



# Dodd-Frank Wall Street Reform and Consumer Protection Act Issues for Banks

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July 28, 2010

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- Supervision, regulation and resolution of large financial institutions
- Establishment of Consumer Financial Protection Bureau and new rules for mortgages
- Consolidation of Office of Thrift Supervision (OTS) into the Office of the Comptroller of the Currency (OCC)
- New regime for trading of swaps and derivatives
- Regulation of credit rating agencies and investment advisers to hedge funds and private equity funds
- New conditions in corporate governance, executive compensation and securities disclosures

## Modified Regulatory Agency Structure and Responsibilities

- Financial Stability Oversight Council
- Office of Financial Research
- Federal Reserve Board
- Federal Deposit Insurance Corporation
- OCC
- Consumer Financial Protection Bureau

# Capital and Deposit Insurance Reforms

- Holding companies subject to bank capital requirements (excludes \$500 million and smaller)
- Countercyclical capital requirements?
- Trust Preferred
  - o Grandfathered for banks with less than \$15 billion of assets
  - o Phase out through 2015 for larger banks

- Premiums to be based on assets minus tangible equity
- Adjustments to DIF reserve ratio
- Standard maximum deposit insurance amount fixed at \$250,000
- TAG extended for 2 years and mandatory

# Compensation and Governance Provisions

## “Say on Pay”

- All public companies must give shareholders a non-binding vote to approve executive compensation beginning with first annual meeting six months after enactment
- At least once every six years, shareholders must be given the opportunity to vote on how often they want “Say on Pay” vote – every one, two or three years

## Golden Parachute Compensation

- Proxy solicitation material for a business combination must clearly describe compensation to be paid to named executive officers as a result of the transaction – and provide total number
- Golden parachute compensation must be subject to a non-binding shareholder vote at the time the transaction is approved unless previously approved under a “say on pay” vote

## Compensation Committee Independence

- Listed companies must have a compensation committee that meet independence requirements similar to those for audit committees under the Sarbanes-Oxley Act.
- Directors who receive consulting, advisory or other compensatory fees or who are affiliates of the company will not be independent.

## Compensation Consultants

- Compensation committee must have authority to engage consultants, legal counsel and other advisors and have responsibility for overseeing their work
- Companies must provide compensation committee with appropriate funding
- Compensation consultants may be engaged only after taking into account certain factors that may affect independence

## Claw-back Policy

- Required for all listed companies
- Provide for recovery of incentive-based compensation that is based on financial information that is subject to an accounting restatement
- Covers compensation paid during three years prior to restatement
- Disclosure of policy is required

## New Compensation Disclosures

- **Use of Compensation Consultants** – whether the compensation committee retained and obtained the advice of a compensation consultant
- **Pay vs. Performance** – Show the relationship between executive compensation actually paid and the financial performance of the company
- **Relative Pay** – Disclose ratio of the median of annual total compensation of all employees, excluding the CEO, to the annual compensation of the CEO
- **Hedging** – Disclose whether employees and directors are permitted to hedge against any decrease in the value of company shares

## Corporate Governance

- **Broker Voting** - Prohibits discretionary voting on the election of directors and executive compensation (Say on Pay)
- **Proxy Access** - Authorizes the SEC to adopt rules for proxy access
- **Chairman and CEO Structure** - Disclose the reasons why the company has chosen the same person to serve as chairman and CEO or why it has chosen different persons

# Consumer Protections And Mortgage Reforms

- Creation of Consumer Financial Protection Bureau
- Bureau may act to prevent unfair, deceptive, or abusive acts or practices
- Pre-emption changes allow greater authority for states to issue rules applicable to national banks and their subsidiaries
- State visitorial and enforcement powers

- Yield spread premiums
- Steering
- Ability to repay
- Appraisal rules
- Prepayment penalties
- Escrow requirements
- Coordination of RESPA and TILA

- Interstate de novo branching permitted
- Payment of interest on demand deposits no longer prohibited

# Application Issues

- Well managed and well capitalized applies at the holding company level
- Limits on charter conversions of banks subject to enforcement actions
- Agencies must consider effect on stability of the U.S. financial system
- New concentration limits established
- International applications must consider home country mitigation of systemic risk

# Other Principal Regulatory Issues

- Risk Committees and Stress Tests
- No use of ratings in regulatory requirements - agency standards of creditworthiness will replace “investment grade”
- Risk retention in asset-backed securities but an exception is provided for “qualified residential mortgages”
- Swaps and Derivatives “Push Out”
- FRB required to establish rules on reasonable interchange fees

- Funds “advised” considered to be affiliates
- Covered transactions - repos, securities lending, derivatives, loans secured by debt of an affiliate
- Exemptive authority changes
- Netting arrangements
- Financial subsidiaries
- Purchases of assets from insiders

- Proprietary trading by banking entities is generally prohibited
- Two year deferred effective date and two + years transition (special provisions made for illiquid funds)
- Permitted transactions
  - o Governments
  - o Underwriting and market making
  - o Hedging
  - o Customer-related activity
  - o Non-US activity

- A banking entity may not acquire or retain any ownership interest in a hedge or private equity fund
- A banking entity may not sponsor a hedge fund or private equity fund
- Major exception - a banking entity may make an investment in and organize and offer a fund related to its *bona fide* fiduciary or investment advisory activity

- Banking entity must offer trust, fiduciary, or investment advisory services
- Fund must be organized and offered in connection with those services
- Investors must be customers of those services or bank personnel involved in those services
- Banking entity may hold up to 3% of the fund

- Seed money investments for 1<sup>st</sup> year of fund's life
- Capital calculations
- Prohibited transactions
- Name of the fiduciary fund may not be the same as the banking entity or a variation of the name of the banking entity

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# Questions?