

Joint Meeting of the EFMLG/FLB/FMLC/FMLG

Extraterritoriality of the Dodd-Frank Act

**Thursday, May 26, 2011
San Francisco**

Lisa A. Shemie
Executive Director and Assistant General Counsel
JPMorgan Chase Bank, N.A.

Extraterritorial Application of the Dodd-Frank Act

- 1. What do we mean when we refer to the “extraterritoriality” of Dodd-Frank?**
- 2. What do we know about the extraterritoriality of Dodd-Frank?**
- 3. What are the tea leaves indicating?**
- 4. Why does this matter?**

Extraterritorial Application of the Dodd-Frank Act

1. What do we mean when we refer to the “extraterritoriality” of Dodd-Frank?

A. The extraterritoriality of Dodd-Frank refers to its effect on overseas activities of US entities that have global operations. Such operations can be categorized into three major groups:

a. Foreign branches

b. Edge Act subsidiaries

c. Foreign holding company subsidiaries

B. The extraterritoriality of Dodd-Frank also refers to its effect on non-US firms that have global operations.

Extraterritorial Application of the Dodd-Frank Act

2. What do we know about the extraterritoriality of Dodd-Frank?

We do not know much (with the possible exception of the Volcker rule), but the answer will be clarified when the swap dealer registration rules are finalised. Such rules will clarify under which circumstances a person who engages in “swap dealing activities” outside the US will be required to register as a swap dealer.

Extraterritorial Application of the Dodd-Frank Act

3. What are the tea leaves indicating?

The recently proposed margin rules do not provide an exception for foreign registered swap entities when effecting swaps with other foreign entities, which seems to be contrary to longstanding statutory and regulatory treatment of US bank overseas activities, and raises the concern that Dodd-Frank may be imposed extraterritorially, especially with regard to Title VII.

In addition, the proposed swap dealer registration rules include a request for comment on the level of swap dealing activity outside the US which would qualify as having a direct and significant connection with activities in, or effect on, commerce of the US, thereby requiring a person outside the US to register as a swap dealer.

Extraterritorial Application of the Dodd-Frank Act

4. Why does this matter?

A. Duplicative legislation – will entities seek to comply with the least onerous rules?

B. Consistency of rules across jurisdictions – will entities engage in regulatory arbitrage?

C. Timing of rule implementation – is a transition period necessary to allow for compliance with multiple regimes?

D. Will there be a competitive disadvantage to US banks' offshore operations versus those of non-US banks?