

# Securities Regulatory Regime

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# Agenda

- Overview of U.S. Securities Regulatory Regime
- Other U.S. Regulators
- U.S. Securities and Exchange Commission
- FINRA
- State Regulators
- Dodd-Frank Act
- Current Topics of Interest

# Overview of U.S. Securities Regulatory Regime

- There are 3 major securities regulators in the United States.
  - Securities and Exchange Commission
  - FINRA (formerly NASD and NYSE Regulation)
  - State Securities Commissions
- State and federal criminal authorities also have a role

## Other U.S. Regulators

- The 50 state insurance commissioners regulate insurance products.
- The CFTC is an independent federal government agency that regulates commodity futures and options markets in the United States.
- The National Futures Association (NFA) is the industry-wide self-regulatory organization for the U.S. futures industry.

# Other U.S. Regulators, continued

- U.S. Banking Regulators (in addition to state regulators):
  - Board of Governors of the Federal Reserve System
    - Oversees state-chartered banks and trust companies that belong to the Federal Reserve System
  - Federal Deposit Insurance Corporation
    - Regulates state-chartered banks that do not belong to the Federal Reserve System
  - Office of the Comptroller of the Currency
    - Regulates banks that have the word “National” in or the letters “N.A.” after their names
  - National Credit Union Administration
    - Regulates federally chartered credit unions

# Securities and Exchange Commission

- SEC is the federal agency with primary responsibility for federal securities laws
- Five Commissioners - political appointees of the President
- The staff does the work of the Commission
  - Enforcement
  - Trading and Markets
  - Investment Management
  - Corporate Finance
  - Office of Compliance, Inspections and Examinations (OCIE)
- Offices nationwide
  - Home office is in DC

# Securities and Exchange Commission

- Regulation of broker-dealers
  - Registration
    - All broker-dealers must be registered with the SEC (except broker-dealers with no Exchange business)
    - Individuals do not register with the SEC
    - Conduct Regulations
      - Fair Dealing
      - Best Execution
      - Customer Confirmation
      - Restrictions on Insider Trading

# Securities and Exchange Commission

- Financial Responsibility Rules
  - Net Capital
  - Customer Protection
  - Books and Records
- Other
  - Fingerprinting Requirements
  - Anti-Money Laundering
  - Business Continuity
- Examination
  - Broker-dealers are subject to periodic examination

# Securities and Exchange Commission

- Investigation of broker-dealers
  - SEC has broad authority to investigate possible wrongdoing
    - Informally
    - Formally
      - Formal Orders
      - Subpoena Documents/Testimony

# Securities and Exchange Commission

- Discipline of broker-dealers
  - Administrative Forum
    - SEC can impose censure, suspension, ban, civil fines, cease and desist orders on firms and associated persons
  - Federal Court
    - SEC can go to federal court and seek injunction, accounting, disgorgement and officer and director bar and civil penalties against any violator

# Securities and Exchange Commission

- The SEC also regulates
  - Investment companies
  - Investment advisors
  - SROs
- Under Dodd-Frank, the SEC now more closely regulates hedge funds and ratings agencies.

# FINRA

- Self Regulatory Organization for 4500 broker-dealers with responsibility for protecting customers and the integrity of the markets
- Responsibilities
  - Qualifications/Registrations
    - Set standards for admission of firms
    - Set standards and qualifications and examinations for persons
    - Administers examinations
    - Administers Broker Check

# FINRA

- Establish Rules
  - Submit proposed rules to SEC for review, public comment and approval
    - Sales Practices
      - Know Your Customer
      - Suitability
      - Commissions and Markups
      - Communications with the Public
      - Supervision
      - Research
    - Financial and Operational
    - Margin

# FINRA

- Responsibilities
  - Examinations
    - On premises of firm and review compliance with books and records requirements
  - Investigations
    - Jurisdiction is limited to membership
    - Does not have subpoena power
    - Can and do compel documents and testimony; failure to comply with requests can lead to fine or termination of registration
  - Discipline
    - Formal complaint procedures
    - Hold administrative hearings
    - Enter decisions
    - Appeals to NAC, SEC and then Court of Appeals
  - Arbitration Facilities

# States

- **Uniform Securities Act**
  - Intended as a model Act relating to establishment of state securities laws
  - Adopted in whole or in part by many states
- **NSMIA - 96**
  - Fundamental change in balance between federal and state regulation of securities markets
  - States no longer involved in merit review of most securities filings
  - Can't impose regulations over and above SEC's in many areas
  - Splits IA jurisdiction between states and SEC
  - Leaves enforcement of potential fraud to states

# Dodd-Frank Wall Street Reform and Consumer Protection Act

- In July 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.
  - The Act significantly changes the regulatory landscape for securities, commodities, derivatives, mortgages, etc.
  - Title 7 extends regulation to the derivatives markets.
    - Swaps, securities based swaps, swap execution facilities, major swap participants, swap and securities based swap dealers.
  - Volcker Rule Restricting Proprietary Trading
  - Enhanced Regulation of Investment Advisors
  - Fiduciary Standard for broker-dealers?

# Current Topics of Interest

- High frequency trading
- The intersection between broker-dealers and investment advisors
- Credit Crisis
- Brokerage firm bankruptcies/failures
- SEC and FINRA enforcement programs
- Increased criminalization of the securities laws