



# Financial Regulatory Reform: Full Steam Ahead for Regulators Despite Expansive Legislative Proposals

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MARNI CENTOR: Hello everyone. The Association of Corporate Counsel and SmartPros Legal & Ethics welcome you to today's webcast, "Financial Regulatory Reform: Full Steam Ahead for Regulators Despite Expansive Legislative Proposals."

*[The instructions provided here were intended for attendees of the live webcast when it was originally broadcast.]*

Our presentation today will be moderated by Tom Eck, who is associate general counsel, regulatory, for Capital One Financial Corporation. Now, I'll turn it over to Tom.

TOM ECK: Thank you, Marni. Few of us in the financial services industry would disagree that this has been a time of unprecedented regulatory change, and the changes just keep coming, whether it's a new tax on banks or a tax on bankers themselves or changes to truth-in-lending regulations that completely change the game for us all. There has been no shortage of regulatory change to occupy the days of us financial services attorneys.

Here to help us navigate some of those changes and through the somewhat uncharted waters, if you will, are two attorneys from Patton Boggs. And Patton Boggs, I might add, is a sponsor for the Financial Services Committee and has been a great partner with us. Specifically, the attorneys from Patton Boggs here today are Carol Van Cleef. She's a partner with Patton Boggs, and she represents financial services companies and other clients in federal and state regulatory compliance and enforcement matters, including anti-money laundering, electronic payments, federal deposit insurance, and other bank regulatory issues. She's a veteran of the savings and loans crisis, so this is not a completely uncharted territory for her, and she has represented more than 50 banking organizations on a number of federal deposit insurance assessments and coverage issues.

We are also joined by Todd Cranford, who is of counsel with Patton Boggs. Before joining Patton Boggs, he was a senior counsel to the U.S. House of Representatives Committee on Financial Services, advising Chairman Barney Frank and other members on a breadth of substantive, policy and legal issues coming before the committee. Specifically, he's dealt with mutual fund reform, implementation of [the Sarbanes-Oxley Act], hedge fund oversight, national security exchanges, and credit rating agencies, among other things. He counsels clients on a variety of matters related to public policy, Securities and Exchange Commission enforcement, capital markets, and corporate governance, among other matters.

*[The CLE code and instructions provided here were for use only by attendees of the live webcast.]*

With that, I will turn it over to Todd.

TODD CRANFORD: Good morning, everyone, and thank you for the introduction, Tom. It is once again a pleasure to be with the Association of Corporate Counsel members this morning to discuss some of the latest efforts here in Washington to achieve financial regulatory reform. We here at Patton Boggs have spent a considerable amount of time, as you might imagine, over the

past couple of years working with a variety of clients to address their concerns relating to administration, congressional and agency proposals to revamp how America works.

Two years ago, few would have imagined that the economy would've taken the hit that it has or that Wall Street, which stands second to importance to Washington on financial matters, but it did. As you would expect, virtually all of the proposals have had their supporters and detractors. My colleague, Carol Van Cleef, and I will spend our time with you today touching upon several of the highlights of financial regulatory reform efforts and how we see the debate shaping up in the next several months. Suffice it to say, consensus remains elusive and nothing is a foregone conclusion.

This first slide just gives you an outline of a number of the topic headings that we feel have been most important and prioritized by the administration, Congress and the regulatory agencies. Consolidation and reorganization of the regulators: That has been, I think, at the forefront of a lot of the [regulatory] efforts before you ever drill down to what's happening within some of the agencies. There's been a lot of debate, as you probably know, just about what agencies should exist, should not exist, and what authority they should have.

There has been a lot of concern that agencies such as the SEC, the CFTC, the OTS [and] the OCC may have been asleep at the switch on a number of these issues, beginning with mortgage lending two years ago, which kind of devolved into the financial crisis that we're currently in. There are proponents and opponents on both sides for proposals of how to deal with this, what is being termed as systemic risk. Of course, the first problem, in my view anyway, is that no one has really clearly defined exactly what systemic risk is going to be, and that term gets thrown around a lot, as well as "too big to fail."

Recently Congress has had a couple of additional hearings and a series of hearings, bringing in regulators, bringing in titans and captains of industry, CEOs from a number of the top financial services firms to discuss what went wrong and how we are going to avoid it going forward. As you can see from the slide, the administration's proposal would significantly revamp the current structure as we know it by eliminating the OCC and the OTS, creating of a national bank supervisor, and joining the SEC and the CFTC to harmonize their statutory and regulatory frameworks.

One of the most controversial proposals from the administration that has found its way into legislative proposals in both the House and the Senate is the Consumer Financial Protection Agency, the CFPA. This would be a new federal agency that would have very broad and yet undefined jurisdiction and authority to regulate [the] financial services industry, everything from mortgages to payday loans. There has been a lot of concern among those in the business community about just what a new agency would do, how it would do it, and what it would mean to their bottom line, of course.

There are several Democrats, many of whom are considered to be conservative blue dogs, and virtually all of the Republicans, who have up to this point stood in opposition to the creation of a new federal agency to take on these responsibilities and, quite frankly, these new burdens. That's in addition to the fact that a number of the current federal regulatory agencies don't want their turf destroyed, and they are now mostly behind the scenes, but nonetheless forcefully advocating

to maintain their current jurisdiction. That would be the Federal Trade Commission, the SEC and the CFTC principal among them.

The big wildcard in this is what's going to happen with the Fed. Roundly blamed for being less than diligent in their regulatory oversight of the mortgage industry, you have some legislators who feel that the Fed should not be given additional authority, but should have some of what they currently have curtailed. Chairman Frank is one of those who wants to make the Fed kind of the uber-regulator and give them responsibility for being the systemic risk cop, but Senate proposals aren't so much in favor of that. Particularly Chairman Dodd, who right now is not a big fan of the Fed, is not very interested in expanding their current authority. It's going to be interesting to see, once he comes out with his final proposal, what role the Fed is going to play going forward in [regulatory] reform.

This slide here, as you can see, just goes into a little bit more of what I was just discussing with what role the Fed is going to play. It will clearly maintain a dominant and prominent position, but exactly what's that is going to look like remains to be seen in the coming weeks, particularly, as I said, on the Senate side, as Mr. Dodd has broken out the senators on the committee into working groups to try to address a number of these issues that have been a thorn in the side of trying to get legislation out of the Senate.

Mr. Dodd's announcement that he's not going to run for re-election is one of the latest wrinkles, and I think we can discuss a little later of what yesterday's Senate election in Massachusetts will mean to [regulatory] reform, but initially Senator Dodd's decision not to run in 2010 is going to have a significant impact on what happens with [regulatory] reform. Exactly what, I think is still up in the air. He may feel a little freer to pursue either his agenda or the agenda of the administration with less concern about maintaining the bipartisan stance that he has up to this point. I think, conversely, he may be as concerned about his legacy as he is about passing the legislation, which would, I think, militate towards maintaining his bipartisan position in working with Senator Richard Shelby from Alabama, who's the committee's ranking member. Senator Shelby has taken the stance that he is opposed to the Consumer Protection Agency, which has been again one of the administration's primary focal points in their reform package.

In May, Congress passed the CARD Act, which was one of the first big pieces of legislation in furtherance of the [regulatory] reform agenda. It was hailed by many as a positive sign, but we really haven't seen that momentum carried forward to today. Although the House passed its version of [regulatory] reform before they left for Christmas, there's no telling when the Senate is going to get to it. Mr. Dodd was hoping to have everything in place for consideration of legislation by the end of this month, but it's looking like that may not happen. It still could, because anything in this environment can happen, but right now it looks like there's still sufficient opposition to some of the key pieces of legislation, such as the Consumer Financial Protection Agency, that it's going to delay consideration not only by the committee, but by the full Senate before later in this first quarter.

Regulation of hedge funds and other unregulated entities: This, again, goes back to the core of what many believe was happening in the financial services industry that has led us to the point that we're in now. You had a number of these—and we'll use the term “exotic” because that's what the press likes to use—financial instruments that were either lightly regulated or

unregulated, trying to make hedge funds, sovereign wealth funds, and private equity funds the bad guys. For those on the call who have any involvement with any of these types of entities, know that you remain on the radar. Congress is working now to try to determine just what role regulations should have in them, trying to, of course, maintain that delicate balance of keeping free access to capital, creativity, ingenuity, but also safety and soundness.

There is significant concern among policymakers, many of whom don't really understand what these entities do, how they do it, and what the managers of these funds do on a day-to-day basis. So I think one of the things that we have been doing, for example, with a number of clients is just trying to get in and educate the policymakers as to what's going on, even those that serve on Financial Services and on the Senate Banking Committee often don't have a clear understanding of just what these entities do, what the products themselves do, and how they do it. So trying to get in and make the policymakers aware of just what's going on has been and will continue to be key in trying to advance the objectives of [regulatory] reform.

Credit rating agencies have also been in the shadows of the debate, but remain on the radar nonetheless. Several years ago, credit rating agencies came under fire, and legislation was signed into law that created more regulation of just how Moody's and Standard & Poors operate, because there were far too many government instruments and private sector products that relied on the ratings coming from the rating agencies, but there was little understanding and little oversight of how they operated. So Congress passed the Credit Rating Duopoly Act and now is revisiting, because again there was concern that the credit rating agencies play a vital role in what's happening in the markets, but were going very lightly regulated, and in some instances, unregulated, so now they are trying to turn the tide and increase oversight of the credit rating agencies, along with actions taken by the SEC to shore up how it operates and enforces its jurisdiction over the credit rating agencies. The administration's proposal was in. There is a section in the legislation passed by the House that addresses it, and it remains to be seen whether or not the Senate will include a provision on credit rating agencies in its bill when it finally comes out.

Over-the-counter derivatives remain a very big issue, going through multi-committee hearings—House Agriculture and House Financial Services, as well as Senate Banking, Senate Finance and Senate Agriculture committees, all looking at the role that derivatives play. I would imagine that a number of those on the call may be the end users of derivatives, and you use them in strategizing and trying to minimize your exposure during the course of the year. That's why this legislation is going to be important to you. We here at the firm have been following the proposals and trying to guide clients through to get them well-positioned to be able to address whatever the legislation may wind up being, whether it's to advocate for or in opposition to certain proposals.

As you can see from this slide, standard OTC derivatives would have to be cleared through a central clearinghouse or traded on exchanges or other electronic trading systems as opposed to the current system of company-to-company or party-to-party trades, of course, just trying to increase the visibility and the transparency of these transactions. These reforms are highly controversial. You've got a number of senators, in particular from farm states, who are very concerned about what impact this will have on their constituents, as well as those from representing financial centers in Chicago and New York who want to make sure that their oxes aren't being gored either.

The insurance industry also remains a priority. It will be interesting to see whether or not insurance is actually included in this [regulatory] reform package that is going now or whether they will try to move it separately, similar to what they plan to do with regulation of Fannie Mae and Freddie Mac. Because, again, very controversial, but they still see the need for a new regulation of those entities, but didn't want to muck up and cloud up this legislative effort any more than it already has been.

Executive compensation: very easy target for the press and for Congress to shoot at. There have been untold stories about what is considered excessive compensation, whether it is in the form of bonuses or the annual salaries for a lot of executives, particularly in the financial services arena. This, again, is nothing new. For those that have been following the issue, Congress has been concerned about what it perceives as excessive compensation for a number of years, as has the Securities and Exchange Commission in trying to come up with new rules, regulations, not so much, at least as they described it, to control compensation, but to be more transparent about the forms of compensation that executives and rank-and-file employees receive, and the role, for example, that consultants play in helping companies arrive at executive compensation packages. The House version of the legislation includes reforms of how [executive compensation] is administered.

As you probably also know, earlier on, there were some restrictions placed on compensation to TARP recipients. There are many who believe that that was wholly appropriate and they don't have concerns about it, and there are others that still feel that Congress may be overstepping its bounds by trying to influence and control compensation in what is essentially a free market and a capital market. That comes from both Democrats and Republicans, as you might expect—more Republicans, but there are a number of conservative Democrats that are concerned with the direction that executive compensation reforms are taking. And it's going to be interesting I think in the Senators of the legislation to see what Senator Dodd—what position and what stance he takes when trying to address concerns, given I think particularly some of the baggage that he's currently taking into this debate with his relationship with Countrywide Financial in particular.

And then, what can we expect going forward? I think first and foremost, it's still difficult to call what is going to happen and what effect the likelihood that the Democrats are going to lose their filibuster-proof majority in the Senate is going to have on [regulatory] reform. Mr. Frank will continue to push his agenda, which is in large part the administration's agenda, in trying to see very broad-based financial regulatory reform passed. They are hoping that the Senate will take up their version of the legislation quickly and that they can get something on the President's desk sooner than later.

GSE reform, Internet gambling, and market structure issues will also, I think, rise prominently on Mr. Frank's agenda. These are issues that he has demonstrated in the past that he is concerned with and that he has broached in the last couple of years, but larger issues have subsumed to the tension with housing, the mortgage industry, and what's going on now taking front and center. I think that his discontent and consternation with the slowness in how many companies are stepping up to assist homeowners to stay in their homes and rework their mortgages is going to come back to the fore, and he may try to pass additional legislation that would do more than suggest to or entice industry to participate, but try to find a way to legally compel them to participate and to modify more mortgages at a faster rate.

Chairman Dodd's decision not to run for re-election alters the landscape, but as I noted earlier, I think the impact is not yet clear. He will undoubtedly want to preserve his legacy, but to what extent he is willing to go to do that I think remains to be seen. Whether or not it's possible, he could have a potential administration position in the offing and he doesn't want to offend the President. So it's going to be, I think, interesting over the next weeks as the Senate works its will and tries to come up with a legislative proposal, which may move a little faster if health care burns up now that the Democrats no longer have their supermajority. It's clear that health care is on the ropes and may not be able to pass as quickly as the Democrats were hoping. If that is the case, then I think they will turn their attention to financial services reform a lot sooner.

With that, I will turn it over to my colleague, Carol, and happy to try to respond to any questions you have later on. Thank you.

CAROL VAN CLEEF: Thank you, Todd, for a very comprehensive overview, and I know it's extraordinarily challenging, especially every time you think that things slow down a little bit—we've had a little bit of a breather in the last couple of weeks—with the elections yesterday, it clearly changes landscapes significantly.

Like Todd, I'd also like to thank ACC and the committee for this opportunity today to speak to you.

What I want to do is, in the next few minutes, give you a quick overview of a number of the issues that are on the forefront from a regulatory perspective. This is an incredibly challenging task because it has been a very active period for the regulators, in part because of what Todd alluded to earlier. As the regulators are getting threatened by the Hill with loss of jurisdiction, loss of staff, and in one case, the loss of the entire agency—maybe two cases—they all want to step up and show what kind of muscle they have in this environment.

At the same time, we've had another clear trend underway, which is the banking regulators in particular and in part having to make up for some of their activities—lapses—over the last several years, have been very active in the enforcement arena. In fact, I spent a little bit of time just looking at the Fed, thinking the Fed was the easiest one to do a quick analysis on, in part because they have the smallest number of banks that they oversee of the federal banking agencies and also because their data is a little bit more accessible than the other agencies. Just doing a quick total, I found the Fed has brought actions against, in January of this year [2010] alone, and we're only to the 20<sup>th</sup> day of the month, they have brought 13 enforcement actions, written agreements, and in many cases imposing very lengthy constraints on the regulatees. In the month of December [2009], which we know people get preoccupied with the holidays, there were 18. There were on average 20 a month for several months in 2009, in contrast to only four in the month of January of last year.

What does this all mean? This means if you extrapolate into the other banking agencies, there are many, many banks that are subject to rather significant enforcement actions—enforcement directives—at the moment. In some cases, it's a do-or-die situation, where they have been told that if they don't obtain necessary capital or find somebody that they can sell themselves to within a matter of a few weeks, that they will be taken over by the government.

Todd, if we could go to the next slide, "Update on other issues." I also want to mention some other rather significant events that have been occurring, especially in what I call OFAC Land. If we could go to the next slide entitled "Federal Deposit Insurance," I wanted to first start by mentioning that we had 140 bank failures in 2009. Some of them were much larger than other ones. Many of them were involving small banks. The FDIC insurance fund did take a significant hit and moved to a loss position. In 2010, again, we're on the 20<sup>th</sup> day of the month and it's a Wednesday, so we've only really had two Fridays for closing banks, which is when the banks typically close, and we have had four bank failures to date. I've seen estimates that are really all over the place in terms of how many more that we might see this year. I think watching, though, the enforcement action that I just mentioned is somewhat of a gauge. There are still many troubled banks out there and we may see more to come.

What does this mean for the FDIC generally? Well, we've seen over the past year the initiatives to increase federal deposit insurance assessment to help replenish the insurance funds. We've also seen something of a shift in tactics, which is to get the industry to pay more for the benefits that they're getting, including the proposal just last week from out of the White House which would impose an additional surcharge or a tax on banks that took TARP funds. A lot of people sit back and say, "Well, wait, this is horrible. I didn't want to take the TARP funds and now I'm having to pay for the fact that I had to take them." I think that there are others who will sit back and take a look at this and say, "Well, what really happened there is: The federal government stepped in to help shore up the entire financial system, and in particular the largest banks, and that all of them should bear some costs of that extraordinary protection that occurs." Obviously this is a debate that's going to go on probably for several months before we see final resolution, either killed or adopted.

We also saw in the last few days the proposal out of the FDIC to impose higher insurance assessments on institutions that fashion their employee compensation in a way that would be deemed to encourage or perpetuate riskier practices within institutions. That was published in the *Federal Register* yesterday and is out for a 30-day comment period.

Then just to mention very briefly that I don't know whether we're really going to see an end of the Temporary Liquidity Guarantee Plan as intended, but we do have phase out/phase down periods that have been put into place and so far, they look like they are going to probably hold.

If we could move on now to the next slide, please. Just a few remarks about the Credit Card Act implementation; as Todd noted, it passed last May. It imposed a very stringent timetable on the Fed in particular to do the necessary rule-making to implement many aspects of the statute. The Fed is well along in that process. At the same time [it] is continuing to try to come out with the necessary regulations to deal with the changes in the mortgage arena, as well. Obviously Federal Reserve staff has been extraordinarily busy over the last several months. I know that one of our colleagues did a focus session a month or so ago on the changes on mortgage regulations, and that's something, obviously, that we can discuss at greater length.

I also wanted to note that in the stored value and prepaid card area, again, regulations were required to address gift cards with final regulations in place shortly. The Federal Reserve has proposed rules in that area. I believe the comment period has now closed and we're awaiting the final set of rules. In addition, FinCEN (Financial Crimes Enforcement Network) was directed to

come out with regulations of the Bank Secrecy Act for stored value or prepaid cards by January 22. We are literally on a minute-to-minute watch now, awaiting whether it's going to be proposed [regulations]. My guess is it will probably be some sort of a final interim regulation with a comment period after that.

It is also very possible, and I'll talk about this a little bit more, that those [regulations] may be tied into some rule making with respect to money service businesses. There are a host of studies that are required by the CARD Act. We're starting to see the first of those surface and will continue to see more in the coming months, which will help direct further the debate and shape the Congressional agenda in this area.

I'd like to go to the next slide, please, and talk a little bit about OFAC. There have been some extraordinary developments in OFAC Land in the last month. Right at the end of the year, OFAC issued a deferred prosecution agreement in conjunction with the Department of Justice and the Manhattan District Attorney's Office. The agreement was with Credit Suisse. It imposed a \$526 million fine stemming out of violations of the OFAC-administered statutes that govern transactions with Iranians. This comes on the heel, and actually is a follow-up and related to the Lloyds TSB Bank case, which was first announced a year ago, and a fine at that time was imposed on Lloyds Bank of \$350 million. That fine, at the time, did not involve OFAC, and OFAC finally came to agreement in December with Lloyds and imposed a \$217 million fine. That fine, however, was offset by the payments made to settle the \$350 million fine imposed last February.

What's important in those two cases—there is a link. It was when the Manhattan District Attorney's Office started investigating some transactions involving some suspected or known buildings owned by Iranians, that they then saw transactions involving Lloyds Bank. As they dug into the transactional records, they discovered that there are other banking institutions that had also been engaged in similar transactions, Credit Suisse being one of those other institutions. There have been reports that there may have been as many as six or seven or eight other banks that may be subject to similar penalties in the future. When I say "similar," not necessarily the same magnitude, but certainly for the same transgressions.

We also have seen the Manhattan district attorney pointed to a greater relationship between Iran and Venezuela, calling into question continuing U.S. banking relationships with Venezuelan banks; clearly one of those issues where there is more to come. As a general matter, we have seen an uptick in OFAC actions against other types of companies, including DHL, which settled for a \$9.44 million penalty in midyear. Subsequently, the Australia and New Zealand Bank Group had a \$5.7 million dollar penalty for a Sudan violation, and there have been a couple of other multimillion-dollar penalties that been issued.

OFAC has continued to flush out its regulations, including some language changes in its global terrorism sanction regulations to clarify what the meaning of "financial, material, or technological support for terrorists" is. It has broadly, not surprisingly, defined that to include property, either tangible or intangible.

We have had yet another iteration of the Economic Sanctions Enforcement Guidelines. What I would probably like to underscore is that OFAC does rely upon self-disclosure, and self-

disclosure means that it has to happen before some government or law enforcement agency begins an investigation. Should law enforcement be, even for unrelated matters, in the institution, it is possible that OFAC could take the position, if you decide at a later date to come forward with a disclosure of potential violations, that that is not self disclosure and then subject the organization to a higher level of penalties. This a major, major issue and is one that the financial services sector has to follow very carefully and consider potentially some efforts to pull OFAC into check.

I would like to also note for you that OFAC has scheduled a Financial Sector Symposium, where it's an open invitation to anyone in the financial services arena. I believe it's either in March or early April. It's on the OFAC Web page. You just have to sign up. Seating apparently is limited, so you want to reserve a seat sooner rather than later.

Also important to note is that OFAC has been very active in trying to sign up MOUs with other regulatory agencies to really leverage off of other regulatory agencies' examination forces, because OFAC does not really maintain its own examination forces. What this means is that it is a further way of exposing the financial services area to a higher level of review and potential action.

If we can move to the next slide, I wanted to talk for a moment about FinCEN's initiative, (Financial Crimes Enforcement Network), which is the agency charged with administering the Bank Secrecy Act. As probably most of you know, or all of you know, that the list of entities that are potentially subject to FinCEN's jurisdiction is quite broad. FinCEN, though, has been fairly deliberate in expanding the list of organizations that have to comply.

One area, mortgage lenders and originators, is an area that's really been on the drawing boards for at least six years, maybe even seven years now. Finally, the middle of last year, FinCEN proposed imposing the AML compliance program requirement on mortgage lenders. It also, at the same time, indicated that, over time, it would consider extending those types of requirements to other types of finance companies, as the case was built for money-laundering exposure of those entities. Somewhat minor—maybe not entirely minor—is the discussion about extending the currency transaction reporting requirement to mutual funds. I think most mutual funds don't deal in cash, so that may be a fairly moot issue.

One issue that is getting a lot of response from various sectors, and is a cause of concern on multiple levels, is a proposal by FinCEN to expand the Section 314(a) information-sharing authorities that are now made available to federal law enforcement. Federal law enforcement can come into FinCEN and say, "I have a particular concern. I'm building a case on a certain type of a matter. I would like to be able to send out an e-mail to the financial institutions, whether it's a particular market, a specific type of financial institution or otherwise, to find out whether they might have accounts for a particular individual or type of account that they might have." There is a whole set of rules that govern when and under what set of circumstances FinCEN will send that out.

FinCEN is now proposing to extend that beyond just federal law enforcement to make it also available to state and local law enforcement officials, as well as to foreign governments. There's a considerable concern in a number of areas of the financial services market that this will

increase significantly the burden that financial institutions have in checking their customers and transactional records against these requests.

We also are seeing a move to extend the Section 314(b) institution-to-institution sharing requirements, which are available when there is suspected money-laundering or terrorist financing, to include fraud, and in particular mortgage fraud, stemming out of the mortgage crisis. As I noted earlier, we do have proposals out for stored value and money service businesses, and we're also awaiting—again, one of those things that could be any day—a revision of the Bank Secrecy Act and Anti-Money Laundering Examination Manual. The last one that came out was in '07. The economic crisis clearly has delayed further changes. Again, when it comes out, we don't expect huge changes, but there will be some.

If we could move on to the next slide, please. I have several slides here, and I'm not going to go into any great detail, just to note again that FinCEN is looking hard at how money service businesses are regulated. The fact that there are so many different kinds of entities that come under this definition, and also the fact that there are foreign entities that are touching U.S. residents that are not necessarily licensed or regulated, but are taking money from U.S. persons, and they're looking at possibly bringing them within the jurisdiction of U.S. government, at least to the extent that they touch the U.S. persons.

On the stored-value proposals, right now, FinCEN is focusing on a couple of areas. There has been a great deal of debate as to how far they should go in regulating stored value, and I think that we're probably best, since we're so close to those regulations coming out, deferring that for discussion another day.

If we can then move then through, I think we have two or three slides there that are covering stored-value, to the slides labeled mortgage and other finance companies. Again, I just want to underscore that mortgage finance companies, if this regulation goes through, will be brought within the overall BSA compliance regime, which would require the development and implementation of an AML compliance program, as well as regular filing of suspicious activity reports, which are useful to law enforcement in their activities.

If we move onto the next slide, to talk about other AML and CFT developments, one of the predominant issues through 2009, and it doesn't seem to be going away in 2010, is the issue of tax evasion. This is a major issue for banking organizations, not just in making sure that you're not pulled in, as some of the foreign banks have been, for either overtly assisting customers in setting up tax-avoidance vehicles, or not reporting, as agreed to with the IRS, the fact that they have customers engaged in this activity. The challenges for financial services entities, be it insurance, securities or banking, and even money service businesses, is the extent to which they're going to have to inquire about customer activity to see if money that's coming in the door may in fact be funds that are derived from or intended to try to evade taxes.

Another area where we've seen developments in the last six months is with respect to SWIFT messaging, international wires, and the international ACH transactions. Those rules went into effect late in 2009. We expect that the regulators, the examiners, will start to look very closely at what is being done to comply with those rules into 2010. There's been guidance that has been issued late in December as to what the examiner's expectations would be. Bottom line is that

institutions need to get more information on their wires and ACH transactions, and that means then that they are going to also be held to a standard of looking more closely at the information that comes in.

Political corruption continues to be a huge issue. Foreign corrupt practices interweaved with money laundering. If you haven't seen, I think there was an announcement yesterday or the day before of the largest FCPA action brought to date. I think the good news, I think for the most part, is that it wasn't brought against a single large company. The bad news is that they are casting a very wide net and there were 30-plus individuals that were involved in this action. It seemed to be related to gun smuggling or the sale of guns.

A couple of other announcements: Before the end of last year, the president announced the formation of a Financial Fraud Task Force, which will focus on all types of financial frauds: mortgage, securities, fraud involving the economic stimulus, as well as predatory lending. Again, focusing law enforcement resources, these present increased challenges for financial services companies and greater vulnerability.

Another action announced yesterday is the merger of the terrorist unit and the narcotics unit in the Southern District of New York, with the intent of trying to take funds that are being generated from narcotics cases to apply them to more extensive actions in the terrorist area.

I also want to highlight—I know Todd mentioned Internet gambling, online gambling. The regulations were scheduled to go into effect late last year. They have been delayed for another six months. The question is whether Congress will act fast enough to prevent those from going into effect. I guess I would also wonder if we're going to have something of a shift in attitude on the Hill, if that might actually start to shift us back to the fact that those [regulations] may be allowed to become effective instead of being pre-empted.

Another item that I wanted to point out is, and it's tied to the increased role we've seen with the FTC. The FTC has really become a watchdog and is closing the gap for a number of types of financial services that slipped through federal regulatory purview otherwise. In late November/early December, I believe, the FTC imposed on MoneyGram an \$18 million fine for money transfers to Canada in connection with telemarketing scams. The FTC really held MoneyGram to a standard we've seen some state regulators and law enforcement hold other money transmitters [to]: understanding who their agents are [and] making sure that they're training appropriately their agent. It reinforces a case that came out of FinCEN and federal law enforcement, state law enforcement, a year ago: the Seagate case. Again, anyone who operates agent networks, whether it's banks, security firms, insurance companies, it is relevant to take a look at this and understand the underlying rules of it.

I'm not going to spend much time on data security, privacy [and] identify theft, other than to say there is federal legislation kicking it around. It seems like it is getting closer to becoming reality. There's some legislation that is also kicking around that would require greater disclosure with respect to phone cards and cell phones (and this is actually on the next slide) that may have implications for delivery of mobile financial services. In addition, we've seen a further extension of the identity theft red flags. We've seen an exemption of lawyers from that [regulation] and the question is: Are we going to see other exemptions for small business and accountants to come?

Moving on to issues to watch, we've talked about many of these issues already. I do want to note that there is a proposal the IRS has put out that would require merchant processing banks, as well as payment processors, to report on credit cards and debit card transactions, push of funds into the merchants that they serve. What this is intended to do is to encourage better reporting of revenue from merchants. I guess that raises for me a question of whether we're going to see merchants start to swing back and want more cash transactions rather than credit card transactions.

There are a number of other issues. What I'd like to close with on the last slide that is entitled "Regulatory Reform" is that this is to really swing back to what Todd was talking about earlier. We may see legislation on regulatory reform this year. There seems to be a pretty good chance we'll see something. If we do move forward, especially with the Consumer Financial Protection Agency or some rejiggering of current responsibilities among the agencies, you do really need to focus hard on how that rejiggering will affect your products and services, and think about laying an appropriate roadmap in the legislative history. It's not going to be necessarily in the law itself, because law is fairly general, even though it's a fairly large proposal, but think about how you might want to protect; make sure that the appropriate factors are considered with respect to your products and services.

Obviously, this is going to be another year of extraordinary developments, sort of fasten the seatbelt and hang on for another wild ride. At that point, I think we have a couple of minutes left for questions.

TOM ECK: Actually, we have a couple of questions. The first one, actually I'm going to take the moderator's privilege on this one. Following up, Todd, on the discussion about the election and what impact you see the fact that there's no longer a supermajority having on the CFPA. In particular, do you think the Republicans are going to be willing to filibuster on something that actually has some degree of popular support and that is, "The banks are bad guys"?

TODD CRANFORD: Well, that is a question that I think is much more difficult to answer than you might think.

TOM ECK: Oh, I think it's very tough to answer. That's why I'm asking you.

TODD CRANFORD: Looking at the political landscape, I think that a lot of folks would think: OK, the Dems no longer have their super majority, so the Republicans coupled with those conservative Democrats who were on the fence to begin with, that a lot of the questionable or too-close-to-call legislation won't get passed. I still think that there is a good chance that some form of a CFPA will be included in this legislation.

I think it is much less likely that the version that is currently in the House-passed bill will wind up being the final version. There are already rumors circulating that Senator Dodd is willing to severely curtail the CFPA's authority and the structure as it currently existed, either in the administration's proposal or in the House-passed version, so that there will be some increased oversight of the markets, but not in a completely new, independent federal regulator. I think that that is something that is likely to happen. I think that this election will obviously impact the passage of financial [regulatory] reform, but it will not kill it. Even though there are a number of

Republicans virtually unanimous in the Senate in opposition to the most controversial aspect—again, the CFPA—they don't want to take the political risk of just saying, "I'm opposed to this," until they are able to offer their solution.

Right now they are talking in very broad-based terms about what they would do, but they have not, at least to my knowledge, come up with a specific alternative to the CFPA. Right now, they are just saying, "We don't want a new federal regulator." Until they come up with an alternative that they think is viable and that they can market to the American public, they are going to be cautious about just being a "just say no" party. Because with the antipathy and animosity toward legislators generally, they want to be able to take advantage of the fact that the Dems are currently in power and be able to rail against them, but they don't want to go so far that people start to look at them and say, "You are all in the same bucket and we should throw all of the bums out."

TOM ECK: I see we are out of time.

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MARNI CENTOR: Tom, do you have any more questions?

TOM ECK: One for Carol, and it has to do with the type of enforcement actions that have been brought. There have been several enforcement actions brought based on what appears to be a lack of capital at the institutions. Are you seeing any enforcement actions related to compliance issues more so than others, AML or whatever?

CAROL VAN CLEEF: It's a very good question, Tom. On the AML front, I think probably what's surprising is that there are enforcement actions that are citing AML deficiencies. In one or two cases, they've been only AML-focused. What has also surprised me is the seeming huge gap, you sort of wonder, eight years, nine years post-9/11 and certainly four or five years post the first edition of the exam manual, how these institutions are being cited for what appears to be such seriously deficient programs.

In other compliance areas, we're seeing sort of general lack of compliance structures, the need to appoint compliance committees, focused particularly in the mortgage area in particular, and I think that's probably where we will see, in six months or a year out, more compliance enforcement actions for failure to adapt to changes necessary in compliance. Looking at other agencies, we certainly are seeing orders of the OTS on that front as well.

TOM ECK: Great, thank you. I see that we are over our allotted time by a few minutes. I would invite attendees having further questions to send those questions directly to Carol or Todd. Their e-mail addresses are on the last slide on their presentation.

I would also like to thank Carol and Todd and the Corporate Counsel Association for putting together what I think has been a very helpful, very informative meeting on a very important topic. Thank you all for attending, and I'll turn it back over to Marni.

MARNI CENTOR: Thank you, Tom. On behalf of the Association of Corporate Counsel and SmartPros Legal & Ethics, thank you again for listening to today's program.

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Thank you again, everyone, and have a good day.