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# **Impact on Other Financial Services: Investment Advisers, Broker Dealers, and Derivatives**

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# Derivatives

# Regulatory jurisdiction of the CFTC and the SEC

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- The Commodity Futures Trading Commission (“CFTC”) is granted jurisdiction to provide oversight and regulation of **swaps, swaps dealers, major swap participants** and related derivatives clearing organizations and swap execution facilities.
- The Securities and Exchange Commission (“SEC”) is granted jurisdiction to provide oversight and regulation of **security-based swaps, security-based swap dealers, major security-based swap participants\*** and derivatives clearing organizations and swap execution facilities.
- The CFTC and the SEC (each, a “Commission”) shall not be able to exercise regulatory authority over certain **identified banking products**.

\* Hereinafter, references to “swaps,” “swap dealers” and “major swap participants” shall generally include their security-based equivalents.

# Key Definitions

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- A **swap** is generally any agreement, contract or transaction based on underlying interest rates, currencies, commodities, indices or other financial interests or property or the occurrence (or non-occurrence) of an event relating to them.
  - includes interest rate swaps, foreign exchange swaps, credit default swaps and commodity swaps
  - includes equity swaps and equity index swaps
  - does not include “forward contracts” or “depository instruments” and excludes certain other contracts (options on securities) that constitute “securities” and contracts otherwise regulated by the SEC
  - will not include certain foreign exchange swaps and forwards if the Treasury Secretary grants exemption
- A **security-based swap** is generally a swap based on a narrow-based security index, a single security or loan, or the occurrence (or non-occurrence) of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index.
- A **mixed swap** shall be jointly defined and regulated by the CFTC and the SEC.

# Key Definitions (cont.)

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- **Swap dealer** means any person who:
  - holds itself out as a dealer in swaps;
  - makes a market in swaps;
  - regularly enters into swaps in the 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.
  - A swap dealer does not include an entity that engages in a de minimis amount of swap dealing in connection with transactions with or on behalf of customers.
- **Major swap participant** generally means any person who is not a swap dealer, and:
  - maintains a “substantial position” in any major category of swaps, excluding (i) positions held for hedging or mitigating commercial risk and (ii) positions maintained by any ERISA plan for the purpose of hedging or mitigating risk directly associated with the operation of the plan;
  - whose swaps create substantial counterparty exposure that may have serious adverse effects on the stability of the U.S. financial system; or
  - (i) is a “financial entity” that is highly leveraged relative to the amount of capital it holds and not subject to capital requirements established by a federal banking agency; and (ii) maintains a substantial position in any major swap category.
  - A major swap participant does not include certain captive finance company.
- Persons may be designated as a swap dealer or major swap participant for one or more classes of swaps and not others.

# Centralized Clearing

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- **Clearing requirement.** All swaps required to be cleared must be cleared through a derivatives clearing organization (“DCO”).
- **End User Exemption.** A swap will not be subject to the clearing requirement if at least one of the parties to the swap:
  - is not a financial entity,
  - uses the swap to hedge or mitigate commercial risk, and
  - notifies the Commission on how it generally meets financial obligations associated with entering into uncleared swaps.

A financial entity is:

- a swap dealer or major swap participant,
- a commodity pool,
- a private fund,
- an employee benefit plan, or
- a person engaged in the business of banking or activities that are financial in nature.

# Centralized Clearing

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An affiliate of an end user may also qualify for the clearing exemption if it trades in swaps for the purpose of mitigating the commercial risk of such end user, unless such affiliate is:

- a swap dealer or major swap participant,
  - an issuer that would be an investment company under the Investment Company Act but for section 3(c)(1) or 3(c)(7),
  - a commodity pool, or
  - a bank holding company with over \$50 billion in consolidated assets.
- **Election to clear.** An end user may choose to clear swaps :
    - If a swap subject to the clearing requirement is entered into between a swap dealer or major swap participant and a counterparty that is not a swap dealer or major swap participant, then the counterparty may select a DCO for clearing (assuming that the counterparty does not opt out of clearing).
    - If a swap not subject to the mandatory clearing requirement is entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer or major swap participant, then such counterparty (i) may elect to clear the swap and (ii) select a DCO for clearing.

# Centralized Clearing

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- **Commission's approval.** A DCO shall submit to the Commission for prior approval of any category or type of swaps for clearing.
- **Commission's own determination.** The Commission shall also identify swaps which are not cleared, but which the Commission deems should be accepted for clearing.



# Treatment of Uncleared Swaps

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- **Uncleared swaps.** Counterparties to a swap that is not cleared by any DCO shall report the swap either to a registered swap data repository, or if no repository accepts such swaps, then to the appropriate Commission.
- **Grandfather provisions.** Swaps entered into before the enactment of the Dodd-Frank Act would not be required to be cleared, but would need to be reported to a registered swap data repository or the appropriate Commission.

# Registration of Derivatives Clearing Organizations

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- **Registration**. Generally, an entity must register with the CFTC if it performs the function of a DCO.
- **Exemption**. The CFTC or the SEC, as appropriate, may exempt a DCO from registration if such organization is subject to comparable supervision by the SEC, or the CFTC, as appropriate, or the appropriate foreign government authorities.

# Core Principles of Conduct – Derivatives Clearing Organizations

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- **Conduct guidelines.** A DCO shall comply with core principles of conduct governing areas:
  - Maintenance of financial resources
  - Establishment of product and participant eligibility
  - Risk management
  - Establishment of timely and effective settlement procedures
  - Establishment of rules and procedures governing default
  - Monitoring and enforcement of rules
  - Reduction of operational risk
  - Reporting and record-keeping
  - Information-sharing with regulators
  - Minimizing conflicts of interest

# Centralized Trading

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- **Execution requirement.** All swaps that are subject to mandatory clearing must be traded on a board of trade designated as a contract market (“DCM”) or through a swap execution facility (“SEF”), unless no such entity accepts the swap for execution. The CFTC and the SEC will also determine the swaps that need to be traded on a DCM or through an SEF.
- **Definition.** An SEF is a facility, trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility, system or platform, including any trading facility that:
  - facilitates the execution of swaps between persons; and
  - is not a designated contract market.
- An end user that is eligible for exemption from clearing may elect not to execute a swap on an SEF.

# Centralized Trading

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- **Registration**. Any facility for the trading or processing of swaps must be registered with the relevant Commission as a DCM or SEF, or exempted from registration.
- **Conduct guidelines**. An SEF shall operate pursuant to certain core principles of conduct governing:
  - ensuring compliance rules on the trading or processing of swaps
  - monitoring swap trades to prevent market manipulation and fraud
  - enforcing rules that allow the facility to obtain swaps information
  - establishing position limits
  - adopting rules authorizing the facility to curtail or suspend trading
  - publishing and recording information
  - establishing systemic safeguards
  - designating a chief compliance officer
  - producing annual reports of its compliance

# Swap Data Repositories

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- A swap data repository (“SDR”) must be registered with the appropriate Commission. An SDR is subject to inspection and examination by the appropriate Commission.
- **Definition.** An SDR is any person that collects and maintains information or records with respect to transactions or positions in swaps entered into by third parties for purposes of centralized recordkeeping.
- **Duties.** An SDR shall generally
  - accept and confirm the accuracy of data relating to swaps,
  - provide data access to the appropriate Commission and other relevant regulators and for complying with real-time public reporting requirements, and
  - maintain appropriate systems to monitor and analyze swaps data and to ensure proper disaster recovery.

# Real-Time Public Reporting

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- **Scope of reporting.** Swap-related transaction and pricing data shall be made publicly available on a real-time basis to enhance price discovery for swaps that:
  - are subject to mandatory clearing, including those that are required to be cleared but not cleared or are exempted from clearing, or
  - are not subject to mandatory clearing, but are cleared at a DCO.
- **Aggregate data reporting for uncleared swaps.** Real-time public reporting is required for uncleared swaps reported to an SDR in a manner that does not disclose the business transactions and market positions of any party.
- **Reporting guidelines.** The real-time public reporting of swap transactions must:
  - ensure that the information provided does not identify any participant,
  - specify the criteria for determining what constitutes a block trade,
  - specify the appropriate time delay for reporting block trades to the public, and
  - consider whether public disclosure will materially reduce market liquidity.
- **Commission reports.** The Commission is required to issue semi-annual and annual public reports utilizing the information gained from SDRs and DCOs.

# Reporting and Recordkeeping for Uncleared Swaps

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- All uncleared swaps are required to be reported to an SDR.
- For uncleared swaps for which data had not been accepted by an SDR, the parties to such swaps must provide reports to the requesting Commission regarding such swaps that are at least as comprehensive as reports required to be provided to an SDR, and maintain books and reports pertaining to such swaps that are subject to inspection by the relevant regulatory authorities.
- Swaps entered into before the enactment of the Dodd-Frank Act must be reported to an SDR or the appropriate Commission.



# Segregation of Margin for Cleared Swaps

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- **Registration**. Any person who accepts any money, securities or property (or extends any credit in lieu of money, securities or property) from, for, or on behalf of a swaps customer to margin, guarantee or secure a swap cleared by or through a DCO must register as a futures commission merchant with the CFTC or as a broker-dealer or security-based swap dealer with the SEC.
- **Segregation of margin**. Such person must segregate margin and collateral received from its customers from its own funds and cannot use such margin or collateral to margin, secure or guarantee any trade or contract of any other person. The appropriate Commission may prescribe rules to allow the commingling of margin or collateral received from all swaps customers.
- **Investment of funds**. Money received as margin or collateral from a swaps customer may be invested in obligations of the U.S., in general obligations of any state or any political subdivision of any state, and in obligations fully guaranteed as to principal and interest by the U.S., or in any other instrument that the appropriate Commission may prescribe.

# Segregation of Margin for Uncleared Swaps

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- **Notification of counterparty.** A swap dealer and major swap participant must notify its counterparty at the beginning of any uncleared swap that the counterparty has the right to require segregation of margin or collateral.
- **Segregation of funds.** At the request of the counterparty, the swap dealer or major swap participant shall:
  - segregate the margin or collateral for the benefit of the counterparty, and
  - maintain initial (but not variation) margin or collateral in a segregated account separate from the assets of the swap dealer or major swap participant and held at an independent third party custodian in an account designated for the counterparty.

# Position Limits

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- The CFTC shall establish:
  - specific position limits for futures and options on futures on certain physical commodities;
  - specific position limits for swaps that are economically equivalent to futures and options on futures on certain physical commodities; and
  - aggregate position limits for (i) contracts traded on DCMs; (ii) contracts that settle against any price of one or more contracts settled on a registered market or foreign board of trade; or (iii) swaps that perform or affect a significant price discovery function.
- Specific position limits will not apply with respect to bona fide hedge transactions.
- The SEC may establish similar limits on the size of positions in any security-based swap and related securities and loans that may be held by any person, and may direct a self-regulating organization to adopt similar rules.
- DCMs and SEFs are required to enforce such position limits.

# Swap Dealers and Major Swap Participants

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- **Registration.** A swap dealer and major swap participant must register with the appropriate Commission.
- **Reporting and record-keeping.** Each registered swap dealer and major swap participant is required to report to the appropriate Commission regarding its transactions, positions and financial condition, and to keep books and records that are open to examination by the appropriate Commission.

# Swap Dealers and Major Swap Participants

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- **Capital and Margin Requirements**

- Both the CFTC and the SEC are required to impose capital requirements and, in the case of uncleared swaps, margin requirements for swap dealers and major swap participants for which there is not a prudential regulator. For banks that are swap dealers, the appropriate federal banking agency is required to impose similar requirements.
- Capital and margin requirements for uncleared swaps must be appropriate in light of the increased risk they pose to the financial system. End users may be exempted from mandatory margin requirements.
- Regulators have discretion to allow for use of non-cash collateral.

- **Business Conduct Requirements**

- Swap dealers and major swap participants are subject to business conduct standards, including compliance with position limits, prevention of fraud or other abusive practices, and supervision.

# Special Duties to Special Entities

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- **Duties.** With respect to a “special entity,” :
  - a swap dealer that serves as an advisor must (i) comply with anti-fraud provisions with respect to such entity, (ii) have a duty to act in the best interests of such entity and (iii) make reasonable efforts to obtain the necessary information to make a determination that any swap recommended by such person is in the best interests of such entity.
  - a swap dealer or major swap participant who enters into or offers to enter into a swap with a special entity must (i) ascertain that such entity has an independent representative representing such entity’s interests and (ii) disclose to such entity the capacity in which the swap dealer or major swap participant is acting. (Such independent third party must, among other things, have sufficient knowledge to evaluate the swap transaction and risks associated with it, undertake to act in the best interests of such entity, and provide written representations to such entity as to fair pricing and the appropriateness of the swap transaction.
- **Definition.** A special entity includes any federal agency or other government entity (including at the state or municipal levels or political subdivisions thereof), and any employee benefits or government plans subject to ERISA.
- **Exceptions.** Duties toward special entities shall not apply for transactions
  - initiated by a special entity on a DCM or SEF and
  - where the counterparty’s identity is not known.

# Prohibition Against Federal Government Bailouts of Swaps Entities (Push-Out Requirement)

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- **Anti-bailout provision.** The federal government is prohibited from providing federal assistance to any swap entity with respect to any swap, security-based swap, or other activity related to such swaps.
- **Definitions.**
  - **Federal assistance** means the use of:
    - advances from any FRB credit facility,
    - discount window not related to FRB's emergency lending authority;
    - FDIC insurance or guarantees used as a loan to any swap entity;
    - purchase of stock, interest or asset of any swap entity;
    - guarantee of any loans or debt of any swap entity;
    - entering into any asset-based arrangement with any swap entity.
  - A **swap entity** includes any swap dealer or major swap participant, but does not include insured depository institutions under certain circumstances. There will be no limitation on swap activities if a swap entity is eligible for, but chooses not to receive, federal assistance.

To receive federal assistance, an insured depository institution must limit its swaps-related activity to hedging and risk-mitigation and to certain permissible swaps.

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# Investment Advisers



# Main Purposes of Title IV

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- To cause investment advisers that manage “private funds” to register with the SEC under the Investment Advisers Act of 1940 (the “Advisers Act”), with certain exceptions.
- To provide for recordkeeping and reporting to the SEC (and the Council) concerning private funds principally related to systemic risk but also for investor protection.
- Title IV also effects a number of other advisers currently operating under exemptions from registration under the Advisers Act.

# Removal of Fewer than 15 Clients Exemption

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- Title IV removes the exemption from registration under Advisers Act for advisers with fewer than 15 clients and who do not hold themselves out as an investment adviser to the U.S. public.
- This exemption is relied upon by:
  - Private fund advisers that manage fewer than 15 funds
  - Foreign institutions with fewer than 15 U.S. clients

# New Exemptions

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- *VC Advisers* – Advisers solely to “venture capital funds” (to be defined by SEC). These advisers will be subject to recordkeeping and reporting requirements.
- *Small Advisers to Private Funds* – Advisers who (i) solely advise private funds and (ii) have less than \$150 million in AUM. Also subject to recordkeeping and reporting requirements.
- *Family Offices* – “Family offices” (to be defined by SEC) are excluded from the definition of investment adviser. Family offices typically provide investment management and other services to members of a single family (as well as certain employees of the family office).

## New Exemptions (cont'd)

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- Foreign Private Adviser Exemption:
  - No place of business in the U.S.;
  - Fewer than 15 U.S. clients and U.S. investors in private funds that it advises; and
  - AUM attributable to U.S. clients and U.S. investors in private funds that it advises of less than \$25 million (or such higher amount as the SEC determines).
- Not available if adviser (i) holds itself out generally to the U.S. public as an investment adviser, (ii) advises a U.S. registered investment company or (iii) is a BDC.

# Private Fund Recordkeeping & Reporting

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- The SEC (with input from the Council) will determine the private fund recordkeeping and reporting that is necessary and appropriate for the assessment of systemic risk and for the protection of investors.
- The private fund records and reports will include information on
  - AUM and leverage
  - counterparty credit risk exposure
  - trading and investment positions
  - valuation policies and practices
  - the types of assets held
  - side arrangements or side letters
  - trading practices

# Substantive Requirements of the Advisers Act

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- Adopt, implement and enforce written policies and procedures reasonably designed to prevent the violation of the Advisers Act.
- Designate a chief compliance officer to administer its compliance policies and procedures.
- Extensive books & records requirements (including e-mail).
- SEC examination.
- Requirements regarding custody of client assets.
- Restrictions on performance fees and other terms in the advisory contracts (including assignment).
- Restrictions on advertising particularly related to past performance.
- Adopt and implement proxy voting policies.
- New “Pay to Play” restrictions on placement agents and political contributions.

# New Duties for Brokers, Dealers and Investment Advisers?

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- SEC study to evaluate the legal or regulatory gaps in the protection of retail customers relating to the standards of care for brokers, dealers and investment advisers that should be addressed by rule or statute
  - SEC may, but is not required to, commence rulemaking
- SEC provided with the authority to establish a standard of conduct applicable to brokers and dealers
  - to act in the best interest of the customer without regard to the financial or other interest of the broker or dealer
  - standard of conduct is to be no less stringent than that applicable to investment advisers

# Considerations for SEC Study of Broker-Dealer Duties

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- The SEC study must consider:
  - the effectiveness of existing legal or regulatory standards of care, including whether there are legal or regulatory gaps, shortcomings or overlaps
  - the regulatory, examination and enforcement resources devoted to, and activities of, the SEC and FINRA
  - whether retail investors understand the different standards of care applicable to brokers, dealers and investment advisers, and persons associated with them
  - whether the existence of different standards of care is a source of confusion for retail customers
  - the resources devoted to enforcing existing standards of care
  - the potential impact on retail customers of imposing on brokers-dealers the standard of care applied under the Advisers Act
  - the potential impact of eliminating the broker-dealer exclusion from the definition of “investment adviser” in the Advisers Act
  - various cost/benefit issues



# Limitations on SEC's Rulemaking Authority

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- The receipt of compensation based on fees, commissions or other standard of compensation may not, in and of itself, be considered a violation of the standard the SEC establishes.
- A broker-dealer or registered representative may not have a continuing duty of care or loyalty to the customer after providing personalized investment advice.
- The meaning to the term “customer” may not include an investor in a private fund managed by the adviser, where such private fund has entered into an advisory contract with the adviser.

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# Broker-Dealers

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- The meaning to the term “customer” may not include an investor in a private fund managed by the adviser, where such private fund has entered into an advisory contract with the adviser.

# Oversight of Broker-Dealers

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- A nonbank financial company may be designated (a “Designated Broker-Dealer”) by the Financial Stability Oversight Council (the “Council”) as subject to Federal Reserve Board (“FRB”) supervision
  - Standard is whether the material financial distress of the broker-dealer, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the Designated Broker-Dealer, *could* pose a threat to the financial stability of the U.S.
  - Designation requires two-thirds vote of Council
  - Standard for review of Council’s decision is “arbitrary and capricious”

# Effects of Designation as FRB Supervisee

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- Mandatory requirements for Designated Broker-Dealers
  - FRB registration
  - Additional reporting requirements, examinations and potential enforcement actions
  - Risk-based capital and leverage requirements
  - Liquidity requirements
  - Risk management requirements
  - Resolution plan for insolvency
  - Credit exposure report requirements
  - Concentration limits
  - Stress tests must be performed by broker-dealer and FRB

# Effects of Designation as FRB Supervisee (cont'd)

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- Optional requirements:
  - Contingent capital requirements
  - Enhanced public disclosure
  - Short term debt limits
- If the FRB determines that a Designated Broker-Dealer poses a “grave threat” to U.S. financial stability, the FRB may proscribe certain activities.
- Designated nonbank financial companies supervised by the FRB and their subsidiaries with total consolidated assets of \$50 billion or more and nonbank financial companies supervised by the FRB may be required to submit additional reports to the Council.
- Publicly traded broker-dealers with \$10 billion or more in total consolidated assets that are supervised by the FRB must establish a risk committee within one year after designation as an FRB supervisee.



# Stock Loans

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- Section 10 of the Exchange Act amended to make it unlawful to effect, accept or facilitate a transaction involving the loan or borrowing of securities in contravention of SEC rules.
- Within two years of the enactment of the Dodd-Frank Act, the SEC is required to adopt rules that increase transparency of stock loan transactions to broker-dealers and investors.
- Customers must be notified that they have the right to refuse to have their fully paid securities used in connection with their broker's stock loan business.

# Short Sales

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- The SEC must adopt rules requiring broker-dealers to publicly disclose, no less than monthly, information regarding short sales including, by security, the aggregate amount sold short.
- Manipulative short selling is now a violation of Section 9 of the Exchange Act.
- The SEC is required to adopt rules to ensure that private enforcement remedies for manipulative short selling are available.
- The SEC must conduct another study on short selling to examine in greater detail short sale transaction settlement and to assess the feasibility of a voluntary program for publicly traded companies regarding the marking of transactions in their shares to better indicate if a transaction is related to a short sale.

# Proprietary Trading

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- The Volcker Rule prohibits proprietary trading by a broker-dealer affiliated with a bank or bank holding company.
- Exemptions:
  - Investing in government issued securities
  - Market making
  - Risk mitigating hedging
  - Agency (customer) transactions
  - Certain SBIC investments
  - Very limited transactions related to sponsored hedge funds
  - Foreign trading if the broker-dealer's parent is a non-U.S. entity
  - Other transactions as determined by regulation

## Proprietary Trading (cont'd)

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- The GAO must study of the risks and conflicts posed by proprietary trading activities of insured depository institutions and their affiliates, bank holding companies and financial holding companies and their subsidiaries, and any other entity designated by the U.S. Comptroller General.
- The study shall consider current practices, the advisability of a complete ban, limitations on the scope of permissible proprietary trading, additional capital requirements, enhanced restrictions on transactions between affiliates, enhanced accounting disclosures, enhanced public disclosure and other options.

# Municipal Advisors

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- New category of regulated persons.
- A “Municipal Advisor”
  - provides advice to or on behalf of a municipal entity or to a person obligated to support payments with respect to municipal financial products or with respect to the issuance of municipal securities, including advice regarding structure, timing, terms, and other similar matters; and/or
  - solicits a municipal entity with respect to services to be provided.
- Municipal advisors have a fiduciary duty to their clients.
- Broker-dealers are excluded from definition of Municipal Advisor.

# Protection of Seniors

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- Grant money is available to develop increased regulation, enforcement and education of state officials and the public regarding the designation of a financial professional as a senior specialist if such person does not meet educational requirements or have certificate authorizing use of designation
  - from a regionally accredited academic institution or
  - that meets NASAA or NAIC requirements

# Annuities and Insurance Policies

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- *Equity indexed* annuities or policies are exempt securities under the Securities Act.
- Annuities and insurance and endowment policies the model value of which does not vary according to the performance of a separate account and satisfies standard nonforfeiture laws or similar requirements of the applicable state at the time of issue or, in the absence of applicable standard nonforfeiture laws or requirements, satisfies the NAIC standards, are exempt securities under Section 3(a)(8) of the Securities Act of 1933.

# Foreign Broker-Dealers

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- In determining whether to permit a foreign person or its affiliate to register as a broker-dealer or succeed to the registration of an existing U.S. broker-dealer, or to terminate any such registration, the SEC may consider whether, for a foreign person or its affiliate that presents a risk to the stability of the U.S. financial system stability, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, appropriate regulation to mitigate such risk.
- No standards for any of the foregoing are contained in the Dodd-Frank Act.



# Designated Clearing Firms

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- A clearing firm that is designated by the Council as systemically important (a “Designated Clearing Firm”) will be subject to enhanced prudential standards.
- Standards may include:
  - risk management policies and procedures
  - margin and collateral requirements
  - participant or counterparty default policies and procedures
  - ability to complete timely clearing and settlement of financial transactions
  - capital and financial resource requirements
  - other standards necessary to achieve the objectives and principles of the standards
- Where appropriate, a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to those standards must be established.

# Designated Clearing Firms (cont'd)

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- Designated Clearing Firms must
  - be examined annually (their vendors may be examined as well)
  - obtain permission to change their rules that affect risk management
- The FRB may examine or bring enforcement actions against designated clearing firms.
- Designated Clearing Firms may obtain discount and borrowing privileges from FRB in unusual or exigent circumstances if they cannot borrow from their usual lenders.

# SIPA Amendments

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- Protection for cash assets increased from \$100,000 to \$250,000.
- Penalty for fraud increased from \$50,000 to \$250,000.

# Mandatory Arbitration

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- The SEC may issue rules restricting mandatory arbitration between broker-dealers and their clients.

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Byungkwon “Ben” Lim, a member of the firm’s Corporate Department, leads the firm’s Hedge Funds and Derivatives & Structured Finance Groups.

He is recommended for hedge funds and structured finance by *The Legal 500 US* (2010), where sources note his “great knowledge of fund documentation.”

Mr. Lim is the author of “Credit Derivatives; New Financial Instruments with New Uncertainties”, *Derivatives* (May/June and July/August, 1999); “Are U.S. Tax Rules Consistent for Inbound Portfolio Investments?”, *Journal of International Taxation* (December 1995); “IRS Tools for Analyzing Swaps Need Refinement”, *Journal of International Taxation* (December 1993); and “Protection of Computer Programs under the Computer Program Protection Law of the Republic of Korea”, *Harvard International Law Journal* Vol. 30 No. 1 (1989), among other publications.

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Linda Lerner is Counsel and a member of the firm's Securities and Derivatives Groups. She has extensive experience with regulatory and compliance issues relating to public and private sales of securities, advertising and sales material, market making, electronic trading, broker-dealer formation, operations and reporting requirements, SRO membership applications, ECN and ATS formation and operation, and market structure issues.

Ms. Lerner is a member of Nasdaq's National Review Council and Market Operations Review Committee and served on FINRA's e-Brokerage Committee, and she lectures and writes frequently on broker-dealer regulation. She is a member of the American Bar Association's Task Force on Private Placement Broker-Dealers, for which she drafted regulations that were submitted to the SEC.

Ms. Lerner is the facilitator for the Midtown Regulatory Group, a group of over 400 senior compliance and legal officers from brokerage firms located throughout the U.S. that meets monthly to discuss regulatory issues. She is also a regular speaker on regulatory and compliance issues, most recently participating in the International Law Discovery and Disclosure Group Conference on Tax Havens, Money Laundering and Compliance Risks, "Preventing AML Breaches Through Effective Compliance;" SIFMA-CL Annual Compliance Conference, "Compliance Issues for Small and Regional Firms;" National Society of Compliance Professionals Annual Conference, "ABCs of Electronic Brokerage;" ALI-ABA Conference on FINRA/SEC Compliance and Enforcement, "Broker-Dealer and Investment Adviser Regulation of Hedge Funds;" and International Centre for Dispute Resolution, "Compliance Issues for Small and Regional Firms."

Ms. Lerner has previously served as General Counsel at Domestic Securities, Inc., a registered broker-dealer, where she focused on a wide range of broker-dealer regulatory and compliance issues.

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