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GUIDE TO BANK UNDERWRITING, DEALING AND BROKERAGE ACTIVITIES — 2012 EDITION

This Guide is about the capital markets activities of U.S. and foreign banks and bank holding companies in the United States. It describes the U.S. regulatory regime applicable to these activities and tries to highlight recent developments respecting the conduct of securities-related and other business under applicable banking and securities laws, including the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Gramm-Leach-Bliley Act, the Bank Holding Company Act, the Glass-Steagall Act and the International Banking Act. This Seventeenth Edition speaks as of September 15, 2012 and reflects a substantial re-writing and update from the 2011 edition.

This Guide devotes significant attention to the implications of the credit/securities crisis of 2007-2009, and the dramatic re-focusing that the Dodd-Frank Act requires as its provisions are implemented. Dodd-Frank-focused analysis is set out in Part I (Dodd-Frank summary, impact on Gramm-Leach-Bliley Act empowerments and preemption issues), Part II (risk management, municipal securities, "Volcker Rule" implications for proprietary trading and private equity fund investment, hedge fund operations and the new statutory scheme applicable to derivatives), Part III (enhanced restrictions on covered transactions by a bank with its affiliates), Part IV (deposit insurance and related issues), Part V (loan trading), Part VI (private placement and related transactions), Part VII (private equity investments in U.S. banking organizations), Part VIII (investment advisory/management and related developments), Part IX (enhanced broker-dealer requirements), Part X (securitization developments), and Part XI (international linkages and implications).

This Guide consists of 11 Parts, and is supplemented by a more detailed Table of Contents and Index of Defined Terms to make it easier to locate (and cross refer to) specific issues and areas of interest.

Part I discusses the framework, scope, implementation and evaluation of regulatory policies for the integration of investment and commercial banking activities. It provides an overview of U.S. and foreign bank and holding company securities-related activities, and outlines the applicable regulatory framework, and legislative/administrative measures for financial services convergence.

Part I addresses the Dodd-Frank Act and its attendant rulemakings, including its implications for the reshaping of the provision of financial services in the United States. Since Dodd-Frank's scope and rulemakings have evolved in the past year, Part I includes a significantly more detailed discussion of Dodd-Frank-related regulatory and market developments.

Dodd-Frank notwithstanding, the "bank charter" remains an enormously powerful and comprehensive organizational framework for the conduct of capital markets-related activities. Accordingly, Part I analyzes the "business of banking" and the various powers given to different types of entities engaged in U.S. banking, insurance and capital markets operations. It also discusses "preemption issues" applicable to bank (primarily national bank) capital markets activities (including in the context of Dodd-Frank).

Part I highlights initiatives and developments with respect to joint ventures, "networking", "strategic alliance" and other "controlling" and "non-controlling" arrangements between and among banking organizations, securities firms and other business operations.

In addition, Part I includes a detailed, issue-oriented analysis of the Gramm-Leach-Bliley Act, including the scope of the powers of financial holding companies, the scope of "complementary activities" which financial holding companies are permitted to conduct (particularly in respect of commodities businesses), evolution and application of "privacy" principles, and other significant recent legislative, regulatory and market developments related to Gramm-Leach's operation and implementation. Appendix A provides a current list of financial holding companies (domestic and foreign), as well as of financial subsidiaries of national banks.

In addition to Part I's summary, a more detailed substantive discussion of various provisions of the Dodd-Frank Act and the Gramm-Leach-Bliley Act has been organized topically and included in the various subsequent Parts of the Guide, all of which have been substantively revised.

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Part II goes to the heart of many of the most significant and far-reaching Dodd-Frank initiatives, including the "Volcker Rule" and the potential wholesale restructuring of U.S. derivatives markets.

Part II also discusses permissible trading and investment activities, ranging from U.S. federal, state, municipal and other "eligible" instruments (including auction-rate and other government securities markets), to "investment securities", specialized equity securities and "identified banking products". It analyzes powers at the financial holding company, bank holding company and bank levels, and addresses the Gramm-Leach-Bliley Act "push-out" provisions relating to bank dealer activities. It includes an enhanced discussion of bank/bank holding company capital-related developments, as well as of the expanding and revised regulatory framework applicable to state and municipal securities markets.

As noted, Part II analyzes the "Volcker Rule" insofar as bank/bank holding company/financial holding company "proprietary trading" and "private equity and hedge fund" sponsorship and investment are concerned (although as this Seventeenth Edition goes to press, final rules for the implementation of all "Volcker Rule" proscriptions have not yet been adopted).

In addition, Part II discusses recent market and regulatory developments with respect to legal, compliance and "operational risk"-related aspects of bank capital markets activities (particularly in the context of the financial crisis of 2007-2009), administrative, enforcement and litigation-related

aspects of the management and operation of hedge funds and investment vehicles (including changes effected by Dodd-Frank), and bank participation in "complex structured finance transactions".

Moreover, given the critical importance of derivatives activities to banking organizations, Part II sets out an updated description of statutory, regulatory and market developments and initiatives respecting the legal structure for (and risks inherent in) the issuance, trading and clearance of derivative products (including, in particular, in respect of energy, equity, emissions, credit, commodity, "event" and other derivatives), as well as foreign exchange, precious metals and bullion. New Dodd-Frank Act requirements applicable to "swap dealers" and "major swap participants" are given special attention.

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Recognizing that, at this time, virtually every major investment bank has converted into, or been acquired by, a bank/financial holding company, Part III addresses securities underwriting and dealing empowerments relevant to bank/financial holding companies, and discusses various considerations (including under the Hart-Scott-Rodino Antitrust Improvements Act) relevant to the acquisition of investment banking firms by banking organizations.

Part III's detailed analysis of anti-tying considerations in the capital markets context reflects ongoing regulatory and industry evaluation of the Anti-tying Statute. Moreover, Part III contains an updated discussion of Sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W, including the applicable Dodd-Frank provisions and the most recent regulatory precedents.

For ease of reference, Appendix B provides an annotated text of the Operating Standards applicable to financial holding company/bank holding company securities operations. For historical context, it also retains an annotated version of the "Section 20 firewalls" (which could be applicable under some limited circumstances, notwithstanding the adoption of the Operating Standards).

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Parts IV and V focus on those instruments which are not themselves "securities" for most banking and securities law purposes.

Part IV reflects the implications of the new Dodd-Frank provisions on bank deposit issuance, insurance and marketing. It discusses developments respecting certificates of deposit (CDs) and similar money market instruments -- including with respect to CD characterization as "non-securities" under securities and banking law, and SEC proceedings respecting "deposit-like" corporate/"prime" debt obligations.

Recognizing the increased focus on liquidity management and contingent funding, Part IV also addresses the marketing of different types of CD products, as well as ongoing issues with respect to equity- and commodity-linked CDs (both "interest-only at risk" and "principal at risk").

Part V addresses loan sales markets and highlights a number of significant recent regulatory and industry developments. It discusses accounting and securitization issues, and precedents and guidance with respect to the use or misuse of "inside information" in loan, loan participation and other credit-related transactions in the United States and the European Union.

Part V also analyzes recent statutory, regulatory and judicial precedents as to the status of loan "notes" and "participations" under Dodd-Frank and other federal banking and securities laws (including the Gramm-Leach-Bliley "push-out" provisions), as well as various grounds for assessing liability of a loan seller to a loan purchaser. It includes a checklist of suggested steps to increase the likelihood that a loan note/participation sale program will not be characterized as involving the trading or disposition of "securities".

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Parts VI through IX focus on an "activity analysis" of bank capital markets activities (i.e., an analysis of activities which fall short of "underwriting" or "dealing").

Part VI discusses "agency placement" and related activities. It reflects recent market and statutory/regulatory/administrative developments respecting private placement services (including under the new "JOBS Act", and with respect to disclosure obligations and diligence responsibilities), and discusses the nature and type of these services provided by financial holding companies, bank holding companies and banks.

Part VII addresses merchant banking/private equity developments and empowerments in a number of different contexts. It discusses the Federal Reserve Board's Gramm-Leach-Bliley Merchant Banking Rules, and includes a detailed and contextual analysis of other private equity empowerments available to financial holding companies, bank holding companies and banks under the Bank Holding Company Act and other federal banking laws.

Part VII raises issues concerning the Dodd-Frank Act (referencing the "Volcker Rule" discussion in Part II), as well as concerning venture capital, SBIC and other equity-related investments (in both the domestic and the international context). Its coverage of regulatory empowerments for real estate investment, management and brokerage has been reorganized, and significant recent bank regulatory and securities law requirements in the M&A advisory, "finder" and corporate finance context are given special attention.

Part VII includes a detailed discussion of private equity investments in regulated industries generally, and of concepts of "control" and "controlling influence" for regulatory purposes (including in the context of foreign bank investments in U.S. "critical infrastructure" that might trigger application of the Exon-Florio provisions of the Foreign Investment Act as administered by the Committee on Foreign Investment in the United States (CFIUS)).

Part VII also analyzes in detail the manner, scope and structuring of "control" and "non-control" investments in U.S. and foreign banking organizations and other depository institutions (referencing a related discussion in Part I). It addresses Federal Reserve Board and FDIC guidance concerning private equity investments in U.S. banks and bank holding companies.

Part VIII recognizes the increasing importance of compliance with the anti-money laundering and anti-terrorist financing provisions of the Bank Secrecy Act ("BSA") and the USA PATRIOT Act, and with the economic sanctions/embargoes administered by the U.S. Office of Foreign Assets Control ("OFAC"). Key regulatory issues are addressed through descriptions of "red flags" and "best practices" regarding BSA/PATRIOT Act/OFAC compliance requirements. The continuing and aggressive nature of securities/bank regulatory/Department of Justice enforcement actions are given particular attention, and those sections of Part VIII which deal with economic sanctions and OFAC issues have been revised and expanded.

In addition, Part VIII includes a substantially enhanced discussion of the Foreign Corrupt Practices Act (FCPA) and other anti-corruption/anti-bribery initiatives, and their implications for the provision of global financial services.

Part VIII also covers a broad range of private banking, fiduciary, mutual fund and asset management issues, and emphasizes the most recent developments respecting funds management and collective investment vehicles, including legislative and regulatory enhancements (under the Dodd-Frank Act and otherwise), enforcement actions (including in respect of "Ponzi schemes", and their impact on asset management, supervisory and control issues), and enhanced disclosure, code of ethics, director responsibility and conflict-of-interest considerations. The discussion of securities law issues affecting asset management activities is streamlined and re-focused.

Appendix C enumerates the administrative services addressed by the Federal Reserve Board in various approvals respecting mutual fund-related operations, as well as the interrelationship between these approvals and other statutory and regulatory overlays.

Part IX discusses all types of agency (or agency-equivalent) intermediation by banking organizations in financial markets. It includes significant recent developments concerning "brokerage" and "riskless principal" activities, securities lending/repo services, broker-dealer "outsourcing", bank holding company/bank involvement in physically-settled commodity and energy-related transactions and other transactional activities. Special attention is given to the Dodd-Frank Act, as well as to Gramm-Leach-Bliley "push-out" provisions relating to bank broker activities.

In addition, as enforcement efforts -- by the SEC, FINRA and state securities regulators -- have increased in number and intensity, Part IX includes an expanded discussion of current statutory, regulatory, compliance and examination issues relating to broker-dealer, analyst and other securities operations.

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Part X discusses ongoing developments from a bank capital markets perspective with respect to asset securitization. It includes an expanded analysis of securitization issues under the Dodd-Frank Act, as well as information on ongoing regulatory and industry efforts with respect to securitization markets.

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Part XI discusses international securities linkages, focusing on significant recent developments with respect to the scope of capital markets activities permitted to U.S. and foreign financial institutions which involve cross-border transactions. Special attention is given to statutory and regulatory issues with respect to the relationship between a U.S. broker-dealer/investment adviser/asset manager/investment company and its foreign bank/securities dealer affiliates (including under the Federal Reserve Board's Regulation K, the SEC's Rule 15a-6 and extensive no-action letters and other regulatory precedents).

Part XI includes an expanded discussion of significant enforcement actions relating to cross-border securities, tax, funds management and banking-related linkages (including issues with respect to the extraterritorial reach and scope of U.S. statutory schemes). It also addresses the continuing globalization of securities, asset management and derivatives markets, as well as concepts of "mutual recognition" of foreign regulatory regimes.

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Robert L. Tortoriello
Derek M. Bush
Hugh C. Conroy, Jr.

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CLEARY GOTTLIEB

SCHEDULE OF PRIMARY CONTACTS

Guide to Bank Underwriting,
Dealing and Brokerage Activities

New York Office (212) 225-2000	Robert L. Tortoriello Hugh C. Conroy, Jr. Timothy Byrne (Parts I and II) Melissa Ruth (Part I) Colin Lloyd/ Jon Edwards (Part II) Neil Markel (Part IV) Elizabeth Broomfield (Part VI) Laura Forman/ Daniel Por (Part IX) James Corsiglia/ Charles Thompson (Part VIII) Antonino Carbonetto (Part X)
Washington Office (202) 974-1500	Kenneth L. Bachman, Jr. Derek M. Bush Katherine M. Carroll Michael H. Krimminger Macey Levington (Part V) Patrick Fuller (Part V) Paul Marquardt (Part VIII) Michael Aktipis (Part XI)
Paris Office 33-1-40-74-68-00	John D. Brinitzer Amélie Champsaur
Brussels Office 32-2-287-20-00	Laurent Legein Allison Breault (Part III)
London Office 44-20-7614-2200	Simon Ovenden David Toube
Frankfurt/Cologne Offices 49-69-971-03-0	Ward A. Greenberg

Hong Kong Office 852-521-4122	Megan Tang
Rome/Milan Offices 39-02-7260-8214	Pietro M. Fioruzzi
Moscow Office 7-501-258-5006	Scott C. Senecal
Beijing Office 86-10-5920-1000	W. Clayton Johnson
Buenos Aires Office 54-11-5556-8900	Andrés de la Cruz
São Paulo Office 55-11-2196-7200	Francisco L. Cestero
Abu Dhabi Office 971-2414-6628	Gamal M. Abouali
Seoul Office 82-26353-8000	Yong G. Lee

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Copies of the Guide

New York Office
Phone: (212) 225-3713
Fax: (212) 225-3999
E-mail: bgaffney@cgsh.com

Barbara Gaffney
Financial Institutions
Research Manager

CLEARY GOTTLIEB

Office Locations

NEW YORK
One Liberty Plaza
New York, NY 10006-1470
T: +1 212 225 2000
F: +1 212 225 3999

WASHINGTON
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
T: +1 202 974 1500
F: +1 202 974 1999

PARIS
12, rue de Tilsitt
75008 Paris, France
T: +33 1 40 74 68 00
F: +33 1 40 74 68 88

BRUSSELS
Rue de la Loi 57
1040 Brussels, Belgium
T: +32 2 287 2000
F: +32 2 231 1661

LONDON
City Place House
55 Basinghall Street
London EC2V 5EH, England
T: +44 20 7614 2200
F: +44 20 7600 1698

MOSCOW
Cleary Gottlieb Steen & Hamilton LLC
Paveletskaya Square 2/3
Moscow, Russia 115054
T: +7 495 660 8500
F: +7 495 660 8505

FRANKFURT
Main Tower
Neue Mainzer Strasse 52
60311 Frankfurt am Main, Germany
T: +49 69 97103 0
F: +49 69 97103 199

COLOGNE
Theodor-Heuss-Ring 9
50688 Cologne, Germany
T: +49 221 80040 0
F: +49 221 80040 199

ROME
Piazza di Spagna 15
00187 Rome, Italy
T: +39 06 69 52 21
F: +39 06 69 20 06 65

MILAN
Via San Paolo 7
20121 Milan, Italy
T: +39 02 72 60 81
F: +39 02 86 98 44 40

HONG KONG
Cleary Gottlieb Steen & Hamilton (Hong Kong)
Bank of China Tower, 39th Floor
One Garden Road
Hong Kong
T: +852 2521 4122
F: +852 2845 9026

BEIJING
Twin Towers – West (23rd Floor)
12 B Jianguomen Wai Da Jie
Chaoyang District
Beijing 100022, China
T: +86 10 5920 1000
F: +86 10 5879 3902

BUENOS AIRES
CGSH International Legal Services, LLP-
Sucursal Argentina
Avda. Quintana 529, 4to piso
1129 Ciudad Autonoma de Buenos Aires
Argentina
T: +54 11 5556 8900
F: +54 11 5556 8999

SÃO PAULO
Cleary Gottlieb Steen & Hamilton
Consultores em Direito Estrangeiro
Rua Funchal, 418, 13 Andar
São Paulo, SP Brazil 04551-060
T: +55 11 2196 7200
F: +55 11 2196 7299

ABU DHABI
Al Odaid Tower
Office 1105, 11th Floor
Airport Road; PO Box 128161
Abu Dhabi, United Arab Emirates
T: +971 2 414 6628
F: +971 2 414 6600

SEOUL
19F, Ferrum Tower
19, Eulji-ro 5-gil, Jung-gu
Seoul 100-210, Korea
T: +82 2 6353 8000
F: +82 2 6353 8099