Global Financial Services Regulatory Guide - United States of America

1. Who regulates banking and financial services in your jurisdiction?

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

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Banks

The United States has a dual banking system comprising both federally chartered and state-chartered banks. In addition, the United States permits banks to have a corporate structure, including bank holding companies and financial holding companies, some of which may now be designated “systemically important financial institutions.”1

All banks engaging in banking activities, including the acceptance of deposits, must obtain a bank charter before conducting business in the United States. There are many different charters available to banks in the United States, each with different financial powers as prescribed by state and federal laws. The principal categories of banks in the United States include national banks, state member banks and state non-member banks. Foreign banks may also establish a presence in the United States by obtaining authorization to operate various types of offices depending on the types of activities to be conducted. Other types of banks that are included within the US banking system, but which are smaller in number, include private banks, uninsured state banks, bankers’ banks, trust companies, industrial banks and savings banks.2

Almost all banks are subject to the regulatory authority of more than one bank regulatory agency. All banks fall under the supervision and regulation of their chartering authority, at either the state or federal level. If deposit insurance is obtained (which it almost always is), a bank is subject to certain statutes of the Federal Deposit Insurance Act, and in the case of a state non-member bank, to direct supervision by the Federal Deposit Insurance Company (FDIC). If a state bank becomes a member of the Federal Reserve System, the Federal Reserve is its primary federal supervisor. Bank holding company and financial holding company structures subject their bank and other subsidiaries to an additional layer of regulation and supervision at the parent company level.

The regulatory agencies primarily responsible for supervising the internal operations of commercial banks and administering the state and federal banking laws applicable to commercial banks in the United States include the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the FDIC and the state banking agencies.

**The Federal Reserve System**. The Federal Reserve directly supervises state-chartered banks that choose to become members as well as foreign banking offices and Edge Act corporations.3 The Federal Reserve is also the primary supervisor and regulator of bank holding companies and financial holding companies. For bank holding companies and financial holding companies, the Federal Reserve either reviews or receives the notification of their formation and expansion and is also responsible for supervising the overall banking organization, which gives it insight into the operation of banks not directly under its supervision. The Federal Reserve has a number of powers to enforce its supervisory policies and regulations, including the authority to issue cease-and-desist orders, remove bank and holding company officers and other affiliated parties, levy fines, revoke membership, and order divestiture or termination of financial holding company activities.

**The Office of the Comptroller of the Currency**. The OCC is the oldest of the federal bank regulatory agencies, and is the primary supervisory agency for national banks, savings associations and federal branches of foreign banks. The OCC is a bureau of the US Department of Treasury. The OCC is responsible for chartering national banks, reviewing national bank branch and merger applications, implementing regulations, and examining and supervising all national banks. The OCC may also issue cease-and- desist orders; levy fines against national bank officers, directors, employees or other affiliated parties for violating laws or regulations or engaging in unsafe or unsound banking practices; remove or suspend bank officials and other parties affiliated with a national bank; and place national banks into conservatorship or revoke their charters.

**The Federal Deposit Insurance Corporation**. The FDIC was organized in 1934 to provide federal insurance of deposits at commercial banks. Deposit insurance is required of all Federal Reserve member banks and is extended to non-member banks with the approval of the FDIC. Nearly all non-member banks are FDIC-insured. The FDIC is empowered to examine all banks with FDIC insurance; however, to prevent regulatory duplication, the FDIC only directly supervises and examines state-chartered banks that are not members of the Federal Reserve System.

As part of its insurance responsibilities, the FDIC also acts as receiver for failed banks and administers the deposit insurance funds. The FDIC is empowered to make special examinations of banks to determine the condition of the bank for insurance purposes. The FDIC’s enforcement powers include the ability to terminate deposit insurance at insured institutions and to issue cease and desist orders, remove bank officials and other affiliated parties, levy fines at state non-member banks, or recommend or pursue enforcement actions against other insured depository institutions. It may also appoint itself conservator or receiver of an insured depository institution.

**State banking agencies**. Every state has its own regulatory agency responsible for chartering and supervising state banks, as well as foreign banks located within the state. The organizational features of these agencies vary from state to state. Banks chartered by the state must follow all applicable state laws and regulations. In addition, if a state bank takes out deposit insurance or becomes a member of the Federal Reserve, it must also comply with the appropriate federal regulations. State regulatory agencies issue bank charters, conduct bank examinations, construct and enforce bank regulations, and decide on proposed branch and merger applications. All state regulatory agencies can impose sanctions such as revoking a state bank’s charter, issuing cease-and-desist orders, removing bank officials and levying fines.

**Other regulators.** Other state and federal regulatory agencies are also responsible for various supervisory and other matters over US banks, some of which agencies are more active and more powerful than others.  Generally, these state regulators are principally responsible for non-bank lending institutions. Some of the more important agencies are the Consumer Financial Protection Bureau (CFPB), the Financial Crimes Enforcement Network, the Federal Financial Institutions Examination Council, the Department of Justice, the Securities and Exchange Commission, and the Federal Trade Commission.

**Securities and investments**

Companies engaged in securities4 or investment-related activities are primarily regulated by the US Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority, Inc. (FINRA) and the state securities agencies. The SEC, an independent federal agency, was established in 1934 to regulate practices in the securities industry. The SEC’s responsibilities include the protection of investors; the maintenance of fair, orderly and efficient markets; and the facilitation of capital formation. The SEC oversees the key participants in the securities industry, including securities exchanges, securities brokers and dealers, investment advisors, and investment companies (i.e., mutual funds). FINRA is a non-governmental, self-regulatory organization that is overseen by the SEC, and that supervises and regulates the conduct of its member brokerage firms,  alternative trading systems that are registered as broker-dealers, and their regulated employees. In addition to the SEC and FINRA, all states have securities regulatory agencies that supervise the securities and investment activities within their state.

**Derivatives**

The US Commodity Futures Trading Commission (CFTC), which is an independent federal agency of the US government, has exclusive jurisdiction over transactions in “Commodity Interests” that are executed or booked in the United States. The term “**Commodity Interests**” collectively refers to the following instruments: (i) futures contracts; (ii) options on futures contracts; (iii) swaps; (iv) leveraged retail foreign exchange and commodity contracts; and (v) certain other leveraged products.

**Insurance**

Individual states and their insurance commissioners or departments have general authority to regulate insurance activities. Companies that desire to engage in insurance activities must comply with state licensing laws and other state insurance laws and regulations.

**Money transmission**

Individual states are responsible for licensing the money transmission services business and their activities. In addition, most money services businesses (MSBs) must register with the federal government through the Financial Crimes Enforcement Network (FinCEN), a division of the US Department of Treasury.  A money transmitter is a type of MSB, which also includes entities such as issuers of stored value products, check cashers or currency exchangers. MSBs are subject to various anti-money laundering requirements pursuant to the US Bank Secrecy Act.  Depending on the type of business, product or activity, the SEC, the CFTC and/or the CFPB, among others, may also have jurisdiction over the business.

1. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was passed in the wake of the 2008 recession, the newly created Financial Stability Oversight Board was charged with determining whether banks and other nonbank financial institutions could pose a threat to the country's financial stability, which is the source of this designation.

2. Although not covered in this chapter, credit unions are another type of financial institution in the United States that are similar to banks, but operate as cooperative, non-profit entities. Credit unions are regulated by the National Credit Union Administration, and are subject to independent statutes, rules and regulations under the Nation Credit Union Act.

3. An Edge Act corporation is a subsidiary of a US or foreign bank that engages in foreign banking operations; these entities were first created in 1919 by an amendment to the Federal Reserve Act of 1913.

4.  A “security” under US securities laws includes “any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.”

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