

# Regulation Digest Weekly

August 8<sup>th</sup>, 2012

Vol 1. No 22

## Opinion

- Repeal of Glass-Steagall: Not a cause, but a multiplier
- Cordray Goes to Congress
- The AIG success story
- In \$440 Million Trading Error, Upside of Wall St. Failures
- A very dark Knight: Exchanges' computerized Achilles heel
- Good Riddance To Obama's Regulatory Czar

## Marketplace of Ideas

### American Action Forum

- The Week in Regulation: July 30 to August 3, *Sam Batkins*
- Regulation Review: Dodd-Frank Financial Market Utility Rule, *Dan Goldbeck*

### American Enterprise Institute

- FDA Overreach? Treating your cells as drugs, *Scott Gottlieb*

### American Securitization Forum

- Discussion of a Proposed Single Agency Security, *July 2012*

### Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*

### Federal Regulations Advisor

- Monday Morning Regulatory Review – 8/6/12, *Leland Beck*

### Government Accountability Office

- Exposure and Testing Requirements for Mobile Phones Should Be Reassessed, *Mark Goldstein & Marcia Crosse*

## Feature Story

### CFTC Proposes Clearing Requirements for Credit Default Swaps and Interest Rate Swaps

The Commodity Futures Trading Commission published a [proposed rule](#) establishing a new Commodity Exchange Act clearing requirement for certain classes of credit default swaps (CDS) and interest rate swaps (IRS) by a derivatives clearing organization (DCO) registered with the Commission. The Commission is seeking by this rule to mitigate market risk, which could pose a threat to the overall financial market in the United States: “Without central clearing [leading up to the financial crisis], a market participant bore the risk that its counterparty would not fulfill its payment obligations pursuant to a swap's terms (counterparty credit risk). As the financial crisis deepened, this risk made market participants wary of trading with each other. As a result, markets quickly became illiquid and trading volumes plummeted.”

CFTC is required by the Commodity Exchange Act (CEA) to consider the costs and benefits of its actions before promulgating any rules implementing the CEA; without providing many specifics, the Commission [anticipates](#) that the proposed rule will increase the use of clearing and the aggregate associated transaction costs. The Commission estimates that “if every IRS and CDS that is not currently cleared were moved into clearing, the maximum additional initial margin that would need to be posted is approximately \$19.2 billion for IRS and \$53 billion for CDS,” or \$72.2 billion in additional initial margin.

However, the Commission believes that many of the additional costs of the proposed clearing requirements are simply monetizing the risk posed to firms by uncleared swaps: “... the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared does not introduce an additional cost, *but rather takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit.* This observation applies to capital costs associated with both initial margin and variation margin.” [Comments](#) on the proposed rule are due September 6<sup>th</sup>.

## In the News

8/1/12

[FTC wants to extend rules on child online privacy to reflect changes in digital world](#), *Washington Post*

[Federal judge says cigarette makers' suit over FDA tobacco review panel can move forward](#), *Washington Post*

[FDA to Assess New Regulatory Endpoints for Four Disease Areas](#), *Regulatory Focus Study: Who Regulates Medical Devices Better: US or EU?*, *Regulatory Focus*

[US FTC proposes tougher rules for online child privacy](#), *Reuters*

[Reg Watch](#), *The Hill*

[Securing the safety of imported foods: New protections guard consumers](#), *Chicago Tribune*

## Manhattan Institute

- Coal Comfort: The EPA hates the carbon-heavy fuel, but it's here to stay, *Robert Bryce*

## The Mercatus Center

- Environmental Benefits of Energy Regulations Are Negligible, *Ted Gayer & Kip Viscusi*
- Overriding Consumer Preferences With Energy Regulation, *Ted Gayer & Kip Viscusi*

## Office of Management and Budget

- A Regulatory Reformer Leaves His Mark, *Jeffrey Zients*

## Penn Program on Regulation

- The Regulatory Week in Review: August 3, 2012, *Mima Mohammed*

## Public Library of Science: Medicine

- How Does Medical Device Regulation Perform in the United States and the European Union? A Systematic Review, *Daniel B. Kramer, Shuai Xu, Aaron S. Kesselheim*

## Washington Legal Foundation

- Judges Rule That EPA Can't Conjure Up New Permit Veto Authority, *Glenn Lammi*

## Contact Us

www.regulatorystudies.gwu.edu

Twitter: @RegStudies

Email: regulatorystudies@gwu.edu

8/2/12

[House Approves Regulatory Moratorium](#), *RegBlog*

[Navistar withdraws forecast, reports SEC probe](#), *Reuters*

[Revised FDA Manual Provides Statistical Reviewers with Standardized Template](#), *Regulatory Focus*

[Knight Capital Still Sliding; Finra on the Scene](#), *WSJ Deal Journal*

[OMB to Federal Agencies: Begin Planning for Massive Budget Cuts](#), *Regulatory Focus*

[EPA fails in efforts to regulate livestock waste because it doesn't know where many farms are](#), *Washington Post*

[Senators Introduce Bill to Curb Regulations](#), *Helicopter Association International*

[U.S. orders major Enbridge oil pipeline review after leak](#), *Reuters*

[SEC opens formal probe of Sprint tax collection](#), *Reuters*

[SEC taps Treasury's Cross as municipal bond office head](#), *Reuters*

[Regulators extend deadline for foreclosure reviews](#), *Reuters*

[Buckyballs fight back](#), *Washington Post*

[Regulators, Lawmakers Hold Fire on Knight Glitch, for Now](#), *Wall Street Journal*

[Finra: Knight Capital in Compliance With Net Capital Rules](#), *Wall Street Journal*

[CBOE profit beats Street as trading volume rises](#), *Chicago Tribune*

[Navistar shares sink 14% as SEC probes accounting practices](#), *Chicago Tribune*

8/3/12

[Exclusive: 'Regulatory czar' Cass Sunstein returning to Harvard](#), *Politico*

[Cass Sunstein, top Obama adviser on regulations, to leave administration](#), *Washington Post*

[Top Regulatory Adviser to Depart White House](#), *New York Times*

[Obama's 'regulatory czar' leaving](#), *USA Today*

[Regulatory czar leaving White House to return to Harvard Law School](#), *The Hill*

[Regulatory Czar Cass Sunstein to Depart WH](#), *ABC News*

[Cass Sunstein Leaves White House Post](#), *Wall Street Journal*

[Obama regulatory czar Cass Sunstein resigns](#), *Daily Caller*

[Director of OIRA to Step Down at End of August](#), *Regulatory Focus*

[Sunstein Wins Business Plaudits, Activist Brickbats on Exit](#), *Bloomberg Businessweek*

[President Obama's regulatory chief Cass Sunstein to return to Harvard](#), *Boston Globe*

[Controversial regulatory czar to depart White House](#), *Los Angeles Times*

[Powerful Shaper of U.S. Rules Quits, With Critics in Wake](#), *New York Times*

[FDA Grant to Support Neglected Orphan Disease Trials](#), *Regulatory Focus*

8/4/12

[Cass Sunstein's Resignation Encourages Advocates For Health And Safety](#), *Huffington Post*

[Obama adviser and 'Nudge' author Cass Sunstein to leave White House](#), *The Telegraph*

[Cass Sunstein, chief of regulations review, to return to Harvard](#), *Boston Globe*

[Illinois EPA still working to beef up regulation of livestock pollution](#), *Chicago Tribune*

8/5/12

[Playing chicken on food safety?](#), *Atlanta Journal-Constitution*

8/6/12

[Judges Rule That EPA Can't Conjure Up New Permit Veto Authority](#), *Forbes*

[FDA Looking to Overhaul Compliance Approach](#), *Regulatory Focus*

[Blaming FDA's Enforcement Discretion, Company Files for Bankruptcy](#), *Regulatory Focus*

[U.S. regulator set to drop silver probe: FT](#), *Reuters*

[Bipartisan Pair of Senators Push Fed for Tougher Big Bank Capital Requirements](#), *Wall Street Journal*

[Analysis: U.S. regulators get tougher on oil pipelines](#), *Reuters*



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[SEC Nixed Knight's Plea for a Do-Over](#), *Wall Street Journal*  
[Besmirched During Crisis, Derivatives Creep Back](#), *Wall Street Journal*  
[SEC Probes NYSE Data Feeds](#), *Wall Street Journal*  
[Top FDA Officials Were Aware of Email Monitoring](#), *Wall Street Journal*  
[FDA Looking to Overhaul Compliance Approach](#), *Regulatory Focus*  
[Exclusive: NYSE in talks with SEC to settle data probe](#), *Chicago Tribune*  
[U.S. business group challenges EPA mercury rule](#), *Chicago Tribune*  
[Regulation may have little jobs impact](#), *WSJ MarketWatch*  
[The "Single Agency Security" Proposal](#), *Asset Securitization Report*

**8/7/12**

[MetLife fined \\$3.2 million for "unsound" foreclosures: Fed](#), *Reuters*  
[Regulatory Transparency Measures Lead to False Alarms](#), *Regulatory Focus*  
[Cellphone exposure limits should be reassessed, GAO recommends](#), *Washington Post*  
[HHS: New rules will save up to \\$9 billion](#), *The Hill*  
[FAA suspends procedure that led planes to come too close together at DC airport](#), *The Hill*  
[Fed imposing \\$3.2M in penalties against MetLife for not preventing foreclosure abuses by bank](#), *Washington Post*  
[Federal safety regulators may seek up to \\$162 million in fines from American Airlines, AMR](#), *Washington Post*  
[After Reagan National Airport close call, FAA bans opposite-direction traffic flow](#), *Washington Post*  
[Are regulators doing enough to rein in bank money laundering?](#), *Washington Post*  
[GAO criticizes FCC's standards for cellphone radiation](#), *Washington Post*  
[Twenty Five U.S. Senators Ask EPA to Adjust Ethanol Mandate](#), *Reuters*  
[Pfizer Settles With SEC Over Charges it Bribed Foreign Regulatory Officials](#), *Regulatory Focus*  
[OMB seeks to dismiss lawsuit that says agency withheld information about unused federal buildings](#), *Washington Post*

**8/8/12**

[Obama regulations chief pressed attacks on ozone standards](#), *The Hill*

## Rulemaking

### Consumer Financial Protection Bureau

#### CFPB Proposes Guidelines Implementing Information Quality Act Requirements

The Consumer Financial Protection Bureau [proposed](#) guidelines for the quality, objectivity, utility, and integrity of information that the Bureau disseminates. Promulgation of these standards complies with the requirements of the Information Quality Act (also known as the Data Quality Act), which requires that agencies subject to the Paperwork Reduction Act "issue guidelines ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by the agency." In 2001, the Office of Management and Budget issued [guidance](#) to the agencies for the implementation of these statutory requirements. Despite the Bureau's assurance in the Federal Register notice, the proposed guidelines are not available online at regulations.gov or on the Bureau's website. [Comments](#) on the proposed guidelines are due on September 4<sup>th</sup>.

### Federal Reserve System

#### Fed Rule Allows Interchange Fee Adjustments to Compensate Issuers for Fraud-Prevention

The Federal Reserve Board released a [final rule](#) amending some provisions of Regulation II governing the adjustments to interchange transaction fees to allow issuers to adjust rates to recoup fraud-prevention costs. "The amendments permit an issuer to receive or charge an amount of no more than 1 cent per transaction (the same amount currently permitted) in addition to its interchange transaction fee if the issuer develops and implements policies and procedures that are reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions. The amendments set forth fraud-prevention aspects that an issuer's policies and procedures must address and require an issuer to review its policies and procedures at least

annually, and update them as necessary in light of their effectiveness, cost-effectiveness, and changes in the types of fraud, methods used to commit fraud, and available fraud-prevention methods. An issuer must notify its payment card networks annually that it complies with the Board's fraud-prevention standards. Finally, the amendments provide that an issuer that is substantially noncompliant with the Board's fraud-prevention standards is ineligible to receive or charge a fraud-prevention adjustment and set forth a timeframe within which an issuer must stop receiving or charging a fraud-prevention adjustment.”

## **Federal Trade Commission**

### **FTC Proposes to Expand Online Privacy Requirements for Children**

The Federal Trade Commission released a [proposed rule](#) modifying certain definitions in an earlier [proposed rule](#) implementing the Children's Online Privacy Protection Act (“COPPA Rule”). “These proposed revisions, which are based on the FTC's review of public comments and its enforcement experience, are intended to clarify the scope of the Rule and strengthen its protections for children's personal information.” Previously, the Commission held that sole responsibility for “obtaining verifiable parental consent to the collection of personal information from children rested entirely with the information collection entity and not with the child-directed site operator.” However, this proposed rule would expand that responsibility to include both the child-directed site operator and the information collection agency. “Sites and services whose content is directed to children, and who permit others to collect personal information from their child visitors, benefit from that collection and thus should be responsible under COPPA for providing notice to and obtaining consent from parents. Conversely, online services whose business models entail the collection of personal information and that know or have reason to know that such information is collected through child-directed properties should provide COPPA's protections.” [Comments](#) are due on September 6<sup>th</sup>.

## **Food and Drug Administration**

### **FDA Requires Medical Device Establishments to Register Information Electronically**

The Food and Drug Administration issued a [final rule](#) requiring all device establishments to register their information electronically instead of on paper forms. Device establishments must now create an account on the FDA's online device registration and device listing system and update their information through that account. The rule will allow the FDA to gather more information concerning listed devices, which it anticipates could be used to identify shortages in the market in case of national emergency, facilitate recalls, and regulate imports from foreign establishments.

## **Environmental Protection Agency**

### **EPA Disapproves Sections of Florida's Water Quality Standards**

The Environmental Protection Agency released a [final rule](#) disapproving sections of Florida's Water Quality Standards for Phosphorus in the Everglades Protection Area and Florida's Amended Everglades Forever Act. On September 3, 2010, the EPA directed Florida to correct the flaws in their legislation by January 1, 2011, or the EPA would take action to ensure the state meets Clean Water Act standards. The EPA is releasing this rule to initiate action since Florida failed to amend their legislation by the deadline.

## **Agencies**

## **Consumer Product Safety Commission**

### **CPSC Targets More Rare Earth Magnet Products in New Administrative Complaint**

The Consumer Product Safety Commission issued a [press release](#) on Tuesday announcing it had filed an administrative complaint against Zen Magnets alleging that the rare earth magnetic products made by that manufacturer pose a substantial risk of injury to the public. When two or more of these small magnets are swallowed, they can cause intestinal perforation by becoming magnetically attracted through internal tissue, requiring surgery; this poses a risk to children. “The Commission staff alleges in its complaint that Zen Magnets warning and labeling are defective because they do not effectively communicate the hazard associated with ingestion of the product. The complaint further alleges that the product's design and packaging are also defective because they fail to prevent children from gaining access to the product, and do not allow parents or caregivers to know readily if a magnet is missing and is potentially within the reach of a young child. The complaint alleges that

once separated from the packaging, the individual magnets themselves display no warning against ingestion or aspiration, and the small size of the individual magnets precludes the addition of such a warning.”

Zen Magnets packaging warns that swallowing magnets can cause serious injury, and instructs customers to “place swallowing magnets on your don't do list along with breathing water, drinking poison, and running into traffic.” This action comes on the heels of a CPSC lawsuit against Maxfield & Oberton, the manufacturer of Buckyballs® rare earth magnetic desk toys, which refused to comply with a CPSC request to voluntarily stop the manufacture, import, distribution and sale of their products.

## **Environmental Protection Agency**

### **EPA Announces Public Hearing on Portland Cement Pollution Rule**

The Environmental Protection Agency is holding a [public hearing](#) on August 16<sup>th</sup> in Arlington, Texas to discuss a [proposed rule](#) that would amend the emissions and performance standards for the Portland cement industry. The proposed amendments, which are a response to petitions from the industry, would make Clean Air Act compliance less costly by allowing firms to perform manual emissions testing instead of requiring a Continuous Emission Monitoring System. The numerical particulate matter standards must also be amended in order to be consistent with manual testing.

## **Food and Drug Administration**

### **FDA Announces Availability of \$14 Million in Grants for Medical Products to Treat Rare Diseases**

The Food and Drug Administration [announced](#) the availability of grant funds “to support the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the proposed product will be superior to the existing therapy. FDA provides grants for clinical studies on safety and/or effectiveness that will either result in, or substantially contribute to, market approval of these products.” Of the \$14.1 million in grants for these projects, \$10 million will be used to continue existing projects, and \$4.1 million will go toward funding 5 – 10 new projects.

## **Department of Energy**

### **DOE Solicits Comment on Retrospective Review Plan**

The Department of Energy is [seeking comments](#) from the public on the Department’s efforts to conduct a retrospective review of its regulations, in accordance with Executive Order 13563. In executing these requirements, the Department seeks feedback specifically on the following: which factors the agency should consider when selecting and prioritizing rules for review; whether there are rules that are or have become unnecessary, ineffective, ill-advised, or outdated; whether there are any rules or reporting requirements that require being updated or streamlined; and how the Department can best obtain accurate, objective information and data about the costs, burdens, and benefits of existing regulations. [Comments](#) are due on September 6<sup>th</sup>.

### **DOE Announces \$56 Million in Funding for Energy Storage Projects**

The Department of Energy [announced](#) the availability of \$43 million in funding for 19 projects to develop new energy storage technologies and to support small businesses. Projects funded through this program will “focus on innovations in battery management and storage to advance electric vehicle technologies, help improve the efficiency and reliability of the electrical grid and provide important energy security benefits to America’s armed forces.” DOE simultaneously announced the availability of \$13 million in additional funding small businesses developing energy storage schemes for both stationary power and electric vehicles.