BANKING LEGISLATION
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HIGHLIGHTS

This issue contains detailed descriptions of:

- Enhanced Prudential Standards and Early Remediation Requirements for Systemic Institutions, including:
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    - Capital and Leverage
    - Liquidity Requirements
    - Single-Counterparty Credit Limits
    - Risk Management
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    - Debt-to-Equity Limits
    - Framework for Early Remediation
    - Compliance Phase-In Periods
- New Swaps Market Regulation

In addition, it summarizes other notable legislative, regulatory, and judicial developments that occurred during the fourth quarter of 2011.

Enhanced Prudential Standards and Early Remediation Requirements for Systemic Institutions

On December 20, the Board of Governors of the Federal Reserve System (the Board) issued a proposal that implements sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to enhance regulatory standards and create early remediation requirements for systemic institutions.[1] The proposal is part of a multifaceted approach to mitigating the threats posed by systemically important institutions to the financial stability of the United States.[2] The proposal includes new requirements related to risk-based capital and leverage, liquidity, single-counterparty credit limits, overall risk management (including a risk

[1] For more information on the Dodd-Frank Wall Street Reform and Consumer Protection Act, see *Banking Legislation and Policy*, Volume 29, Number 2.

[2] The Dodd-Frank Act and pursuant regulations create a new orderly liquidation authority for certain financial companies, augment the supervision of large financial companies, and increase the regulation of various financial instruments, markets, and institutions. For more information on the new orderly resolution authority, see *Banking Legislation and Policy*, Volume 30, Number 3.

committee requirement), stress tests, and debt-to-equity limits. It also provides a framework for implementing the early remediation of troubled financial companies, defines various measures of the financial condition of a company, and outlines a series of remediation requirements that kick in as a company's condition deteriorates.

During the recent financial crisis, the sudden failures or near-failures of large, highly leveraged, interconnected financial institutions presented a great threat to U.S. and global financial stability. The U.S. and many foreign governments conducted large-scale interventions to prevent the failure of such systemically important companies or to mitigate the effects of their failure on the financial system as a whole. Such actions have solidified the market view that certain financial institutions are "too big to fail," bringing with it new threats to financial stability. Economic agents (e.g., shareholders, creditors, and counterparties) do not have the appropriate incentives to monitor and limit excessive risk-taking, and smaller financial companies face competitive distortions in which "too-big-to-fail" companies can often fund themselves at a lower cost.

This proposal comprises a major component of the enhanced supervision of large bank holding companies (BHCs) and systemically important nonbank financial companies. It is important to note that this is one step in a multistage approach to enhancing regulatory standards. The Federal Reserve also plans to implement the Basel Committee on Banking Supervision's (BCBS) Basel III Accord and other BCBS recommendations through future rulemakings. Basel III strengthens capital and liquidity standards for internationally active banking organizations. [3]

Scope

The Dodd-Frank Act mandates enhanced standards and early remediation requirements for BHCs with at least $50 billion in consolidated assets as well as for nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) as needing greater supervision. Although the law covers foreign banking institutions with operations in the U.S., the current proposal applies only to large U.S. BHCs and the FSOC–designated institutions (collectively known as "covered companies"). Enhanced supervision for foreign BHCs with U.S. operations will be addressed in a separate rulemaking.

Although the proposal applies the same set of standards to all covered companies, regulators reserve the right to apply individualized standards in a tailored format depending on factors such as a company's complexity, capital structure, or riskiness. The Board emphasizes this flexibility with respect to nonbank financial companies that are structured differently from typical banking organizations. Additionally, certain components of the new proposal apply to a wider or narrower breadth of companies than the so-called covered companies. These exceptions are noted below.

Capital and Leverage

According to the proposal, all covered companies must comply with the Board's capital planning rule, which requires companies to submit Board-approved annual plans to the Federal Reserve in which they demonstrate their ability to meet certain risk-based and leverage requirements. The rule became effective on December 30, 2011, and currently applies only to U.S. BHCs with $50 billion or more in consolidated assets, but the proposal extends the scope of the rule to nonbank covered companies as well. In particular, all covered companies will have to hold enough capital to meet a minimum total risk-based capital ratio of 8 percent and a minimum tier 1 leverage ratio of 4

[3] For more information on the Basel III Accord, see *Banking Legislation and Policy*, Volume 29, Number 3.

percent. Covered companies must also meet a minimum common tier 1 risk-based capital ratio of 5 percent.

A covered company's capital plan must demonstrate capital adequacy (i.e., meeting the minimum requirements above) over a nine-quarter horizon under both stressed and expected conditions. The plan must discuss the sources and uses of a firm's capital as it pertains to the company's risk profile. By requiring capital plans that account for stressed conditions, the proposal aims to reduce a covered company's probability of failing. A covered company must consider all Federal Reserve–developed stress scenarios and at least one company-developed stress scenario in its plan. The capital plan requirement and the stress tests discussed below will go hand in hand.

Generally speaking, the proposal would not finalize the implementation of the BCBS's Basel III capital rules. For instance, in subsequent rulemaking the Board plans to replace its definition of common tier 1 capital with the definition found in Basel III. U.S. regulators remain committed to implementing Basel III through future rulemaking.

In addition, the Board intends to implement a quantitative risk-based capital surcharge for certain global financial companies (a subset of the covered companies) in the future. Based on the BCBS's global systemically important banks (G-SIB) surcharge, the future rulemaking will require these large, interconnected companies to maintain additional common equity above the regulatory minimums in order to cope with potential losses under stressed conditions. The BCBS has identified approximately 30 global banks that would face the G-SIB surcharge.

Liquidity Requirements

The Board's proposal would require covered companies, as well as U.S. BHC subsidiaries of foreign banking organizations, to comply with a series of qualitative liquidity requirements. This marks the first time BHCs have been subject to formal liquidity standards in the U.S. The liquidity requirements include cash flow projections, liquidity stress testing, a liquidity buffer, limits on various liquidity metrics, corporate governance requirements regarding liquidity risk management, and a contingency funding plan that identifies alternative sources of funding when the usual sources are strained.

In the future, the Board plans to propose quantitative liquidity requirements based on Basel III's liquidity coverage ratio (LCR) and net stable funding ratio (NSFR). The LCR requires companies to hold enough high-quality liquid assets to meet expected net cash outflows over a 30-day period of stress. The NSFR requires global banks to extend their liquidity risk resiliency to a one-year horizon.

Single-Counterparty Credit Limits

The recent financial crisis demonstrated how interconnectivity among large financial institutions can create risks for financial stability. With this in mind, the proposal caps the net credit exposure of any covered company to any counterparty at 25 percent of the covered company's capital stock and surplus.[4] Furthermore, the proposal caps the net credit exposure at 10 percent of capital stock and surplus if both parties are nonbank covered companies or BHCs with more than $500 billion in consolidated assets. Credit exposures generally include all extensions of credit to a counterparty (e.g., repurchase and reverse repurchase agreements, securities transactions, and exposures associated with derivatives).

[4] The term "capital stock and surplus" is defined as regulatory capital plus loan-loss reserves. Loan-loss reserves are funds set aside to account for bad loans (e.g., consumer defaults, loan renegotiations).

The proposal also provides rules for measuring credit exposures. Among other things, it describes how collateral, guarantees, and hedges using derivatives can be used by companies to reduce measured credit exposures for purposes of the single-counterparty credit limits.

Risk Management

In order to enhance enterprise-wide risk management, the proposal would require that each covered company, as well as each publicly traded U.S. BHC with at least $10 billion in consolidated assets, establish a stand-alone risk committee to oversee its global risk management practices. The committee would be composed of members of the company's board of directors, would be chaired by an independent director, and would include at least one member with risk management expertise. Covered companies must also employ a chief risk officer (CRO) who has the incentives and expertise to give an objective assessment of the company's risks. The CRO would report directly to the company's risk committee and its chief executive officer. In general, covered companies would face stricter risk management requirements than U.S. BHCs with less than $50 billion in consolidated assets.

Stress Tests

Under the proposal, covered companies are subject to both supervisory stress tests and company-conducted stress tests. The supervisory stress tests are conducted annually to determine if a company has sufficient capital to absorb losses under baseline, adverse, and severely adverse conditions as defined by the Federal Reserve. These stress tests build on previous testing efforts conducted by the Federal Reserve. Company-specific results will be published at a summary level after companies have been informed of the results. After the supervisory stress tests, companies will be expected to update their resolution plans (i.e., living wills) and take other actions, as appropriate, based on the results. Covered companies must also conduct semiannual stress tests using their own stress scenarios as well as scenarios provided by the Federal Reserve. Savings and loan holding companies, state member banks, and BHCs with at least $10 billion in consolidated assets will also have to conduct company stress tests, but only on an annual basis. The results of company-conducted stress tests will be published as well.

Debt-to-Equity Limits

Certain covered companies designated by the FSOC would be required to maintain a debt-to-equity ratio of no more than 15 to 1. Such a designation would occur if a company poses a grave threat to U.S. financial stability and the debt-to-equity requirement is necessary to mitigate the threat. This section of the proposal also applies to U.S. BHC subsidiaries of foreign banking organizations.

Framework for Early Remediation

Along with the enhanced regulatory standards discussed above, the Board's proposal would create a framework for the early remediation of covered companies in order to reduce the risks of insolvency. In general, the remediation that is required would become more stringent as the financial condition of a financial company deteriorates. A variety of forward-looking triggers, including regulatory capital, stress tests results, market indicators, and risk management weaknesses, would be used to measure the financial condition of a company.

Under the proposed early remediation regime, there are four levels of remediation: heightened supervisory review, initial remediation, recovery, and recommended resolution. Under heightened supervisory review, the Board would examine a covered company's financial condition to determine if there is financial distress warranting a higher level of remediation. The initial remediation level would include restrictions on capital distributions and growth (both asset growth and acquisitions). Specifically, capital distributions, which include dividend payments and buybacks, would be restricted to less than 50 percent of average net income over the previous two quarters.

At the recovery level, capital distributions and growth are generally prohibited. Additionally, the covered company must raise additional capital and limits may be placed on executive compensation. Supervisors may impose additional requirements as necessary, including the removal of senior management and transaction limits between affiliates.

If a covered company reaches the recommended resolution level, the Board will determine if the company should be resolved under the Federal Deposit Insurance Corporation's (FDIC) new orderly resolution authority. Such a determination must also be approved by the Treasury Department and the FDIC.

Compliance Phase-In Periods

The Board's proposal also includes phase-in periods for covered companies to comply with the new prudential standards. The phase-in periods are intended to reduce the burden on covered companies of initially complying with the proposed requirements. In general, covered companies would be required to meet the enhanced prudential standards by the start of the fifth quarter after the effective date of the final rule. If a company is identified as a covered company after the effective date, then it would have until the start of the fifth quarter following its identification as a covered company. There would be different transition arrangements for certain aspects of the proposal, including the risk-based capital and leverage requirements, the single-counterparty credit limits, and the stress testing requirements.

New Swaps Market Regulation

The Commodities Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) continue to develop new regulations related to the swaps markets, as required by the Dodd-Frank Act.[5]

Definitions

Since regulators are defining a range of new types of participants and instruments, the following abbreviations are useful for understanding the regulation. Generally, an SD (swap dealer) is a market maker for swaps, such as a bank or investment bank; an MSP (major swap participant) is an entity with a substantial net position in swaps; a CPO (commodity pool operator) is an individual or organization, such as a hedge fund manager, that invests collective funds in commodity futures or options; an FCM (futures commission merchant) is an entity, such as an investment bank, that handles orders for futures contracts and extends credit to customers in the futures market; a DCM (designated contract market) is an exchange, such as CME Group, on which futures or options are traded; an SEF (swap execution facility) is a platform for trading and clearing swaps such as a DCM; an SDR (swap data repository) is a centralized recordkeeping facility for data on swap transactions; and a DCO (derivatives clearing organization) is an entity, such as a clearinghouse, that allows each party in a transaction to substitute the credit of the DCO for the credit of the party. The definitions of these terms are still taking shape; therefore, more time is needed for the classifications to be completely delineated.

[5] For more information on swaps market regulation, see *Banking Legislation and Policy, Volume 29, Number 4*; *Banking Legislation and Policy, Volume 30, Number 1*; *Banking Legislation and Policy, Volume 30, Number 2*; and *Banking Legislation and Policy, Volume 30, Number 3*.

Effective Date for Swap Regulation

The CFTC issued a final order on December 19 that postpones the effective date of much of the proposed swap market regulation prescribed by Title VII of the Dodd-Frank Act to July 16, 2012. The final order applies to provisions that reference terms needing further definition (e.g., "swap," "swap dealer," "major swap participant," and "eligible contract participant") and also exempts certain transactions from CFTC oversight.

Position Limits for Futures and Swaps

On October 19, the CFTC approved a final rule that places limits on speculative positions in certain commodity futures and swaps contracts in an effort to prevent excessive speculation and manipulation. The rule pertains to 28 physical commodity futures and option contracts as well as economically equivalent swaps, but it does not apply to positions taken for hedging purposes.[6] The position limits will be imposed on both an end-of-day and intraday basis and will be implemented in two phases.

The rule divides speculative limits into two types: spot-month position limits and non-spot-month position limits. Spot-month positions refer to positions (both long and short) in futures contracts that mature and become deliverable in the present month. For example, in March 2012 spot-month position limits will be applied to March 2012 corn futures, and non-spot-month position limits will be applied to April 2012 corn futures (or contracts maturing in any other future month). Spot-month position limits are generally stricter than non-spot position limits because contract prices are generally more vulnerable to large fluctuations and manipulation during the month of delivery. Spot-month position limits, once fully implemented, will generally be set at 25 percent of estimated deliverable supply. The limits will be adjusted annually for agricultural contracts and biennially for energy and metal contracts.

Non-spot-month position limits come in two forms: limits on positions in a single delivery month and limits on positions aggregated over all delivery months. For example, in March 2012 there will be non-spot position limits that apply to April 2012 corn futures (or any other non-spot month) and to all outstanding corn futures. Unlike the spot-month position limits that are based on estimated deliverable supply, the non-spot-month position limits are based on open interest.

Core Principles for Derivatives Clearing Organizations

Also on October 19, the CFTC adopted a final rule outlining 15 core principles that registered DCOs and entities that want to register as DCOs must follow. The rule implements section 725 of the Dodd-Frank Act, which revised the DCO core principles. This rule delineates core principle standards related to compliance, financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement, system safeguards, reporting, recordkeeping, public information, information sharing, antitrust considerations, and legal risks. Three additional core principles dealing with governance fitness standards, the composition of governing boards, and conflicts of interest will be covered in a future rulemaking.

Investment of Customer Funds

On December 5, the CFTC issued a final rule with respect to the investment of customer segregated and secured amount funds by FCMs and DCOs that aims to mitigate credit, liquidity, and market risk as well as preserve principal and maintain

[6] A swap contract may be economically equivalent to a futures contract if it settles off the futures contract or similar contracts, if it contains a reference price based in part on the futures contract, or if it is priced at a fixed differential to the futures contract. See 76, *Federal Register*, pp. 71630 for more information.

liquidity. FCMs and DCOs are generally required to segregate customer funds and must put customer funds associated with positions in foreign futures and foreign options in secured accounts. The rule narrows the scope of allowable investments of customer funds, heightens standards for permitted investments on an individual and portfolio basis, and promotes diversification through various concentration limits in order to increase safety. Among other things, the rule eliminates foreign sovereign debt as a permitted investment and eliminates in-house transactions as well as repurchase agreements with affiliates.[7] It also imposes limitations on investments in money market mutual funds. The rule does not place limits on the collateral used by customers of FCMs and DCOs. In crafting the rule, the CFTC aimed to give FCMs and DCOs investment flexibility while simplifying the regulation and restraining potential risks.

Foreign Boards of Trade

On the same day, the CFTC finalized its registration process for foreign boards of trade that wish to provide U.S. members or participants with direct access to their trading systems. In order to register with the CFTC, foreign boards of trade must meet a number of eligibility requirements, which include being supervised by home country regulators in a manner comparable to the CFTC's supervision of DCMs, possessing the attributes of a well-organized exchange, adhering to the rules that prohibit abusive trading practices, and enforcing rules to maintain market and financial integrity.

Proposed Process to Make Swaps Available to Trade

Also on December 5, the CFTC proposed the process for DCMs and SEFs to make swaps subject to a clearing requirement "available to trade," as required by the new section 2(h)(8) of the Commodity Exchange Act (CEA).[8] The "available to trade" designation is given by a DCM or SEF to a swap transaction and carries with it certain trade execution requirements. Swaps subject to a clearing requirement that have been designated as available to trade must be traded on a DCM or SEF, subject to certain exceptions. A DCM or an SEF must consider a number of factors before making a swap available to trade, including the existence of potential buyers and sellers, the frequency or size of the transactions, the bid/ask spread, and the DCM's or SEF's ability to support trading in the swap on its trading system. A DCM or SEF will determine initially if a swap is available to trade, but the CFTC must review these designations. Once a DCM or SEF makes a swap available to trade, all DCMs or SEFs that offer for trading that swap or any economically equivalent swaps must make those swaps available to trade as well.[9]

Data Recordkeeping and Reporting

On December 20, the CFTC adopted a new statutory framework for the reporting and recordkeeping of swap transactions. The final rule outlines requirements for SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties to report and keep records of swap transactions. Swap data must be reported to an SDR, and the data collected must include information on the economic terms, the confirmation, and the valuation of the transaction. Unique identifiers will also be used so that data can be easily linked together and aggregated by regulators.

The CFTC also issued a final rule on the real-time reporting of swap transaction data. All swap transactions and pricing data must be reported to a

[7] Repurchase agreements with third parties are still allowed. However, repurchase agreements with a single counterparty are limited to 25 percent of customer funds.

[8] This section of the CEA was added pursuant to section 723 of the Dodd-Frank Act.

[9] The proposed definition of an "economically equivalent swap" requires a DCM or SEF to consider each swap's material pricing terms when determining if two swaps are economically equivalent.

registered SDR, which will then ensure the public dissemination of the data as soon as technologically practicable.

Registration of Swap Dealers and Major Swap Participants

On January 11, the CFTC finalized the registration process for SDs and MSPs, as required by section 731 of the Dodd-Frank Act. Registration will not be mandatory until certain terms, such as SD and MSP, are further defined, but individuals who believe they are SDs or MSPs may register before then. Registered SDs and MSPs must meet a variety of requirements related to capital and margin, reporting and recordkeeping, business conduct standards, and segregation of customer funds, among other things.

Individuals associated with an SD or MSP are not required to register. An associated person is a natural person (e.g., a partner, officer, employee, or agent) who solicits or accepts swaps on behalf of an SD or MSP or one who supervises such actions. Although associated individuals do not need to register, an SD or MSP cannot allow these individuals to effect swaps on its behalf if they are subject to a statutory disqualification. The SD or MSP must exercise reasonable care in determining who is subject to such a disqualification.

The National Futures Association has been given the authority by the CFTC to manage the registration process and confirm initial compliance with these requirements. The final rule also requires SDs and MSPs to maintain memberships with a registered futures association.

The SEC proposed a similar rule on October 12 for the registration of security-based SDs and security-based MSPs.

Federal Legislation

Enacted Legislation

Part of the so-called "minibus" spending package, the Consolidated and Further Continuing Appropriations Act, which was signed into law by President Obama on November 18, raises the maximum mortgage size guaranteed by the Federal Housing Administration (FHA) to $729,750 for a single-family residence in a high-cost area (H.R.2112). The conforming loan limit was raised to $729,750 in 2008 but had reverted to $625,550 on October 1. This legislation does not re-raise the loan limits for the government-sponsored enterprises Fannie Mae and Freddie Mac.

On January 3, President Obama signed legislation that calls for two studies of the failures of insured depository institutions (H.R.2056). The studies will examine the effects of FDIC policies and procedures on bank failures and will also look at the impact of loss-sharing agreements. They will be conducted independently by the inspector general of the FDIC and the Government Accountability Office (GAO). The bill was first introduced by Representative Lynn Westmoreland (R-Ga.) and was cosponsored by Representative David Scott (R-Ga.)

Proposed Legislation

Proposed Legislation Related to the Dodd-Frank Act

The Dodd-Frank Improvement Act, introduced on October 4 by Senator Mike Crapo (R-Ida.), would extend the deadline for derivatives rulemaking related to the Dodd-Frank Act until July 16, 2012 (S.1650). It would also create the Office of Derivatives within the SEC to administer security-based swaps rules and monitor the swaps market.

The Swap Jurisdiction Certainty Act, introduced on October 31 by Representatives Jim Hines (D-Conn.) and Scott Garrett (R-N.J.), would exempt certain swap transactions from Dodd-Frank regulatory requirements if they involve non-U.S. parties (H.R.3283). Among other things, non-U.S. individuals registered in the U.S. as swaps dealers would be exempt from new capital rules provided that they meet their home country's comparable capital requirements and that their home country is a Basel signatory. The proposed legislation would also apply to security-based swaps.

Other Proposed Legislation

The Wall Street Trading and Speculators Tax Act, introduced on November 2 by Representative Peter DeFazio (D-Ore.), would impose a 3-basis-point tax on most nonconsumer financial transactions (H.R.3313). The proposed legislation aims to curb speculative short-term trading and would generally not apply to long-term investments.

The United States Covered Bond Act, introduced on November 9 by Senator Kay Hagan (D-N.C.), would craft a legislative framework for a covered bond market in the U.S. (S.1835). Covered bonds are corporate debt instruments that are backed by mortgages or public-sector loans. The framework would be similar to that of covered bond markets that already exist in many European countries.

Federal Regulation

Multiple Sponsors

Additional Revisions to Market Risk Capital Rules

On December 7, 2011, the Federal Reserve, the Office of the Comptroller of the Currency (OCC), and the FDIC proposed additional revisions to their market risk capital rules in an effort to remove all references to credit ratings from the regulations, as mandated by the Dodd-Frank Act. This proposed rule complements a December 2010 proposed rule that outlined the market risk capital rules. The December 2010 proposal was modeled after revisions to Basel II but did not address Basel II's capital requirements for certain debt and securitization positions because they relied on credit ratings.[10]

According to the new proposal, alternative standards for creditworthiness used in determining capital requirements would include the Organization for Economic Cooperation and Development's country risk classifications for sovereign positions, stock market volatility and company-specific financial information for corporate debt positions, and a supervisory formula for securitization positions. The proposed market risk capital rules would apply to banks with assets of at least $1 billion or aggregate trading assets and trading liabilities equal to 10 percent or more of total assets.

Adjustments to Definitions of Small and Intermediate Small Institutions

On December 19, the Federal Reserve, the OCC, and the FDIC issued a joint final rule that adjusts the asset thresholds used to define "small" and "intermediate small" banks and savings associations under the Community Reinvestment Act (CRA). The thresholds are adjusted annually to account for inflation. An institution is now defined as "small" if it has less than $1.160 billion in assets at the end of either of the

[10] For more information on the December 2010 proposal, see *Banking Legislation and Policy*, Volume 29, Number 4.

previous two calendar years; it is defined as "intermediate small" if it is a small institution and has at least $290 million in assets at the end of both of the previous two calendar years. Small and intermediate small institutions face fewer reporting requirements under the CRA than large institutions.

Financial Stability Oversight Council

Proposed Criteria for Identifying Nonbank SIFIs

On October 11, the Financial Stability Oversight Council (FSOC) published its second notice of proposed rulemaking in regard to the identification of nonbanks as systemically important financial institutions (nonbank SIFIs). In the notice, the FSOC proposes to apply three stages to determine whether a nonbank financial institution is systemically important enough to warrant heightened supervision by the Board of Governors of the Federal Reserve (the Board). In the first stage, the FSOC will identify potential nonbank SIFIs based on size and financial operations. Specifically, the FSOC will apply a series of six uniform thresholds to nonbank financial institutions that relate to total consolidated assets, credit default swaps outstanding, derivative liabilities, loans and bonds outstanding, leverage ratio, and short-term debt ratio. If the institution exceeds the total consolidated assets threshold and any one of the other thresholds, then it will be selected for further analysis in stage two.

In stage two, the FSOC will use six quantitative framework categories — size, interconnectedness, substitutability, leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny — to conduct an institution-specific assessment. If the FSOC believes that an institution warrants even further evaluation, then it will notify and begin a series of dialogues with the institution. The institution under evaluation can contest the FSOC's judgment. The FSOC will make its final decision as to whether the institution under evaluation is systemically important by a two-thirds majority vote.

Board of Governors of the Federal Reserve System

Adjustments to Reserve Requirements for Depository Institutions

On October 26, the Board issued a final rule that gives the annual adjustments of two thresholds related to reserve requirements for depository institutions. Reserve requirements are generally assessed on the net transaction accounts (primarily checking accounts) of depository institutions. In 2012, the first $11.5 million in a depository institution's net transaction accounts will be exempt from reserve requirements (up from $10.7 million in 2011). A reserve ratio requirement of 3 percent will be applied to net transaction accounts between $11.5 million and $71.0 million (up from $58.8 million in 2011). Net transaction accounts beyond $71.0 million will face a 10 percent reserve ratio. These annual adjustments account for the growth in net transaction accounts and total reservable liabilities.

The Board also proposed simplifications to the administration of reserve requirements on October 11 that aim to reduce costs for both Reserve Banks and depository institutions (76, *Federal Register*, pp. 64250-64259 and 76, *Federal Register*, pp. 64259-64264).

Federal Deposit Insurance Corporation

Finalized Transfer of OTS Powers

The transfer of power from the Office of Thrift Supervision (OTS) to the FDIC as primary regulator of state thrifts was finalized on November 14, 2011 (76, *Federal Register*, pp. 63817-63818). This transfer of power was directed by sections 316 and 323 of Title III of the Dodd-Frank Act. The FDIC will not use the OTS Freedom of Information Act (FOIA) or the Privacy Act (PA). Instead, the FDIC will apply its own disclosure and privacy regulations as described in part 309 (Disclosure of Information) and 310 (Privacy Act Regulations) of the Code of Federal Regulations to all records and responsibilities transferred to it from the OTS.

Treatment of Mutual Insurance Holding Companies

On December 7, the FDIC proposed to treat mutual insurance holding companies as insurance companies for the purpose of liquidation and rehabilitation processes (76, *Federal Register*, pp. 77442-77446). A mutual insurance holding company is a company that owns one or more insurance companies. In general, the Dodd-Frank Act prescribes that insolvent insurance companies are subject to the liquidation and rehabilitation processes under state law; therefore, this proposal would subject troubled mutual insurance holding companies to state insolvency regimes.

Permissible Investments for Savings Associations

The FDIC proposed restrictions on investments in corporate debt securities by insured savings associations (76, *Federal Register*, pp. 78086-78090). Under the proposed rule, an insured savings association must determine that the issuer of corporate debt is capable of meeting all financial commitments associated with a security over its projected life before purchasing the security. This criterion would be met if the issuer's risk of default is low and if it is likely to repay all principal and interest in a timely manner, according to the savings association's assessment. This standard for creditworthiness, which does not rely on references to credit ratings, is consistent with those proposed by other agencies under the Dodd-Frank Act, including a recent proposal by the OCC. The FDIC also proposed guidance for how savings associations can exercise due diligence in adhering to this rule.

Securities and Exchange Commission

Confidential Private Fund Risk Reporting

On October 26, the Securities and Exchange Commission (SEC) adopted a final rule that requires private fund advisers, including hedge fund advisers, to report certain information that will be used by the FSOC to monitor systemic financial risks. The rule implements sections 404 and 406 of the Dodd-Frank Act and will require SEC-registered investment advisers to submit a new Form PF periodically if they manage more than $150 million in private fund assets. Large investment advisers must report more information more frequently than small advisers. Information reported on Form PF will remain confidential. The CFTC also adopted this rule; therefore, CFTC-registered commodity pool operators and commodity trading advisors may submit Form PF to satisfy certain CFTC reporting obligations if they are also SEC-registered private fund advisers.