains and losses, and trust preferred securities for community banking organizations. In summary, for community banks, the changes are minimal and target areas that are higher risk. The Fed released a summary which, highlights the provisions that are most relevant to smaller, noncomplex banking organizations and compares the new capital requirements to the current standards. [Final Rule 7/2/13](#).

As with all financial institutions subject to the final rule, community banks will have a significant transition period to meet the new requirements. The phase-in period for smaller, less complex banking organizations will not begin until January 2015 while the phase-in period for larger institutions begins in January 2014.

Reading:

- **Federal Reserve Board approves final rule to help ensure banks maintain strong capital positions.**
<http://www.federalreserve.gov/newsevents/press/bcreg/20130702a.htm>

FDIC finalizes effective date of swap push-out rule

The Federal Reserve, FDIC, and OCC issued guidance clarifying the effective date of Section 716, the Swaps Push-out provisions, of Dodd-Frank is July 16, 2013. Section 716 prohibits certain types of federal assistance, such as discount window lending and deposit insurance, for certain uses to a swaps entity, subject to specified exceptions, with respect to its swap, security-based swap, or other activity. Rule will be effective 6/10/13.

[Interim final rule \(6/10/13\)](#)

FSOC releases 2013 annual report

The Financial Stability Oversight Council (FSOC) has unanimously approved its 2013 annual report. Under the Dodd-Frank Act, the FSOC must report annually to Congress on a range of issues, including the activities of the FSOC, significant financial market and regulatory developments, and potential emerging threats to the financial stability of the United States. The report must also make recommendations to promote market discipline, maintain investor confidence, and enhance the integrity, efficiency, competitiveness, and stability of U.S. financial markets.

[FSOC annual report.](#)

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Consumer protection

CFPB finalizes rule regarding underwriting standards for mortgages

Regulation Z, which implements the Truth in Lending Act (TILA), has been amended. Regulation Z prohibits a creditor from making a higher-priced mortgage loan without regard to the consumer's ability to repay the loan. The final rule implements Sections 1411 and 1412 of Dodd-Frank, which generally require creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling and establishes certain protections from liability under this requirement for "qualified mortgages." The final rule also implements Section 1414 of Dodd-Frank, which limits prepayment penalties. Finally, the final rule requires creditors to retain evidence of compliance with the rule for three years after a covered loan is consummated. This rule will be effective January 10, 2014. [Final rule \(6/12/13\)](#)

Regulation Z escrow final rule issued

On May 23, the Federal Register published final rule amendments to the 2013 Escrows Final Rule Under the Truth in Lending Act (Regulation Z) by clarifying how to determine whether a county is considered "rural" or "underserved" for the application of the escrows requirement, restoring

certain existing Regulation Z requirements related to the customer's ability to repay and prepayment penalties for higher-priced mortgage loans, and including some technical corrections to enhance clarity. This rule will be effective June 1, 2013. [Final rule \(5/23/13\)](#)

Final rule issued for electronic fund transfers

The CFPB has published for comment an interim final rule establishing a new Regulation E (Electronic Fund Transfers). This interim final rule does not impose any new substantive obligations on persons subject to the existing Regulation E, previously published by the Board. This rule will be effective October 28, 2013. [Final rule \(5/22/13\)](#)

Rule finalized on payday and deposit advance loans

The Dodd-Frank Act established a "Consumer Financial Civil Penalty Fund" into which the CFPB must deposit any civil penalty it obtains against any person in any judicial or administrative action under federal consumer financial laws. Under the Act, funds in the civil penalty fund may be used for payments to the victims of activities for which civil penalties have been imposed under federal consumer financial laws. In addition, to the extent that such victims cannot be located or such payments are otherwise not practicable, the CFPB may use funds in the civil penalty fund for the purpose of consumer education and financial literacy programs. On April 26, the CFPB issued a final rule that implements the relevant statutory provisions by articulating the CFPB's interpretation of what kinds of payments to victims are appropriate and by establishing procedures for allocating funds for such payments to victims and for consumer education and financial literacy programs. [Final rule \(5/7/13\)](#)

Credit card amendment to Regulation Z finalized

The CFPB issued a final rule to amend Regulation Z relating to the prohibition of a card issuer from opening a credit card account for a consumer, or increasing the credit limit applicable to a credit card account, unless the card issuer considers the consumer's ability to make the required payments under the terms of such account. Regulation Z currently requires that issuers consider the consumer's independent ability to pay, regardless of the consumer's age; in contrast, the Truth in Lending Act expressly requires consideration of an independent ability to pay only for applicants who are under the age of 21. The final rule amends Regulation Z to remove the requirement that issuers consider the consumer's independent ability to pay for applicants who are 21 or older, and permits issuers to consider income and assets to which such consumers have a reasonable expectation of access. This rule became effective May 3. [Final rule \(5/3/13\)](#)

Identity theft red flag rules

The CFTC and SEC finalized rules and guidelines that would require financial institutions and creditors to develop and implement a written identity theft prevention program that is designed to detect, prevent, and mitigate identity theft in connection with certain existing accounts or the opening of new accounts. The CFTC and the SEC also finalized guidelines

to assist entities in the formulation and maintenance of a program that would satisfy the requirements of the proposed rules. This also establishes special requirements for any credit and debit card issuers that are subject to the CFTC's or the SEC's jurisdiction, to assess the validity of notifications of changes of address under certain circumstances. [Final rule \(4/10/13\)](#)

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Other regulatory hot topics

House Committee passes bills revising Dodd-Frank Act

On June 19, the House Financial Services Committee passed four bills that revise Dodd-Frank:

- [H.R. 1564](#) – The Audit Integrity and Job Protection Act, which would prohibit the Public Company Accounting Oversight Board from dictating which auditor a company is audited by or requiring companies to adhere to mandatory auditor rotation.
- [H.R. 1135](#) – The Burdensome Data Collection Relief Act, which would repeal a section of Dodd-Frank that requires companies to file with the SEC information about employee compensation, including how the CEO's annual compensation compares to that of other employees.
- [H.R. 1105](#) – The Small Business Capital Access and Job Preservation Act was passed. The bill would exempt certain private equity fund advisers from registering with the SEC as mandated by the Dodd-Frank Act.
- [H.R. 2374](#) – The Retail Investor Protection Act was passed. The legislation would force the Labor Department to wait to issue its fiduciary rule until 60 days after the SEC has released its rule. It also would require the SEC to meet additional cost benefit requirements before issuing its rule.

[Reform tracker 2013](#)

The FDIC finalizes rule regarding orderly liquidation authority

The FDIC is adopting a final rule that establishes criteria for determining if a company is predominantly engaged in "activities that are financial in nature or incidental thereto" for purposes of Title II of Dodd-Frank. A company that is predominantly engaged in such activities is a "financial company" for purposes of Title II. A financial company, other than an insured depository institution, may be subject to Title II's orderly liquidation authority if, among other things, it is determined that the failure of the company and its resolution under otherwise applicable law would have serious adverse effects on financial stability in the United States. This rule is effective July 10. [Final rule \(6/10/13\)](#)

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KPMG thought leadership

2013 Banking Industry Outlook Survey: Regulatory change spans the enterprise

KPMG's **2013 Banking Industry Outlook Survey** reveals how banking executives remain focused on dealing with regulatory-related matters since these are having a pervasive impact on their institutions. Forging ahead in this evolving regulatory environment will require fundamental changes to traditional business models and operating structures, while effectively managing the rising costs of reform and its impact on growth. [Click here to read more.](#)

CFPB pushes retirement savings regulatory marketplace

The U.S. KPMG Financial Services Regulatory Practice has released an article that explores the potential impacts to the retirement savings marketplace that could result from the activities of the CFPB to protect older Americans from financial harm. [Click here to read more.](#)

FASB establishes liquidation accounting model

A new report has been issued by KPMG regarding a Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) that requires an entity to prepare its financial statements using the liquidation basis of accounting when liquidation is imminent, as defined in the ASU. The ASU's objective is to eliminate diverse practices by providing guidance about when and how to apply the model. The guidance applies to all entities except for investment companies regulated under the Investment Company Act of 1940. [Click here to read more.](#)

FCPA guidelines and the first Dodd-Frank whistleblower report

The U.S. Department of Justice and the SEC have released [guidance on the U.S. Foreign Corrupt Practices Act](#), outlining how prosecutors and regulators may interpret and enforce a federal anti-bribery and corruption law that bans American businesses from bribing foreign government officials. [Click here to read more.](#)

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