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Dodd-Frank Rulemaking Progress Report

Progress as of May 1, 2011

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About the Progress Report

- This Davis Polk Dodd-Frank Rulemaking Progress Report is the second in a series of reports that use empirical data to help market participants and policymakers assess the progress of the rulemaking work that has been done under the Dodd-Frank Act. Previous reports can be found at http://www.davispolk.com/dodd-frank-rulemaking-progress-report/.
- This version of the Progress Report only includes rulemakings explicitly required by the Dodd-Frank Act. In addition, many more discretionary rulemakings will be needed to implement Dodd-Frank's mandates. Regulators have started to adopt rules that are discretionary under Dodd-Frank.
- The Progress Report was developed using information from Davis Polk's subscription-based Regulatory Tracker™ product. For more information on the Regulatory Tracker, please contact tracker@davispolk.com.

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In Brief: April 2011

- **April Deadlines: All Missed. Backlog Increases.** April saw the 9-month anniversary of Dodd-Frank and, with that, the deadlines for all 26 rulemaking requirements in the second quarter of 2011. All were missed. The backlog of missed rulemaking requirements now stands at 30.
- **Enormous Demands on Regulators.** It has been clear since the passage of Dodd-Frank that the demands on the regulators are enormous and unprecedented. Pages 12 and 13 of this Progress Report quantify this burden by showing the number of proposed rules, interim final rules and concept releases the CFTC and SEC have released for public comment each day since January 1, 2009. While this measure admittedly does not distinguish between more and less important proposals, the increase over pre-Dodd-Frank work is clear.
- **Dramatic Increase in CFTC Open Comment Periods.** The number of open comment periods for CFTC rules, found on page 12, is particularly striking. From the beginning of 2009 until the passage of Dodd-Frank, the CFTC never had more than 4 rule proposals or concept releases out for public comment on any given day. In late December 2010, the CFTC had 31 rule proposals or concept releases out for public comment. Many of these comment periods have since closed, and CFTC staffers are undoubtedly busy reading through the resulting comments before finalizing rules. More missed deadlines are sure to result. As discussed on the following pages, we expect to see similar patterns for the SEC and banking regulators as the deadlines for their rulemakings approach.

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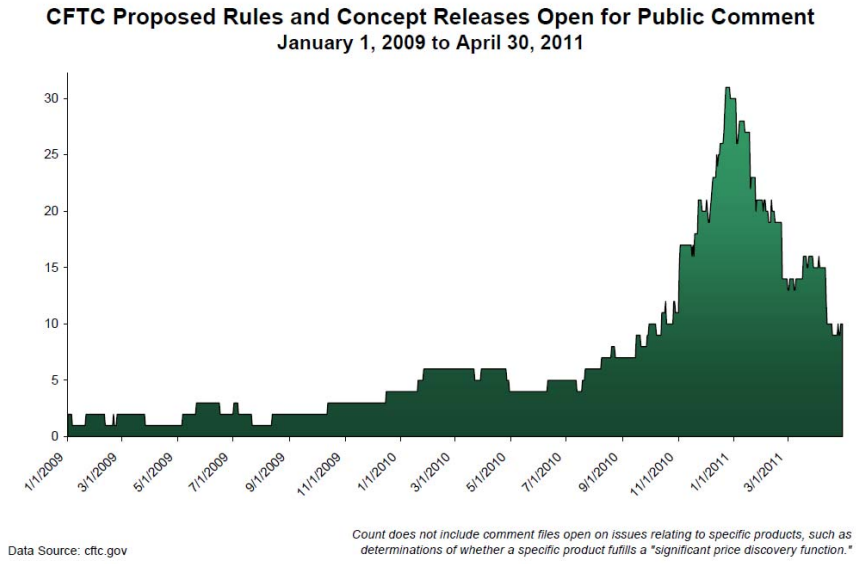
A New Pattern – "Comment Mountains"

- **Comment Mountains.** Our data analysis has indicated a pattern that we believe represents a Dodd-Frank trend – "**comment mountains**." Comment mountains occur when a regulator, due to Dodd-Frank's timing requirements, must propose a number of rules at the same time. The slope up the mountain is a time of intense regulatory and stakeholder focus. The descent down the mountain requires regulators to read a large number of comments in a short amount of time. If, as we believe will continue to be the case, the descent down the mountain coincides with final rulemaking deadlines, missed deadlines will result.

- **The First Mountain – CFTC Swap Rules.** The CFTC proposed a number of rules in the late fall of 2010 and the early winter. During the winter, many stakeholders commented on these releases. Now, as this wave of comment periods close and we "descend the mountain," CFTC staffers must review these comments and summarize and report on them to commissioners, who must consider them while the deadlines for finalizing rules approach. Without a doubt, the large number of comment letters to be read and the many meetings with stakeholders being held by regulators will lead to delays in final rules. However, a plateau is about to arrive for the CFTC – they have proposed to reopen Title VII comments for up to 30 days.

- **More Mountains to Come.** The next comment mountain is likely to consist of SEC rules required under Title VII on many of the same topics as those the CFTC has already proposed. Following that, a mountain of rules by the banking regulators will likely be formed in the fourth quarter of this year, including proposals related to the Volcker Rule and Basel II capital. The vast amount of work required by Treasury to create the Consumer Financial Protection Bureau will create its own comment mountain, most likely in 2012.



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The Topography of a Comment Mountain

A comment mountain starts with a "valley" period during which the regulator is busy drafting proposed rules.

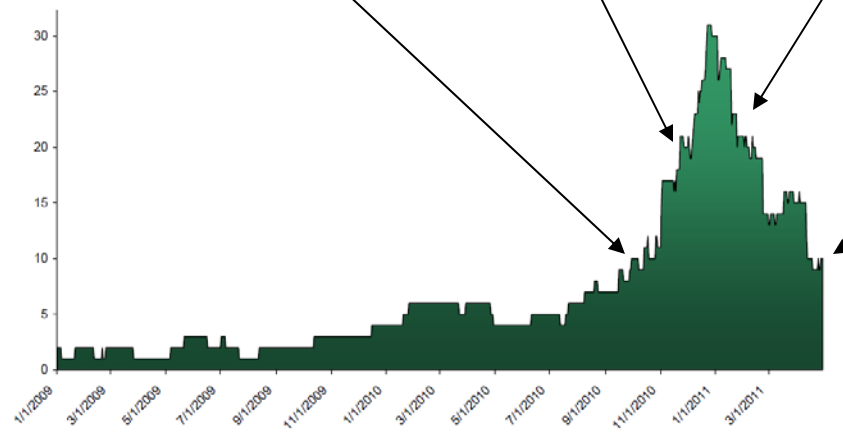
The ascent up, and summit of, the mountain is a time of intense analysis and commenting work by stakeholders.

As comment periods close, stakeholders submit their comments to the regulator.

We expect comment mountains to be followed by a "valley" of time during which the regulatory staff reads, summarizes and briefs commissioners on received comments and finalizes rules.

CFTC Proposed Rules and Concept Releases Open for Public Comment

January 1, 2009 to April 30, 2011



Data Source: cftc.gov

Count does not include comment files open on issues relating to specific products, such as determinations of whether a specific product fulfills a "significant price discovery function."

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Progress Report Charts and Key Lessons

- **Statutory Rulemaking Chart (page 7).** This chart graphically represents the due date for all final rules required for each agency under Dodd-Frank. It is based on the statute and will not change absent congressional action. A large percentage of required rulemakings are due in the third quarter of 2011 (27.5%), most of which relate to OTC derivatives regulation.
- **Statutory Rulemaking Matrix (page 8).** This matrix is a deeper dive into statutory deadlines broken up by individual agency.
- **Progress in April 2011 (page 9).** These two pie charts show the overall change in Dodd-Frank rulemaking status from April 1 to May 1, 2011. No new rules were finalized; 26 rulemaking deadlines were missed.
- **Rulemaking Progress Pie Charts (page 10).** These four pie charts show rulemaking progress by type of agency. Very few rules (only 5.4%) have been finalized, with no rules required by the statute finalized in April. Many agencies will have no choice but to miss deadlines in an increasing number of instances.

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Progress Report Charts and Key Lessons

- **Rulemaking Progress by Due Date Chart (page 11).** This chart graphically represents rulemaking progress based on when required rules are due. This chart shows the trend of missed deadlines – all 26 statutory deadlines for the second quarter of 2011 were in April, and all 26 were missed.
- **CFTC Comment Periods Chart (page 12).** This chart graphically represents the number of public comment periods the CFTC has had open on proposed rules, interim final rules and concept releases each day from January 1, 2009 to April 30, 2011. While this measure admittedly does not distinguish between more and less important proposals, the increase in work over pre-Dodd-Frank months is undeniable.
- **SEC Comment Periods Chart (page 13).** This chart graphically represents the number of comment periods the SEC has had open on proposed rules, interim final rules and concept releases each day from January 1, 2009 to April 30, 2011. We expect to see a significant increase in the number of SEC rules open for public comment – a "comment mountain" – in the near future.

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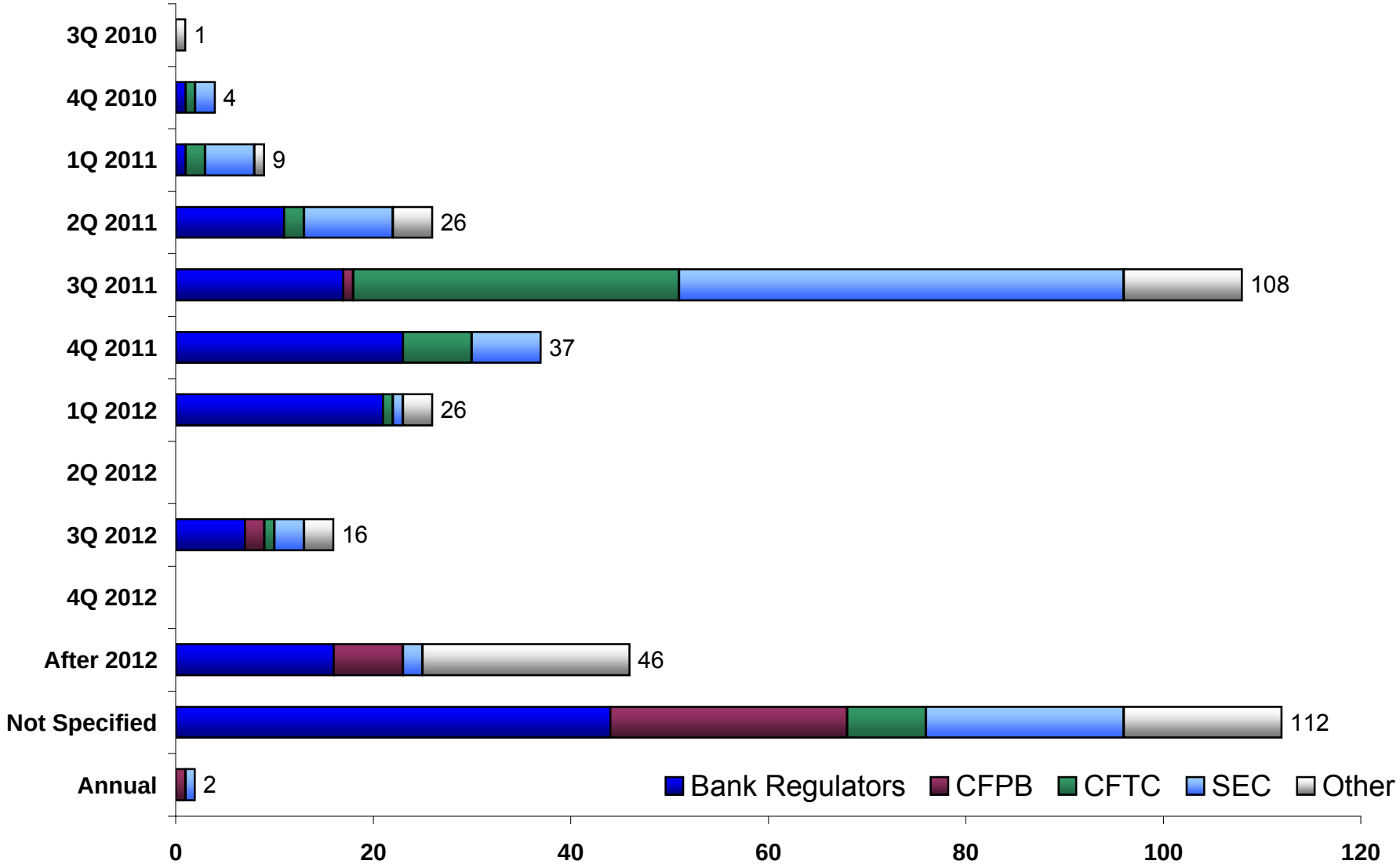
Statutory Deadlines for Required Rulemakings



Rulemaking counts are based on estimates and require judgment. Differences in total rulemakings between months may reflect revisions to these estimates.

Number of Rulemaking Requirements
(Joint Rules are Counted For Each Applicable Agency)

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Dodd-Frank Statutory Deadlines for Final Rulemakings

Agency	3Q 2010	4Q 2010	1Q 2011	2Q 2011	3Q 2011	4Q 2011	1Q 2012	2Q 2012	3Q 2012	4Q 2012	After 2012	No Deadline	Annual	Total
CFPB					1				2		7	24	1	**35**
CFTC	1		2	2	33	7	1	1			8			**55**
DAG											1			**1**
DVA											1			**1**
FCA					4									**4**
FED		1	1	5	7	9	13		3		10	17		**66**
FDIC			3		5	7	5	2		3		21		**46**
FHFA			2		3	1		1		3		2		**12**
FSOC							1		1			1		**3**
FTC					1							2		**3**
HUD				1							10			**11**
MSRB												1		**1**
NCUA				1	4						3	5		**13**
OCC				3	5	7	3		2		3	6		**29**
OFR												1		**1**
OTS							1							**1**
RHS											1			**1**
SEC	2		5	9	45	7	1	3		2		20	1	**95**
TREAS	1								1		2	4		**8**
USDC			1											**1**
Total	**1**	**4**	**9**	**26**	**108**	**37**	**26**	**0**	**16**	**0**	**46**	**112**	**2**	**387**

Note: Where multiple agencies are required to issue a rule jointly, the rulemaking requirement appears in each of their totals, which reflects the current burden on regulatory staff. If joint rules are excluded, the number is closer to 243.

Agency Key:

CFPB	= Consumer Financial Protection Bureau	HUD	= Department of Housing and Urban Development
CFTC	= Commodity Futures Trading Commission	MSRB	= Municipal Securities Rulemaking Board
DAG	= Department of Agriculture	NCUA	= National Credit Union Association
DVA	= Department of Veterans Affairs	OCC	= Office of the Comptroller of the Currency
FCA	= Farm Credit Administration	OFR	= Office of Financial Research
FED	= Federal Reserve	OTS	= Office of Thrift Supervision
FDIC	= Federal Deposit Insurance Corporation	RHS	= Rural Housing Service
FHFA	= Federal Housing Finance Agency	SEC	= Securities and Exchange Commission
FSOC	= Financial Stability Oversight Council	TREAS	= Department of the Treasury
FTC	= Federal Trade Commission	USDC	= U.S. District Court for the District of Columbia

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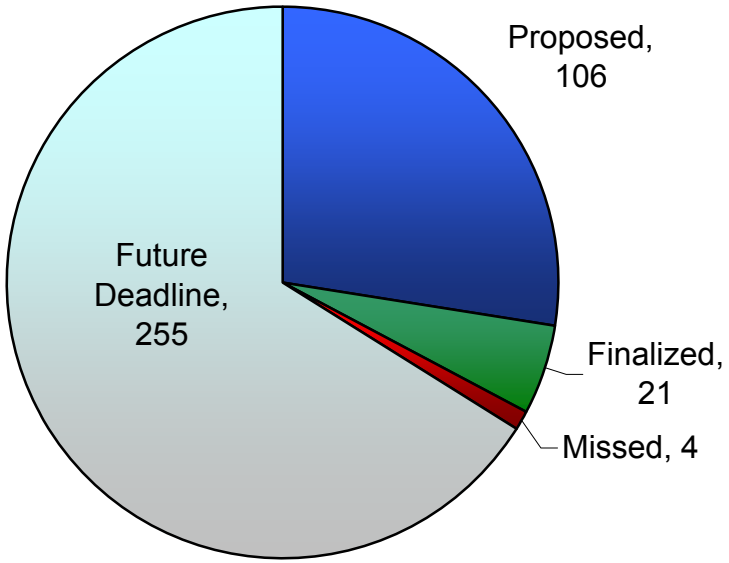
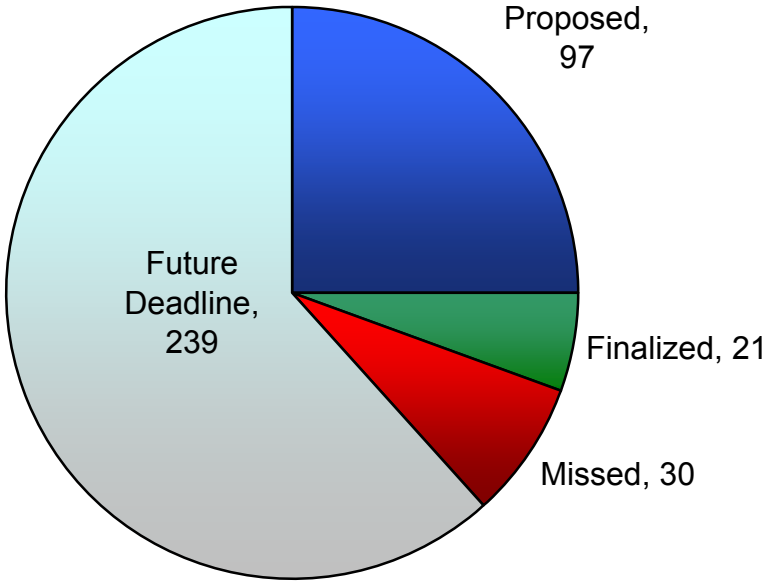
As of May 1, 2011

Dodd-Frank Rulemaking Progress

As of April 1, 2011



As of May 1, 2011



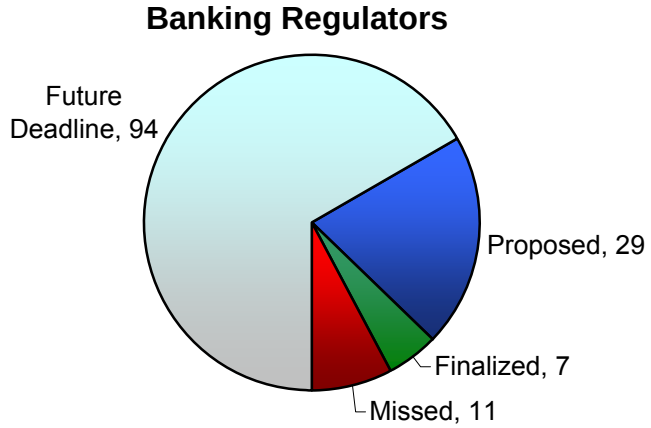
Rulemaking counts are based on estimates and require judgment. Differences in total rulemakings between months may reflect revisions to these estimates.

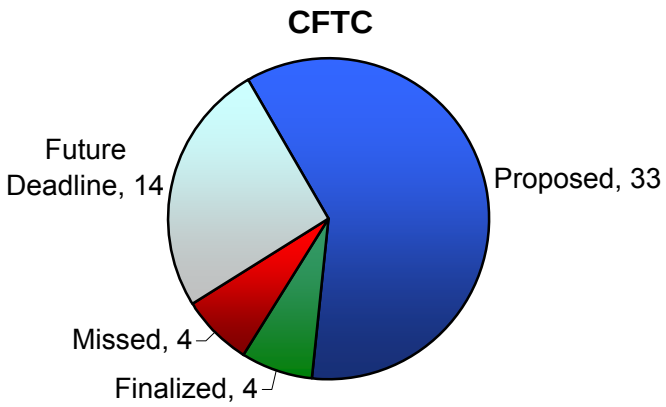
Values Refer to Number of Rulemaking Requirements

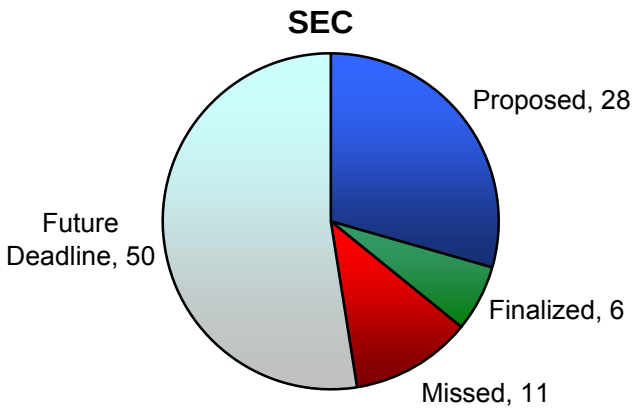
The number of "Proposed" rules does not include rulemaking requirements for which the deadline has been missed

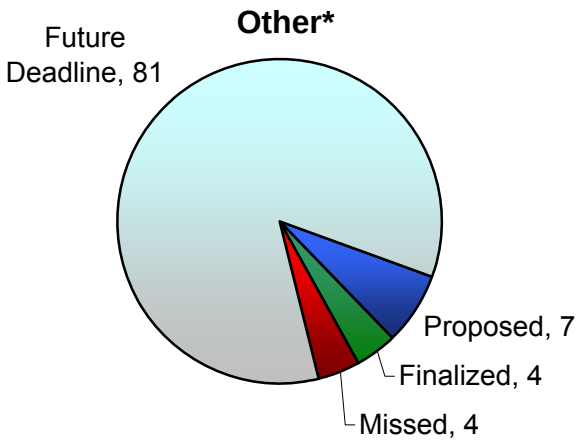
As of May 1, 2011

Dodd-Frank Rulemaking Progress









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Values Refer to Number of Rulemaking Requirements

** Other regulators required to adopt rules under Dodd-Frank are listed on page 8.*

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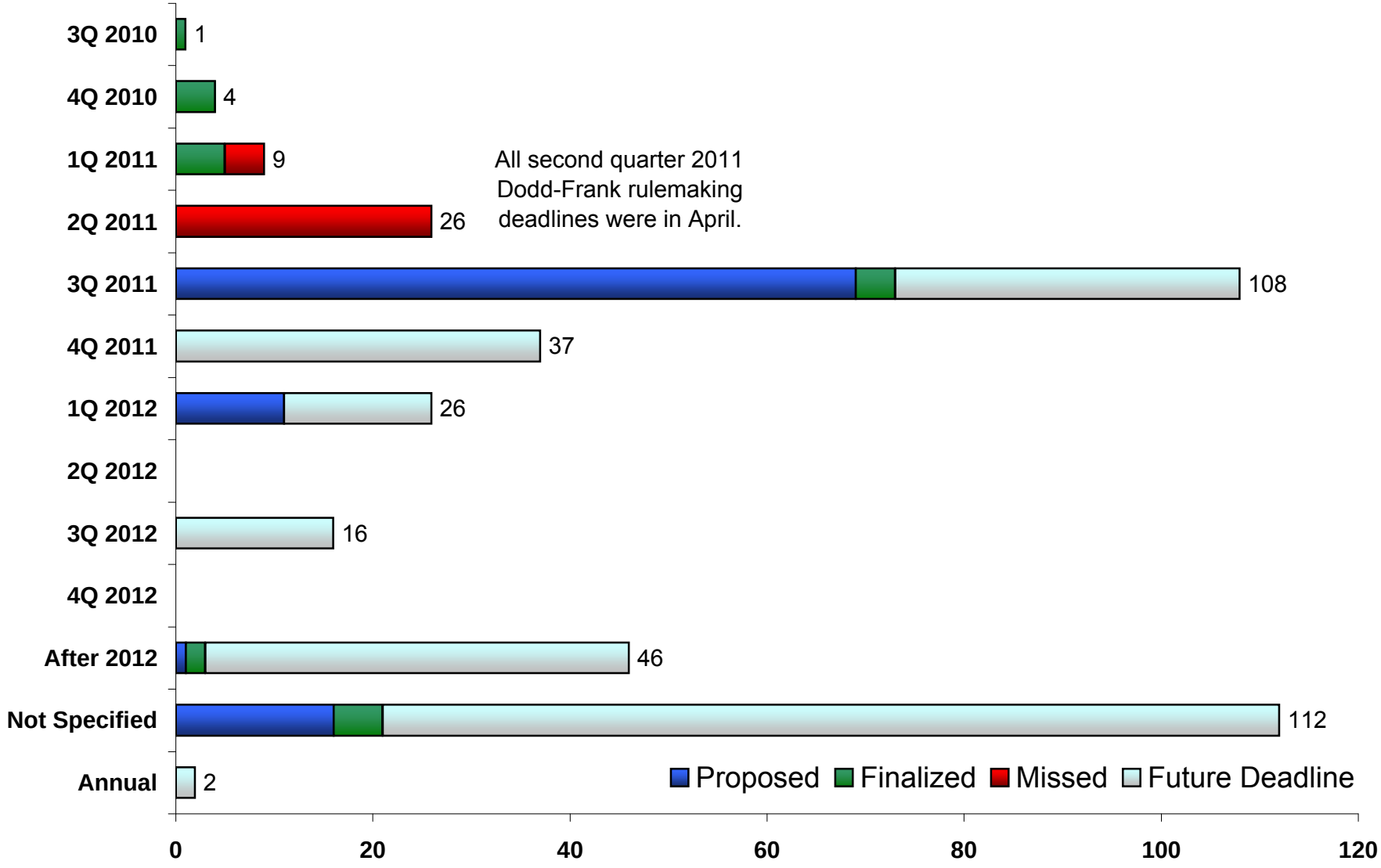
As of May 1, 2011

Rulemaking Progress by Due Date



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CFTC Proposed Rules and Concept Releases Open for Public Comment
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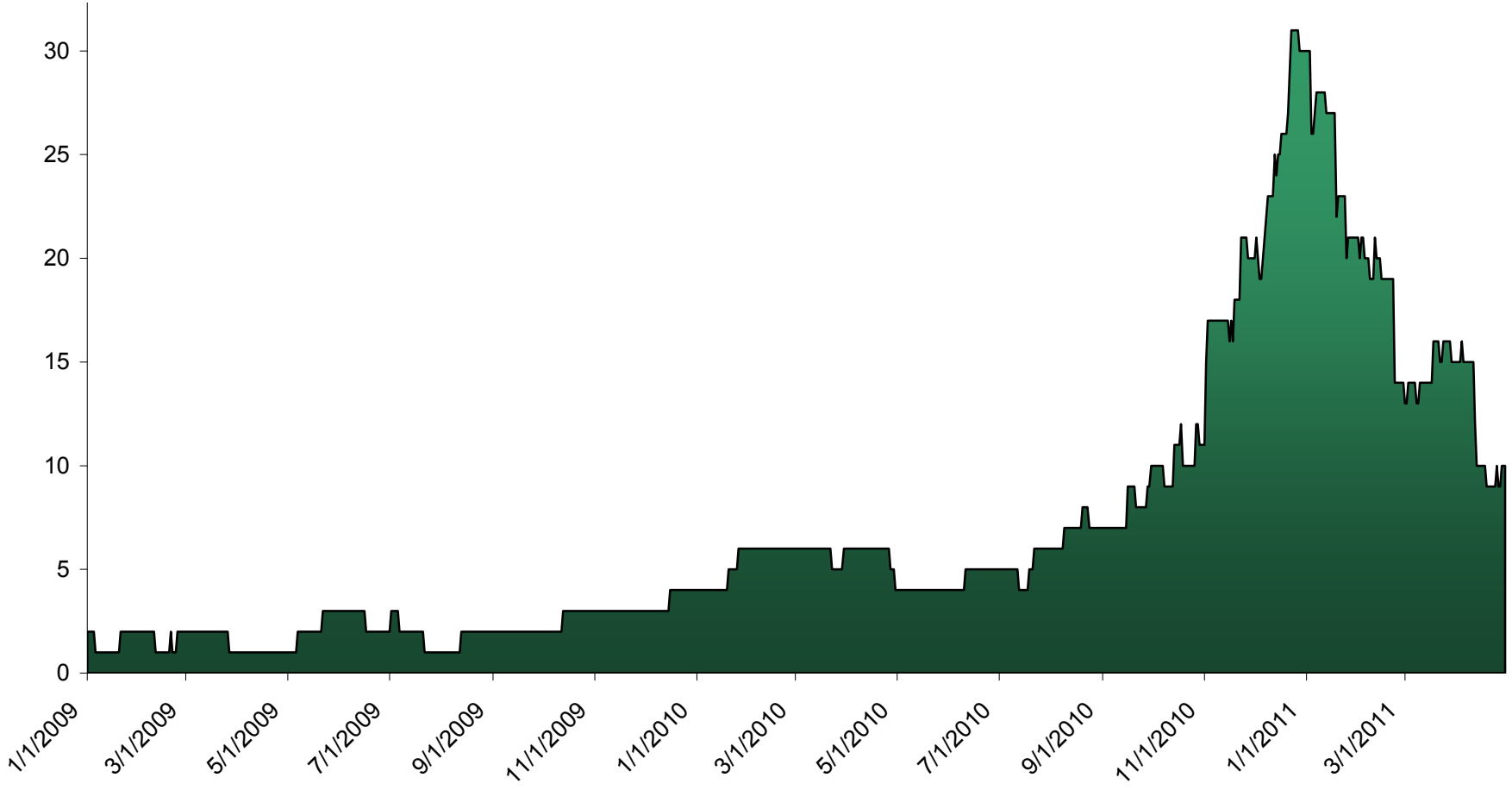

Data Source: cftc.gov

Count does not include comment files open on issues relating to specific products, such as determinations of whether a specific product fufills a "significant price discovery function."

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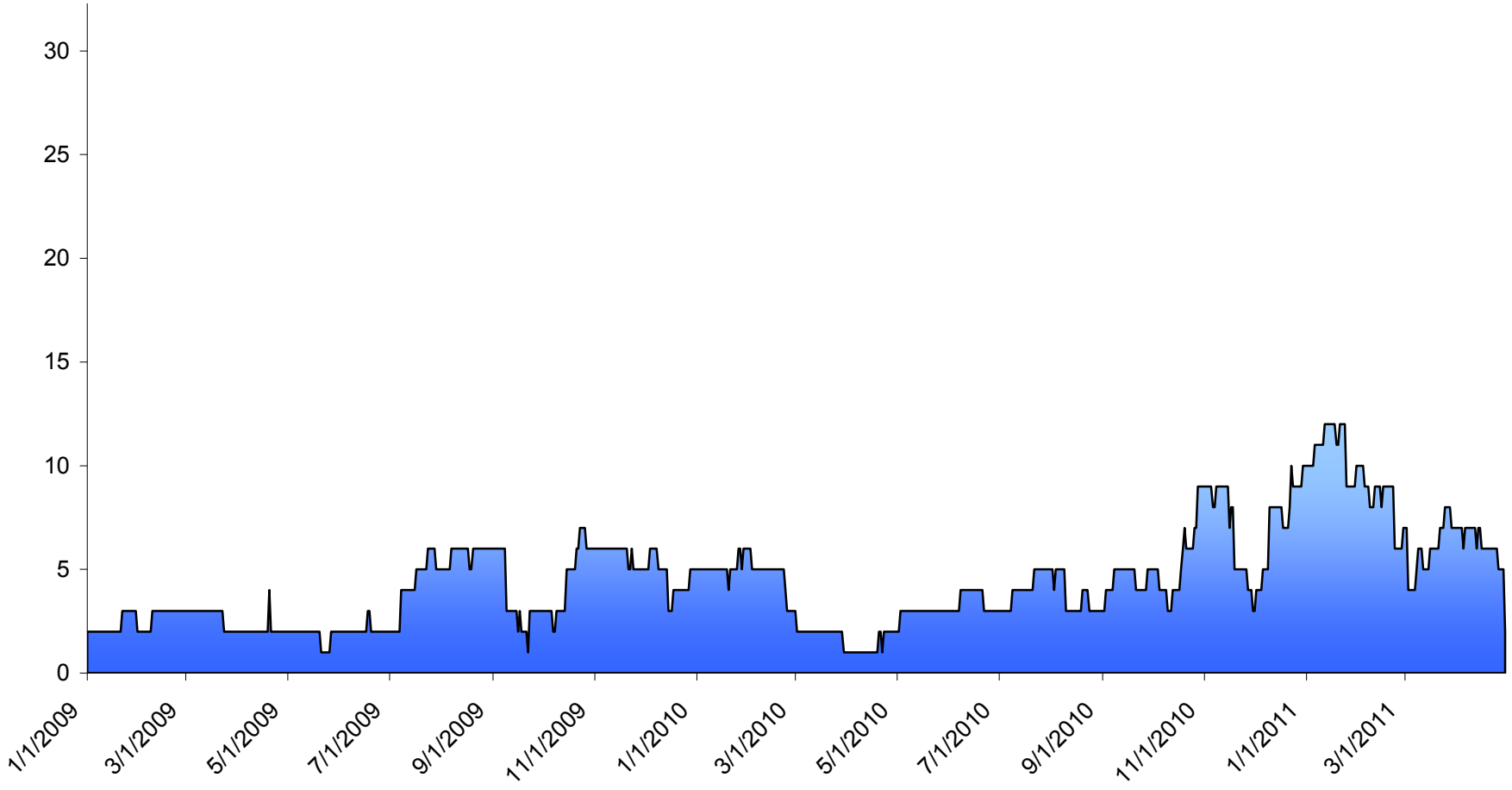
SEC Proposed Rules and Concept Releases Open for Public Comment
January 1, 2009 to April 30, 2011



Data Source: sec.gov

Count does not include comment files open on issues relating to specific products.

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Notes

- Required, proposed, final and missed rulemakings are counted based on Davis Polk's tally of statutory requirements in the Davis Polk Regulatory Tracker™. An agency's rule release may satisfy several statutorily required rulemakings.
- "Missed" deadlines are rulemaking deadlines that were due, but have not been finalized, as of the date of the Progress Report. Rules issued after the statutory deadline appear as final rules, not missed deadlines. Missed deadlines for which there are proposed rules are counted as "Missed," not "Proposed." "Future Deadlines" are those rulemakings for which there is no proposed or final rule, but for which the deadline has not yet arrived.
- Where multiple agencies are required to issue a rule jointly, the rulemaking requirement appears in each of their totals, which we believe most accurately reflects the staff burden on regulatory agencies.
- The term *Banking Regulators* includes the Board of Governors of the Federal Reserve, the FDIC and the OCC.

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Questions?

If you have any questions regarding the matters covered in this Progress Report, please contact any of the lawyers listed below or your regular Davis Polk contact.

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For more information regarding the Davis Polk Regulatory Tracker™, please contact tracker@davispolk.com.

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