Global Financial Services Regulatory Guide - United States of America

2. What are the main sources of regulatory laws in your jurisdiction?

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# What are the main sources of regulatory laws in your jurisdiction?

**Banking**

Financial institutions, their holding companies and their affiliates are extensively regulated under federal and state laws in the United States. Federal and state banking statutes, related regulations, and less formal guidance, interpretations, letters and notices from the regulatory agencies impose a comprehensive regulatory system on financial institutions.

**Federal banking statutes**. The primary banking statutes are the following:

National Bank Act of 1864 - This created the national bank charter and the first federal banking agency in the United States (OCC), and regulated the distribution of currency national banks were authorized to issue. The authorization of the national bank charter created the parallel scheme of state and federally chartered banks still in place today.

Federal Reserve Act of 1913 - This created the Federal Reserve System and the Board of Governors of the Federal Reserve System. It granted the Federal Reserve the power to make loans secured by eligible paper of member banks, which allowed banks to obtain funds to meet large cash withdrawals or increases in credit and authorized the Federal Reserve to hold reserves of member banks and to conduct monetary policy through open-market operations.

Home Owners’ Loan Act (HOLA) - This created a dual system for savings associations, allowing for federal savings associations in addition to state savings associations.

Federal Credit Union Act - This established the federal credit union system, which is now regulated by the National Credit Union Administration.

Federal Deposit Insurance Act (FDIA) - This created the Federal Deposit Insurance Company (FDIC) to administer a deposit insurance program for banks, and provided for the primary regulation and supervision of state non-member banks and the secondary regulation and supervision of national banks and state member banks.

The Bank Holding Company Act of 1956 (BHCA) - This gave the Federal Reserve the authority to regulate the formation and operation of bank holding companies (BHCs), and limits the nonbanking activities of all BHCs to those that are “so closely related to banking as to be a proper incident thereto.”

International Banking Act of 1978 - This provides equal treatment for foreign and domestic banks in the United States with respect to branching, reserve requirements and other regulations.

Significant amendments to the banking statutes above include the following:

The Gramm-Leach-Bliley Act of 1999 ("**GLBA**") was adopted in order to allow affiliations among banks, securities firms and insurance companies under a financial holding company supervised by the Federal Reserve. The GLBA also provides privacy safeguards for limiting disclosures of personal information.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("**Dodd-Frank Act**") significantly reformed the US supervisory and regulatory framework applicable to financial institutions and capital markets The Dodd-Frank Act created 13 new federal offices, including the Consumer Financial Protection Bureau (CFPB), and required numerous regulations to be adopted by the bank and other financial institution regulators.

**Federal regulations.** Federal regulations applicable to banks in the United States are located in Title 12 of the US Code of Federal Regulations. The OCC, Federal Reserve, FDIC and the CFPB each have their respective regulations in Title 12.

**Securities and investments**

There are many laws and regulations in the US that govern securities and investment-related activities, products and services. The following are the primary federal statutes applicable to securities and investment activities and products:

**Securities Act of 1933 ("Securities Act):** This governs the issuance and distribution of securities in the primary market and requires issuers of securities to register each public offering with the SEC, unless an exemption is available, so that investors receive financial and other significant information concerning the securities being offered. The Securities Act also prohibits deceit, misrepresentations and other fraud in the sale of securities.

**Securities Exchange Act of 1934 (**"**Exchange Act**"**):**This broadly provides the regulatory framework for the trading of securities in the secondary market.It granted the SEC broad authority to register, regulate and oversee market participants in the secondary market broker-dealers, transfer agents, stock exchanges, self-regulatory organizations (SROs) and clearing agencies. The Exchange Act prohibits certain market conduct and gives the SEC disciplinary powers over regulated entities and their associated persons. The SEC also has broad enforcement powers over any market participant, whether or not directly regulated, found to engage in fraudulent conduct, or manipulative or deceptive practices in connection with securities trading.

**Investment Company Act of 1940 (**"**Company Act**"**):** This regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting and trading in securities on behalf of investors.

**Investment Advisers Act of 1940 (**"**Advisers Act**"**):** This regulates persons providing securities investment advice The Advisers Act also requires such persons and entities to conform to standards and regulations designed to protect investors.

Each of these statutes is complemented by comprehensive SEC regulations, orders and interpretations.

In addition to complying with the federal statutes, broker-dealers are required to register with the SEC and must also become members of the Financial Industry Regulatory Authority (FINRA). FINRA rules contain a comprehensive set of rules regulating all aspects of the business of a broker-dealer. All FINRA rules are approved by the SEC prior to adoption.

Each state has its own set of securities laws and regulations designed to protect investors against fraudulent sales practices. Although laws vary from state to state, most states require security offerings to be registered before being sold in that state, unless a specific-state exemption applies or such securities are regulated exclusively by Section 18 of the Securities Act, which pre-empts state law application. States may also require registration of personnel or entities engaged in securities and investment activities, unless an exemption is available.

**Derivatives**

Transactions in Commodity Interests are governed by the Commodity Exchange Act (CEA), as amended by Title VII of the Dodd-Frank Act, and the rules, orders and interpretations of the Commodity Futures Trading Commission (CFTC).

**Insurance**

Each state has its own insurance laws and regulations. Insurance products that have links to any securities or securities products will also be governed by securities regulators.

**Federal regulations:** The Bank Secrecy Act (BSA) generally requires money services businesses (MSB) to register with FinCEN and establish anti-money laundering (AML) programs, recordkeeping, and certain transaction reporting.The USA PATRIOT Act amended the BSA to strengthen AML program requirements, conduct customer due diligence, and enhance customer identification programs.

**State regulations:** Each state has laws and regulations applicable to money transmission businesses. While there are efforts to harmonize these regulations, currently these regulations vary state by state in terms of licensing requirements, exemptions and regulatory interpretation.Many states also have regulations designed to protect consumers who use money transmission services.

**All financial institutions**

The BSA, the USA PATRIOT Act, as well as regulations promulgated by FinCEN and the Office of Foreign Assets Control (OFAC), contain the laws, rules and regulations concerning anti-money laundering controls, processes, reporting, disclosure and other requirements applicable to most financial institutions and other businesses conducting activities that could raise money laundering risks.

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