



# Dodd-Frank: One Year Later

**THE DODD-FRANK WALL  
STREET REFORM AND  
CONSUMER PROTECTION  
ACT REPRESENTS THE MOST  
COMPREHENSIVE FINANCIAL  
REGULATORY REFORM  
MEASURES TAKEN SINCE  
THE GREAT DEPRESSION.**

**SO, ONE YEAR AFTER ENACTMENT,  
WHAT DO WE KNOW?**

By the time you read this, we will have commemorated the first anniversary of the passage of the Dodd-Frank Act. Any significant milestone brings with it the opportunity for evaluation. The Act required that approximately 400 rules be written, of which 38 have been finalized. By and large the rules that have been finalized do not address or resolve the core systemic risk issues in the Act. Quite a number of rulemaking deadlines have been missed. The comment periods for many proposed rules were deemed too brief to allow for adequate consideration and discussion. A number of agencies have extended the comment periods, or re-proposed rules. Many agencies have acknowledged that a phased, or staged, implementation process is required given the possibility for disruption. This is especially true in the case of the regulations affecting OTC derivatives. In the meantime, as deadlines are extended, and as the debate regarding international competitiveness and the need for greater harmonization gains strength, legislators are proposing measures that would roll back certain reforms effected by the Act. With elections coming up, and with international reform measures dragging along, one cannot help but wonder how, when, or even if many of the Act's reforms will be put in place.

In the pages that follow, we summarize briefly the principal developments in several key areas. As lawyers, we would reflexively say that this is a summary, and only a very brief summary at that, and that all of this is qualified in its entirety by reference to our more complete (and far longer) descriptions, analyses and reports....As people who receive lots of summaries, we would say short is usually better. We hope you'll find these short summaries useful.

Management, if not elimination, of systemic risk is perhaps the primary purpose of the Act. The Financial Stability Oversight Council, essentially an interagency group with broad oversight of this risk and the authority to identify systemically important institutions and activities, and the Federal Reserve Board, the primary body for supervising these institutions and activities, have begun their work, but much remains to be done. We do not yet know and cannot even speculate in an informed manner about which nonbank institutions will be supervised by the Federal Reserve or which activities might be deemed systemically important. We can anticipate some of the heightened prudential standards that the Federal Reserve may apply, but there is still significant uncharted territory.

**The Financial Stability Oversight Council, the Federal Reserve Board, and the FDIC have begun to implement their broad authority to supervise systemically important institutions. Developments so far include:**

### **Creation of the Council**

- The Council has met six times before the first anniversary of Dodd-Frank.
- Voting members are primarily ex officio heads of the federal financial regulatory agencies, with one independent member with insurance expertise appointed by the President and confirmed by the Senate.
- On June 27, 2011, President Obama nominated S. Roy Woodall, Jr. to serve on the Council as the insurance expert.
- On July 1, 2011, President Obama nominated Thomas J. Curry to serve as Comptroller of the Currency. If confirmed by the Senate, Mr. Curry would become a voting member of the Council in his capacity as Comptroller.
- On July 18, 2011, President Obama nominated Richard Cordray to serve as Director of the Consumer Financial Protection Bureau (Bureau). If confirmed by the Senate, Mr. Cordray would become a voting member of the Council.
- Non-voting members include the director of the Office of Financial Research, the director of the Federal Insurance Office, a state insurance commissioner, a state banking supervisor, and a state securities commissioner. The Treasury Department has not yet named the directors of OFR or FIO. The other non-voting members have been selected by groups of state regulators.
- The Council has established several committees to handle its work, including separate committees for systemic risk, the designation of nonbank financial

companies as systemically important, the nature of the heightened prudential standards that will apply to systemically important financial institutions, and review of resolution plans and divestiture orders.

### Office of Financial Research

- The Treasury Department has established and staffed the OFR, but has not appointed a director.
- OFR has proposed a methodology to standardize how parties to financial contracts are identified in data collected for the Council. The proposed rule has not been finalized.

### Systemic Risk Regulation

- Systemic risk regulation extends to nonbank companies that are “predominantly engaged” in financial activities. The FRB has proposed a definition of the term, based on either of two conditions: (i) 85% or more of its gross revenues in either of the previous two calendar years are derived from financial activities; or (ii) 85% or more of its consolidated assets in one of the previous two years are financial assets.
- The Council has proposed criteria for the designation of a nonbank financial company as systemically important. The proposal was roundly criticized as overly general. Treasury has indicated that the Council may undertake a second proposal but no re-proposal has yet been announced.
- The Council and the FRB also have authority to, respectively, identify and regulate financial market utilities that are systemically important. On July 8, 2011, the Council finalized criteria for identifying these utilities. The FRB has proposed risk management and notice requirements.
- On July 18, 2011, the FDIC finalized certain rules for the Orderly Liquidation Authority in Title II of Dodd-Frank.
- Guidelines for the preparation of resolution

plans—or “living wills”—were proposed on April 22, 2011. The FRB and FDIC are still developing a final rule, which is expected to be released by the end of August 2011.

- Several provisions of Dodd-Frank either create new supervisory tools for the regulators or confirm existing authority. The Council and the FRB have not yet proposed any rules on these subjects, apart from the resolution plan proposal and capital requirements under the Collins Amendment.
- On June 28, 2011, the FRB, the OCC, and the FDIC issued a final rule implementing in part the Collins Amendment (section 171), which requires that the capital requirements for bank holding companies be as stringent as the current capital requirements at the bank level. The final rule places a floor on the risk-based capital requirements that would apply to those bank holding companies subject to the “advanced approaches” requirements under Basel II.
- The regulators have proposed two sets of systemic risk-type guidance, one for capital plans by large bank holding companies and the other for stress tests for banking organizations with more than \$10 billion in total consolidated assets. Each set of guidelines has a counterpart provision in section 165 of Dodd-Frank, but the guidance does not formally implement these counterpart provisions. The regulators have noted that this guidance will serve as a model for the rules that officially implement these elements of section 165.
- On June 25, 2011, the Group of Governors and the Heads of Supervision—the group that oversees the Basel Committee on Banking Supervision—published proposed regulatory requirements for global systemically important banks. These will have no force of law in the U.S. but likely will inform ongoing U.S. rulemaking.

Regulatory failure—the legal inability or the unwillingness to regulate large sectors of the financial services industry and their lending and secondary market activities—was a major contributor to the financial crisis. The Dodd-Frank Act responds to this judgment with a number of new agencies and the elimination of one. The construction of the new framework has proceeded smoothly in some areas, less so in others (notably the Consumer Financial Protection Board). Many previously unregulated institutions will have to grow accustomed to a new federal regulator. Of course, the success and impact of the new framework will depend in large measure on the substance of new rules, and the vast majority of these rules are still a long way off.

## Major Agency Changes

- The Financial Stability Oversight Council has been established and has met six times before the first anniversary. Two ex officio seats remain vacant: the Comptroller of the Currency and the Director of the Consumer Financial Protection Board.
- The Consumer Financial Protection Board (CFPB) will formally be established on the anniversary date. In the meantime, the Treasury Department created a consumer financial protection unit that will become the CFPB. It has already staffed the unit and begun to issue guidance on its future activities. The Administration has nominated Richard Cordray to serve as the Director of the CFPB.
- Treasury has established two other required offices within the department: the Office of Financial Research and the Federal Insurance Office.

- The SEC has not yet established the required Office of Credit Ratings.
- The Office of Thrift Supervision will be abolished on October 19, 2011.

## Major Changes in Agency Oversight

- Several types of financial institutions and certain financial activities will be subject to substantially new regulation.
- Systemically important nonbank financial companies—The Council has authority to designate these institutions, and the Federal Reserve will regulate them once designated. The Council has proposed a rule on designations. The FRB has begun to propose rules addressing the regulation of systemic risk.
- Thrift institutions—The supervisory and rulemaking authority of OTS over these institutions is transferred to the other three federal bank regulatory agencies.

- In January 2011, the agencies jointly provided a report to Congress on the OTS transfer issues. By the anniversary date, the agencies will have completed the transfer of OTS staff.
- Federal Reserve Board—supervision of and rulemaking for all savings and loan holding companies. The FRB has indicated the general supervisory principles it will apply, but no further guidance will be forthcoming until after the transfer date.
- Office of the Comptroller of the Currency—supervision of all federally-chartered savings associations and savings banks. OCC has rulemaking authority generally over all savings associations, whether federal- or state-chartered.
- FDIC—supervision of state-chartered savings associations. FDIC has rulemaking authority limited to the state-chartered thrifts.
- Providers of consumer financial products— Rulemaking authority for essentially all federal statutes regulating consumer financial products has been transferred to the CFPB—The allocation of supervisory responsibilities is complicated, but two categories of providers will be governed in almost all respects by the CFPB.
- Nonbank financial companies—These companies currently are unregulated with respect to their consumer businesses. Dodd-Frank grants supervisory, enforcement, and rulemaking authority over many (but not all) of these institutions to the CFPB. Until a director has been confirmed, the CFPB has indicated that it will not attempt to exercise its supervisory or enforcement authority over these companies.
- Insured depository institutions with more than \$10 billion in total assets—Supervision of the consumer compliance obligations of these institutions will be transferred from the current regulator—primarily the FRB—to the CFPB. The CFPB has said that it can exercise this authority before a permanent director has been confirmed. The CFPB has primary but not exclusive enforcement authority over these institutions.
- Large hedge funds—the SEC has finalized a rule implementing the Dodd-Frank provision that requires hedge funds that manage over \$100 million as investment advisers to register with the SEC in that capacity. Dodd-Frank repealed an exemption previously set forth in the Investment Advisers Act of 1940.
- Mid-sized investment advisers—the SEC has finalized a rule implementing the provision of Dodd-Frank that transfers the supervision of investment advisers with between \$25 and \$100 million in assets under management from the SEC to state securities regulators.
- Swap dealers and participants—the SEC and CFTC have proposed and are beginning to finalize a variety of rules addressing registration by and operations of swap dealers, major swap participants, and swap clearinghouses. Other agencies, including the FRB and FDIC, have proposed margin and capital requirements for the entities that they regulate that are dealers or participants.
- Clearing organizations—the CFTC has several rulemaking procedures in progress to implement several requirements of Dodd-Frank; none have yet been finalized.
- Financial market utilities—those entities that are deemed systemically important by the Council will be regulated by the FRB. On July 18, 2011, the Council finalized criteria for the designation of these entities as systemically important. The FRB has proposed a rule establishing risk management standards and requiring such entities to provide advance notice of material changes to their rules, procedures or operations.

As we approach the one-year anniversary, the most talked about piece of securitization reform required under Dodd-Frank remains in the proposal phase. The proposed credit risk retention rule mandated under Dodd-Frank (and outlined below) has yet to be finalized, with the joint federal regulators recently pushing back the comment deadline to August 1, 2011.

The other major piece of securitization reform, proposed revisions to Regulation AB's registration, disclosure, and reporting requirements for asset-backed securities and other structured finance products ("Regulation AB II"), also has been put on hold by the SEC while it focuses on meeting Dodd-Frank rulemaking deadlines. SEC Chairman Mary Shapiro recently announced that portions of the proposed revisions most likely will be reconsidered and re-released in the near future to account for concerns already addressed under Dodd-Frank.

That doesn't mean securitization reform isn't well on its way. Most of the remaining securitization-related provisions under Dodd-Frank have been

finalized. And the FDIC released a proposed rule amending its “securitization rule” safe harbor to require financial institutions to retain more of the credit risk from securitizations and to reflect recent accounting changes. This was preceded by the FASB’s revisions to accounting rules relating to sales of financial assets and consolidation of certain off-balance sheet entities, revisions to bank capital rules to reflect the FASB’s accounting changes and the enactment of the Hiring Incentives to Restore Employment Act, which imposes a 30% withholding tax on foreign financial institutions, including certain offshore securitization vehicles.

The major elements of securitization reform that have been finalized under Dodd-Frank are:

#### **Repurchase Requests, Representations and Warranties**

- Credit rating agencies must explain, in reports accompanying credit ratings, representations, warranties, and enforcement mechanisms available to investors and how they differ from representations, warranties and enforcement mechanisms in similar issuances.
- Issuers must disclose fulfilled and unfulfilled repurchase requests across all ABS transactions, including CDOs, GSE sponsored or guaranteed securities, and municipal entity securities (at time of offering and on an on-going basis).
- Applies to both registered and unregistered ABS.

#### **Issuer Review and Disclosure of Third-Party Reports**

- Issuer must perform an asset review and disclose its findings in the registration statement. An independent third party may conduct the asset review if it either is named in the registration statement and consents to being deemed an “expert” for liability purposes under section 11 of the Securities Act, or the issuer adopts the findings and conclusions of the third party reviewer.
- The review is meant to provide “reasonable assurance” that the asset pool disclosure in the registration statement is accurate in all material respects.
- Issuers must make publicly available the findings and conclusions of any independent third party reviews performed for all registered and unregistered ABS offerings.

The major elements of securitization reform that are still in the proposal phase under Dodd-Frank are:

## **Credit Risk Retention – Proposed Rule open for comment until August 1, 2011**

- 5% to be retained by the securitizer; however, if originator retains some amount of risk, only the remaining risk (up to 5% total) will be allocated to securitizer.
- Risk retention can be in the form of “vertical” slice, “horizontal” first-loss position, an “L-shaped interest” hybrid of vertical and horizontal retention, a funded cash reserve account, or a representative sample.
- Risk retention also to apply to CDOs, securities collateralized by CDOs and similar instruments.
- Excess spread must be set aside in a premium capture reserve account to prevent sponsors from effectively reducing their economic exposure.
- Specific risk retention types and forms for commercial mortgages, ABCP conduits and revolving master trusts.
- Exemptions for qualified residential mortgages, ABS issued or guaranteed by the federal government (including

ABS issued by Fannie Mae and Freddie Mac as long as they operate under the conservatorship or receivership of the FHFA), certain single-tranche resecuritizations, and certain qualifying commercial loans and auto loans.

- Foreign transaction safe harbor if certain conditions are met.
- No hedging or transfer of credit risk.
- Regulations relating to credit risk retention requirements will become effective one year from adoption for residential mortgage assets, and will become effective two years from adoption for all other asset classes.

## **Conflicts of Interest – Proposed SEC rule not yet released for comment**

- Prohibition on the underwriter, placement agent, initial purchaser, sponsor, or related subsidiaries or affiliates of any ABS from engaging in any transaction that involves or results in a material conflict of interest with respect to any investor in a transaction related to that activity.
- Exceptions for certain risk mitigating hedging activities, purchases and sales to provide liquidity, and bona fide market making.

**The major elements of securitization reform that are still in the proposal phase under Regulation AB II are:**

**Regulation AB II Required Disclosures**

- Revise shelf registration eligibility criteria to include credit risk retention requirement, CEO certification, PSA repurchase provision requirement, and issuer undertaking to not hold any securities sold in registered transactions backed by the same pool of assets.
- Asset-level or data-level detail, including data with unique identifiers relating to loan brokers or originators, the nature and extent of the compensation of the broker or originator of the assets backing the security, and the amount of risk retention of the originator or securitizer of such assets.
- Fulfilled and unfulfilled repurchase requests across all trusts will be aggregated by the originator, so investors may identify originators with clear underwriting deficiencies.
- Due diligence analysis must be performed by securitizer and provided to investors.
- Same level of information must be provided upon investor request for any of the issuer's ABS and structured product offerings conducted pursuant to Rule 144A or Regulation D.

The Dodd-Frank Act requires various financial regulators—most notably, the CFTC and SEC—to establish the parameters of Title VII’s comprehensive new regulatory framework for swaps and security-based swaps through a vast number of rulemakings. During the past year, the CFTC and SEC held a series of roundtable discussions on core elements of Title VII and, given the enormous regulatory task at hand, encouraged public comment and industry participation throughout the rulemaking process. To date, that process has produced dozens of proposed rules but very few final rules. Critically important, and often controversial, aspects of Title VII, such as the key product and entity definitions, margin and capital requirements, end-user exception to clearing, clearinghouse ownership and membership requirements, and SEF structural requirements, have yet to be finalized.

Unless otherwise provided, Title VII provisions are effective on the later of July 16, 2011, or, to the extent that a provision requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing that provision. In order to avoid widespread uncertainty in the derivatives markets as to which provisions of Title VII would become effective on July 16, 2011, the CFTC and SEC separately issued temporary exemptive orders in July that, in effect, defer most Title VII requirements. The temporary exemptions do not, however, limit the agencies’ antifraud or antimanipulation authority, which will apply on July 16, 2011.

### **Lincoln Provision (the “Swaps Pushout” Rule)**

- No “Federal assistance” (e.g., advances from any Federal Reserve credit facility or discount window that is not part of a broad-based eligibility program, FDIC insurance, or guarantees) may be provided to any “swaps entity” (i.e., swap dealers and non-bank MSPs).
- The prohibition does not apply to insured depository institutions that limit their swap activities to (i) hedging and other similar risk-mitigating activities directly related to their activities and (ii) engaging in swaps involving rates or reference assets that are permissible for investment by national banks. For purposes of the exception

in clause (ii), credit default swaps are permissible only if cleared.

- The prohibition only applies to swaps entered into after the end of the transition period, which could be up to five years after enactment.

## Regulatory Framework and Key Definitions

- The Act creates parallel regulatory regimes for the CFTC and SEC, and divides jurisdiction between the two regulators based on whether a “swap” or a “security-based swap” is involved. The CFTC will have jurisdiction over “swaps” and certain swap market participants, and the SEC will have jurisdiction over “security-based swaps” and certain security-based swap market participants. Banking regulators will retain jurisdiction over certain aspects of banks’ derivatives activities (e.g., capital and margin requirements, prudential requirements).
- **Swap.** This term is broadly defined to include many types of derivatives across various asset classes, but excludes, among other things, nonfinancial or security forwards that are intended to be physically settled, futures contracts, listed FX options, debt securities, securities options, and forwards that are subject to the Securities Act of 1933 (“33 Act”) and the Securities Exchange Act of 1934 (“34 Act”), and security-based swaps. FX swaps and FX forwards qualify as swaps, unless the Secretary of the Treasury determines otherwise; however, notwithstanding any such determination, all FX swaps and FX forwards must be reported to a swap data repository or, in the absence of one, to the applicable regulator, and swap dealer and MSP counterparties to FX swaps and FX forwards must conform to business conduct standards applicable to swap dealers and MSPs. On April 29, 2011, the Secretary of the Treasury issued a proposed

determination that exempted FX swaps and FX forwards from the swap definition, but noted that the exemption would not apply to FX options, currency swaps, and non-deliverable forwards.

- **Security-based Swap.** A “security-based swap” is a swap on a single security or loan or a narrow-based security index (generally, an index with 9 or fewer component securities). The definition also includes credit default swaps relating to a single issuer or the issuers in a narrow-based security index.
- The Act creates two new categories of significant market participants: swap dealers and major swap participants.
- **Swap Dealer.** A “swap dealer” is any person who holds itself out as a dealer in swaps, makes a market in swaps, regularly enters into swaps with counterparties as an ordinary course of business for its own account, or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. The term excludes persons that enter into swaps for their own account, either individually or in a fiduciary capacity, but not as a part of a regular business. It also does not include insured depository institutions that offer to enter into swaps with their customers in connection with originating loans with those customers. The Act requires the CFTC and SEC to prescribe a de minimis exception to being designated as a swap dealer.
- **Major Swap Participant.** A “major swap participant” (“MSP”) is any person who is not a swap dealer and:
  - Maintains a “substantial position” (to be defined by the applicable regulators) in swaps for any major swap category, excluding positions

- held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;
- Whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or
- Is a financial entity that is highly leveraged relative to the amount of capital that it holds, is not subject to any Federal banking agency's capital requirements, and maintains a "substantial position" in outstanding swaps in any major swap category.
- Certain captive finance affiliates of manufacturers that use swaps to hedge commercial risks relating to interest rate and FX exposures are excluded from the definition of major swap participant.

## Clearing and Trading Requirements

- **Mandatory Clearing.** A swap must be cleared if the applicable regulator determines that it is required to be cleared and a clearing organization accepts the swap for clearing.
  - The determination process may be initiated by the applicable regulator or by a clearing organization, and may relate to any single swap or any group, category, type, or class of swaps.
  - Mandatory clearing requirement will not apply to existing swaps if they are reported to a swap data repository or, if none, to the applicable regulator in a timely manner.

- **Commercial End User Exception.** The Act provides an exception to the mandatory clearing requirement if one of the counterparties to the swap (i) is not a financial entity, (ii) is using swaps to hedge or mitigate commercial risk, and (iii) notifies the applicable regulator how it generally meets its financial obligations associated with entering into non cleared swaps. Application of the exception is at the sole discretion of the commercial end user.
  - The term "financial entity" includes swap dealers, MSPs, commodity pools, private funds (as defined in the Investment Advisers Act of 1940), employee benefit plans, and persons predominantly engaged in activities that are in the business of banking or in activities that are financial in nature; but excludes certain captive finance affiliates. The Act directs the applicable regulators to consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions.
- **Mandatory Trade Execution.** To the extent that a swap must be cleared, it must be executed on an exchange or swap execution facility, unless no exchange or swap execution facility makes the swap available for trading.
- **Non-ECPs.** Persons who are not eligible contract participants ("ECPs") must always enter into swaps via an exchange.
  - For swaps, the illegality applies to the non-ECP.
  - For security-based swaps, the illegality applies to any person effecting the transaction with or for the non-ECP.

## Regulation of Swap Dealers and Major Swap Participants

- **Registration.** Swap dealers and MSPs must register as such and will be subject to a regulatory regime that will be defined, to a very large extent, by rulemaking.

Registration is required with an applicable regulator regardless of whether the entity is registered with the other applicable regulator or is a depository institution.

- **Capital and Margin.** The applicable regulators (for nonbanks) and the Federal banking regulators (for banks) will set minimum capital requirements and initial and variation margin requirements for swap dealers and MSPs.
  - To offset the “greater risk” of non-cleared swaps, the capital and margin requirements must help ensure the safety and soundness of the swap dealers and MSPs and be appropriate for the risk associated with the non-cleared swaps held by those entities.
  - The Act permits the use of noncash collateral and, for non cleared swaps, requires swap dealers and MSPs to hold their counterparties’ initial margin, upon request, in a segregated account at an independent third party custodian.
  - The Act does not provide an exemption to the margin requirements for commercial end users, although Senators Dodd and Lincoln stated in a June 30, 2010 letter to Chairmen Frank and Peterson their view that the Act does not authorize the regulators to impose margin requirements on commercial end users. In their proposed margin requirements, the CFTC would not impose margin requirements on non financial entities. In contrast, the banking regulators have proposed applying a margin requirement to nonfinancial end users, but any such requirement would be reduced to the extent that the swap dealer or MSP counterparty has established any applicable credit exposure limit for the nonfinancial end user.
- **Business Conduct Standards.** Swap dealers and MSPs must conform with

business conduct standards, including:

- Disclosure to non-swap dealer and non-MSP counterparties of the material risks and characteristics of the swaps and any material incentives or conflicts of interest that the swap dealer or MSP may have in connection with the swaps; and
- Additional responsibilities with respect to “special entities” (i.e., states, municipalities, State and Federal agencies, pension plans, governmental plans, and endowments):
  - A swap dealer that acts as an advisor to a special entity has a duty to act “in the best interests of” the special entity; and
  - A swap dealer or an MSP that offers or enters into a swap with a special entity must comply “with any duty” established by the applicable regulator that requires the swap dealer or MSP “to have a reasonable basis to believe” that the special entity is advised by a qualified independent representative.

### Miscellaneous

- The Act increases eligibility requirements for individual and governmental entity ECPs.
- The applicable regulators are authorized to establish aggregate position limits and large trader reporting requirements for swaps.
- Swaps shall not be considered to be insurance and may not be regulated as insurance contracts under state law.
- Offers and sales of security-based swaps to non-ECPs must be registered, notwithstanding sections 3 and 4 of the 33 Act.
- The beneficial ownership rules in sections 13 and 16 of the 34 Act apply to persons who purchase or sell security-based swaps on or after July 16, 2011.

The financial crisis took many investors by surprise. It became clear that investors in certain financial products did not fully understand their risks. Action has now been taken in a number of areas—most importantly relating to the whistleblower rules, described below. The SEC’s Dodd-Frank Act-mandated study on standards of care not surprisingly concluded that broker-dealers should be subjected to a higher standard of care; however, careful additional consideration will need to be given to the framework for such a standard.

## **Broker-Dealer, Investment Adviser, and Market Regulation**

### ***Broker-Dealer and Investment Adviser Relationships***

- Requires the SEC to undertake a study of the standard of conduct applicable to broker-dealers and investment advisers and authorizes the SEC to adopt a fiduciary duty standard for broker-dealers. The SEC’s study recommends uniform protection for retail investors when receiving personalized investment advice or recommendations about securities, and that such advice be given in the investor’s best interests in accordance with a uniform fiduciary duty standard.
- Prohibits or limits use of mandatory arbitration; requires disclosures to and consents from retail investors if a broker-dealer sells only proprietary products; requires disclosures regarding the terms of relationships with broker-dealers, conflicts of interest, and compensation schemes for broker-dealers and investment advisers; and requires rules mandating point-of-sale disclosures for retail investors.

### ***Investment Adviser Registration***

- The SEC adopted rules to: require that advisers to hedge funds and other private funds register with the SEC; establish new exemptions from SEC registration and reporting requirements for certain advisers; and change the allocation of regulatory responsibility for investment advisers between the SEC and states.

### ***Securities Lending and Short Sales***

- Requires the SEC to adopt rules increasing the transparency of information regarding securities lending.
- Requires the SEC to adopt rules requiring disclosure of the amount of short sales by institutional investment managers and requires a study on short selling.

### ***SEC Administrative Matters***

- Changes the self-regulatory organization rule filing process and establishes that the SEC may engage in consumer testing.

### **Related Studies**

- The SEC completed studies on improved investor access to registration information about investment advisers and broker-dealers, as well as enhanced investment adviser examinations.
- The GAO completed studies on consumer finance (concluding that additional regulation of financial planners was not necessary) and person-to-person lending.

### **Private Placements**

- The SEC has proposed revisions to net-worth standards for accredited investors to exclude the fair market value of an individual's primary residence, net of debt secured by the residence.
- The SEC has proposed rules would disqualify certain securities offering from qualifying for the Rule 506 of Regulation D safe harbor for private placements if the offerings involve certain felons and other bad actors, similar to disqualification provisions applicable to Regulation A offerings.

### **SEC Enforcement**

- The SEC adopted rules providing for the payment of bounties to those individuals who voluntarily provide the SEC with original information that leads to a successful enforcement action, and establishing anti-retaliation protections for whistleblowers.
- Expands aiding and abetting and control person liability, while extending the SEC's extraterritorial jurisdiction in certain antifraud actions; authorizes the SEC to impose civil monetary penalties in cease and desist proceedings and expands the scope of collateral bars for persons associated with regulated entities; and authorizes parties in proceedings instituted by the SEC to serve subpoenas nationwide.

Title IX of the Dodd-Frank Act significantly expands the SEC’s oversight of credit rating agencies (CRAs), while at the same time altering the use of credit ratings in a broad range of legal requirements and impacting the public disclosure of credit ratings in securities offerings. The SEC has commenced rulemaking to implement its oversight authority through a series of rules regarding required disclosures in connection with credit ratings, prohibited activities, governance, internal controls and conflicts of interest. Various federal agencies have also identified those rules which reference credit ratings, and are in the process of substituting alternative standards of creditworthiness in place of those ratings.

## Oversight

- Establishes the SEC’s Office of Credit Ratings, which is responsible for the SEC’s rules applicable to CRAs (this Office has not been staffed due to budget considerations).
- The SEC will conduct an annual exam of each nationally recognized statistical rating organization (NRSROs) and make its inspection reports publicly available.

## Liability

- Eliminated the exemption from the consent filing requirement for registration statements that was provided to NRSROs in 1933 Act Rule 436(g), relating to liability under 1933 Act section 11.
- Duty to report violations of law to appropriate authorities.
- Enforcement and penalty provisions of the 1934 Act apply to CRA statements to the same extent as registered public accounting firms or securities analysts.

- Modification to “state of mind” requirement for private securities fraud actions against CRAs for money damages.

## Governance

- The board of directors of the NRSRO has specifically mandated oversight responsibilities with respect to policies and procedures for determining ratings, conflicts of interest, and internal hiring and promotion.
- At least half of the NRSRO board of directors must be composed of independent directors (no fewer than two), with a portion of such directors to include users of ratings.
- Independent directors to serve for a fixed, non-renewable term not to exceed five years, with compensation not linked to the business performance of the NRSRO.

## Transparency, Conflicts of Interest and, Process

- The SEC is addressing various aspects of the credit rating agency process through rules proposed in May 2011, including: (1) internal controls and procedures; (2) conflicts of interest; (3) credit rating methodologies; (4) transparency; (5) ratings performance; (6) analyst training; (7) credit rating symbology; and (8) disclosures accompanying the publication of credit ratings. The comment period for those proposed rules closes on August 8, 2011.

## Removal of Ratings

- Requires the removal of certain statutory references to credit ratings effective two years from enactment.
- Directs federal agencies to review and modify regulations to remove references to, or reliance on, credit ratings, and to substitute an alternative standard of credit worthiness. The SEC proposed rule changes in 2011 to eliminate references to credit ratings, and these rule changes have not yet been adopted.

## Studies

- The SEC is required to study the feasibility and desirability of: (1) standardizing credit rating terminology; (2) standardizing the market stress conditions under which ratings are evaluated; (3) requiring a quantitative correspondence between credit rating agencies and a range of default probabilities and loss expectations under standardized conditions of economic stress; and (4) standardizing credit rating terminology across asset classes.
- In December 2010, the SEC requested comment on its credit rating standardization study, and the comment period is now closed. In May 2011, the SEC requested comment on a study with regard to assigned credit ratings, and comments on this study are due by September 13, 2011.

# The Volcker Rule Provisions

Unduly risky trading and investment activities at banking institutions, made profitable by the federal safety net of deposit insurance and access to the discount window, either, according to some commentators, was a cause of the financial crisis or is the source of the next one. The Volcker Rule—a relative latecomer to the Dodd-Frank legislative process—responds to these concerns by re-erecting some of the walls between banking and investment activities that were first enacted in the Glass-Steagall Act. Broadly speaking, banking entities are prohibited from trading for their own account and from sponsoring or taking an ownership interest in a private equity fund or a hedge fund. Systemically important nonbank institutions may do so—subject to higher capital requirements and quantitative limits. Critically important, of course, are the definitions of proprietary trading and hedge and private equity fund. These are still in process, and little meaningful guidance is available.

The Volcker Rule, in a nutshell, prohibits or limits (i) proprietary trading and (ii) sponsorship of or an ownership interest in a hedge fund or a private equity fund. Banking entities—regardless of size—are prohibited from engaging in these activities. Nonbank financial companies supervised by the Federal Reserve (i.e., that are systemically important) may engage in these activities but will be subject to higher capital requirements for the activities and may be subject to quantitative limits or

diversification requirements set forth by the Federal Reserve. The Rule does not cover (a) banking organizations where the bank is engaged solely in trust or fiduciary activities or (b) nonbank financial companies not supervised by the Federal Reserve.

The Volcker Rule permits certain trading or fund activities that otherwise would be barred, including the organization of a fund solely in the banking entity's advisory or fiduciary capacity to be offered only to

**its customers (and subject to certain other limits). A banking entity may make a “de minimis” investment in such a fund.**

## **Implementation**

Development of regulations to implement the substantive prohibitions and limits in the Volcker Rule are proceeding on a slower pace than contemplated by Dodd-Frank. A final rule is due by October 18, 2011, but the agencies have yet to release a proposed rule. The Federal Reserve has said that a proposal should be forthcoming this summer. A final rule is anticipated in the fourth quarter of 2011. A GAO report published on July 13, 2011 expressed concerns about the quality of information available to regulate proprietary trading, and these concerns will complicate the rulemaking process.

The rulemaking timeline may be important because the Volcker Rule will take effect on July 21, 2012, regardless of when or even whether a final rule is issued.

## **Substantive Requirements**

Although no proposal on the substantive provisions of the Volcker Rule has yet been issued, three developments are worth noting:

- Compliance deadlines. Dodd-Frank provides for a two-year conformance or phase-in period after the Volcker Rule takes effect. The Federal Reserve has issued a final rule that explains the period and possible extensions of the compliance deadline.
- FSOC Study. Dodd-Frank required the Financial Stability Oversight Council to conduct a study of the potential impact of the Volcker Rule and to make recommendations for the implementing regulation. The Council released the study at its meeting on January 18, 2011. The study included the following suggestions:
  - Refinement of the definitions of “hedge fund” and “private equity fund” so as

to exclude structures not intended to be captured, including controlled subsidiaries and joint ventures.

- Flexibility in these definitions so as to include investment funds that are similar to hedge funds and private equity funds, particularly with respect to compensation, trading/investment strategy, use of leverage, and investor composition.
- Definition of “banking entity” so as to avoid the inclusion of activities elsewhere permitted by the Volcker Rule.
- Clarification of the meaning of “customer.” The Council identified several factors to consider.
- Consideration of whether all third-party funds are or should be permissible.
- Detail in the definition of “de minimis” investments so as to address a variety of questions.
- Implementation in a manner that prevents use of insurance products as a means of evading Volcker Rule.
- Public disclosure of permissible fund activity.
- Conflicts of interest. Otherwise permissible proprietary trading or hedge fund or private equity fund activity nevertheless is prohibited by the Volcker Rule if the activity presents a material conflict of interest. (There are other restrictions on permissible activities as well.) The three federal banking agencies, the SEC, and the CFTC all have authority to issue rules on material conflicts of interest, but we believe any such rules are likely to be informed by an SEC rule on conflicts of interest in connection with securitizations. The SEC has said that it will issue a proposed rule on these conflicts of interest in the third quarter of 2011.

While the Dodd-Frank Act principally focuses on changes to the financial regulatory system, Titles IX and XV of the Dodd-Frank Act include corporate governance, compensation and disclosure provisions applicable to public companies. As a result of the Dodd-Frank Act, large public companies were required for the first time to conduct an advisory vote on executive compensation, as well as an advisory vote on the frequency of holding such votes. The SEC has begun the process of implementing rules directing securities exchanges to adopt listing standards regarding the independence of compensation committee members and compensation advisers, but has yet to propose rules regarding listing standards with regard to the recoupment of compensation when paid based on erroneous financial results. The Dodd-Frank Act requires that the SEC adopt additional disclosure requirements regarding the relationship of pay and performance, the ratio of the amount of total compensation paid to a median employee to the CEO's total compensation and policies with respect to employee and director hedging. With respect to incentive compensation arrangements at financial institutions, agencies have proposed rules to implement Dodd-Frank Act mandated restrictions and disclosures. The SEC has also proposed rules to implement "specialized corporate disclosure" provisions regarding conflict minerals, mine safety and payments by resource extraction companies.

## Say-on-Pay

- The SEC adopted final rules that require companies to include a resolution in their proxy statements asking shareholders to approve, in a non-binding, advisory vote, the compensation of their executive officers disclosed in the proxy statement—the “Say-on-Pay” vote.
- A separate resolution is also required to determine whether this Say-on-Pay vote takes place every one, two, or three years—the “Say-on-Frequency” vote.
- The proxy statement must include disclosure regarding: (1) the general effect of such vote; (2) the current frequency of the Say-on-Pay vote; (3) when the next scheduled Say-on-Pay vote will occur; (4) how the company has considered the results of the most recent shareholder advisory vote on executive compensation in determining compensation policies and decisions, and how that consideration has affected the company’s compensation decisions and policies.
- If a company solicits shareholders to vote on a merger, acquisition, or similar transaction that would trigger certain golden parachute compensation, then the company must provide additional disclosure regarding the golden parachute compensation payments and conduct a separate non binding, advisory vote for approval of the golden parachute compensation.
- The Say-on-Pay and Say-on-Frequency vote was required for the first annual or other meeting of shareholders occurring after January 21, 2011, except that “smaller reporting companies” must comply beginning with meetings occurring on or after January 21, 2013.

## Compensation Committee and Advisor Independence

- The SEC proposed rules that direct the national securities exchanges to adopt listing standards regarding the independence of the compensation committee members, as well as the independence of advisers engaged by the compensation committee. The proposed rules require:
  - that the exchanges adopt listing standards that require: (1) each member of a compensation committee to be an independent member of the board of directors, taking into account specific factors regarding independence; (2) compensation committees must have the authority to obtain or retain the advice of compensation advisers, must be directly responsible for the appointment, retention, compensation, and oversight of the work of compensation advisers, and must have the appropriate funding for payment of reasonable compensation to the compensation adviser; and (3) compensation committees must consider specific independence factors when retaining a compensation adviser; and
  - disclosure of whether the compensation committee retained and obtained the advice of a compensation consultant and whether the consultant’s work raised any conflicts of interest, the nature of any such conflict, and how it was addressed.
- The comment period has closed and the SEC has not adopted final rules by the July 16, 2011 deadline.

## Future Corporate Governance Rulemaking

- The SEC must adopt rules requiring disclosure of the relationship of the compensation paid to executives versus the company's financial performance, the ratio of median employee total compensation to the CEO total compensation, and whether employees and directors are permitted to engage in hedging transactions, as well as rules mandating listing standards regarding compensation clawback policies.
- Broker discretionary voting has been prohibited in connection with executive compensation matters, and the SEC may specify other significant matters for which broker discretionary voting is prohibited.

## Proxy Access

- The SEC adopted rules allowing certain shareholders to include director nominees in the company's proxy materials. To be eligible to make a nomination, a shareholder, either individually or together with other shareholders, must beneficially own at least 3% of the total voting power of the company's securities that are entitled to vote on the election of directors and have held such securities for three years, and the director nominee must meet specific criteria.
- The effectiveness of the rule has been stayed due to pending litigation challenging the rule.

## Specialized Corporate Disclosure Provisions

- The SEC has proposed rules requiring annual disclosure of whether any conflict minerals that are necessary to the functionality or production of a company's products originated in the Democratic Republic of Congo or an adjoining country. If so, companies are further required to provide a report describing the measures taken to exercise due diligence on the source and chain of custody of those minerals. The report must also include an independent private-sector audit.
- Mining companies must disclose notices or orders from the Mine Safety and Health Administration about health and safety violations in a Form 8-K, and additional disclosure regarding such matters is required in periodic reports. This disclosure requirement is currently in effect, however the SEC has proposed implementing rules.
- The SEC has proposed rules requiring that those companies engaged in commercial development of oil, natural gas, and minerals must provide annual disclosures about any payments made by the issuer or its subsidiaries, or an entity under the control of the issuer, to the U.S. or a foreign government for the purpose of the commercial development of oil, natural gas, or minerals.
- The comment period for these proposed rules closed in March 2011, and final rules are expected this year.

Generally, the Dodd-Frank Act imposes more stringent regulatory capital requirements on financial institutions. The Act requires that the Council make recommendations to the Federal Reserve regarding the establishment of heightened prudential standards for risk-based capital, leverage, liquidity and contingent capital. We know to a certainty that banks will be required to hold more capital and will be more limited in the instruments that will be Tier 1 qualifying. Aside from that, we have few details on regulatory capital matters. In a related context, most of the finishing touches have been applied to the Basel III framework.

The Basel III framework also will impose higher capital requirements and will focus on higher quality capital, phasing out the use of many innovative hybrid instruments. SIFIs will face an added surcharge under the Basel framework. Additional details on Basel are available on our website. As of the anniversary date, we do not have insight regarding the application of Basel III to U.S. institutions. In any event, new capital requirements—whatever they may turn out to be—will phase in over several years.

### **Supervised Nonbanks and Bank Holding Companies with Total Consolidated Assets Equal to or Greater than \$50 Billion**

- The Federal Reserve must establish prudential standards for these institutions, which include:
  - Risk-based capital requirements;
  - Leverage limits;
  - Liquidity requirements;
  - Requirements for a resolution plan; and
  - Concentration limits.
- These standards also include a risk committee requirement, a stress test requirement, and may include a contingent capital requirement, requirements for enhanced public disclosures, and short-term debt limits
- These institutions will be subject to a maximum debt-to-equity ratio of 15-to-1

## Collins Amendment Provisions (Section 171)

- Require the establishment of minimum leverage and risk-based capital requirements:
  - Set the risk-based capital requirements and the Tier 1 to total assets standard applicable to insured depository institutions under the prompt corrective action provisions of the Federal Deposit Insurance Act.
  - Set these current rates as a floor.
  - Limit regulatory discretion in establishing Basel III requirements.
- Raise the specter of additional capital requirements for activities that are determined to be risky, including, but not limited to, derivatives, securitized products, financial guarantees, securities borrowing and lending and repos.
- All of these requirements become effective upon the adoption of implementing regulations, which are required to be passed within 18 months of the Act's enactment.

## Final Rules to Date

- Risk-Based Capital Floor – On June 14, 2011, the banking agencies adopted a final rule (<http://www.fdic.gov/news/board/14june2011no4.pdf>) that implements Section 171 and establishes a permanent risk-based capital floor equal to the capital requirements calculated under a banking agency's general capital rules.

## Effect on Hybrids

- The application of the prompt corrective action provisions for insured depository institutions to bank holding companies no longer permits the inclusion of trust preferred securities or other hybrid securities in the numerator of Tier 1, subject to certain exceptions and phase-in periods as discussed below:

- Mutual holding companies and thrift and bank holding companies with less than \$15 billion in total consolidated assets are not subject to this prohibition for hybrids issued before May 16, 2010.
- Intermediate U.S. holding companies of foreign banks have a five-year phase-in period.
- For newly issued securities (those issued after May 19, 2010), the requirement is retroactively effective.
- For bank holding companies and systemically important nonbank financial companies, hybrids issued prior to May 19, 2010 will be subject to a phase in from January 2013 to January 2016.

## Required Studies

- There are a number of studies required that impact regulatory capital requirements:
  - Hybrids: Within 18 months of enactment, the GAO must conduct a study on the use of hybrid capital instruments and make recommendations for legislative or regulatory actions regarding hybrids.
  - Contingent capital: within two years of enactment, the Council must present the results of a study on contingent capital that evaluates, among other things, the effect on safety and soundness of a contingent capital requirement, the characteristics and amounts of contingent capital that should be required and the standards for triggering such requirements; following this study, the Council may recommend to the Federal Reserve certain minimum contingent capital requirements.

In short, at the one-year mark, we are not as far along on Dodd-Frank rulemaking as the Act requires or contemplates. In particular, market participants await clarity on some of the most pressing matters that will affect their businesses and shape our financial institutions sector, such as SIFI designation, the Volcker Rule (and in particular guidance on proprietary trading), the outcome of quite a number of substantial derivatives questions, and capital requirements. In the space of a year, though, it has become clear that our markets will be dramatically different. We will continue to provide regular updates on our dedicated regulatory reform webpage. <http://www.mofo.com/resources/regulatory-reform>, as well as through our FrankNDodd subscription based system. For information about FrankNDodd, email [questions@frankndodd.com](mailto:questions@frankndodd.com).

# **Appendix**

## Studies

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### 87 Studies Required

\*As of July 21, 2011



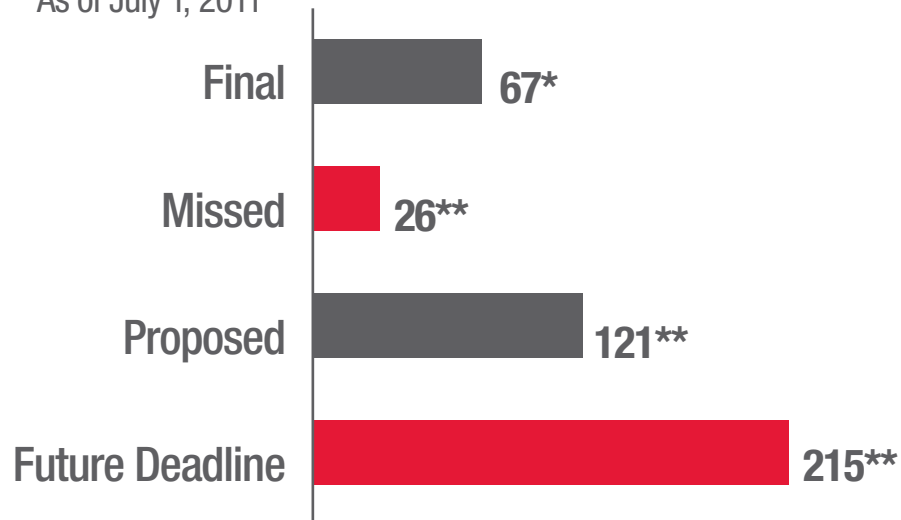
## Final Rules

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### 400 Required Rulemakings

\*As of July 21, 2011

\*\*As of July 1, 2011



# Final Studies

\*As of July 21, 2011

<b>Release Date</b>	<b>Agency</b>	<b>Action Type</b>	<b>Title</b>	<b>DFA Reference</b>
July 21	CFTC, SEC, FRB	Study	Risk Management Supervision of Designated Clearing Entities	Section 813; Title VIII
July 21	SEC	Study	Report on Review of Reliance on Credit Ratings	Section 939A(c)
July 19	GAO	Study	Bankruptcy: Complex Financial Institutions and International Coordination Pose Challenges	Section 202
July 19	GAO	Study	Mortgage Reform: Potential Impacts of Provisions in the Dodd-Frank Act on Homebuyers and the Mortgage Market	Section 1421
July 19	CFPB	Report	The Impact of Differences Between Consumer-and-Creditor Purchased Credit Scores	
July 18	FSOC	Report	Report to the Congress on Secured Creditor Haircuts	Section 1078
July 13	GAO	Study	Regulators Will Need More Comprehensive Information to Fully Monitor Compliance with New Restrictions When Implemented	Section 215
July 8	FDIC	Study	Study on Core Deposits and Brokered Deposits	Section 619
July 7	GAO	Study	New Regulatory Challenges Could Emerge as the Industry Grows	Section 989f
July	FRB	Report	Report to the Congress on the Use of the Automated Clearinghouse System for Remittance Transfers to Foreign Countries	Section 1073

Release Date	Agency	Action Type	Title	Topics	DFA Reference
7/8/2011	FDIC	Study	Study on Core Deposits and Brokered Deposits (FDIC Release)	Banking; Deposits	Title XV, Sec. 1506
6/29/2011	FRB	Report	2009 Interchange Revenue, Covered Issuer Cost, and Covered Issuer and Merchant Fraud Loss Related to Debit Card Transactions (FRB Release)	Banking; Fees & Charges	Title X, Sec. 1075
6/29/2011	SEC	Report (OIG)	Oversight of and Compliance With Conditions and Representations Related to Exemptive Orders and No-Action Letters (SEC Release)	Agency Administration	Title IX, Sec. 965
6/28/2011	GAO	Report	Financial Literacy: A Federal Certification Process for Providers Would Pose Challenges (GAO Release)	Consumer Protection; Mortgage Reform	Title X, Sec. 1013
6/24/2011	GAO	Report	Bank Regulation: Modified Prompt Corrective Action Framework Would Improve Effectiveness (GAO Release)	Banking; Capital Requirements	Title II, Sec. 202
5/5/2011	GAO	Report	Mortgage Foreclosures: Documentation Problems Reveal Need for Ongoing Regulatory Oversight (GAO Release)	Mortgage Reform	Title XIV
5/2/2011	FHFA	Report (OIG)	Risk Assessment - March 2011 (FHFA Release)	Mortgage Reform	Title XIV
4/22/2011	SEC	Study	Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 for Issuers With Public Float Between \$75 and \$250 Million (SEC Release)	Accounting & Auditing	Title IX, Sec. 989G
4/18/2011	FDIC	Report	The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act (FDIC Release)	Systemic Risk	Title II
4/8/2011	CFTC, SEC	Study	Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives (Agency Release)	Derivatives	Title VII, Sec. 719
3/31/2011	FHFA	Report (OIG)	Federal Housing Finance Agency's Exit Strategy and Planning Process for the Enterprises' Structural Reform (FHFA Release)	Mortgage Reform	Title XIV
3/31/2011	FHFA	Report (OIG)	Evaluation of Federal Housing Finance Agency's Oversight of Fannie Mae's and Freddie Mac's Executive Compensation Programs (FHFA Release)	Compensation; Mortgage Reform	Title XIV
3/25/2011	GAO	Report	Consumer Costs for Debt Protection Products can be Substantial Relative to Benefits but are Not a Focus of Regulatory Oversight (GAO Release)	Consumer Protection	Title X
3/21/2011	GAO	Report	Federal Deposit Insurance Corporation Funds' 2010 and 2009 Financial Statements (GAO Release)	Agency Administration	Title III,
3/18/2011	FRB	Report	Comprehensive Capital Analysis and Review: Objectives and Overview (FRB Release)	Capital Requirements	Title I
3/10/2011	SEC	Study	U.S. Securities and Exchange Commission Organizational Study and Reform (SEC Release)	Agency Administration	Title IX, Sec. 967
2/1/2011	FDIC, FRB, OCC, OTS	Report	Joint Implementation Plan on Sections 301-326 of the Dodd-Frank Act (Agency Release)	Transfer of Functions	Title III, Sec. 327

# Final Studies (continued)

\*As of July 1, 2011

Release Date	Agency	Action Type	Title	Topics	DFA Reference
1/26/2011	SEC	Study	Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers (SEC Release)	Investment Advisers; Brokers & Dealers; Investor Protection	Title IX, Sec. 919B
1/22/2011	SEC	Study	Study on Investment Advisers and Broker-Dealers (SEC Release)	Investor Protection	Title IX, Sec. 913
1/19/2011	CFTC	Study	Report on the Oversight of Existing and Prospective Carbon Markets (CFTC Release)	Derivatives; Energy	Title VII, Sec. 750
1/19/2011	GAO	Report	Regulatory Coverage Generally Exists for Financial Planners, but Consumer Protection Issues Remain (GAO Release)	Consumer Protection	Title IX, Sec. 919c
1/19/2011	GAO	Report	Dodd-Frank Act: Role of the Governmental Accounting Standards Board in the Municipal Securities Markets and Its Past Funding (GAO Release)	Municipal Securities	Title IX, Sec. 978
1/19/2011	SEC	Study	Study on Enhancing Investment Adviser Examinations (SEC Release)	Investment Advisers	Title IX, Sec. 914
1/18/2011	FSOC	Study	Study and Recommendations Regarding Concentration Limits on Large Financial Companies (FSOC Release)	Systemic Risk	Title VI, Sec. 622
1/18/2011	FSOC	Study	Macroeconomic Effects of Risk Retention Requirements (FSOC Release)	Asset-Backed Securities	Title IX, Sec. 941 Title IX, Sec. 946
1/18/2011	FSOC	Study	Study and Recommendations on Prohibitions on Proprietary Trading & Certain Relationships With Hedge Funds and Private Equity Funds (FSOC Release)	Volcker Rule; Hedge Funds & Private Equity	Title VI, Sec. 619
1/12/2011	GAO	Report	Status of Programs and Implementation of GAO Recommendations (GAO Release)	TARP	Title XIII, Sec. 1302
10/19/2010	FRB	Report	Report to Congress on Risk Retention (FRB Release)	Asset-Backed Securities	Title IX, Sec. 941
10/19/2010	GAO	Report	Status of Study Concerning Appraisal Methods and the Home Valuation Code of Conduct (GAO Release)	Mortgage Reform	Title XIV, Sec. 1476

# Final Rules

\*As of July 21, 2011

Publication Date	Effective Date	Rule   Description	Topic
7/21/2011	7/21/2011	Identification of Enforceable Rules and Orders	Consumer Protection; Transfer of Functions
7/21/2011	7/21/2011, 7/21/2012, 7/21/2013	Office of Thrift Supervision Integration; Dodd-Frank Act Implementation	Banking; Fees & Charges; Transfer of Functions
7/20/2011	10/1/2011	Debit Card Interchange Fees and Routing	Banking; Fees & Charges
7/20/2011	7/20/2011	Regulation Z; Truth in Lending	Consumer Protection; Mortgage Reform
7/19/2011	7/14/2011	<i>CFTC - Final order on temporary exemption for swaps, swap dealers, major swap participants, eligible swap participants, and certain transactions in exempt commodities.</i>	Derivatives Markets and Products; DFA Section 701 et seq.
7/19/2011	9/19/2011	Rules Implementing Amendments to the Investment Advisers Act of 1940	Hedge Funds & Private Equity; Investment Advisers
7/18/2011	7/21/2011	FRS - Final rule repealing Regulation Q, prohibition against payment of interest on demand deposits.	Safety and Soundness; DFA Section 627
7/15/2011	8/15/2011	FDIC - Final rule on certain orderly liquidation authority provisions.	Living Wills; Resolution Authority; Systemically Important Financial Institutions; DFA Section 209
7/15/2011	8/15/2011	FRS - Final rule issuing revised model adverse action notices in Regulation B, Equal Credit Opportunity.	Consumer Credit; DFA Section 1100F
7/15/2011	8/15/2011	FRS / FTC - Final rule on risk-based pricing rules under the Fair and Accurate Credit Transactions Act.	Consumer Credit; DFA Section 1100F
7/14/2011	8/15/2011	CFTC - Final rules to implement new anti-manipulation authority in swap markets.	Investor Protection; DFA Section 753
7/14/2011	7/21/2011	FDIC - Final rule rescinding regulations that implemented the statutory prohibition against the payment of interest on demand deposits.	Deposit Insurance Reform; DFA Section 627
7/14/2011	7/15/2011	OCC - Final rule on retail foreign exchange transactions.	Derivatives Markets and Products; DFA Section 742
7/13/2011	9/12/2011	CFTC - Final rule defining agricultural commodity.	Derivatives Markets and Products; DFA Section 723
7/12/2011	7/15/2011	FDIC - Final rule providing requirements for foreign currency futures, options on futures, and options an insured institution engages in with retail customers.	Derivatives Markets and Products; DFA Section 742
7/11/2011	8/10/2011	<i>SEC - Real Estate Settlement Procedures Act (RESPA): Technical Corrections and Clarifying Amendments</i>	Consumer Protection; Mortgage Reform
7/8/2011	7/8/2011	<i>SEC - Extending expiration dates of temporary exemptions for eligible credit default swaps.</i>	Derivatives Markets and Products; DFA Sections 763, 774
7/7/2011	7/7/2011	<i>SEC - Delegation of Authority to the Director of Its Division of Enforcement</i>	Agency Administration; Whistleblowers
7/6/2011	7/21/2011	FDIC / OCC - List of OTS regulations to be enforced by the OCC and FDIC upon the DFA transfer date.	Thriffs; DFA Sections 312, 316

*\*Italicized items may be orders or clarifications technically not "final rules" affecting our tally of required rulemakings.*

# Final Rules (continued)

\*As of July 21, 2011

Publication Date	Effective Date	Rule   Description	Topic
7/6/2011	7/21/2011	<b>FDIC / OCC</b> - List of OTS regulations to be enforced by the OCC and FDIC upon the DFA transfer date.	<b>Thriffs;</b> DFA Sections 312, 316
7/6/2011	7/21/2011	<b>SEC</b> - Final rule providing exemptions from registration requirements for advisers to venture capital funds, private fund advisers with less than \$150 million in assets, and foreign private advisers.	<b>Investor Protection;</b> DFA Sections 403, 409, 419
6/30/2011	8/29/2011	<b>HUD - SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities</b>	<b>Mortgage Reform;</b> Transfer of Functions
6/29/2011	8/29/2011	<b>SEC</b> - Final rule defining "family office."	<b>DFA Section 209;</b> Investor Protection
6/28/2011	7/28/2011	<b>FDIC / FRS / OCC</b> - Final rule amending risk-based capital adequacy standards.	<b>Bank Capital;</b> DFA Section 171
6/21/2011	6/21/2011	<b>FRB - Capital Adequacy Guidelines; Small Bank Holding Company Policy Statement: Treatment of Subordinated Securities Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008 and the Small Business Jobs Act of 2010</b>	<b>Banking; Capital Requirements;</b> Liquidity Provisioning
6/20/2011	1/1/2012	<b>FRS</b> - Final rule increasing the threshold for exempt consumer leases to \$51,800.	<b>Consumer Protection;</b> DFA Section 1100E
6/20/2011	1/1/2012	<b>FRS</b> - Final rule increasing the threshold for exempt consumer credit transactions to \$51,800.	<b>Consumer Credit;</b> DFA Section 1100E
6/14/2011	7/16/2011	<b>SEC</b> - Final rule on beneficial ownership reporting requirements and security-based swaps.	<b>Derivatives Markets and Products;</b> DFA Section 766
6/13/2011	8/12/2011	<b>SEC</b> - Final rule implementing whistleblower incentives and protection provisions.	<b>DFA Section 922;</b> Investor Protection
5/25/2011	6/24/2011	<b>NCUA</b> - Final rule revising Part 745; Share Insurance and Appendix.	<b>Deposit Insurance Reform;</b> DFA Section 343
5/20/2011	6/20/2011	<b>FHFA - Federal Home Loan Bank Investments</b>	<b>Credit Ratings;</b> Mortgage Reform
5/16/2011	5/16/2011	<b>SEC</b> - Order directing funding for the Governmental Accounting Standards Board (GASB).	<b>Derivatives Markets and Products;</b> DFA Section 978
5/4/2011	4/28/2011	<b>FDIC - Establishment of the FDIC Systemic Resolution Advisory Committee.</b>	<b>DFA Section 201 et seq.;</b> Systemically Important Financial Institutions
4/27/2011	6/15/2011	<b>FCA - Federal Agricultural Mortgage Corporation Governance and Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Risk-Based Capital Requirements</b>	<b>Agriculture; Capital Requirements;</b> Credit Ratings
4/4/2011	7/21/2011	<b>FRS</b> - Final rule amending Regulation Z to exempt certain consumer credit transactions in which the amount financed exceeds \$50,000.	<b>DFA Sections 1062, 1100H;</b> Mortgage Reform
4/4/2011	5/4/2011	<b>FHFA - Federal Home Loan Bank Liabilities</b>	<b>Banking; Mortgage Reform;</b> Credit Ratings
3/4/2011	4/4/2011	<b>HUD - Emergency Homeowners Loan Program</b>	<b>Mortgage Reform;</b> Insurance
4/4/2011	7/21/2011	<b>FRS</b> - Final rule amending Regulation M to exempt certain consumer credit transactions in which the amount financed exceeds \$50,000.	<b>Consumer Credit;</b> DFA Sections 1062, 1100H
3/2/2011	4/1/2011	<b>FRS</b> - Final rule providing a separate, higher threshold for determining coverage of the escrow requirement applicable to higher-priced mortgage loans under Regulation Z, Truth in Lending.	<b>DFA Section 1461;</b> Mortgage Reform

# Final Rules (continued)

\*As of July 21, 2011

Publication Date	Effective Date	Rule   Description	Topic
2/25/2011	4/1/2011	<b>FDIC</b> - Final rules regarding the assessment base and rates, large institutions assessment system, and deposit insurance fund dividends.	<b>Deposit Insurance Reform;</b> DFA Sections 331, 332, 334
2/14/2011	4/1/2011	<b>FRS</b> - Final rule on conformance period for prohibited proprietary trading, private equity fund or hedge fund activities (Volcker rule).	<b>Proprietary Trading by Bank</b>
2/2/2011	4/4/2011	<b>SEC</b> - Shareholder approval of executive compensation and golden parachutes.	<b>DFA Sections 721, 723, 733, 735;</b> Executive Compensation
1/28/2011	2/28/2011	<b>FSA</b> - Farm Loan Programs	<b>Banking;</b> Agriculture
1/27/2011	1/27/2011	<b>FDIC</b> - Final rule amending deposit insurance regulations to allow unlimited coverage for IOLTAs.	<b>Deposit Insurance Reform</b>
1/26/2011	3/28/2011	<b>SEC</b> - Final rule on representations and warranties in asset-backed securities offerings.	<b>Investor Protection;</b> Securitization
1/25/2011	3/28/2011	<b>SEC</b> - Final rule requiring issuers of asset-backed securities to review the assets underlying each ABS and to disclose the nature of the review and findings.	<b>Securitization</b>
1/24/2011	1/24/2011	<b>SEC</b> - Final rule for the handling of proposed rule changes submitted by self-regulatory organizations (SROs).	<b>Derivatives Markets and Products</b>
1/18/2011	1/18/2011	<b>SEC</b> - Delegation of Authority to the Chief Accountant	<b>Agency Administration</b>
12/28/2010	1/27/2011	<b>FHFA</b> - Minority and Women Inclusion	<b>Agency Administration</b>
12/22/2010	12/31/2010	<b>SEC</b> - Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities	<b>Asset-Backed Securities</b>
12/20/2010	1/1/2011	<b>FDIC</b> - Designated reserve ratio for the Deposit Insurance Fund.	<b>Deposit Insurance Reform</b>
12/1/2010	12/29/2010	<b>FTC</b> - Mortgage Assistance Relief Services	<b>Mortgage Reform;</b> Consumer Protection
11/26/2010	11/26/2010	<b>SEC</b> - Extension of expiration dates of temporary exemptions for eligible credit default swaps.	<b>Derivatives Markets and Products</b>
11/15/2010	12/31/2010	<b>FDIC</b> - Final rule on deposit insurance coverage for noninterest bearing transaction accounts.	<b>Deposit Insurance Reform</b>
10/20/2010	1/18/2011, 10/20/2011	<b>NCUA</b> - Corporate Credit Unions	<b>Banking;</b> Capital Requirements
10/12/2010	10/12/2010	<b>SEC</b> - Delegation of Authority to the Director of the Division of Trading and Markets	<b>Agency Administration;</b> SROs
10/4/2010	10/4/2010	<b>SEC</b> - Removal from regulation FD of the exemption for disclosures made to credit rating agencies for the purpose of determining a credit rating.	<b>DFA Section 939B;</b> Securitization
10/1/2010	10/1/2010	<b>SEC</b> - Commission guidance regarding auditing, attestation, and related professional practice standards for brokers and dealers.	<b>Corporate Governance;</b> DFA Section 982
9/30/2010	9/30/2010	<b>FDIC</b> - Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets, etc.	<b>Banking;</b> Asset-Backed Securities
9/24/2010	10/25/2010	<b>NCUA</b> - Short-Term, Small Amount Loans	<b>Banking</b>
9/24/2010	4/1/2011	<b>FRS</b> - Truth in Lending final rule to protect consumers in the mortgage market from unfair lending practices that can arise from certain loan originator compensation practices.	<b>DFA Section 1403;</b> Mortgage Reform

# Final Rules (continued)

\*As of July 21, 2011

Publication Date	Effective Date	Rule   Description	Topic
9/21/2010	9/21/2010	<b>SEC</b> - Rescission of Rules Pertaining to the Payment of Bounties for Information Leading to the Recovery of Civil Penalties for Insider Trading	<b>Enforcement &amp; Remedies;</b> Whistleblowers
9/21/2010	9/21/2010	<b>SEC</b> - Final rule provides that any accounting firm preparing an audit report for an issuer that is a non-accelerated filer will not be required to attest to, and report on, the internal control assessment made by the issuer's management.	<b>Corporate Governance;</b> DFA Section 989G
9/20/2010	7/21/2011	<b>CFPB</b> - Designated transfer date for transfer of functions to the Bureau of Consumer Financial Protection.	<b>DFA Section 1062;</b> Other
9/16/2010	11/15/2010	<b>SEC</b> - Facilitating Shareholder Director Nominations	<b>Corporate Governance</b>
9/10/2010	10/18/2010	<b>CFTC</b> - New regulations establishing standards for off-exchange retail foreign exchange transactions and intermediaries.	<b>Derivatives Markets and Products;</b> DFA Section 742
9/2/2010	9/2/2010	<b>NCUA</b> - Increase standard maximum share insurance amount (SMSIA) applicable to credit union accounts.	<b>Deposit Insurance Reform;</b> DFA Section 335
8/13/2010	8/13/2010	<b>FDIC</b> - Increase in standard maximum deposit insurance amount (SMDIA).	<b>Deposit Insurance Reform;</b> DFA Section 335

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