

July 23, 2010

## **U.S. REGULATORY REFORM HEADS TO THE IMPLEMENTATION PHASE**

### ***Dodd-Frank Wall Street Reform and Consumer Protection Act Signed by the President***

To Our Clients and Friends:

On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, the most sweeping financial reform legislation in over a generation. The law was largely the product of public consternation and anxiety following the 2008 financial crisis and subsequent recession. The signing of the bill does not, however, mark the end of the process for this round of financial reform and regulation. Despite the President's comments yesterday that the new law "provides certainty to everybody, from bankers to farmers to business owners to customers," the reality is that Dodd-Frank leaves to regulators the task of conducting pivotal studies, defining core terms, and drafting comprehensive rules, regulations and exceptions that will answer many central and currently open questions raised by the legislation. And so, short of reaching our destination, we have just embarked on the second leg of a long journey.

The first leg of the journey spanned nearly two years. The genesis of a regulatory reform bill dates to the fall of 2008, perhaps earlier. Even as Congress was working to create the TARP program, the Administration was working on financial regulatory reform legislation. In June 2009, the Administration produced a white paper hailed by President Obama as a "transformation on a scale not seen since the reforms that followed the Great Depression." While it was hoped by the Administration that the House and Senate would quickly take up regulatory reform along the lines proposed by the Administration, legislation moved slowly, particularly in the Senate. In the end, it took a full year from when the white paper was released for Congress to send a bill to the President's desk.

As we move into the implementation phase of this legislation, one point to bear in mind is how many technical -- and not so technical -- issues and problems we will discover in this 2,300 page bill. One reason for the likely surfeit of problems, ironically, is the manner in which the conference on the bill was conducted. Normally, the vast majority of the work done in conference is accomplished behind closed doors, with staff toiling over language and checking each-other's work.

The conference on the Dodd-Frank bill, in contrast, was open and televised, and the "work" was done by members, on the fly, with little time or ability for anyone to check their work. In a sense, the conference was much like a committee mark-up, where amendments are added through a process that is often loosely-structured due to the expectation that problems can be cleaned up on the floor or in conference. When a conference is conducted in this manner, you create a remarkably transparent process, but there is little or no opportunity after the fact to clean up errors and identify unintended consequences prior to enactment. And Congress was using live ammunition.

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Another consequence of the transparent, free-flowing conference process was that more issues than one might normally expect were committed to regulatory discretion. In the absence of quick consensus, decisions on thorny issues were deferred for regulatory consideration. It has been oft noted that nearly 250 regulations and 70 studies are required by the Act.

Two results of the conference logically follow. First, agencies will grapple with hundreds of thorny issues that Congress could not or chose not to decide and also attempt to clean up and rationally interpret errors or ambiguities in the legislative text through regulations. Second, Congress (and Chairmen Frank and Dodd indicated as much during conference deliberations) is likely to take up a technical corrections bill some time in the coming year. Of course, if that bill comes up in 2011, it will do so without Senator Dodd, who is retiring.

Gibson Dunn has published a series of client alerts covering a number of important topics addressed in Dodd-Frank. Links to those earlier memoranda appear below. In addition, today we are releasing a comprehensive summary and discussion of the Act and a detailed comparison of the Title II Orderly Liquidation Authority provisions against existing U.S. Bankruptcy Code and Federal Deposit Insurance Act sections. Also included, both as an appendix to the comprehensive memorandum and as a link below, is a selection of the colloquies made by various Representatives and Senators.

The comprehensive summary is organized topically by bill title. While we recognize the length of the comprehensive summary is daunting, we hope that you find it a useful instrument for understanding the legislation. While 200 pages may seem like a lot, each page of our summary accounts for approximately 21 pages of legislative text. Moreover, a detailed table of contents and links (below) to the discussions of individual titles may facilitate ease of use.

The order of major topics is as follows: financial stability, including the Financial Stability Oversight Council and stricter prudential standards for nonbank financial companies subject to Fed supervision and bank holding companies; resolution authority for large, interconnected financial companies; the OTS-OCC merger and regulation of savings associations; the regulation of advisers to hedge funds; insurance reforms, including the establishment of the Office of National Insurance; enhanced regulation of depository institution holding companies; regulation of over-the-counter derivatives markets; payment, clearing, and settlement supervision; investor protections and securities regulation reforms; the Bureau of Consumer Financial Protection and related preemption provisions; and amendments to the Fed's emergency lending authority and the FDIC's emergency financial stabilization program. To facilitate further analysis, each paragraph includes section and page number references to the final Conference Report.

Below is a menu of links to the comprehensive summaries and its individual sections and appendices, various other publications that Gibson Dunn has produced on financial regulatory reform, and links to other helpful sources. Please click on the titles below.

- **[Gibson Dunn's Comprehensive Dodd-Frank Memorandum](#)**

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- **Summaries of individual titles of the Dodd-Frank Act:**

- [TITLE I](#)
- [TITLE II](#)
- [TITLE III](#)
- [TITLE IV](#)
- [TITLE V](#)
- [TITLE VI](#)
- [TITLE VII](#)
- [TITLE VIII](#)
- [TITLE IX](#)
- [TITLE X](#)
- [TITLE XI](#)
- [TITLE XII](#)
- [TITLE XIII](#)
- [TITLE XIV](#)
- [TITLE XV](#)
- [TITLE XVI](#)

- [Comparison of Orderly Liquidation Authority and U.S. Bankruptcy Code](#)

- [Selected House and Senate Colloquies on the Dodd-Frank Act](#)

**Gibson Dunn Publications (*click on titles below*):**

- [The Dodd-Frank Act Reinforces and Expands SEC Enforcement Powers](#) - Jul 21, 2010
- [Executive Compensation, Corporate Governance and Other Securities Disclosure Provisions in the Dodd-Frank U.S. Financial Regulatory Reform Act](#) - July 21, 2010
- [The Regulation of Advisers to Private Funds: Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act](#) - July 16, 2010
- [Derivatives Regulation Under the Dodd-Frank Wall Street Reform and Consumer Protection Act](#) - July 16, 2010
- [The Dodd-Frank Wall Street Reform and Consumer Protection Act \(H.R. 4173\) from the Broker-Dealer's Perspective](#) - July 12, 2010
- [The Final "Volcker Rule" under the Dodd-Frank U.S. Financial Regulatory Reform Bill](#) - July 12, 2010
- [Executive Compensation and Corporate Governance Provisions in the Dodd-Frank U.S. Financial Regulatory Reform Bill](#) - June 30, 2010

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- [Preparing for the Conference: A Comprehensive Review of the Senate Financial Reform Bill](#) - May 27, 2010
- [Financial Regulatory Reform: Chairman Dodd Releases New Legislation to Reform Financial Services Industry Regulation and Enhance Consumer Protection](#) - Mar 17, 2010
- [Financial Markets in Crisis: Administration Releases "White Paper" on Reforming the Financial Regulatory System](#) - Jun 17, 2009

## Other Helpful Sources (*click on titles below*):

- [The President's July 21, 2010 Comments on Signing](#)
- [Summary of Dodd-Frank as Prepared by the House Financial Services Committee](#)
- [Summary of Dodd-Frank as Prepared by the Senate Banking Committee](#)
- [Final Text of Dodd-Frank in the Conference Report](#)

*Please note that we regard the comprehensive memorandum on Dodd-Frank as a work in progress. The memorandum aims to be a comprehensive summary of important Dodd-Frank provisions; however, the length and complexity of the Act mean that there are a few sections that are not discussed. Further, although we have worked hard to make this memorandum an accurate discussion of this law, we may not have succeeded in every instance. ACCORDINGLY, WE WELCOME -- INDEED INVITE -- YOUR COMMENTS AND CRITICISMS. Our website will allow you to access updated versions of this memorandum, and we encourage you to communicate your comments, corrections, and thoughts directly to us via e-mail at the addresses below. Or, of course, you may contact any of us the old-fashioned way: by telephone at the numbers listed below. We look forward to hearing from you.*



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