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Banking Regulation

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USA

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Introduction

The bank regulatory framework in the United States has developed over the past 150 years as a series of responses to financial crises and as a reflection of evolving political priorities. The banking industry is among the most highly regulated industries in the United States, with multiple federal and state agencies having overlapping supervisory and enforcement authority over the industry. Going forward, US financial institutions face even greater regulation of their activities following the global financial crisis, with recently enacted legislation seeking to strengthen banks' condition by, among many other things, increasing capital requirements and restricting certain behaviour widely thought to have contributed to the financial crisis. New legislation also seeks to provide greater protection to consumers by increasing the regulation of consumer financial products and expanding the scope of federal regulation into previously unregulated areas. These significant and ongoing changes present challenges to all participants in the US financial system.

Regulatory architecture: overview of banking regulators and key regulation

The United States has a "dual" banking system in which depository institutions choose the state or federal chartering and supervisory authority under which they will operate. Banks that choose a federal charter are regulated solely by federal government agencies. Banks that elect a state charter are subject to regulation by both their state government chartering agencies and by at least one federal banking agency. Companies that own or control insured depository institutions are subject to separate federal-agency supervision and regulation.

<u>Primary federal bank regulators</u>

Multiple federal banking agencies coexist in the US bank regulatory system, each overseeing specific types of institutions. Some of the key federal regulatory agencies are discussed below.

- *The Board of Governors of the Federal Reserve System ("Federal Reserve")*

The Federal Reserve has primary federal regulatory authority over state-chartered banks that have chosen to become members of the Federal Reserve System, which is the central banking system of the United States and includes the Federal Reserve's 12 reserve banks. The Federal Reserve is also the primary federal prudential regulator of bank holding companies, savings and loan holding companies, financial holding companies, systemically important financial institutions, and state-chartered branches and agencies (but not representative offices) of foreign banks operating in the US. Among its many functions, the Federal Reserve is in charge of conducting stress-testing of systemically important financial institutions and large bank holding companies.

- *Office of the Comptroller of the Currency ("OCC")*

The OCC is an independent branch of the US Department of the Treasury. The OCC charters, regulates, supervises and enforces applicable laws and regulations against all national banks and federal savings associations, as well as federal branches of foreign banks operating in the US.

- *Federal Deposit Insurance Corporation ("FDIC")*

The FDIC is the primary federal regulator of state banks that have not joined as members of the Federal

Reserve System and of state savings associations. In its federal regulatory role, the FDIC regulates, supervises and enforces applicable laws and regulations against these depository institutions. The agency also has secondary supervisory authority over all banks and savings associations whose deposits it insures. The FDIC protects depositors' funds by insuring deposits up to $250,000 through the Deposit Insurance Fund. The agency also manages the conservatorship or receivership process for all failed FDIC-insured banks and savings associations by facilitating the disposition of such depository institutions' assets and liabilities.

- *National Credit Union Administration ("NCUA")*

The NCUA charters and regulates federal credit unions. The NCUA also administers the National Credit Union Share Insurance Fund, which insures the deposits of federal credit unions and all state credit unions that choose to become federally insured. In addition, the agency has the authority to promulgate rules concerning the internal operations of federal credit unions, investments and deposits, the requirements to obtain deposit insurance applicable to credit unions, and manages the resolution process for failed credit unions.

- *Consumer Financial Protection Bureau ("CFPB")*

The CFPB is a new agency created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). The CFPB regulates the consumer financial services industry and has assumed the responsibilities of the Federal Reserve, the OCC, the FDIC, and other federal agencies with respect to certain consumer protection functions. The agency is responsible for restricting unfair, deceptive, or abusive acts and practices, promoting financial education, researching consumer behaviour, and enforcing consumer protection laws.

The CFPB has supervisory authority over a variety of companies, including payday lenders, private student loan providers, and the residential mortgage industry, as well as larger participants of other consumer financial service or product markets. Insured depository institutions and credit unions with more than $10bn in total assets and all their affiliates (including subsidiaries) are also subject to the agency's supervision with respect to the laws it enforces.

<u>Major federal banking legislation</u>

Below is a brief summary of several significant federal laws that, along with the laws' implementing regulations, establish the core functions, permissible activities, and responsibilities of financial institutions and their regulatory bodies.

- The *National Banking Act* created the national banking system and the OCC. It also provided for the chartering of national banks, defined their powers, and provides for their supervision and regulation by the OCC.
- The *Federal Reserve Act* created the Federal Reserve and established the Federal Reserve System as the central bank of the United States. The act's purpose was to create economic stability through monitoring the monetary system and circulating a national currency. Additionally, the act required national banks to become members of the Federal Reserve System and to set aside reserves with the federal reserve banks.
- The *Federal Deposit Insurance Act* ("FDIA") consolidated laws establishing and governing the FDIC, and expanded the agency's authority. The act authorised the FDIC to administer a deposit insurance fund, to determine the amount of assessments paid by insured banks, and to set standards for institutions to obtain insurance. Additionally, the FDIA established the FDIC as conservator or receiver of failed banks.
- The *Home Owners' Loan Act* created the federal savings association charter, which is similar to a banking charter but focuses on consumer lending, and provides for the supervision of savings associations and their holding companies.
- The *Bank Holding Company Act* regulates the activities of bank holding companies. The act requires approval from the Federal Reserve prior to becoming a bank holding company, appoints the Federal Reserve as the regulator of bank holding companies, and generally limits the activities of bank holding companies to those "closely related to banking".
- The *Gramm-Leach-Bliley Act* repealed laws that prohibited the consolidation of commercial

banks, investment banks and insurance companies. The act allows a qualified bank holding company to elect to become a "financial holding company", which is authorised to engage in "financial activities", such as insurance underwriting and sales, securities underwriting and dealing, and merchant banking.

- The *Dodd-Frank Act* made significant changes to the federal banking regulatory structure. It created the Financial Stability Oversight Council and provided for enhanced prudential regulation of the financial sector to mitigate systemic risk. It also strengthened consumer protection laws and enforcement.
- The *Bank Secrecy Act* imposes anti-money laundering requirements on US financial institutions, including US branches and agencies of foreign banks. The Act and its implementing regulations, among other things, require financial institutions to implement customer-identification and customer due-diligence programmes, and to monitor for and report suspicious activity and certain transactions in currency. Failure to comply with the Act can result in substantial civil and criminal liability, as demonstrated by several recent settlements involving the assessment of billions of dollars of penalties against both domestic entities and US subsidiaries of foreign banking organisations.

In addition to these laws, the current bank regulatory framework addresses numerous other important areas, including consumer protection, privacy, and lending, among others.

Recent regulatory themes and key regulatory developments

A major current focus in US banking regulation is implementation of the Dodd-Frank Act's requirements for enhanced prudential standards. New regulations now require large banks to submit resolution plans (also known as "living wills") and capital plans to their regulators, and to conduct rigorous stress testing. Higher capital and liquidity standards are expected to be adopted through the implementation of Basel III, including a capital surcharge for the largest banks. Other prudential regulations, such as risk management requirements and limits on exposure to any single counterparty, have been proposed but not yet finalised.

Regulatory focus is also on finalising regulations to implement the so-called "Volcker Rule", which further restricts the trading activities of banking firms, and on improving the resolution of systemically important financial firms through the FDIC's new orderly liquidation authority.

Banking agencies have also stepped up enforcement of traditional areas of banking laws, such as fines for alleged violations of the anti-money laundering laws. Also the FDIC, as receiver for failed banks, has brought a number of lawsuits against former bank directors for alleged breaches of fiduciary duties.

Each of these developments is discussed in more detail below.

<u>Resolution plans</u>

To improve the ability to resolve systemically important financial firms, bank holding companies, including foreign banks with a US branch or agency, with $50bn or more in total consolidated assets, now must submit an annual resolution plan to both the Federal Reserve (the prudential regulator) and the FDIC (which has resolution authority). These plans have euphemistically been dubbed "living wills". The largest companies have submitted their initial resolution plans, while smaller ones must do so by December 31, 2013.

The specific requirements of a living will are complex and are spelled out by regulation. As a general matter, a resolution plan must analyse how the company can be resolved under the US Bankruptcy Code without posing systemic risk to the financial system. A foreign bank similarly must prepare a plan that analyses how its US operations can be resolved, and how such plan is integrated into the parent organisation's broader resolution plans. A company that fails to submit a satisfactory resolution plan may be subject to more stringent capital, leverage or liquidity requirements, or to restrictions on growth or activities. It may even be required to divest certain assets or operations.

<u>Capital plans</u>

The Dodd-Frank Act's mandate for enhanced capital standards has been implemented, initially by requiring a bank holding company with total consolidated assets of $50bn or more to submit an annual capital plan, covering a nine-quarter planning horizon, to the Federal Reserve. The capital plan must: assess the company's expected uses and sources of capital, taking into account stress test results, and detail the company's process for assessing capital adequacy, including a discussion of how the company will maintain certain specified capital levels and serve as a source of strength to its subsidiary depository institutions; discuss any expected changes to the company's business plan that are likely to have a material impact on its capital adequacy or liquidity; and include the company's capital policy.

In addition to annual filings, a company must re-submit its capital plan if there is a material change to its risk profile, financial condition, or corporate structure, or if the Federal Reserve requires it to do so. Any capital distribution generally must be as described in the capital plan.

Stress testing

For each bank holding company with total consolidated assets of $50bn or more, the Federal Reserve will conduct an annual supervisory stress test using a minimum of three scenarios, including a baseline scenario, an adverse scenario, and a severely adverse scenario. The stress test will assess the company's *pro forma* capital levels and capital ratios. Results will be provided to the company and also will be published in summary form. The Federal Reserve may require the company to update its resolution plan in light of these results.

Each company subject to the supervisory stress test must itself conduct both an annual stress test and a mid-year stress test. For the annual stress test, the company must use the scenarios used in the supervisory stress test. For the mid-year stress test, the company must develop its own scenarios − at least a baseline, adverse, and severely adverse scenario − based on its own risk profile and operations. In conducting a stress test, each company must, for each quarter over a nine-quarter planning horizon, make detailed estimates of losses and calculate *pro forma* capital ratios under each scenario. A company must report the results of each stress test to the Federal Reserve and publish a summary of the results under the severely adverse scenario.

A company must consider the results of both the supervisory and the company-run stress tests as part of its capital planning process; when assessing its exposures, concentrations, and risk positions; and in developing or implementing any plans for recovery or resolution.

Banking firms with total consolidated assets greater than $10bn, but less than $50bn, must also conduct an annual stress test. The requirements are generally the same as those a large bank holding company must meet for the mid-year stress test, but they have a longer period to conduct their tests, and the required public disclosures are less detailed.

The Volcker Rule

The Dodd-Frank Act's "Volcker Rule", named after the former Federal Reserve Chairman who championed the rule's creation, generally prohibits banks and their affiliates from engaging in proprietary trading or sponsoring or investing in hedge funds and private equity funds. Certain trading activities are exempt, including trading in government obligations, underwriting, and market-making activities, risk-mitigating hedging activities, trading on behalf of customers, trading for the general account of insurance companies, and certain public-interest investments. Sponsorship of a private equity or hedge fund is permitted if a banking firm organises the fund to serve customers of its *bona fide* trust, fiduciary, or investment advisory services. In that case, a small investment in the fund is also permitted if the firm complies with certain restrictions. Activities of foreign banks outside the US are likewise exempt. Permitted activities nevertheless may become impermissible if they pose a material conflict of interest, result in material exposure of the banking firm to high-risk assets or high-risk trading strategies, or pose a threat to safety or soundness or financial stability.

The reach of the Volcker Rule's prohibitions will depend on how the implementing regulations define certain statutory terms, and what limitations they place on exempt activities. Crafting regulations to implement the Volcker Rule has proven very difficult as a result of the complex issues involved. Regulations have been proposed, but have yet to be finalised. Banking firms have until July 21, 2014 to fully conform their activities and investments to the Volcker Rule and any implementing regulations, with the possibility of up to three one-year extensions. The Federal Reserve may provide for five additional extension years for certain illiquid investments that were committed prior to May 2010.

Orderly Liquidation Authority

The financial meltdown of 2007 and 2008 exposed limitations in the government's ability to wind down the operations of non-bank financial companies in an orderly manner. To address that concern, the Dodd-Frank Act created an "orderly liquidation authority" so that institutions posing systemic risk to the financial system could be resolved by the FDIC in a fashion similar to its current authority to act as receiver for banks. The Dodd-Frank Act authorises the Treasury Secretary to appoint the FDIC as receiver for a systemically important financial company, with the concurrence of the Federal Reserve, the FDIC, and the President of the United States. A company may be placed into receivership under this authority only if the company is in default or in danger of default, the failure of the company and its resolution under the US Bankruptcy Code would have serious adverse effects on US financial stability, and no viable private sector alternative is available to prevent the default of the company.

The FDIC has long had the authority to liquidate failing insured banks and savings associations. The new orderly liquidation authority enables the FDIC to liquidate other types of legal entities, including holding companies and other affiliates of insured banks. In such a liquidation, creditors and shareholders will bear the losses, management responsible for the condition of the company may not be retained, and the FDIC and other appropriate agencies must take actions to ensure that all parties found to have responsibility for the condition of the financial company bear losses consistent with their responsibility. No taxpayer losses are allowed. If funds used in the liquidation are not fully recovered from the disposition of assets, the FDIC will make an assessment on the industry to recoup any shortfall.

The FDIC's orderly liquidation authority includes the following five powers which it has identified to be the most important:

- ability for the FDIC to conduct advance resolution planning, which is enhanced by the authority to examine financial firms, and by the resolution plans discussed above that large financial firms must submit;
- provide liquidity, including through borrowing from the Treasury, for preserving systemically important operations;
- pay advance dividends and distributions to creditors based on expected recoveries to alleviate the impact of the failure on counterparties;
- form a bridge financial company to continue key, systemically important operations; and
- transfer all derivative contracts with a counterparty to another entity and avoid their immediate termination and liquidation, which may aggravate losses to the failing firm and threaten financial stability.

Bank governance and internal controls

The board of directors of a banking firm in the United States is ultimately responsible for supervising the business and affairs of the firm. Executive officers manage day-to-day operations, subject to the direction and oversight of the board. US banking laws require that the board (or a committee of the board) of a banking firm approve certain policies and activities, such as dividend payments, certain extensions of credit to insiders, real estate lending policies, an anti-money laundering compliance programme, an information security programme, and an identity theft prevention programme. Regulations implementing the Dodd-Frank Act also require the board of a banking firm to oversee compliance with the new prudential standards discussed above. For example, the board must approve the resolution plan, policies and procedures for stress testing, and an annual capital plan for a banking firm subject to these requirements.

Most banking firms must maintain audit and risk committees, comply with compensation requirements, and meet internal control standards. In addition to banking laws, securities laws and stock exchange rules impose various corporate governance requirements for banking firms that are public companies, such as director independence, internal accounting controls, and executive compensation.

Audit committees

Banking laws require an insured bank to establish an audit committee of the board. For a bank with total assets of $1bn or more, the members of the audit committee must be outside directors who are independent of management. An outside director is a director who is not, and within the preceding fiscal year has not been, an officer or employee of the bank or any affiliate of the bank. Whether a director is independent of management is a fact-specific question, depending on factors such as the director's ownership interest in the bank, professional services provided to the bank, and family relationships with executive officers of the bank.

For a bank with total assets of more than $3bn, the audit committee must include members with banking or related financial management expertise, have access to its own outside counsel, and not include any large customers of the bank.

Risk committees

The Dodd-Frank Act requires the Federal Reserve to issue regulations requiring each publicly-traded bank holding company with at least $10bn in total assets to establish a risk committee. The risk committee must oversee the company's enterprise-wide risk management practices, include such number of independent directors as the Federal Reserve requires, and include at least one risk management expert. The Federal Reserve has proposed, but has not finalised, rules to implement this requirement. The proposal would require that the risk committee be chaired by an independent director. It would also require a bank holding company with at least $50bn in total assets to employ a chief risk officer with appropriate risk management expertise.

Compensation

US banking laws have prohibited excessive compensation, or compensation that could lead to material financial loss to a bank, as an unsafe and unsound practice since the 1990s. In June 2010, the federal banking agencies issued further guidance to help ensure that incentive compensation policies do not encourage imprudent risk-taking. The guidance requires that incentive compensation arrangements provide employees with incentives that appropriately balance risk and reward, that they are compatible with effective controls and risk-management, and are supported by strong corporate governance, including active and effective board oversight.

US securities laws, including amendments made by the Dodd-Frank Act, and stock exchange rules, require public companies, including those that are banking firms, to meet additional requirements for compensation committee independence, executive compensation disclosures, and clawback of incentive-based compensation.

Internal controls

Each bank is required under US banking laws to establish internal controls and information systems that are appropriate to its size and activities. A bank must establish clear lines of authority and responsibility for monitoring adherence to bank policies. Its internal controls must include effective risk assessment and adequate procedures to safeguard assets; generate timely and accurate financial, operational, and regulatory reports; and enable the bank to comply with applicable laws and regulations. US bank regulators do not prescribe detailed rules for internal controls, but regulatory guidance references a 1992 document entitled, "Internal Control – Integrated Framework", prepared by the Committee of Sponsoring Organisations of the Treadway Commission, which is a voluntary private-sector organisation sponsored by professional associations of accountants.

A bank must have an independent and objective internal audit function to monitor its internal controls. The internal audit function must be staffed by qualified persons. It must test and review the bank's information systems, document the tests and findings, and verify management actions to address identified material weaknesses. The effectiveness of the internal audit function must be periodically reviewed by the bank's audit committee or full board.

Bank capital requirements

The risk-based capital rules for determining the eligibility of capital instruments for inclusion in regulatory capital, for assigning risk-weights to assets, and for calculating the regulatory capital ratios, are based on the first capital accord of the Basel Committee on Banking Supervision (Basel I). The US adopted the Market Risk Amendment to Basel I in 1996 to set the capital charge for market risk for banking firms whose trading activity accounts for at least 10% of total assets or $1bn. Banks in the US must maintain a Tier 1 risk-based capital ratio of 4%, and a total risk-based capital ratio of 8%.

Regulatory capital ratios are an integral part of the "prompt corrective action" regulations implemented by the US federal banking regulators. Under these regulations, insured depository institutions are classified on the basis of capital ratios as "well capitalised", "adequately capitalised", "undercapitalised", "significantly undercapitalised", or "critically undercapitalised". To be "well capitalised", a bank must have a total risk-based capital ratio of at least 10%, a Tier 1 risk-based capital ratio of at least 6%, a leverage ratio of at least 5%, and must not be subject to any written agreement or order issued by a federal regulatory authority to meet or maintain a specific capital level. To be "adequately capitalised", a bank must have a risk-based capital ratio of at least 8%, a Tier 1 risk-based capital ratio of at least 4%, and a leverage ratio of at least 4% (or 3% for the most highly rated banks). The leverage ratio, defined as the ratio of Tier 1 capital to adjusted total assets, is a unique requirement in addition to the risk-based capital requirements of Basel I.

A bank that is "adequately capitalised" but not "well capitalised" is not penalised under the prompt corrective action regulations, but faces restrictions under other banking laws. A bank that is "less than adequately capitalised" faces restrictions on its operations. A holding company that has elected "financial holding company" status, and whose subsidiary bank ceases to be well capitalised, must promptly implement a plan to return the bank to "well capitalised" status, or it risks no longer qualifying as a financial holding company – a status that confers the ability to engage in securities and insurance underwriting activities in addition to traditional banking activities.

The US adopted a final rule in 2007 to implement the Basel II advanced approaches that requires banking firms with consolidated total assets of at least $250bn, or with consolidated total on-balance sheet foreign exposure of at least $10bn, to use the Basel II advanced internal ratings-based approach to calculate risk-based capital requirements for credit risk, and the Basel II advanced measurement approaches to calculate risk-based capital requirements for operational risk. Other banks may opt into this rule if they meet certain qualification requirements. The banking agencies have amended the rule to implement the Dodd-Frank Act's requirement that the generally applicable risk-based capital requirements serve as a minimum threshold. Accordingly, Basel II advanced approaches banks must calculate risk-based capital requirements under both the risk-based capital rules for other banks and the advanced approaches rule, and meet the higher requirements. For market risk, the US has issued a final rule to implement the Basel Committee's current standards for setting the capital charge, known as Basel 2.5.

The US banking agencies have proposed rules to implement Basel III, adopt the Basel II standardised approaches for assigning risk-weights to assets, and amend the Basel II advanced approaches rule to incorporate Basel III requirements. The proposed rules also incorporate the requirements of the Dodd-Frank Act. One Dodd-Frank Act requirement that, if adopted, will result in deviation from Basel III, is the elimination of credit ratings – which were widely cited in the United States as contributing to the financial crisis beginning in 2008 – from the US regulatory capital rules, to be replaced with alternative standards of creditworthiness.

The proposed rules would require banking firms to maintain, on a consolidated basis, certain common equity Tier 1 capital, Tier 1 capital, total capital, and leverage ratios as specified by regulation (with certain modifications made for so-called "advanced approach" firms). Moreover, firms that fail to maintain a specified capital conservation buffer would be subject to limitations on capital distributions and discretionary bonus payments to executive officers. Furthermore, an 'advanced approaches' banking firm would be required to maintain a countercyclical capital buffer, composed solely of common equity Tier 1 capital.

The US banking agencies have indicated that they will implement the Basel III liquidity requirements, but they have not yet issued any proposals.

Rules governing banks' relationship with their customers and other third parties

A significant portion of US banking laws and regulations focuses on how banks interact with their customers and with other third parties. Chief among these rules are requirements governing banks' relationships with borrowers, lenders, investors, and vendors.

Depositors

A fundamental pillar of the US banking system, and a primary reason for the heavy federal regulation of banks, is federal deposit insurance, which is administered by the FDIC for banks and savings associations, and by the NCUA for credit unions. The FDIC also insures the deposits of approximately ten "grandfathered" US branches of foreign banks that obtained their insurance prior to December 1991 (US branches of foreign banks established after that date are not eligible for deposit insurance). Insured institutions pay assessments to the FDIC or NCUA based primarily on the basis of total assets, capital levels, and supervisory ratings. These assessments support deposit insurance funds designed to compensate depositors of failed institutions for losses they may suffer up to a statutory limit. The deposit insurance covers individual, joint, corporate, and government deposit accounts up to $250,000 per depositor, per insured bank. Upon the failure of an insured institution, if the FDIC or NCUA is unsuccessful at finding an entity to acquire the failed institution's deposit liabilities, depositors with insured deposits are made whole by the FDIC or NCUA out of the assets of the failed institution and, if necessary, out of the government's insurance funds. Depositors with uninsured deposits in the failed bank receive a receiver certificate from the FDIC which entitles the depositor to share proportionately in funds, if any, recovered through the disposal of the assets of the failed bank.

In addition to deposit insurance provided by the FDIC or NCUA, the Federal Reserve establishes reserve requirements for banks to help ensure that a bank has liquidity to satisfy depositor demands. Banks are required to make deposited funds available to the depositor within specified regulatory timetables. Consumer depositors have additional regulatory protections, including entitlement to receive disclosures and periodic statements setting forth account information including account balances, interest rates, the rate computation method, fees, funds availability policies, and changes in account terms. Federal regulations also provide protections to consumers with regard to bank advertising, balance calculation standards, and overdraft programmes.

Borrowers

Lending by US financial institutions is heavily regulated, both for safety and soundness and consumer protection purposes.

Safety and soundness lending considerations dictate that banks are generally not permitted to provide unsecured credit to one borrower in excess of fifteen (15) per cent of the bank's unimpaired capital, to avoid inappropriate concentration of risk in a single borrower. Similarly, to avoid potential conflicts of interests, a bank's loans to its directors, officers, and principal shareholders are subject to qualitative and quantitative limits.

Regulators also supervise banks for compliance with an extensive array of consumer lending laws. Banks must lend in a manner that does not discriminate against a consumer based on certain protected characteristics, including race, religion, national origin, sex, age, or public assistance status, and are monitored as to whether they offer credit that serves the convenience and needs of communities in which they do business. With regard to residential mortgages, banks must publicly report loan application and lending data on an annual basis, and must also comply with consumer credit disclosure requirements regarding the terms and cost of credit. Federal law also restricts the features of credit products to the extent determined not in consumers' best interests by regulators, and, in the consumer mortgage lending context, banks must determine that a borrower has the ability to repay any mortgage loan it offers to make to the borrower, consistent with recently enacted mortgage lending requirements. The CFPB is responsible for administering regulations related to consumer credit, and it also collects consumer complaints against banks, and processes these complaints in coordination with other federal and state agencies.

Investors

Banks are permitted to act as brokers or agents in securities transactions through regulatory exemptions from broker-dealer registration requirements under securities law. As discussed above, the proprietary trading activities of banks are limited through the Volcker Rule. Banks, upon regulatory approval, may also conduct fiduciary activities, including acting as a trustee, executor, administrator, or guardian.

Vendors and bank service providers

A bank is responsible for monitoring any third parties hired by the bank to perform services for it. To the extent a bank violates an applicable regulation because of an error by its vendor, the bank will nevertheless be responsible for the violation. Additionally, companies that provide services to banks must consent to examination by the bank's primary federal regulator with respect to the services provided to the bank.

Conclusion

Domestic and foreign financial institutions operating in the United States are subject to a highly complex federal and state regulatory framework. The discussion above provides a high-level overview of certain aspects of US financial regulation, but application of the law is always a fact-specific exercise that requires consideration of a myriad of circumstances. It is strongly encouraged that banks or other financial institutions wishing to enter the US marketplace confer with competent counsel to ensure compliance with applicable laws and regulations.

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