

## Comment: 12 regulatory reform predictions for '12

**By Annette L. Nazareth and Gabriel D. Rosenberg**

Next year is shaping up to be another significant year for US regulatory reform. Here are our predictions of 12 key issues for 2012:

### **1. Oversight of, and challenge to, regulatory reform increases**

Congressional oversight of the regulatory reform process will increase as the 2012 elections approach. We also expect more legal challenges to rulemakings, placing pressure on regulators to conduct more rigorous cost-benefit analyses of their proposals. The confluence of these factors may slow the pace of some of the more controversial and politically sensitive reforms, such as the Volcker rule and the Consumer Financial Protection Bureau.

### **2. G-20 nations' regulatory reform efforts converge - to a point**

Any slowdown in US regulatory reform will decrease the country's lead in global regulatory reform. Other G-20 nations, generally up to a year behind the US pace, will begin to make their proposals more concrete and in line with those in the US. However, on key and controversial provisions—such as the Volcker rule and mandatory exchange-trading of derivatives—others in the G-20 may chart their own course. The G-20 may also have to contend with outlier jurisdictions that seek to attract financial institutions through less onerous regulations.

### **3. First systemically important financial institutions are identified**

The Dodd-Frank Act requires the new Financial Stability Oversight Council (FSOC) to identify and, through the Federal Reserve, to impose heightened prudential regulations on systemically important financial institutions (SIFIs). In October, the FSOC proposed rules for making this

designation. These rules are likely to be finalized and the first SIFIs identified in 2012.

### **4. Regulators adopt enhanced capital rules and prudential standards**

US banking regulators will take the next step in capital regulation by adopting rules to implement Basel III. This will include a surcharge for globally systemically important financial institutions, known as G-SIFIs, as part of a larger attempt to rein in “too big to fail,” as well as higher capital requirements generally and liquidity requirements.

### **5. Public discourse around the Volcker rule strengthens, pressuring regulators to repropose**

In October, regulators released a complex and controversial 298-page proposal to implement the statutory “Volcker rule” restrictions on proprietary trading and relationships with hedge funds and private equity funds. While the statutory Volcker rule is scheduled to come into effect in July, the strong public response to the rule's complexity and burden will pressure regulators to go back to the drawing board and repropose.

### **6. The SEC and CFTC finalize derivatives rules and set an effectiveness timeline**

The Dodd-Frank Act imposes a comprehensive new regulatory regime over activities in derivatives known as swaps and security-based swaps. While 93 of the 95 related rulemaking requirements were due in 2011, only 22 were met. The SEC and CFTC will complete the vast majority of these rules in 2012 and in the process, set a schedule for when and how market participants will comply.

### **7. Demand for compliance, operational and technology professionals skyrockets**

As derivatives rules are finalized and the clock begins to tick for implementation, major financial institutions will rush to develop

the pervasive compliance, operational and technological systems the rules mandate. Skilled professionals in this area, already working on implementing other regulation, will be in high demand.

### **8. Banks decide how to restructure businesses - possibly moving them offshore**

As Dodd-Frank rules are finalized, banks will need to make key strategic decisions about how to restructure their businesses. In the derivatives context, we expect that final rules on the treatment of offshore derivatives businesses, swaps between affiliates and the definition of a “swap dealer” will give banks the information necessary to choose whether to keep derivatives businesses at home or move them offshore.

### **9. Pressure mounts to repeal the swap pushout rule**

The controversial swap pushout rule, championed by former Senator Blanche Lincoln, prohibits insured banks from engaging in a number of swap transactions, forcing them to move the activity to affiliates. Efforts have already begun to repeal the provision; the House Financial Services Subcommittee on Capital Markets approved a proposed repeal in November. Republicans will strengthen these efforts in 2012 leading up to the elections.

### **10. The Consumer Financial Protection Bureau remains directorless**

The establishment of a Consumer Financial Protection Bureau remains among the most controversial provisions of US regulatory reform, with numerous key Republicans calling for its repeal. The struggle between its proponents and opponents has manifested itself in the rejection of two candidates to be its head - the Bureau's ideological godmother (Harvard Law School professor and now Massachusetts Senate candidate Elizabeth

Warren) and the Administration's nominee (former US Representative and Ohio Attorney General Richard Cordray). We expect the standoff to continue pending the results of the 2012 elections, and the CFPB to remain directorless (and with limited powers) in 2012.

### **11. The SEC pushes for a uniform fiduciary standard for broker-dealers and investment advisors**

In January, the SEC released a Dodd-Frank study on investment advisors and broker-dealers, suggesting a “uniform fiduciary standard” that would govern their relationships with retail investors when providing personalized investment advice about securities. We expect the SEC to propose this “uniform fiduciary standard” in the new year consistent with its investor protection focus, despite opposition from independent insurance agents and brokers.

### **12. Regulators focus on data collection to regulate markets**

Next year may well be a watershed year for financial data collection. The SEC will adopt a “consolidated audit trail,” creating the tools necessary to monitor activity across securities and security-based swap markets, including high-frequency trading. The CFTC will implement swap data collection rules. The Office of Financial Research (OFR), largely under the radar to this point, will come into public consciousness as the new center for US financial data collection. Its arrival will be heralded by regulators and academics, but not by the financial institutions that will face the monumental task of collecting data and providing it to the OFR.

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