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StayCurrent
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The Dodd-Frank Wall Street Reform and Consumer Protection Act: Impact on Banks

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Introduction

The Dodd-Frank Act: Landmark Financial Legislation

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[1] is landmark financial legislation that represents the most profound restructuring of financial regulation since the Great Depression. With the primary goal to "restore responsibility and accountability in our financial system to give Americans confidence that there is a system in place that works for and protects them," the Dodd-Frank Act will have broad impact on the financial services industry for years to come.

Born out of the financial crisis that erupted in early 2008, the Dodd-Frank Act, composed of a series of new laws is, in the aggregate, breathtaking in its scope. Particularly significant is that the new law: 1) creates the Bureau of Consumer Financial Protection ("BCFP"), a new independent consumer watchdog agency housed within the Federal Reserve Board ("FRB"), 2) grants to the U.S. Department of the Treasury, Federal Deposit Insurance Corporation ("FDIC") and the FRB broad new powers to seize, close and wind down "too big to fail" financial (including non-bank) institutions in an orderly fashion, 3) establishes a new Financial Stability Oversight Council ("FSOC"), charged with identifying and responding to emerging risks throughout the financial system, composed primarily of federal financial services regulators and chaired by the Secretary of the Treasury Department, 4) restructures the federal regulatory jurisdiction over banks and their parent companies, and abolishes the Office of Thrift Supervision ("OTS"), 5) adopts new federal oversight of the insurance industry, 6) adopts new standards and rules for the mortgage industry, 7) adopts new bank, thrift and holding company regulation, 8) adopts new federal regulation of the derivatives market, 9) adopts the so-called Volcker Rule, substantially restricting proprietary trading by depository institutions and their holding companies, 10) imposes requirements for "funeral plans" by large, complex financial companies, 11) establishes new regulation of the securitization market through "skin in the game" and enhanced disclosure requirements, 12) establishes new regulation of interchange fees, 13) establishes new and enhanced compensation and corporate governance oversight for the financial services industry, 14) provides enhanced oversight of municipal securities, 15) provides a specific framework for payment, clearing and settlement regulation, 16) adopts new federal hedge fund regulation, 17) adopts new fiduciary duties and regulation of broker dealers, investment companies and investment advisors, 18) tasks the federal banking agencies with adopting new and enhanced capital standards for all depository institutions, 19) significantly narrows the scope of federal preemption for

national banks and federal thrifts, and 20) places a moratorium on ownership of industrial loan banks by non-financial companies.

Furthermore, the Dodd-Frank Act provides broad and substantial delegations to various federal agencies the task of implementing its many provisions through regulation. Hundreds of new federal regulations, studies and reports addressing all of the major areas of the new law will be required, ensuring that federal rules and policies in this area will be further developing for years to come.

The Dodd-Frank Act: Impact

The Dodd-Frank Act profoundly impacts all major segments of the financial services industry, including 1) banks, 2) thrifts, 3) bank, financial and savings and loan holding companies, 4) mortgage businesses that include mortgage brokers, mortgage bankers and direct lenders, 5) insurance companies, 6) industrial loan companies and their parent companies, 7) investment company, broker-dealer and investment advisor firms, 8) hedge funds and private equity funds, and 9) payment systems companies.

This Stay*Current* bulletin addresses the impact of the Dodd-Frank Act on national and state-chartered banks. As described below, the Dodd-Frank Act imposes significant changes on the supervision and operations of all types of charters. In pertinent part, the key impact of the Dodd-Frank Act is to create a system of differential regulation based on asset size, with smaller banks, both national-and state-chartered, being subject to different regulatory regimes than applicable to larger institutions. As discussed below, individual sections of the Dodd-Frank Act have different triggers to distinguish between small and large banks, with various changes in regulatory focus being triggered between $10 and $15 billion in assets.

The Dodd-Frank Act: Full Regulatory Overhaul Awaits Another Day

The Dodd-Frank Act preserves the dual banking system and, in that regard, does not interfere with the current structure of federal bank regulators, as national banks remain regulated by the Office of the Comptroller of the Currency ("OCC"), state member banks by the FRB, and state non-member banks by the FDIC. The Dodd-Frank Act does, however, significantly revise federal regulation over thrift institutions and their holding companies. A separate Paul Hastings Stay*Current* article addresses the impact of the Dodd-Frank Act on thrifts and their holding companies. *See* Paul Hastings Stay*Current*—The Dodd-Frank Act: Impact on Thrifts. *See also* Paul Hastings Stay*Current*—The Dodd-Frank Act: Impact on Bank and Thrift Holding Companies and Significant Nonbank Financial Companies.

Notwithstanding the transfer of consumer financial protection functions of the primary federal bank regulators to the new BCFP, examination and enforcement of banks' compliance with federal consumer financial laws will remain with their primary federal regulator for banks with assets of $10 billion or less. The newly established BCFP will have primary responsibility for examination and enforcement of federal consumer financial laws for banks with assets in excess of $10 billion as well as rulemaking authority for all federal consumer financial laws affecting banks. As the BCFP will have primary enforcement powers with respect to federal consumer financial laws for larger banks, based upon their safety and soundness examinations the OCC, FRB or FDIC, as the primary prudential regulator, will be authorized to recommend that the BCFP initiate a compliance enforcement action against a larger bank. The OCC, FRB or FDIC would be authorized to commence their own enforcement action if the BCFP does not commence an action within 120 days. Although the BCFP will not have enforcement powers over banks with $10 billion or less in assets, the BCFP is authorized to require that such banks file reports with it, which could potentially impose new burdens on all banks. For further information

on the BCFP, *see* Paul Hastings Stay*Current*—The Dodd-Frank Act: The Bureau of Consumer Financial Protection.

Examinations Fees

Currently, national banks are subject to assessments by the OCC, while the FDIC and FRB do not assess fees for their examination functions – either as primary regulator or under back-up examination authority. As a result of the Dodd-Frank Act, both the FDIC and FRB are now authorized to also assess fees or charges on any entity for which it carries out its supervisory responsibilities, including holding companies for the FRB. Banks subject to the BCFP jurisdiction will not be subject to a separate examination assessment, as the BCFP's budget is drawn from the FRB. Nonetheless, as a result of the Dodd-Frank Act, banks will be subject to a greater assessment burden.

Capital Requirements for Banks Have Nowhere to Go But Up

General

All depository institutions including banks and their holding companies will be subject to minimum leverage and minimum risk-based capital ratios that must be no less than the ratios currently imposed by the current federal bank regulatory agencies under the prompt corrective action provisions of the Federal Deposit Insurance Act ("FDIA"). Future capital ratios also cannot be quantitatively lower than the generally applicable ratios in effect as of the date of enactment of the Dodd-Frank Act. As a result, capital ratios for banks have nowhere to go but up from the following current rates:

		Well capitalized	Adequately capitalized
Minimum risk-based capital ratios:	Tier 1 capital:	6%	4%
	Total capital:	10%	8%
Minimum Leverage		5%/3%	4%

While Title I of the Dodd-Frank Act imposes more stringent capital standards on all depository institutions and holding companies, Title VI seeks to implement a relief valve, requiring that capital standards be "countercyclical" so that the amount of capital required to be held by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution. As a result, insured depository institutions are more likely in the future to become subject to individual capital requirements, through which regulators adopt capital ratios for each specific institution, rather than the current one-size fits all system. The form of these institution-specific determinations will need to be examined closely, because if set forth in an enforcement order or prompt corrective action directive, an institution will no longer be deemed to be well capitalized, thereby triggering a series of restrictions including a prohibition on the acceptance of brokered deposits as well as increased deposit insurance premiums.

The Collins Amendment

The Dodd-Frank Act, through the so-called Collins Amendment, modifies the types of securities that can be included by depository institutions and holding companies as Tier 1 capital, favoring common equity over trust-preferred and cumulative-preferred securities (other than TARP-preferred securities) currently issued by many institutions ("Impermissible Capital Instruments"). Recognizing that such

new standards would eliminate billions of dollars in current capital, the Dodd-Frank Act provides for various phase-in periods for institutions to comply with the new Tier 1 capital requirements, depending upon an institution's size, the instrument's issue date and for holding companies, and whether an entity is currently regulated by the FRB.

In sum, banks that held consolidated assets of less than $15 billion as of December 31, 2009 will not be subject to any new restrictions on the elements of their capital. However, banks with greater than $15 billion in consolidated assets that have Impermissible Capital Instruments issued prior to May 19, 2010 (a grandfather date set after the initial introduction of the Collins Amendment), will have a three-year phase-in period beginning January 1, 2013 to comply with the new requirements for regulatory capital deductions. Impermissible Capital Instruments issued after May 19, 2010 will immediately be discounted from Tier 1 capital. Given the uncertainty of market fluctuations, meeting the new requirements could be a difficult task for some institutions or their holding companies. Moreover, as the phase-in deadline approaches, we expect that the markets will be crowded with various offerings by depository institution holding companies and significant nonbank financial companies seeking to meet the enhanced capital requirements.

Charter Conversions

Many federally-chartered banks currently avail themselves of the benefits of federal preemption with respect to their activities that are conducted directly or through subordinate organizations. In light of the various limitations imposed under the Dodd-Frank Act with respect to federal preemption of state consumer financial laws (as described in a separate Paul Hastings Stay*Current* article), as well as assessments and fees imposed by the OCC, it is appropriate and prudent for banks to examine whether their current charter remains an optimal charter for their ongoing and future operations, *i.e.*, whether current regulatory burdens associated with the current charter outweigh the costs. Further, a number of community and regional banks are considering the relative merits of state bank charters in light of the provisions of the Dodd-Frank Act that reduce the advantages of preemption relating to the national bank and federal thrift charters. *See* Paul Hastings Stay*Current*—The Dodd-Frank Act: Impact on Federal Preemption for National Banks and Federal Thrifts.

To eliminate the perceived problems related to charter-arbitrage with respect to what is perceived to be more lenient regulation, the Dodd-Frank Act generally precludes charter conversions from: a national bank to a state bank or a state savings association; a state bank or state savings association to a national bank; or a federal savings bank to a state bank or state savings bank, whenever the converting institution is subject to a cease and desist order (or other formal enforcement order), or a memorandum of understanding (collectively, an "Enforcement Order") by its current regulator. Notwithstanding the general prohibition, conversions are permissible if the agency that issued the Enforcement Order does not object to the conversion after the converting institution provides a written plan to address the supervisory matters giving rise to the Enforcement Order that is consistent with the safe and sound operation of the converting institution and the resulting regulator implements the plan.

Risk Retention of Loans Originated for Sale

Mortgage lending practices of banks could be altered by the Dodd-Frank Act, which seeks to mitigate a practice that was perceived to have led to the financial crisis whereby some lenders would "pass the trash" by originating loans to borrowers of questionable credit-worthiness primarily to generate fee income. As a result, the Dodd-Frank Act requires the Federal banking agencies (defined as the OCC, FRB, and FDIC) and the Securities and Exchange Commission ("SEC") to engage in joint rulemaking that imposes certain credit risk retention obligations on securitizers and certain originators by

requiring "any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party." Final rules shall become effective 1 year after they are published in the *Federal Register*. Substantially similar but separate regulations will also be issued within the same timeframe for residential mortgage assets, which the Secretary of Housing and Urban Development ("HUD") as well as the Federal Housing Finance Agency ("FHFA") will also participate in, along with the Federal banking agencies and the SEC. Where a securitizer purchases assets from an originator, the Federal banking agencies and the SEC will have the discretion to allocate risk retention requirements between a securitizer and an originator, although it is unclear how this allocation among securitizers and originators will affect the rulemaking with respect to residential mortgage assets because only the Federal banking agencies and the SEC were given power to exercise such discretion, and not the HUD or the FHFA.

The term "qualified residential mortgage" will be defined in regulations, and will include mortgages with underwriting and product features for which historical loan performance data indicate a lower risk of default, such as documentation and verification of financial resources relied upon to qualify the borrower; the ratio of the borrower's housing debt to income; the ratio of the borrower's total monthly debt payments to income; underwriting to a fully indexed adjustable rate mortgage; and mortgage guarantee insurance or other credit enhancement at the time of origination. Factors that have been demonstrated to exhibit a higher risk of default, *e.g.*, balloon payments, negative amortization features, prepayment penalties and interest-only payments, would disqualify a mortgage from being deemed to be a "qualified residential mortgage" that would be exempt from the risk-retention requirement.

The effect of the "skin in the game" risk-retention provisions results in an increase in assets that will need to be held on a bank's balance sheet, and increases the amount of risk-based capital that a bank must hold against such assets. For example, for each $1.0 million in non-exempt loans originated-for-sale, a bank would potentially be required to hold at least 5% or $50,000, reflecting its "skin in the game." Assuming a 100% risk-weighting and a 10% risk-based capital requirement, the bank would have to hold an additional $5,000 in capital to support these assets – capital that, prior to the Dodd-Frank Act, a bank would not have been required to hold. Accordingly, in addition to having a stake in loans that are originated and securitized, the risk-retention provisions of the Dodd-Frank Act will also impact banks by increasing their capital requirements. Regulations implementing the risk-retention rules, and exemptions thereto, are due within 270 days of enactment of the section, in April 2011, to become effective: (a) one year after final rules are published in the *Federal Register* with respect to residential mortgages, and (b) two years after the date of publication in the *Federal Register* for other classes of asset-backed securities. It remains to be seen whether the BCFP or the federal banking agencies will grant any industry wide exemptions or relief from these requirements. *See* Paul Hastings Stay*Current*—The Dodd-Frank Act: Impact on Mortgage Businesses.

Key Changes to Deposit Insurance

The Dodd-Frank Act codifies two important FDIC programs adopted under the Emergency Economic Stabilization Act of 2008 ("EESA"), by permanently increasing the federal deposit insurance limit to $250,000 retroactive to January 1, 2008, and by effectively extending for two years significant portions of the FDIC's Transaction Account Guarantee ("TAG") program, providing for unlimited federal deposit insurance for "noninterest-bearing transaction accounts."

The increase in the federal deposit insurance limit under EESA reflected Congress' recognition that many depositors, including small businesses, had more than $100,000 of funds on deposit at insured depository institutions and, therefore, had more to lose if their bank or thrift were to fail. To avoid

irrational deposit withdrawals by customers fearful that their institution could fail, Congress raised the deposit insurance limit from $100,000 to $250,000 as part of the EESA but only on a temporary basis. The Dodd-Frank Act makes this temporary change (a) retroactive to January 1, 2008, so as to provide deposit coverage to all depositors at institutions for which the FDIC was appointed as receiver since the beginning of the financial crisis; and (b) permanent. The retroactivity provision only applies to deposits held at 13 institutions that failed during the first nine months of 2008, including IndyMac Bank and Washington Mutual Bank. The permanent increase in the insurance limit to $250,000, per depositor, per institution for each account ownership category, will also help to avoid irrational shifts of deposits based on rumors or fear with respect to the stability of a depository institution.

The two-year extension of the significant portions of the TAG program commencing on December 31, 2010 differs from the current TAG program developed by the FDIC, as it includes a more restrictive definition of "noninterest-bearing transaction account" than is currently used by the FDIC by excluding accounts that earn *de minimis* interest. Moreover, the revised TAG program excludes accounts on which institutions reserve a right to require advance notice of withdrawals, specifically NOW accounts. Finally, unlike the current TAG program, banks have no ability to opt out of participation in the program, which requires the payment of higher insurance premiums for TAG-deposits.

The Dodd-Frank Act also implements several important changes to the management and capitalization of the FDIC's Deposit Insurance Fund ("DIF"), which has become underfunded during the financial crisis, generally imposing a greater burden on insured depository institutions with greater than $10 billion in assets. First, the FDIC is required to redefine the assessment base on which deposit insurance premiums are assessed to an insured depository institution, so as to equal the average total consolidated assets of an insured depository institution minus the sum of average tangible equity of the insured depository institution during the assessment period, subject to possible adjustments from total consolidated assets for custodial banks and banker's banks. This shift imposes a greater burden on larger banks, which hold more non-deposit liabilities than smaller banks. Second, the Dodd-Frank Act raises the floor on the DIF reserve ratio from 1.15% to 1.35% or a comparable percentage of the FDIC assessment base. Full implementation of the revised reserve ratio is required to be achieved by September 30, 2020, offsetting for the impact of deposit insurance assessments on institutions with less than $10 billion in consolidated assets, meaning that assessments on larger institutions will be responsible for the 20 basis point increase. Finally, to minimize the chance of the DIF being underfunded in the future, the Dodd-Frank Act eliminates the requirement that the FDIC pay dividends to insured depository institutions whenever the DIF exceeds a reserve ratio of 1.35% equal to one-half of the amount the DIF exceeded 1.35%, and the entire amount if the DIF exceeded 1.5%. This repeal permits the FDIC to allow the DIF to grow in periods of economic expansion when there may be fewer bank failures.

Other Provisions Impacting Banks

Transactions with Insiders

The Dodd-Frank Act fills a perceived regulatory vacuum by prohibiting non-credit transactions between an insured depository institution and its executive officers, directors or principal shareholders unless the transaction (i) is on market terms and (ii) if the transaction represents more than 10% of the capital stock and surplus of the insured depository institution and the transaction has been approved in advance by a majority of the disinterested members of the board of directors of the institution. This restriction is intended to prevent "sweetheart" non-credit transactions between insiders and institutions. The FRB is authorized to consult with the OCC and FDIC and promulgate regulations to implement this provision. New limits are imposed on loans to insiders with respect to derivatives

transactions, repurchase and reverse-repurchase agreements, as well as securities lending and borrowing transactions, subject to regulations to be adopted.

The Dodd-Frank Act also expands the definition of "covered transactions" as used in Section 23A of the Federal Reserve Act ("FRA")[2] to include credit exposure on derivatives transactions and securities lending and borrowing transactions, as well as the acceptance of affiliate-issued debt obligations as collateral for a loan or an extension of credit. Moreover, the Dodd-Frank Act clarifies that collateral must be maintained at all times for covered transactions, rather than only at the time of the transaction. The new law also restricts the use of debt obligations issued by an affiliate to satisfy collateral obligations.

The Dodd-Frank Act authorizes the OCC (with respect to national banks) and FDIC (with respect to state-chartered banks), in conjunction with the FRB, to grant exemptions under Section 23A, subject to the FDIC's determination (or non-objection within a 60-day notice period) that the exemption does not present an unacceptable risk to the DIF. Accordingly, transactions requiring a 23A exemption will not be accomplished on an expedited basis. For further discussion on the impact of the Dodd-Frank Act with respect to transactions with affiliates, *see* Paul Hastings Stay*Current*—The Dodd-Frank Act: Affiliate Transaction and Insider Lending Restrictions.

Limits on Proprietary Trading

Through the so-called Volcker Rule, the Dodd-Frank Act amends the Bank Holding Company Act of 1956[3] by generally prohibiting a "banking entity" from: (A) engaging in proprietary trading;[4] and (B) investing in or sponsoring[5] a private equity or hedge fund.[6] The term "banking entity" covers insured depository institutions, their holding companies, and any company that is treated as a bank holding company under Section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity.

Exceptions to the general prohibition on proprietary trading are provided for certain permitted activities that include:

- purchasing, selling, acquiring or disposing of U.S. government or agency securities, including obligations or instruments issued by Fannie Mae, Freddie Mac, Ginnie Mae and the Federal Home Loan Banks, and state, municipal and other political subdivision obligations;
- purchasing, selling, acquiring or disposing of securities in connection with underwriting or market-making type activities, but only to the extent reasonably expected to fulfill near term customer demand;
- risk-mitigating hedging transactions designed to reduce specific risks to the banking entity in connection with holding such positions; and
- engaging in such other activities the regulators (federal banking agencies, SEC or CFTC, as appropriate) determine, by rule, would promote/protect the safety and soundness of the banking entity and U.S. financial stability.

All permitted activities are subject to applicable federal or state laws, any restrictions or limitations that may be imposed by the applicable regulator (including capital and quantitative limitations as well as diversification requirements), and must not: (i) present a material conflict of interest between the banking entity and its clients, customers or counterparties; (ii) result in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms will be defined by rulemaking); or (iii) pose a threat to the safety and soundness of the banking entity or the financial stability of the U.S.

With respect to the general prohibition on investing in a hedge fund or private equity fund, exceptions are provided for:

- "seed" investments, whereby a banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes or offers for the purpose of establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund the attract unaffiliated investors; and

- *de minimis* investments.

In each case, the banking entity's investment must: (i) be reduced to less than 3% of fund ownership within 1 year after the fund is established (which may be extended an additional 2 years); (ii) must be "immaterial" (to be defined by rulemaking) to the banking entity; and (iii) the aggregate of the banking entity's investments in all such funds may not exceed 3% of the banking entity's Tier 1 capital.

The FSOC is directed to conduct a study and make recommendations on implementing the Volcker Rule within 6 months of enactment of the Dodd-Frank Act, with final rules to be adopted by the agencies within 9 months thereafter. In general, the Volcker Rule provisions shall take effect on the earlier of: (a) 12 months after the date of the issuance of the final rules; or (b) 2 years after the date of enactment of Section 619 of the Dodd-Frank Act. Two exceptions are provided with respect to: (i) a conformance period for divestiture, where a banking entity shall bring its activities and investments into compliance with the new restrictions not later than 2 years after the date on which the requirements become generally effective; and (ii) an extended transition period for illiquid funds, where upon application by a banking entity, the FRB may extend the period during which the banking entity may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund, however only to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010. Notwithstanding the conformance period that is allowed for divesture, the appropriate agency may impose additional capital requirements and other restrictions deemed appropriate on a banking entity's investment in or sponsorship of a private equity or hedge fund.

Transactions between a banking entity and a hedge fund or private equity fund that the banking entity serves as the investment manager, investment adviser, or sponsor to, or is organized or offered by the banking entity, are subject to restrictions applicable to transactions between banks and their affiliates under Sections 23A and 23B of the FRA.

An important aspect of the Volcker Rule is its anti-evasion authority, which requires the appropriate regulators to include in their implementing regulations internal controls and recordkeeping requirements to insure compliance with the rule. Further, the regulators are authorized to require termination of activities and investments of a banking entity, subject to due notice and an opportunity for a hearing, that are not in compliance with, or that the appropriate regulator determines is an evasion of, the requirements of the Volcker Rule.

For a more comprehensive discussion of the Volcker Rule, *see* Paul Hastings Stay*Current*—The Dodd Frank Act: Impact, Issues and Concerns in Implementing the Volcker Rule.

Interest on Demand Deposits Authorized

Notwithstanding the two-year extension and modification of the TAG program as described above, the Dodd-Frank Act provides a small sliver of regulatory relief, particularly for commercial depositors, by repealing the long-standing prohibition on depository institutions paying interest on demand deposits.

Accordingly, commercial depositors will no longer have to structure their deposits in sweep arrangements in order to earn interest on idle funds.

Branching

The Dodd-Frank Act immediately relaxes current interstate branching restrictions by allowing banks to establish branches in any state if that state would allow the establishment of a branch by a state bank chartered in that state. The granting of such *de novo* branching powers eliminates a significant impediment to current bank operations, as in several states, entry is currently limited to whole bank acquisitions.

Action Plan

Both federally-chartered and state-chartered banks would be well-served to have an action plan in response to the various provisions of the Dodd-Frank Act that impact the activities and operations of banks. Banks should start planning for the implementation of the Dodd-Frank Act by:

1. Reviewing their capital structure, in light of the phase-out of trust-preferred and cumulative-preferred securities and various hybrid capital, and plan to raise additional capital early, in case of adverse changes in the market conditions.

2. Evaluating whether their bank is operating under the charter that is most optimal for their current and planned operations. Given limitations on federal preemption and OCC assessments, the benefits of converting to a state-chartered bank could outweigh the costs of remaining a national bank.

3. Monitoring the credit-risk retention rules and regulations and war-game how they impact originate-to-sell programs and how various exemptions are defined. Modify lending programs now to eliminate factors that would disqualify a residential mortgage from an applicable exemption under the risk-retention rules.

4. Considering if there are any states into which the bank desires to branch that have heretofore required a whole bank acquisition.

To view other thought leadership pieces on how this landmark legislation and the myriads of implementing regulations will affect your industry, please follow this link.

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (enacted on July 21, 2010). The general effective date of the Dodd-Frank Act is July 22, 2010.

[2] 12 U.S.C. § 371c(b)(7).

[3] 12 U.S.C. §§ 1841 *et seq*.

[4] For purposes of the Volcker Rule, a banking entity that is engaged in "proprietary trading" means that it is engaging as a principal for the trading account of the banking entity in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate federal banking agencies, the SEC, and the CFTC may determine by regulation.

The term "trading account" means any account used for acquiring or taking positions in the securities and instruments principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate federal banking agencies, the SEC and CFTC may determine by regulation.

[5] To "sponsor" a fund means: (A) to serve as a general partner, managing member, or trustee of a fund; (B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or (C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

[6] The terms "hedge fund" and "private equity fund" mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate federal banking agencies, the SEC and CFTC may determine by regulation.