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The Final Act

Financial Reporting Implications of the Dodd-Frank Wall Street Reform and Consumer Protection Act

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Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") into law. The Act arguably is the most sweeping change to financial regulation in the United States since the changes that followed the Great Depression and is in response to widespread calls for change in the financial regulatory system as a result of the near collapse of the world's financial system in the fall of 2008 and the ensuing global credit crisis, which some have termed the "Great Recession."

The Act aims to (1) promote U.S. financial stability by "improving accountability and transparency in the financial system," (2) put an end to the notion of "too big to fail," (3) "protect the American taxpayer by ending bailouts," and (4) "protect consumers from abusive financial services practices." To achieve these broad objectives, the Act includes many provisions whose magnitude will not be fully appreciated until regulators have implemented them by adopting new rules and regulations. And believe us, there will be much more to come: by one law firm's count, the legislation requires regulatory agencies to create 243 rules, conduct 67 studies, and issue 22 periodic reports.[1]

This *Heads Up* summarizes certain aspects of the Act, in particular those that have, or might have, financial reporting implications. Expect this publication not to be our last on this topic. As regulators usher in new rules and regulations over the coming months, our goal will be to provide you with additional details regarding those new rules and regulations and the impact that they may have on financial reporting and other aspects of your business. So, stay tuned.

Permanent Exemption From Section 404(b) of the Sarbanes-Oxley Act of 2002

For smaller public entities (regardless of the industry in which they operate), one of the Act's provisions that will be particularly relevant is the permanent exemption for nonaccelerated filers (i.e., public entities whose public float is less than $75 million)[2] from the requirement to obtain an external audit on the effectiveness of internal control

[1] DavisPolk, July 9, 2010, *Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Enacted Into Law on July 21, 2010.*

[2] The Act exempts issuers that are neither "large accelerated filers" nor "accelerated filers," as these terms are defined in Rule 12b-2 of the Securities Exchange Act of 1934, so the exemption also would extend to debt-only issuers.

over financial reporting under Section 404(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"). The Act also requires two studies, one by the SEC and one by the Government Accountability Office (GAO). The SEC study will focus on how the burden of complying with Section 404(b) could be reduced for entities whose market capitalization is between $75 million and $250 million, as well as on whether any such methods of reducing the burden, or a complete exemption, would encourage entities to list on U.S. exchanges.

Editor's Note: In October 2009, the SEC issued a rule requiring all nonaccelerated filers to comply with Section 404(b) starting in their annual reports for fiscal years ending on or after June 15, 2010. In effect, the Act negates the SEC's rule and provides a permanent exemption for eligible smaller public entities. However, management's assessment of and report on internal control over financial reporting under Section 404(a) continues to be required for all issuers, including smaller public entities.

In testimony to the House Financial Services Subcommittee on July 20, 2010, SEC Chairman Mary Schapiro was asked whether entities that would qualify under the Act for the permanent exemption from Section 404(b) of the Sarbanes-Oxley Act would have to comply with Section 404(b) in the brief period between when this provision of the Act would be effective and when the requirement to comply with Section 404(b) under the SEC's October 2009 final rule[3] became effective (i.e., fiscal years ending on or after June 15, 2010). Schapiro responded that entities that are permanently exempt from complying with Section 404(b) under the Act would not have to comply with that section in that brief period.

In addition, the Act requires the GAO to conduct a separate study on the impact of the amendments to Section 404(b). This study will include an analysis of (1) whether issuers that are exempt from Section 404(b) are more prone to restatements, (2) how the cost of capital for issuers that are exempt from Section 404(b) compares with the cost of capital for other issuers, (3) whether there is a difference in investors' confidence regarding issuers that comply with Section 404(b), (4) whether issuers that are exempt from 404(b) should disclose this fact to investors, and (5) the costs and benefits for issuers that have voluntarily complied with Section 404(b).

Under the Act, auditors of nonpublic broker-dealers are now subject to PCAOB oversight, including its rulemaking power to require an inspection program for such auditors and the ability to set standards for their audits.

PCAOB Authority Over Auditors of Broker-Dealers

Although auditors of nonpublic broker-dealers that are registered with the SEC currently must be registered with the Public Company Accounting Oversight Board (PCAOB), under the Sarbanes-Oxley Act, they have not otherwise been subject to PCAOB oversight. Under the Act, auditors of nonpublic broker-dealers are now subject to PCAOB oversight, including its rulemaking power to require an inspection program for such auditors and the ability to set standards for their audits. After the signing of the Act, the PCAOB issued a press statement noting that more information about its plans to implement such measures and guidance for auditors of broker-dealers will be forthcoming.

The Act also requires broker-dealers to pay an annual accounting support fee, currently paid by certain classes of issuers, to the PCAOB to support the Board's activities. This fee must be "in proportion to the net capital of the broker or dealer . . . compared to the total net capital of all brokers and dealers." The first fees collected from brokers and dealers will fund the first full fiscal year of the PCAOB after the signing of the Act (activities for calendar year 2011). The PCAOB is expected to issue for public comment proposed rules on the assessment and collection of these fees.

[3] SEC Final Rule Release No. 33-9072, *Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers.*

Enhancements to the Asset-Backed Securitization Process

To fix problems in the securitization markets identified during the credit crisis and to better align the incentives of the participants in these markets, the Act requires that securitizers[4] of financial assets "retain an economic interest in a portion of the credit risk" of the assets through investments in the securities that the assets back.[5] That is, the Act requires securitizers to effectively have some "skin in the game" when they securitize financial assets. In addition, the Act requires enhanced disclosures for these securities, as discussed below.

The Act stipulates that securitizers must retain at least 5 percent of the credit risk of securitized assets (unless certain underwriting standards indicating a low credit risk are met, in which case the threshold will be less than 5 percent). In addition, the Act explicitly prohibits securitizers from hedging or transferring the required retained credit risk and exempts securitizers of qualified residential mortgages[6] from the requirement to retain a portion of the credit risk of the underlying assets.

Moreover, the Act directs the SEC to establish rules that would require securitizers "to disclose, for each tranche or class of security, information regarding the assets backing that security." The regulations are designed to establish consistent standards for the format of the data provided by securitizers and require, at a minimum, disclosure of asset-level or loan-level data, including "(i) data having unique identifiers relating to loan brokers or originators; (ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and (iii) the amount of risk retention by the originator and the securitizer of such assets."

The Act directs the SEC to establish rules that would require securitizers "to disclose, for each tranche or class of security, information regarding the assets backing that security."

In addition, the Act requires the SEC to issue rules under which securitizers will have to disclose "fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer."

The Act also directs the Board of Governors of the Federal Reserve System, in consultation with a number of other regulatory agencies (including the SEC), to study the combined effect of the following on each individual class of asset-backed security:

- The "credit risk retention requirements . . . including the effect credit risk retention requirements have on increasing the market for Federally subsidized loans."
- Statements 166[7] and 167[8] (codified in ASC 860[9] and ASC 810,[10] respectively).

[4] The Act defines a "securitizer" as "an issuer of an asset-backed security" or "a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer."

[5] The Act defines an "asset-backed security" as "a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow[s] from the asset, including — (i) a collateralized mortgage obligation; (ii) a collateralized debt obligation [CDO]; (iii) a collateralized bond obligation; (iv) a [CDO] of asset-backed securities; (v) a [CDO of CDOs]; and (vi) a security that the [SEC], by rule, determines to be an asset-backed security."

[6] The Act does not define "qualified residential mortgages" but specifies that the federal banking agencies, the SEC, the Department of Housing and Urban Development, and the Federal Housing Finance Agency will jointly define the criteria for "qualified residential mortgages," considering underwriting and product features that indicate a lower risk of default. The Act also indicates that these agencies may not define the term more broadly than "qualified mortgage" is defined in the Truth in Lending Act.

[7] FASB Statement No. 166, *Accounting for Transfers of Financial Assets* — an amendment of FASB Statement No. 140.

[8] FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R).*

[9] FASB Accounting Standards Codification Topic 860, *Transfers and Servicing.*

[10] FASB Accounting Standards Codification Topic 810, *Consolidation.*

Nationally recognized statistical rating organizations must establish, maintain, enforce, and document internal controls that govern implementation of, and adherence to, policies, procedures, and methods for determining ratings.

Editor's Note: In April 2010, the SEC proposed amendments[11] to the reporting requirements and offering and disclosure process for asset-backed securities. The proposed amendments are broadly consistent with the Act's requirements for asset-backed securities. For example, like the Act, the amendments propose a 5 percent minimum threshold for the amount of credit risk that a securitizer must retain in a securitization of financial assets. However, under the SEC's amendments, the minimum threshold would be a vertical slice (i.e., the securitizer would be required to hold a proportional (minimum) 5 percent interest in the securitization vehicle, which amounts to 5 percent of each tranche issued by the vehicle); the Act does not address this issue. In theory, the SEC could, in its rulemaking with respect to the Act, change course and decide that the minimum 5 percent interest that securitizers must hold in a securitization vehicle must be subordinated to the other interests in the vehicle (i.e., the securitizer would be required to hold at least 5 percent of the residual tranche). If that were the case, securitizers would want to consider whether and, if applicable, how the subordination of the interest in the vehicle might affect the accounting analysis of whether the securitizer (1) has to consolidate the securitization vehicle or (2) is prohibited from derecognizing the assets that it has legally transferred to the vehicle.

Irrespective of whether the minimum 5 percent interest that securitizers must retain in securitization vehicles would be proportional or subordinated under the SEC's proposal, entities that use securitizations to fund their operations and that previously did not retain an interest in the vehicle to which they transferred financial assets, or that retained an interest of less than 5 percent, will need to consider how the interest that the Act would require them to hold affects any consolidation and derecognition analyses.

Greater Oversight of Credit Rating Agencies

The Act imposes significant structural, regulatory, and liability reforms on credit rating agencies, including the following:

- Nationally recognized statistical rating organizations (NRSROs) must establish, maintain, enforce, and document internal controls that govern implementation of, and adherence to, policies, procedures, and methods for determining ratings. In addition, NRSROs must provide an annual internal controls report, including an attestation by the NRSRO's CEO, that describes management's responsibility in establishing and maintaining internal controls and that assesses the effectiveness of those controls.
- Eliminates the exemption for credit ratings provided by NRSROs from being considered part of a "registration statement" or certified by a "person," as those terms are used in Sections 7 and 11 of the Securities Act of 1933 (the "Securities Act"). Accordingly, to include an NRSRO credit rating in a registration statement, SEC registrants must obtain a consent from the NRSRO and file it along with the registration statement. NRSROs would thus be treated as "experts" under Section 11 of the Securities Act and would be liable for material misstatements or omissions associated with these included ratings.
- The enforcement and penalty provisions of the Securities Exchange Act of 1934 (the "Exchange Act") apply to "statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws." The Act also clarifies that statements made by credit rating agencies are not forward-looking statements, as that term is used in the safe-harbor provisions of Section 21E of the Exchange Act.
- Credit rating agencies must disclose their methodologies, their use of third parties for due-diligence efforts, and their rating track record.

[11] SEC Proposed Rule Release No. 33-9117, *Asset-Backed Securities.*

Editor's Note: On July 22, 2010, the SEC issued a "no action" letter[12] allowing issuers of asset-backed securities, for a period of six months, to omit credit ratings from registration statements filed with the SEC. In a statement regarding the letter, the SEC noted:

> Although there are currently few issuers in the registered asset-backed securities market, we understand from some issuers that they cannot currently obtain credit rating agency consent to include the credit ratings in [registration statement] filings. This action will provide issuers, rating agencies and other market participants with a transition period in order to implement changes to comply with the new statutory requirement while still conducting registered [asset-backed securities] offerings.

On July 27, 2010, the SEC's Division of Corporation Finance issued new compliance and disclosure interpretations (C&DIs) on the use of credit ratings for issuers not subject to Regulation AB. The new C&DIs provide interpretive guidance on when a registrant would be required to name a credit agency as an expert and obtain its consent in conjunction with the use of credit ratings information in a registration statement. For example, the C&DIs point out that "some issuers note their ratings in the context of a risk factor discussion regarding the risk of failure to maintain a certain rating and the potential impact a change in credit rating would have on the registrant." In that case and in disclosing other "issuer disclosure-related ratings information" (e.g., changes to a credit rating, the liquidity of the registrant, the cost of funds for a registrant or the terms of agreements that refer to credit ratings), the registrant would not be required to obtain a consent from the credit rating agency.

Executive Compensation and Corporate Governance

The Act includes a variety of executive compensation and corporate governance provisions. For example, it requires public companies to allow shareholders a nonbinding vote on the compensation of named executive officers (NEOs) at least once every three years ("say-on-pay"). In addition, public-company shareholders must be allowed a nonbinding vote to approve any "agreements or understandings" that the entity has with its NEOs regarding any type of compensation paid in connection with "an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer," unless such agreements or understandings have been subject to a shareholder vote under the general say-on-pay provision ("say on golden parachutes").

Congress directed the SEC to establish rules requiring that entities, in the event of an accounting restatement attributable to material noncompliance with financial reporting requirements, develop policies mandating the recovery (or "clawback") of "excess" incentive compensation paid to executive officers under incentive plans.

In another significant provision of the legislation, Congress directed the SEC to establish rules requiring that entities, in the event of an accounting restatement attributable to material noncompliance with financial reporting requirements, develop policies mandating the recovery (or "clawback") of "excess" incentive compensation paid to executive officers under incentive plans. Such recovery of incentive compensation would be required regardless of whether the executive officer was involved in the misconduct that led to the restatement.

Editor's Note: Entities should consider (1) whether the clawback rules, once issued by the SEC, would call into question whether an entity has established a grant date in accordance with ASC 718[13] and (2) the potential accounting implications if a grant date has not been established. In addition, to the extent that entities contemplate changing any of the terms or conditions of their existing executive share-based payment plans (or awards) as a result of the Act, they should consider the guidance on modification accounting in ASC 718.

[12] Response of the Office of Chief Counsel, Division of Corporation Finance, to Ford Motor Credit Company LLC and Ford Credit Auto Receivables Two LLC, July 22, 2010.

[13] FASB Accounting Standards Codification Topic 718, *Compensation — Stock Compensation*.

The following are some of the other executive compensation and corporate governance provisions of the Act:

- The SEC must issue rules directing national securities exchanges and associations to require the independence of all members of a listed entity's compensation committee. Further, compensation committees are responsible for the appointment, compensation, and oversight of independent compensation consultants and other advisers.
- Federal regulators must jointly prescribe regulations that (1) require covered financial institutions to report the structures of all incentive-based compensation arrangements and (2) prohibit incentive-based payment arrangements that encourage inappropriate risk taking by excessively compensating employees, directors, or principal shareholders or that could cause the covered financial institution to incur material financial losses.
- The SEC must issue rules requiring entities to disclose whether employees and directors are allowed to hedge the value of any of the company's equity securities they own.
- The SEC may issue requirements that, if met, would permit shareholders to nominate directors to include in an entity's proxy materials (otherwise known as "proxy access").
- The Federal Reserve must issue rules requiring covered financial institutions to establish risk committees that include a "risk expert."

The SEC must issue rules requiring entities to disclose whether employees and directors are allowed to hedge the value of any of the company's equity securities they own.

Editor's Note: For more information about the Act's corporate governance and executive compensation provisions, see Deloitte's *Hot Topics* newsletter, "Dodd-Frank Wall Street Reform and Consumer Protection Act — Abstracts and Observations."

Bureau of Consumer Financial Protection

The Act consolidates most federal regulation of financial services offered to consumers under a new agency, the Bureau of Consumer Financial Protection (the "Bureau"), which will be led by an independent director appointed by the president and confirmed by the Senate, and which will have a dedicated budget in the Federal Reserve. The Bureau will write consumer-protection rules that affect almost all credit providers, including mortgage lenders, providers of payday loans, other nonbank financial companies, and banks and credit unions with assets in excess of $10 billion.

Certified public accountants who perform "customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal Authority," or "other services that are incidental to such customary and usual accounting activities" are not subject to the Bureau's authority.

New Systemic Risk Regulator

The Act creates the Financial Stability Oversight Council (the "Council") whose role is to identify and respond to emerging risks that may pose a threat to U.S. financial stability. The Council will be chaired by the Secretary of the Treasury and includes members from seven other agencies, including the Federal Reserve Board, the SEC, and the Bureau. The Council's responsibilities include monitoring domestic and international financial regulatory proposals and developments (e.g., insurance and accounting issues) and advising Congress on possible enhancements to the integrity, efficiency, competitiveness and stability of the U.S. capital markets. Further, the Council may submit comments on existing or proposed accounting principles, standards, or procedures to the SEC and any other standard setters.

Changes to SEC Authority and Operations

The Act modifies and expands the powers of the SEC in the hope of better protecting the investing community. For example, the Act:

- Requires the SEC, in any action in which it levies sanctions of more than $1 million, to compensate whistleblowers who provide original information with between 10 percent and 30 percent of the amount of the sanctions. To fund compensation of whistleblowers, the Act establishes an investor protection fund. The Act also provides whistleblowers with a private right of action against employers who retaliate against them. Further, the Act extends the current statute of limitations on Sarbanes-Oxley whistleblower claims from 90 to 180 days, and specifies that any rights or remedies provided for whistleblowers under the Sarbanes-Oxley Act may not be waived.
- Requires the SEC to conduct a study of whether it should issue a rule that would establish that every financial intermediary who provides personalized investment advice to retail customers has a fiduciary duty to the investor. The Act also requires the SEC to complete a study of any gaps in the standard of conduct and supervision of broker-dealers and investment advisers providing personalized investment advice about securities to retail customers.
- Contains several new requirements that may affect future SEC action regarding financial reporting. For instance:
  - The Act requires that the SEC establish a permanent Investor Advisory Committee made up of outside members to consult the Commission on regulatory priorities and advocate for investor interests.
  - The SEC must also form an Office of Investor Advocate whose duties will include (1) assisting investors, (2) consulting with the Commission, and (3) making an annual independent report to Congress.
  - The SEC is required to conduct a study of financial literacy among retail investors. The study should include recommendations to improve the timing, content, and form of disclosures to investors.
  - The Act also requires studies of the operations and structure of the SEC, including one by an independent consultant, and changes the SEC's funding mechanism in a way that is expected to increase its budget.

The Act requires the SEC, in any action in which it levies sanctions of more than $1 million, to compensate whistleblowers who provide original information with between 10 percent and 30 percent of the amount of the sanctions.

Additional Disclosures

To address concerns that the exploitation and trade of certain rare minerals originating in the Democratic Republic of Congo has helped finance conflict marked by "extreme levels of violence" in that country and neighboring countries and has led to an "emergency humanitarian situation," the Act requires public companies to annually disclose whether they produced items containing "conflict minerals" that originated in that region.[14] If so, entities must submit to the SEC a report that includes:

- A "description of the measures" that the entity took to "exercise due diligence on the source and chain of custody of such minerals."
- A "description of the products manufactured or contracted to be manufactured . . . that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country."
- The "facilities used to process the conflict minerals."
- The "country of origin of the conflict minerals."
- The "efforts to determine the mine or location of origin with the greatest possible specificity."

[14] The Act defines "conflict minerals" as "columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or . . . any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country."

The report must be audited by an independent entity from the private sector and must include the name of this auditor.

In addition:

- In each periodic report filed with the SEC, mine operators must (1) disclose, for "each coal or other mine" they operate, the "total number of violations of mandatory health or safety standards" and (2) list mines that show a pattern of such violations.
- The SEC must issue rules requiring entities engaged in the commercial development of oil, natural gas, or minerals to disclose in an annual report any payment made to a foreign government or the federal government in connection with such development.

Changes to the SIPC

The Act increases the (1) credit line at the U.S. Treasury from $1 billion to $2.5 billion and (2) the minimum assessments paid by Securities Investor Protection Corporation (SIPC) members from $150 per year to two basis points of an SIPC member's gross revenues. The objectives of these increases are to help the SIPC build reserves to meet future obligations and to fund the increase in investor protection related to the increase in the protection of customer cash amounts from $100,000 to $250,000. The Act prohibits an SIPC member with customer accounts from entering into insolvency, receivership, or bankruptcy proceedings without the consent of SIPC.

The Act requires entities to clear most over-the-counter derivatives through regulated central clearing organizations and to trade the derivatives on regulated exchanges to increase transparency.

The Volcker Rule

Named after Paul Volcker, chairman of the Economic Recovery Advisory Board under President Obama, the Volker Rule aims to reduce the amount of speculative investments on large financial firms' balance sheets and, with limited exceptions, prohibits any banking entity from engaging in proprietary trading or sponsoring, or investing in, a hedge or private equity fund. The rule also requires systemically important nonbank financial companies to hold additional capital and comply with other quantitative limits on such activities.

Editor's Note: An entity should consider whether the divestiture of its proprietary trading business would require it to (1) reclassify, as available for sale, the associated securities that it has previously classified as held to maturity and carried at amortized cost and (2) measure these securities at fair value and recognize the changes in fair value in other comprehensive income.

Further, to the extent that its proprietary trading business includes any underwater securities for which it has accumulated unrealized losses in other comprehensive income, an entity should consider whether its intention, or the Act's requirement, to dispose of the securities causes it to realize these losses as an other-than-temporary impairment.

Regulation of OTC Derivatives

The Act requires entities to clear most over-the-counter (OTC) derivatives through regulated central clearing organizations and to trade the derivatives on regulated exchanges to increase transparency. For those derivatives that are not cleared, the Act prescribes new reporting and disclosure requirements. The Act exempts from these requirements commercial end-users, such as farmers and manufacturers, which can continue to use derivatives to hedge and manage the commercial risks of their businesses without being subject to the clearing and exchange trading requirements.

To eliminate the opportunities for a speculator to evade the rules by trading similar contracts on different exchanges, the Act prescribes aggregate position limits for all foreign and domestic exchanges for commodity contracts and all economically equivalent contracts that entities could use to speculate in a commodity.

The Act prohibits some forms of federal assistance[15] to swap dealers, security-based swap dealers, major swap participants, and major security-swap participants that are registered under the Commodity Exchange Act or the Exchange Act (collectively, "swap entities") with respect to any swaps or security-based swaps or other activities of the entities. However, the Act permits an insured depository institution to push the swaps business to an affiliate that is a swap entity and still receive federal assistance, provided that the institution is part of a bank holding company or savings and loan holding company and the affiliate complies with specific sections of the Federal Reserve Act.

Editor's Note: OTC executed contracts that by their terms are physically settled and that involve assets that are not readily convertible to cash might not meet the definition of a derivative in ASC 815-10-15-83. Because the Act requires that these contracts be cleared through central clearing parties and traded on exchanges, entities will have to consider whether these market mechanisms provide a means of net settlement, in which case the contracts would meet the definition of a derivative and must be measured at fair value, with changes in fair value recognized in earnings (provided that they do not qualify for the normal purchases and sales scope exception).

Banks using the "swaps pushout rule" and pushing their swaps business to a bank affiliate should consider whether the pushout affects the makeup of the operating segments that they currently disclose in the footnotes.

The Act requires most managers of hedge funds and private equity funds to register with the SEC as investment advisers and provide information about their trades and portfolios that is necessary to the assessment of systemic risk.

Regulation of Advisers to Hedge Funds and Private Equity Funds

The Act requires most managers of hedge funds and private equity funds to register with the SEC as investment advisers and provide information about their trades and portfolios that is necessary to the assessment of systemic risk. In addition, these advisers are subject to (1) substantial new recordkeeping and reporting requirements and (2) enhanced SEC scrutiny and audit. The Act exempts from the SEC registration requirements (1) advisers to venture capital funds, (2) sole advisers to hedge funds and private equity funds that have assets of less than $150 million and that are under management in the United States, and (3) "family offices."

Additional Information and Contacts

For insights into, and additional information about, the Act, see Deloitte's Center for Corporate Governance Web site. The following individuals are available to answer questions about specific aspects of the Act (Deloitte clients are encouraged to contact their Lead Client Service Partners):

- Maureen Errity (corporate governance).
- Mike Kesner (human capital).
- Steven Foster (insurance).
- Thomas Rollauer (bank holding companies and systemic risk regulation).
- Michael Jamroz (securities: derivatives).
- Susan Levey (securities: fiduciary standard).
- Elizabeth Krentzman (asset management and investment advisers).
- Randi Brosterman (consulting: strategy and operations).
- Tom Omberg (financial accounting and reporting).

[15] With respect to this prohibition, federal assistance means "the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act, [or] Federal Deposit Insurance Corporation insurance or guarantees for the purpose of — (A) making any loan to, or purchasing any stock, equity interest, or debt obligation of, any swaps entity; (B) purchasing the assets of any swaps entity; (C) guaranteeing any loan or debt issuance of any swaps entity; or (D) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity."

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