Regulatory Reform: Progress Update and a Look Ahead

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About SIFMA

OUR MISSION

• Bringing together the shared interests of hundreds of securities firms, banks and asset managers

• Convening members for development of policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry

• Serving as advocate, spokesperson and principal source of industry information, without regulatory or supervisory authority

• Engaging with policymakers and other stakeholders on federal, state and international issues

• Liaising with media

WHO WE ARE

• 522 Corporate Members

• Member Profile:
  o Buy side and sell side participants
  o Asset management firms, custodian banks
  o Global, regional and small broker-dealers
  o Global and regional banks
  o Associate members include law firms, industry utilities, and consulting firms

• 44 Board Members / 12 Executive Committee Members

• 209 Working Groups
  o Task forces, Roundtables subcommittees addressing specific issues

• 4,522 Society Members

• Four Professional Societies – peer-to-peer education and networking
  o Compliance and Legal
  o Internal Audit
  o Financial Management
  o Operations and Technology

• Offices in NYC & DC - 148 employees
SIFMA Coordination

**Full Members**
- Global Banks, Broker-Dealers and Asset Management Firms

**Associate Members**
- Law Firms, Technology Firms and Other Service Providers

**Financial and Business Trades**
- American Bankers Association (ABA)
- Chamber of Commerce (CoC)
- Financial Services Roundtable (FSR)
- Futures Industry Association (FIA)
- Institute of International Bankers (IIB)
- International Swaps and Derivatives Association (ISDA)
- Investment Company Institute (ICI)
- The Clearing House (TCH)

**Non-US Associations**
- Global Financial Markets Association (GFMA)
  - SIFMA is the U.S. regional member
  - Association for Financial Markets in Europe (AFME)
  - Asian Securities and Financial Markets Association (ASIFMA)
- SIFMA Foundation (501(c)3)
The New Regulatory Landscape
Dodd-Frank Reforms

• MACRO
  o Systemic Risk Regulation / Enhanced Prudential Standards / Capital
  o OFR/Legal Entity Identifier
  o Living Wills / Orderly Liquidation / Cross-Border Resolution
  o Volcker Rule – Prop Trading / Funds

• Product/Market Regulation
  o OTC Derivatives
  o Securitization / Risk Retention
  o Fiduciary Standard
  o Consumer Protection Finance Bureau
Extensive Rulemaking Agenda

398 Dodd-Frank Rulemaking Requirements

- 131 Finalized
- 135 Proposed
- 132 Requirements Not Proposed
- 145 Missed Deadlines

- CFTC missed: 14 out of 60
- SEC missed: 51 out of 95
- Bank Regulators missed: 59 out of 135
- Others missed: 21 out of 108

400 Rulemakings, 41 Reports, 88 Studies – Across 18 new and existing Departments, Agencies, Bureaus and the Government Accountability Office (GAO)

* Statistics taken from Davis-Polk Dodd-Frank Progress Report (As of October 4, 2012)
Treasury/Financial Stability Oversight Council (FSOC)

11 Final Rules Required by *Dodd-Frank*

**State-of-Play**
- 5 Finalized Rule
- 2 Proposed Rules

**Key Progress Items**
- Authority to Require Supervision/Regulation of Non-Bank Firms (Final Rule)
- Alternative methods of calculating market risk capital requirements without reliance on credit ratings (Joint Final Rule)
- OFR Assessment Program (Proposed Rule)

**Still to Come**
- Studies/Reports on contingent capital, prompt corrective action, and haircuts on the claims of secured creditors
- Proposed money market mutual fund reform
- Continued work on non-bank SIFI designations
- Determination on FX exemption from Title VII
Federal Reserve Board (FRB)

66 Final Rules Required by *Dodd-Frank*

State-of-Play
- 21 Interim/Final Rules
- 19 Proposed Rules

Key Progress Items
- Annual Capital Plans for U.S. Bank Holding Companies with $50+ billion in Consolidated Assets (Final)
- Market Risk Capital Rule (Final)
- Basel III Capital Requirements (Proposed)

Still to Come
- Final Volcker Rule activity restrictions
- Final rules to implement enhanced prudential standards
- Final rule on margin and capital requirements for SD and SBSD
- Joint final ABS risk retention rule
- Liquidity rules

* When multiple agencies issue a rule jointly, the rulemaking requirement appears in each of their totals. If joint rules are excluded, the number is 50.
Federal Deposit Insurance Corporation (FDIC)

47 Final Rules Required by *Dodd-Frank*

*State-of-Play*
- 12 Interim/Final Rules
- 16 Proposed Rules

*Key Progress Items*
- Orderly Liquidation Authority (Final Rule)
- Resolution Plans for Insured Depository Institutions with $50 Billion or More in Assets
- Stress Testing Requirements (Proposed Rules)
- Risk-Based Capital Guidelines (Proposed Rule)

*Still to Come*
- Final Volcker Rule
- Cross-border resolution agreements between countries
- Joint final ABS risk retention rule
- Final rule on margin and capital requirements (swaps)
- Final OLA rules for SIPC/BD liquidation
- Backup holding company supervision
Office of the Comptroller of the Currency (OCC)

30 Final Rules Required by *Dodd-Frank*

*State-of-Play*
- 6 Interim/Final Rules
- 13 Proposed Rules

*Key Progress Items*
- Implemented the Collins Amendment (Final Rule)
- Integrated the Office of Thrift Supervision
- Permissible Investments for Federal and State Savings Associations (Final Rule)
- Risk-Based Capital Standards (Final Rule)
- Annual Stress Test Requirement (Final Rule)

*Still to Come*
- Final Volcker Rule
- Joint final ABS risk retention rule
- Final rule on margin and capital requirements (swaps)
- Final rule on lending limits
Commodity Futures Trading Commission (CFTC)

**64 Final Rules Required by Dodd-Frank***

**State-of-Play**
- 39 Interim/Final Rules
- 24 Proposed Rules

**Key Progress Items**
- Definition of Swaps, SD and MSP
- Swap Data Recordkeeping and Reporting Requirements (Final Rule)
- Swap Dealer Business Conduct Standards (Final Rules)
- Legal Entity Identifier

**Still to Come**
- Final cross-border interpretive guidance
- Final swap execution facility rule
- Treatment of inter-affiliate swaps
- Response to recent court decision to strike down its position limits rule
- Final rule on margin and capital requirements for SD and SBSD
Securities and Exchange Commission (SEC)

98 Final Rules Required by *Dodd-Frank*

State-of-Play
- 33 Interim/Final Rules
- 20 Proposed Rules

Key Progress Items
- Definition of Security-Based Swaps, SBSD and MSBSP
- Net Worth Standard for Accredited Investors (Final Rule)
- Issuer Review of Assets in Offerings of ABS (Final Rule)
- Risk Retention (Proposed Rule)
- Municipal Advisor Registration (Proposed Final Rule)

Still to Come
- Final Volcker Rule
- Proposed fiduciary standard for broker-dealers
- Final rule on margin and capital requirements for SD and SBSD
- Joint final credit risk retention rules for ABS
- Rule on extraterritorial application of swaps rules

*All numbers are approximate. When multiple agencies issue a rule jointly, the rulemaking requirement appears in each of their totals. If joint rules are excluded, the number is 95.*
Where we are:

- Five regulatory Agencies were tasked with promulgating regulations to implement Section 619 of the Dodd-Frank Act, otherwise known as the “Volcker Rule.” The extent and complexity of the proposal reflects the difficulty regulators face in attempting establish rules that prohibit certain types of proprietary trading and investment activities while ensuring critical market functions are not adversely impacted.
  - 16000 Comment Letters Submitted
  - July 21, 2012 deadline for a final rule was missed
  - Compliance period clarified and extended to July 21, 2014

Major Concerns:

- Artificial Distinction Between Permitted Activities and Proprietary Trading
- Transaction-by-Transaction Approach
- Negative Presumptions and Reliance on Hard-Coded Criteria
- Overly Specific and Prescriptive Compliance Regime
- Broad Definition of “Covered Fund”
  - Definition of “Banking Entity”
  - Super 23a
A Look Ahead: Extraterritorial Issues

- CFTC exemptive order and final guidance on the application of Title VII swap rules at an entity level and transaction basis are pending; SEC proposed application of its Title VII regime is expected soon.

- Volcker and SCCL Rules

- “Mutual Recognition”
A Look Ahead: Mortgage Finance

- The CFPB’s definition of a Qualified Mortgage (QM)
- The definition of a Qualified Residential Mortgage (QRM)
- Credit risk retention
- Complexity of the U.S. conforming loan market
- GSE reform
A Look Ahead: Market Structure

- Technology and the Speed of Trading
  - High Frequency Trading
  - Algorithmic Trading

- Exchanges as Self Regulatory Organizations

- Consolidated Audit Trail

- Increasing the Tick Size for Small and Mid-Cap Firms
Proposed rules would not require a U.S. Banking Organization to hold a minimum amount of Additional Tier 1 or Tier 2 capital.

**Leverage Capital Requirements:**

- **US Leverage Ratio** (Tier 1 capital to average total consolidated assets must be at least 4%). Applies to all US Banking Organizations.

- **Basel III Supplementary Leverage Ratio** (Tier 1 capital to “total leverage exposure” must be at least 3%). Applies only to Advanced Approaches Banking Organizations.

**Minimum Risk-Based Capital Composition:**

- **Common Equity Tier 1:**
  - G-SIB Surcharge: 1% - 2.5%
  - Countercyclical Buffer (if deployed): 0% - 2.5%
  - Capital Conservation Buffer: 2.5%
  - Additional Tier 1*: 1.5%
  - New Minimum: 4.5%

- **Common Equity Tier 1:**
  - 4.0%

- **Tier 2**
  - 4.0%

- **Tier 1 (core and restricted capital elements, with common equity as “dominant” form)**
  - 4.0%

**Transitional Arrangements:**

- **Advanced Approaches Banking Organizations only.**

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