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, regulations of the bank regulatory agencies issued under them, as well as less formal guidance, interpretations, letters and notices from the regulatory agencies, impose a comprehensive system of supervision, regulation and enforcement over the operations of financial institutions, their holding companies and affiliates.

**Federal banking statutes**. Most of the federal statutes applicable to banks are codified in Section 12 of the US Code. Many other laws applicable to banks have been adopted throughout the years in various other “acts”; however, these laws and acts were adopted in the form of amendments to the statutes below. The banking statutes found in the US Code are as follows:

National Bank Act of 1864 - The National Bank Act (formerly, the Currency Act of 1863) 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. HOLA was extensively amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1998.

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

Federal Deposit Insurance Act (FDIA) - Initially enacted in 1933 as an amendment to the Federal Reserve Act, the FDIA offered deposit insurance for accounts in banks. The FDIA created the Federal Deposit Insurance Company (FDIC) to administer this insurance program, 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 structure 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**) was adopted in July 2010, and represented a material reform of the supervisory and regulatory framework applicable to financial institutions and capital markets in the United States. 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 United States 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 - This law 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 - This law broadly regulates all participants in the secondary markets that list or trade securities after issuances.  The Exchange Act grants the SEC the authority to register, regulate and oversee broker-dealers, transfer agents, stock exchanges, self-regulatory organizations and clearing agencies. The Exchange Act identifies and prohibits certain types of conduct in the markets and gives the SEC disciplinary powers over regulated entities and their associated persons.  The SEC also has broad enforcement powers in connection with any market participant, whether or not directly regulated, found to have engaged in fraudulent conduct, or manipulative or deceptive practices in connection with securities trading.

Investment Company Act of 1940 - This regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting and trading in securities, and whose own securities are offered to the investing public.

Investment Advisers Act of 1940 - This provides for the registration and regulation of persons and entities who are engaged in providing advice to others regarding securities investments by the SEC. The Advisers Act also requires such persons and entities to conform to standards and regulations designed to protect investors.

Each of the foregoing statutes are also amplified by a comprehensive set of regulations. Further, the Dodd-Frank Act had a significant impact on the securities laws. In addition to the foregoing, securities and investment activities and products are also subject to orders and interpretations of the SEC.

In addition to the federal statutes, US broker-dealers are required to become members of the Financial Industry Regulatory Authority (FINRA), which is subject to oversight by the SEC. US broker-dealers are subject to FINRA’s rules set forth in the FINRA Manual. The FINRA Manual contains 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.

Broker-dealers are considered "financial institutions" under applicable anti-money laundering regulations including the Bank Secrecy Act and the USA PATRIOT Act.  In addition to those laws, FINRA Rule 3310, and regulations promulgated by FinCEN and the Office of Foreign Assets Control (OFAC), contain the laws, rules and regulations concerning anti-money laundering controls, processes, suspicious activity reporting, disclosure, sanctions-screening and other requirements applicable to most financial institutions and other businesses conducting activities that could raise money laundering risks. Notably, registered investment advisers are not similarly defined as financial institutions and thus are not subject to requirements to implement an anti-money laundering program; however, the vast majority have done so as a condition of conducting business with other regulated entities.  All US persons and institutions are required to conduct OFAC sanctions screening.

Each state has its own set of securities laws and regulations that are designed to protect investors against fraudulent sales practices and activities. Even though the laws vary from state to state, most state laws require companies making security offerings to register the offerings before being sold in that state, unless there is a specific state exemption available, or unless such securities are "covered securities" pursuant to Section 18 of the Securities Act, which pre-empts state law application. State laws and regulations 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 laws and regulations governing the sale of insurance products and other insurance activities. Insurance products that have links to any securities or securities products will also be governed by securities regulators.

**Money transmission**

Each state has its own laws and regulations defining and governing the conduct of a money transmission business. Depending on the particular product or service being offered, the laws, rules or regulations of the SEC, CFTC or CFPB could be applicable, as well.  In addition, most money services businesses (MSB) must register with FinCEN, which requires MSBs to establish and enforce an anti-money laundering program.

The Bank Secrecy Act, the USA PATRIOT Act, as well as regulations promulgated by FinCEN and the Office of Foreign Assets Control, 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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