A DODD-FRANK UPDATE

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Today's Presenters

Carol Beaumier, *Managing Director, Protiviti*

Carol Beaumier is a Managing Director with Protiviti and leads the firm's global Financial Services and Regulatory Risk Consulting Practices. An experienced consultant and former bank regulator, Carol has extensive experience in a wide range of financial industry and regulatory issues. Carol has more than twenty years experience as a financial services industry consultant. Prior to joining Protiviti, she was a Partner in Arthur Andersen's Regulatory Risk Services Practice and a Managing Director and founding Partner of The Secura Group where she headed the Risk Management practice. Before consulting, Carol spent 11 years with the Office of the Comptroller of the Currency where she was an examiner with a particular focus on multinational and international banks. She also served as Executive Assistant to the Comptroller, as a member of the OCC's senior management team and as liaison for the Comptroller both inside and outside of the agency.
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Tim Long, *Managing Director, Protiviti*

Tim Long is a Managing Director with Protiviti and member of the Risk and Compliance team focusing on the regulatory service area. Tim has 30 years of experience in bank supervision and policy-related matters, with the Office of the Comptroller of the Currency (OCC). Prior to joining Protiviti, Tim retired from the OCC in July 2011, having most recently served as Senior Deputy Comptroller, Bank Supervision Policy and Chief National Bank Examiner. In addition, Tim served as a key advisor to the U.S. Department of the Treasury during the recent financial crisis. He was Regulatory Council chair of the TARP Capital Purchase Program and a member of the newly created Financial Stability Oversight Council Deputies Committee. Tim also has held a series of lead supervision positions over large banks, serving as examiner-in-charge of Nationsbank (now Bank of America), Wells Fargo and First Interstate Bank. Tim's expertise includes virtually all areas of bank supervision, compliance, enterprise-wide risk management and corporate governance practices.
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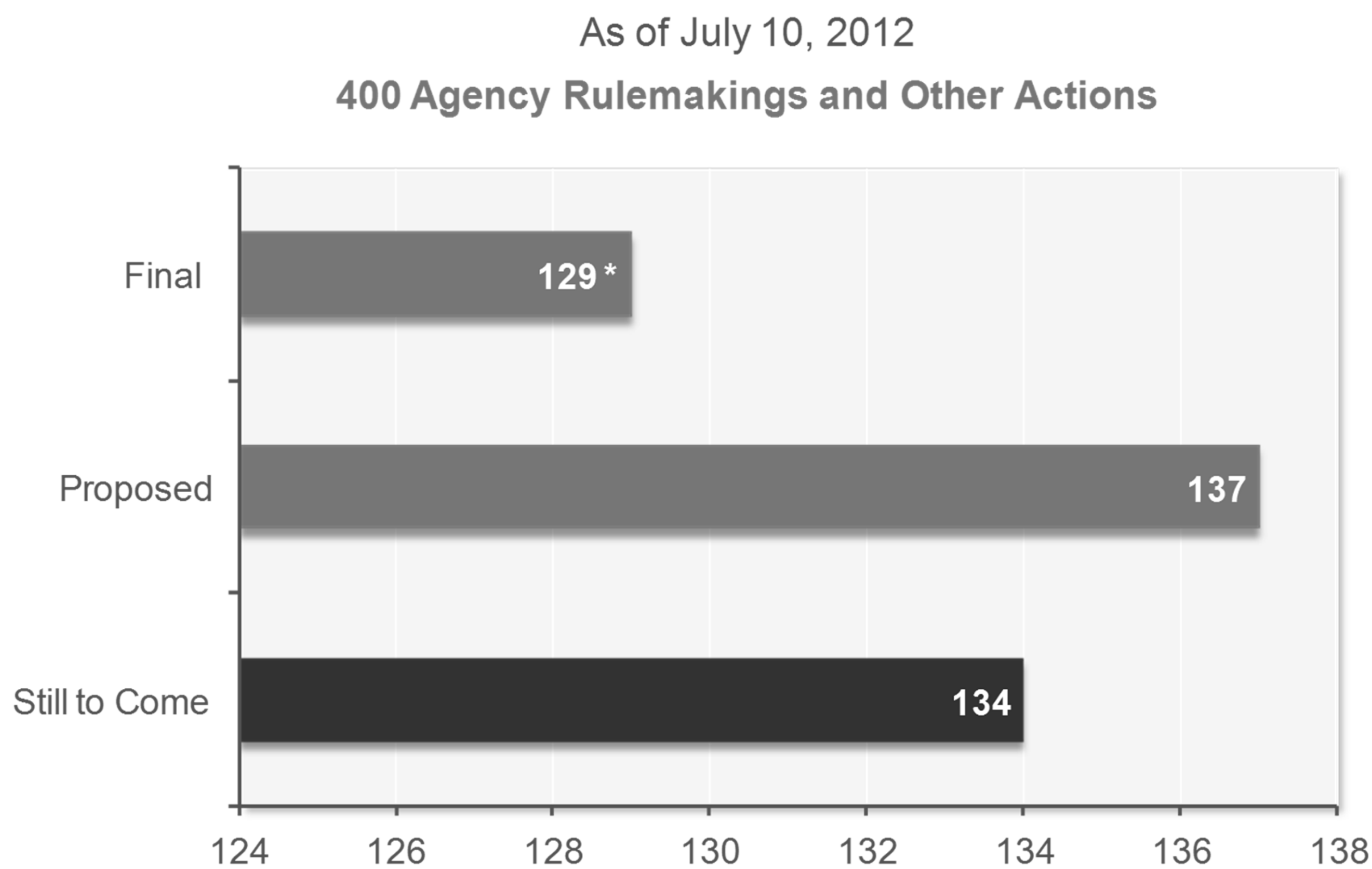
Agenda

- Implementation Status
- Systemically Important Financial Institutions
- Regulatory Capital
- Derivatives
- Volcker Rule
- Consumer Financial Protection Bureau
- Looking Ahead to Year 3
- Q & A

IMPLEMENTATION STATUS

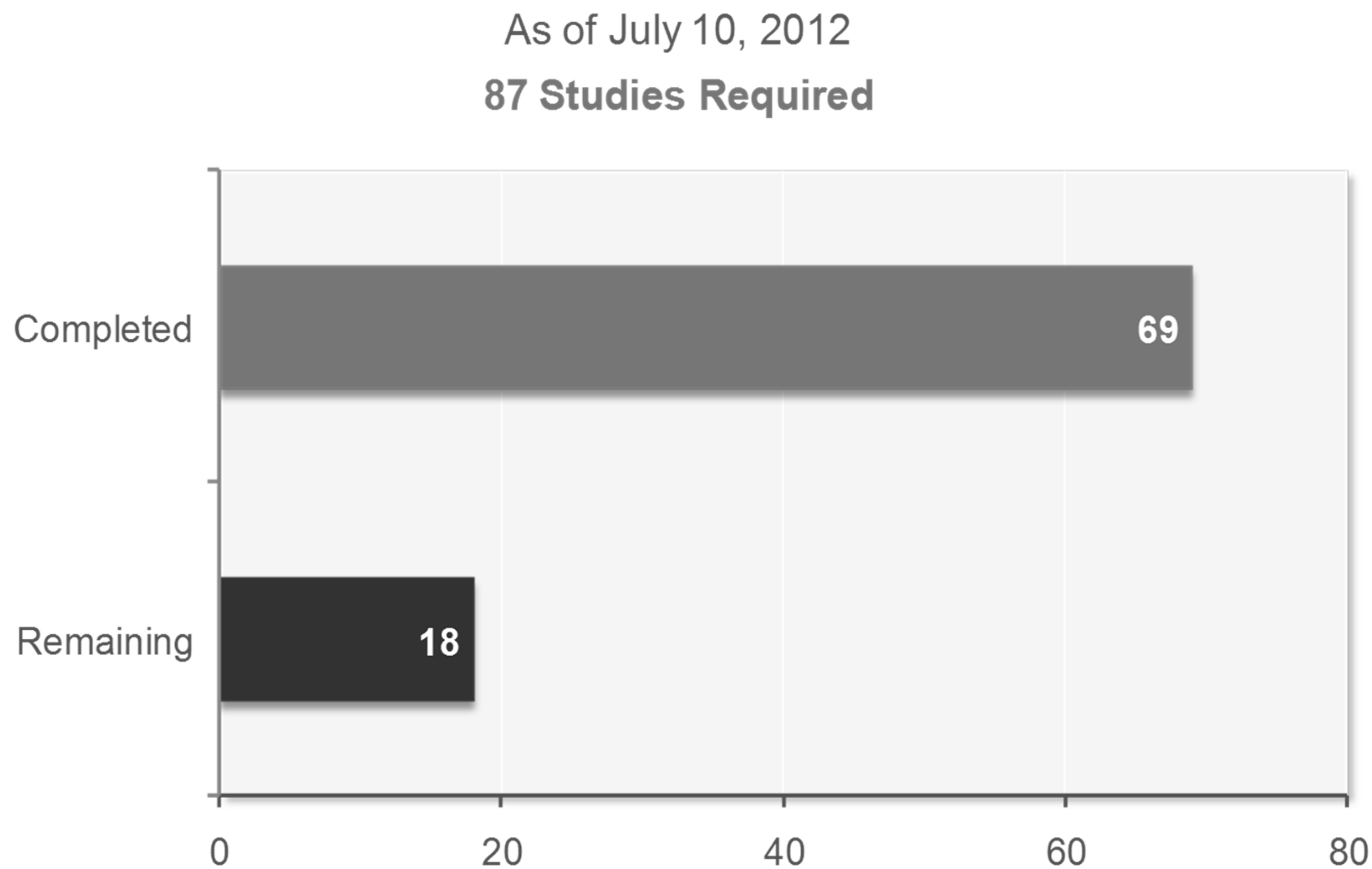
Snapshot – Required and Discretionary Actions



* Includes 17 final agency actions not in the form of rulemaking

Source: Morrison & Foerster LLP

Snapshot – Studies



Source: Morrison & Foerster LLP

But, Efforts of the Last Two Years Should not be Overlooked

Examples of Completed Rulemakings

- Durbin Amendment
- Creation of new agencies/functions:
  - Financial Stability Oversight Council
  - Office of Financial Research
  - Office of Insurance Oversight
  - Consumer Financial Protection Bureau
- Dissolution of Office of Thrift Supervision
- Collins Amendment
- Investment Advisor Registration
- Living Wills
- Say on Pay
- Proxy Access
- Whistleblower Incentives and Protections

Examples of Pending Rulemakings

- Securitization Reform
- Designation of Nonbank SIFIs
- Derivatives Reform
- Volcker Rule
- Credit Agency Rating Reform
- Compensation Committee and Advisor Independence
- Capital Requirements
- Mortgage Origination and Servicing
- Enhanced Prudential Supervision

Polling Question

Which of the following required Dodd-Frank rules has been finalized?

A Volcker Rule

B Derivatives Rules

C Credit Agency Reform

D None of the above

SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTIONS

FSOC and OFR

Financial Stability Oversight Council (FSOC) Formed:

- 15 members; housed in the Treasury Department and Chaired by Treasury Secretary Geithner
  - One non-voting chair vacant pending conformation of the Director of OFR
- Responsible for identifying and addressing systemic risk
- Focus on systemically important financial institutions (SIFIs) which will include bank holding companies with $50 billion or > in total assets and designated nonbank financial services companies

Office of Financial Research (OFR):

- Responsible for collecting and analyzing data for FSOC; performing research; and developing tools for risk measurement and monitoring
  - OFR issued its inaugural annual report on July 20, 2012 which identifies some of the most significant gaps in the understanding of the financial system and in metrics to quantify financial activity and its plan for addressing these gaps

Systemically Important Financial Institutions (SIFIs)

Bank SIFIs Defined As:

- All bank holding companies with total assets > $50 billion
  - For foreign banking organizations, based on total global assets

Still Awaiting Final Determination on Non-Bank SIFIs:

- Statutory criteria:
  - Determination that material financial distress could pose a threat to the stability of the financial system
  - Determination of the nature, scope, size, scale, concentration, interconnectedness or mix of activities could pose a threat to the stability of the financial system
- Proposed definition extends to companies that are predominately engaged in financial activities based on 85% revenue or asset test over a two year period
- Expectation that FSOC will designate the first nonbank SIFIs by the end of 2012

Eight Systemically Important Financial Market Utilities (FMUs) named in July

Enhanced Prudential Standards

SIFIs Subject to Enhanced Prudent Standards:

- On January 5, 2012, the Federal Reserve Board, after consultation with other members of FSOC issued a 70 page proposed rule relating to enhanced prudential supervision for bank and nonbank SIFIs with the exception of savings and loan holding companies and foreign banks which will be the subject of future rulemakings
  - The proposal posed 95 questions related to a wide-range of topics including risk-based capital and leverage requirements, liquidity requirements, stress tests, single-counterparty credit limits, and early remediation requirements
  - Comments were due by March 31, 2012
  - Expectation is that covered companies will be required to comply with the standards one year after they are enacted
  - Certain provisions – Risk Committees and stress testing – apply to banking organizations with $10 billion or more in total assets
- The agencies have separately published rules and guidelines that address some of the same issues covered in the enhanced prudential proposal, e.g.,
  - Annual capital planning process
  - Stress testing

Polling Question

At what size will publicly-traded banking organizations be required to have board level risk committees?

A) $50 billion in total assets

B) $25 billion in total assets

C) $10 billion in total assets

D) N/A – all publicly-traded banking organizations will be required to have board-level risk committees

Living Wills

Companies Subject to Living Will Requirements:

- All bank holding companies with total assets of $50 billion or more
- All nonbanks designed as Systemically Important Financial Institutions (SIFIs)
- All depository institutions with total assets of $50 billion or more (required by FDIC, not a DFA requirement)
- Living wills for the companies in the first two categories will require approval by both the FRB and FDIC; living wills for companies in category 3 would require approval by the FDIC only

Implementation Deadlines Staggered:

- The largest nine ($250 billion or more in total assets) submitted initial plans on July 2, 2012
  - Goldman Sachs, Bank of America, JP Morgan Chase, Citigroup, Morgan Stanley, Barclays, Deutsche Bank, Credit Suisse and UBS
- Companies with $100 billion or more must submit initial plans by July 1, 2013
- All other companies must submit initial plans by December 31, 2013

Content of Living Wills

- All core businesses and activities mapped to legal entities
- All interdependencies (e.g., technology, human resources, intercompany transactions among legal entities)
- Description of the organization structure and identification of key management officials
- Key supervisory authorities
- Key funding and capital sources
- Processes for valuing business lines/assets
- Prioritization of actions that should be taken in the event of a crisis
- Identification of all of the jurisdictions in which the company operates as well as jurisdictional issues/obstacles to orderly liquidation
- Evaluation of all of the institution’s contractual arrangements
- Identification and description of all of the institution’s counterparties
- Description of the company’s MIS capabilities for collecting, maintaining and reporting the information required to develop and maintain a living will and any deficiencies thereof
- Analysis of how a company could be resolved under the U.S. Bankruptcy Code without posing systemic risk

REGULATORY CAPITAL

Regulatory Capital

Banking Agencies Regulatory Capital Proposals – June 2012

- Basel III Proposal
  - Applies capital framework to most U.S. Banks
- Standardized Approach Proposal
  - Applies elements of Basel II credit risk weightings to most U.S. banks
- Advanced Approached Proposal
  - Applies change made as result of crisis to large U.S. banking organization

Highlights of U.S. Proposals – Basel III Minimum Capital Requirements

- New minimum common equity Tier 1 requirements of 4.5 percent of total standardized risk-weighted assets (TRWA)
- Minimum Tier 1 capital (common equity Tier 1 plus additional Tier 1 capital) requirement of 6 percent of TRWA
- Minimum total capital (Tier 1 plus Tier 2) requirement of 8 percent of TRWA
- Leverage ratio of 4 percent of total average on-balance sheet assets

Regulatory Capital (contd.)

Additional Capital Changes

- A new capital conservation buffer of 2.5 percent common equity to Tier 1 capital to TRWA
- For advanced approaches banking organizations, a new countercyclical buffer up to 2.5 percent of common equity Tier 1 capital
- Additional common equity Tier 1 capital requirements for globally systematically important financial institutions (SIFI) from 1 to 2.5 percent

Polling Question

The Advanced Approaches Proposal applies to?

A All U.S. banks

B Large U.S. banking organizations

DERIVATIVES

Derivatives

Regulatory Framework under Dodd-Frank

- Dodd Frank requires parallel SEC and CFTC regulatory regimes
- Determination based on Swaps or Security Based Swaps
- Banking agencies retain jurisdiction over bank derivatives

Definitions of Swaps and Security Based Swaps

- SEC and CFTC finalized joint rules addressing definitions in July 2012
- Treasury Department has proposed to exclude foreign exchange contracts from definition of Swaps

Derivatives (contd.)

Pending

- Many issues are still pending:
  - Mandatory clearing
  - Margin requirements for commercial end-users still an open issue
  - Minimum capital and margin requirements

VOLCKER RULE

Volcker Rule

Two Primary Prohibitions Applicable to Banking Entities

- Proprietary trading
- Private equity / hedge fund investment and sponsorship

Key Exceptions

- Proprietary trading: underwriting, dealing, market making, customer trading, risk management/hedging
- Fund activities: funds servicing fiduciary and asset management clients, subject to numerous conditions

Volcker Rule (contd.)

Actions Thus Far

- Financial Stability Oversight Council Volcker Rule Study (January 2011)
- Financial agencies proposed regulations (November 2011)
- Significant number of questions and concerns on compliance requirements
- FRB has adopted final regulations and policy statement on Volcker conformance period

Pending

- Financial agencies' final regulations
    - How will the agencies respond to comment period
    - Impact of congressional pressure
    - Impact of recent market activities (JPMC, LIBOR)

Polling Question

Only SIFIs need to be concerned about the compliance program requirements of the Volcker Rule?

A True

B False

CONSUMER FINANCIAL PROTECTION BUREAU

Mission of the CFPB

CFPB assumed transitional authority on July 21, 2011, the first year anniversary of DFA.

Mission

- Conduct rule-making, supervision, and enforcement for Federal consumer financial protection laws
- Restrict unfair, deceptive, or abusive acts or practices
- Take consumer complaints
- Promote financial education
- Research consumer behavior
- Monitor financial markets for new risks to consumers
- Enforce laws that outlaw discrimination and other unfair treatment in consumer finance

Priorities

Consumer Disclosures

- Consolidate duplicative and overlapping early disclosures
  - "Know Before You Owe" campaign
  - Consolidated disclosures must be finalized in mid-2012
- Simplify credit card agreements (e.g., fees, finance charges)

Consumer Complaint Intake and Resolution

- Development of centralized consumer financial products and services intake, monitoring and response process

Unfair, Deceptive or Abusive Acts or Practices

- A new "triple" standard for assessing compliance

Specific Activities, Businesses and Practice

- Mortgage lending, payday lending, student lending, credit cards, prepaid cards, overdrafts, debt suspension/cancellation and credit monitoring products, vendor management, elder abuse, collection companies, credit reporting companies

First Enforcement Actions

Capital One

Just days short of its first anniversary, the CFPB issued its first enforcement action against Capital One Bank. The action alleged that the Bank had engaged in deceptive marketing practices related to add-on credit monitoring and payment protection plans. The charges were based on actions of third party vendors of the Bank which according to the Bank's CEO engaged in " . . . marketing calls [that] were inconsistent with the explicit instructions we provided to agents for how these products should be sold." Concurrently, the OCC also issued a Cease & Desist Order related to the same activity. CFPB's action comes from its authority under DFA to prohibit unfair, deceptive or abusive acts or practices while the OCC's authority stems its authority under the FDI Act to enforce Section 5 of the FTC Act.

The Bank agreed to pay $210 million to settle the charges - $150 million to be paid to more than 2 million customers, a penalty of $25 million to be paid to the CFPB and a fine of $35 million to be paid to the OCC.

Charles E. Gordon and The Gordon Law Firm P.C. *et al*

Also just a few days short of its first anniversary, the CFPB obtained a temporary restraining order freezing the assets of defendants and entered an action seeking an unspecified amount of relief against a California-based loan modification firm, alleging the charging of improper advance fees and misrepresentation to consumers.

The first of what many believe is an established pipeline of enforcement cases?

Industry Concerns

Examples:

- Public consumer complaint database
- Position on access to privileged information
- Inclusion of lawyers on the examination team
- Ever-growing list of priorities
- Definition of “abusive”

LOOKING AHEAD TO YEAR 3

DFA: Year 3

Knowns/Likely

- Finalization of Volcker Rule
- Finalization of SIFI regime
- Many more living wills filed
- Finalization of derivatives regulatory regime
- Further material action on Title IX issues (CRAs, securitization, etc.)
- Stepped up rulemaking and enforcement activity by the CFPB

Unresolved Open Issues

- Regulation of foreign financial firms under Dodd-Frank
- Fiduciary duties of broker-dealers and investment advisers

Unknowns

- Impact of 2012 elections
- Effect of any industry “events” on the regulatory landscape
- GSE reform
- The impact of international financial regulatory actions on Dodd-Frank and related implementation activities in the United States

Q & A

Resources

Refer to Protiviti's website for more resources related to Dodd-Frank and other regulatory reforms:

Protiviti *(www.protiviti.com/regulatoryreform)*	
OCC Issues Request for Comment on Annual Stress Test Reporting Requirements	Flash Report
Basel Committee Issues Revised Supervisory Guidance on Assessing the Effectiveness of Internal Audit Functions	Flash Report
The Dodd-Frank Act: Here and Now	FS Insights (Special Edition)
The CFPB Is Coming – Are You Ready?	Point of View
Compliance Management in a Global World	FS Insights (Volume 3, Issue 11)
Basel Committee seeks Comments on Risk Data Aggregation and Risk Reporting	Flash Report
Final Stress Testing Guidance for Large Financial Institutions	Flash Report
Extraterritorial Laws and Regulations: The New Normal	Survey Results
Top Priorities for Internal Audit in Financial Services	Survey Results
Dodd-Frank Act's Potential Implications on Technology at Financial Institutions	FS Insights (Volume 3, Issue 10)

THANK YOU!