



Regulation Digest Weekly



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Feature Story

CFTC Proposes Risk Management Rule for Futures Commission Merchants

The Commodity Futures Trading Commission published a [proposed rule](#) that would “require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs” for futures commission merchants (FCMs). FCMs are already required to submit monthly financial reports to the Commission; the proposed rule would require the reporting of FCM balance sheet leverage ratios on a monthly basis as well. FCMs would also be required to segregate and secure a certain ratio of customer funds to prevent funds from becoming undersecured in the case of an account withdrawal. “Each FCM is required under proposed §1.11 to compute or determine the necessary target of residual interest based upon appropriate due diligence and consideration of various factors relating to the nature of the FCM’s business, including the type and general creditworthiness of the customer base, the amount of the undermargined customer accounts on any given day, and the volatility and liquidity of the markets and products traded by customers.”

The Commission states that the proposal “will afford greater assurances to market participants that: customer segregated funds and secured amounts are protected; customers are provided with appropriate notice of the risks of futures trading and of the FCMs with which they may choose to do business; FCMs are monitoring and managing risks in a robust manner; [and] the capital and liquidity of FCMs are strengthened to safeguard their continued operations.” [Comments](#) are due on January 14th.

In the News

11/7/12

[U.S. Coal Stocks Fall as More Regulation Seen Post Obama Win](#), *Bloomberg*
[Merck May Not Have Shown Women Can Safely Choose Drug](#), *Bloomberg*
[U.S. Swaps Rules Won’t Work Overseas, CFTC Is Warned](#), *Bloomberg*
[For Wall Street, Obama’s reelection means no dismantling of Dodd-Frank law](#), *Washington Post*
[Businesses Ready to Tackle Regulations With Election Over](#), *CFO Journal*
[Exchanges, Trading Firms Face Continuation of Dodd-Frank With Obama Win](#), *Wall Street Journal*
[Congress Calls on Hamburg, Compounding Pharmacist to Testify at Hearing](#), *Regulatory Focus*

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[FDA Further Appeals Loss over Graphic Tobacco Packages Regulation](#), *RegBlog*
[JPMorgan Reaches Agreement to Settle SEC Mortgage Probes](#), *Bloomberg*
[SocGen Said to Lead Swaps Dealers to Standardize Trade Margins](#), *Bloomberg*
[SEC Sues Louisiana Fund Firm for Hiding Mortgage-Linked Loss](#), *Bloomberg*

Opinion

- Obama 2.0 and Regulation: Looking Forward, Mindful of the Past
- How Obama Can Heal His Rift With Business
- Senate confronts a sleazy stealth attack on financial regulation
- Regulations rival tax cliff among small business owners’ biggest concerns
- A Compounding Fracture at the FDA

Marketplace of Ideas

American Action Forum

- The Week in Regulation: November 5-9, *Sam Batkins*
- The Regulators are Coming...for the Tech Industry, *Cameron Smith & Sam Batkins*

American Enterprise Institute

- More diversity, less regulation: What American businesses can teach our politicians, *David Shaywitz*
- A compounding fracture at the FDA, *Scott Gottlieb & Sheldon Bradshaw*

Center for American Progress

- Down But Not Out: Interior Department Scales Back Its Dirty Energy Plan In The American West, *Tom Kenworthy*

Competitive Enterprise Institute

- CEI’s Battered Business Bureau: The Week In Regulation, *Ryan Young*
- Businesses Against Deregulation, *Ryan Young*

Demos

- Finishing the Job: Next Steps on Financial Reform, *Wallace Turbeville*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 11/12/12, *Leland Beck*



The George Washington University Regulatory Studies Center

▪ Now is the Perfect Time to Review
Outdated Diabetic Driver Rules, *Sofie
Miller*

The Mercatus Center

▪ Regulating in the Dark: Examining Bush
Midnight Regulations, *Sherzod Abdulkadirov*
▪ OSHA's Role in Promoting Occupational
Safety and Health, *John Leeth*

Penn Program on Regulation

▪ The Regulatory Week in Review:
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Reason Foundation

▪ How Misguided USDA Regulations Harm
Consumers and Restrict Food Freedom,
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CONTACT US

www.regulatorystudies.gwu.edu

Twitter: @RegStudies

Email: regulatorystudies@gwu.edu

[Risk Council to Meet on Money-Market Mutual Funds](#), *Bloomberg*
[Bill to force cost-benefit analysis of new regulations faces opposition](#), *Washington
Post*

[JPMorgan agrees to settle SEC mortgage probes](#), *Washington Post*
[SEC Staff Considers Proposal on Corporate Political Donations](#), *CFO Journal*

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[Commodity Regulator Says Trader Caused \\$118 Million Loss](#), *Bloomberg*
[CME Group Sues to Block Dodd-Frank Swap Reporting Rules](#), *Bloomberg*
[6,125 Proposed Regulations and Notifications Posted in Last 90 Days--Average 68
per Day](#), *CNS News*

[Retirement plans ready for battle on tax benefits, regulation](#), *Reuters*

[SEC denies request to delay transparency rule](#), *Reuters*

[CME lawsuit opens new front against U.S. finance watchdogs](#), *Reuters*

[Election Leaves Uncertainty for Adviser Regulation](#), *Wall Street Journal*

[Fed's Duke Proposes Separate Community Bank Mortgage Loan Rules](#), *Wall Street
Journal*

[FDA Releases Long-Awaited Final Guidance on Artificial Pancreas Systems](#),
Regulatory Focus

[Fed delays Basel III bank capital buffer rules](#), *MarketWatch*

[Floodgates Open on New Health Regs](#), *NationalJournal*

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[House Prepares to Bring Up Bill Allowing Sale of Banned Asthma Inhalers](#),
Regulatory Focus

[Americans Favor Regulations More Than Romney Bargained On](#), *Bloomberg*

[U.S. clearing house mulls legal action in row over compliance](#), *Reuters*

[Is Obamacare too much work for the Obama administration?](#), *Washington Post*

[FDA Scores Legal Victory Against Whistleblowing Case as Lawsuit Continues](#),
Regulatory Focus

[Consumer Advocacy Group Fires Back at FDA Over Transparency of Advisory
Committees](#), *Regulatory Focus*

[Money-market pioneer Bruce Bent cleared in SEC case](#), *Washington Post*

[FDA uncovers insects, birds and other contamination issues at second](#)

[Massachusetts pharmacy](#), *Washington Post*

[Consumer Bureau Deputy Date Plans Departure From Agency](#), *Bloomberg*

[CME Lawsuit Over CFTC Swap-Database Rule Faulted by DTCC](#), *Bloomberg*

[Commodity Returns for Banks Curbed by Regulation](#), *McKinsey Says*, *Bloomberg*

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[FDA seeks stronger authority on eve of meningitis hearings](#), *Reuters*

[U.S. FTC chief: Kids' Internet privacy rules done by year's end](#), *Reuters*

[Congressional report: FDA staff recommended shutting down meningitis-linked
pharmacy in 2003](#), *Washington Post*

[US regulators urge SEC to propose changes in how money-market funds operate](#),
Washington Post

[U.S. Risk Panel Approves Draft Recommendations on Money Funds](#), *Bloomberg*

[CFTC International Rules Harming U.S. Firms, Swaps Brokers Say](#), *Bloomberg*

[Meningitis Risk at NECC Pharmacy Known by FDA in 2002](#), *Bloomberg*

[Many Coal-Fired Power Plants Poised to Retire, Group Says](#), *Bloomberg*

[Geithner Steps Up Pressure to Make Money Funds Safer](#), *Bloomberg*

[Meningitis Missteps Spur U.S. Regulators to Seek Control](#), *Bloomberg*

[Will New FAA Regulations Lead to Pilot Shortage?](#), *Bloomberg TV*

[Regulators seek changes in how money-market funds operate](#), *Washington Post*

[Small banks battle regulators on capital requirements](#), *Washington Post*

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[Regulations and risk aversion drive post-crisis U.S. money fund liquidity](#), *Reuters*



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Rulemaking

Department of Education

ED Finalizes 2010 Rule Amending the Magnet Schools Assistance Program

The Department of Education published a [final rule](#) finalizing a March 2010 interim final rule that amended the regulations governing the Magnet Schools Assistance Program (MSAP). The MSAP is a competitive [grants program](#) administered by the Department of Education intended to “assist in the desegregation of public schools by supporting the elimination, reduction, and prevention of minority group isolation in elementary and secondary schools with substantial numbers of minority group students.” The amendments to the MSAP finalized in this rule remove “provisions in the regulations that require districts to use binary racial classifications and prohibit the creation of magnet schools that result in minority group enrollments in magnet and feeder schools exceeding the district-wide average of minority group students.” These regulations will be effective beginning December 13th.

Federal Reserve Board

Fed Board Delays Effective Date of Basel III Regulatory Capital Rulemakings

The Federal Reserve Board [announced](#) on Friday that the effective date of the regulatory capital rulemakings, which were proposed in June to implement provisions of the Basel III agreement, would be delayed beyond January 1, 2013. The Fed Board has not yet published the finalized rules, and industry would therefore be unable to meet the new requirements by the previously estimated effective date. “In light of the volume of comments received and the wide range of views expressed during the comment period, the agencies do not expect that any of the proposed rules would become effective on January 1, 2013. As members of the Basel Committee on Banking Supervision, the U.S. agencies take seriously our internationally agreed timing commitments regarding the implementation of Basel III and are working as expeditiously as possible to complete the rulemaking process. As with any rule, the agencies will take operational and other considerations into account when determining appropriate implementation dates and associated transition periods.”

Federal Housing Finance Agency

FHFA Finalizes Rule Establishing Fannie Mae & Freddie Mac Mortgage Goals Through 2014

The Federal Housing Finance Agency published a [final rule](#) establishing the 2012 – 2014 housing goals for Fannie Mae and Freddie Mac (the “Enterprises”), which are operating under the FHFA’s conservatorship. “The final rule establishes new benchmark levels for the single-family housing goals for 2012, 2013 and 2014. The final rule lowers the benchmark levels for these goals from those in effect for 2010 and 2011, but raises the low-income home purchase goal level above the level in the proposed rule, and lowers the low-income refinance goal level from that in the proposed rule. The final rule also establishes new levels for the multifamily housing goals for 2012-2014. Both Enterprises exceeded the multifamily housing goal levels for 2011, and the final rule increases those goal levels above the 2010-2011 levels. However, in light of uncertainty about the multifamily market, and the Enterprises’ role in that market, the goal levels for 2013 are set below the 2012 level, and are further decreased for 2014. The final rule does not make any other changes to the housing goals that have been in effect since 2010.”

Department of Transportation

FMCSA Proposes Rule Establishing Severe Penalties for Egregious Drivers

The Federal Motor Carrier Safety Administration published a [proposed rule](#) that would enable FMCSA to revoke driving abilities from motor carrier operators with egregious safety records. FMCSA sees this action as necessary because of a small number of motor carriers who avoid regulatory compliance by submitting new registration applications under a different name after FMCSA places the motor carrier out of service for driving offenses. “Implementation of this proposed rule would enable the Agency to suspend or revoke the operating authority registration of motor carriers that have shown egregious disregard for safety compliance, permit persons who have shown egregious disregard for safety compliance to exercise controlling influence over their operations or operate multiple entities under common control to conceal noncompliance with safety regulations. Motor carriers that engage in such conduct may face suspension or revocation of their operating authority registration. FMCSA acknowledges that loss of operating authority registration is a significant penalty, but the Agency believes this rule is necessary and appropriate for the small number of motor carriers that engage in the most egregious instances of noncompliance.” [Comments](#) are due on January 14th.



Agencies

Food and Drug Administration

FDA Finalizes Industry Guidance on Premarket Approval of Artificial Pancreas Device Systems

The Food and Drug Administration finalized a [guidance for industry](#) providing recommendations for application for premarket approval of an artificial pancreas device system (APDS). APDS could be used by type 1 diabetics, who are reliant on insulin delivery, as a glucose-stabilizing substitute for the insulin-provision functions of a healthy pancreas. Use of an APDS would eliminate the need for external insulin injections, and would minimize the incidence of both dangerous high and low blood sugar incidents that can be life-threatening for diabetics. The separate devices which would constitute an APDS are currently regulated by FDA as class III device systems. Applications for premarket approval of an APDS must include: instructions for use; a picture of the system and how the components interface; the regulatory status of each of the separate components of the system; description of the technological features of the system; and the control algorithm for insulin dose delivery.

Federal Reserve System

Fed Board Announces Launch of 2013 Stress Testing and Capital Planning Program

The Federal Reserve Board [announced](#) on Friday the launch of its 2013 capital planning and stress testing program, which applies to 30 firms and bank holding companies. “The aim of the annual reviews is to ensure that large, complex banking institutions have robust, forward-looking capital planning processes that account for their unique risks, and to help ensure that institutions have sufficient capital to continue operations throughout times of economic and financial stress. Capital is important to banking organizations, the financial system, and the broad economy because it acts as a cushion to absorb losses and helps to ensure that any such losses are borne by shareholders, not taxpayers. Institutions in the CCAR and CapPR programs will be expected to have credible plans that show they have sufficient capital to continue to lend to households and businesses even under severely adverse conditions, and are well prepared to meet Basel III regulatory capital standards as they are implemented in the United States.

Firms’ capital adequacy will be assessed against a number of quantitative and qualitative criteria, including projected performance under the stress scenarios provided by the Federal Reserve and the institutions’ internal scenarios. Boards of directors of the institutions are required to review and approve capital plans before submitting them to the Federal Reserve.”

Consumer Financial Protection Bureau

CFPB Establishes Privacy Act System of Records

The Consumer Financial Protection Bureau published [notice](#) of the establishment of a Privacy Act System of Records, pending comments from the public. “The new system of records described in this notice “CFPB.022—Market and Consumer Research Records” will maintain records related to the CFPB’s monitoring of risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services; and to the CFPB’s researching, analyzing, and reporting on consumer financial products or services, consumer awareness and understanding of the costs, risks, and benefits of such products or services, and consumer behavior with respect to such products or services. The CFPB will maintain control over the records covered by this notice.” The notice also indicates that the new system of records will be effective December 24, 2012, unless the comments received cause the Bureau to determine otherwise. [Comments](#) are due on December 14th.

Environmental Protection Agency

EPA Announces Plans to Allow Contractor Access to Refiners’ Confidential Business Information

The Environmental Protection Agency published a [notice](#) announcing the plans of EPA’s Office of Transportation and Air Quality to authorize EPA contractors to access confidential business information (CBI) submitted to EPA under Title II of the Clean Air Act. In the announcement, EPA notes that those affected by this plan will be those who have submitted information pursuant to fuel and fuel additive registration, and various fuels programs including reformulated gasoline, anti-dumping, gasoline sulfur, ultra-low sulfur diesel, benzene content, and the renewable fuel standard program. CBI is collected by EPA “in order to monitor compliance with Clean Air Act programs and, in many cases, to permit regulated parties flexibility in meeting regulatory requirements. For example, data that may contain CBI is collected in order to register fuels and fuel additives prior to introduction



into commerce and to certify engines. Certain programs are designed to permit regulated parties an opportunity to comply on average, or to engage in transactions using various types of credits....We are issuing this Federal Register notice to inform all affected submitters of information that we plan to grant access to material that may be claimed as CBI to the contractors identified below on a need-to-know basis.”

Export-Import Bank

Ex-Im Bank Announces Application for \$100 Million to Fund Export of Trucks and Bulldozers to Ukraine

The Export Import Bank published a [notice](#) announcing the receipt of an application for a long-term loan or financial guarantee in excess of \$100 million to fund the export of Caterpillar mining trucks and bulldozers to Ukraine. The mining equipment is meant to be used to mine iron ore in Ukraine. [Comments](#) on this notice are due on December 4th.

Ex-Im Bank Announces Partially Public Meeting of Board Directors on November 15th

The Export-Import Bank published [notice](#) announcing a partially-public meeting on November 15th of the Ex-Im Bank’s Board of Directors, who approve or reject export loan requests. The meeting is being held to discuss the Ex-Im Advisory Committee for 2013, which provides Ex-Im Bank with guidance from various sectors of the economy to strengthen its support of U.S. exports.

