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Derivatives Market Awaits Senate Agriculture Committee Bill After Dodd Bill Includes Few Changes

With the battle over healthcare finally behind it, Congress is moving forward with its plan to implement financial reform legislation, including regulation of the derivatives industry. Sen. Chris Dodd (D-CT) has spearheaded the most recent round of discussion in this area, proposing a revamped financial regulatory reform bill on March 15, 2010 (Dodd Bill). The release of the Dodd Bill followed weeks of intense negotiation with both Democratic and Republican senators, as members of both parties attempted to create a bipartisan draft of the proposed bill. Bipartisan efforts ultimately failed, and Sen. Dodd pressed forward with his own bill in hopes of bringing it to the Senate Floor at the end of April. Notably absent from the Dodd Bill were any significant changes to Sen. Dodd's prior legislative proposal for the regulation of derivatives. As a result, market participants are now shifting their focus to the Senate Agriculture Committee's long-awaited version of derivatives legislation, which many expect to contain the final terms of a bipartisan bill in the Senate.

The Dodd Bill continues the debate over various legislative proposals aimed at reforming the financial system that could dramatically change the way the over-the-counter (OTC) derivatives industry operates. These proposals, if enacted, will initiate a new regulatory regime to govern OTC transactions, which have been lightly regulated in the past. Notably, each of the proposals contemplates new registration, capital, disclosure and reporting requirements for OTC dealers; a new category of regulated entity "Major Swap Participants" subject to regulation akin to that to be imposed on OTC dealers; required clearing, including margin requirements for most OTC transactions; and the imposition of new position limits on both exchange-traded and certain OTC swaps. The most viable legislative proposals, including Sen. Dodd's prior bill, the Restoring American Financial Stability Act of 2009 (Prior Dodd Bill) and H.R. 4173 were summarized and compared in our January 7, 2010, [Legal Alert](#).

The Dodd Bill only slightly revises the Prior Dodd Bill and is not likely to curtail the debate. Most of the changes were made to bring the Dodd Bill more closely in line with the financial regulatory reform bill enacted by the House of Representatives in December 2009—The Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173) (House Bill). Attached is a [chart](#) that includes a comparison of the derivatives provisions in the Dodd Bill to those in the Prior Dodd Bill, the House Bill, and the Obama Administration's proposal for derivatives regulation, put forth under the auspices of the Treasury Department.

Although the Dodd Bill represents a sustained effort in Congress to regulate derivatives, we do not expect its provisions to be fully enacted as currently drafted. Sens. Jack Reed (D-DE) and Judd Gregg (R-NH) have already announced that they are working on a bipartisan replacement for the derivatives portion of the Dodd Bill. More significantly, it is expected that Sen. Blanche Lincoln (D-AR), chairman of the Senate Committee on Agriculture, Nutrition and Forestry (the Senate Committee that has had primary responsibility for legislation regarding the OTC markets and the Commodity Futures Trading Commission), will submit a draft bill addressing derivatives regulation in the near future. The prospect of a new bill proposed by Sen. Lincoln, coupled with the announced negotiation of a revised Dodd Bill by Senate Banking Committee Democrats and Republicans, make it likely that significant changes will be made to the Dodd Bill in the final legislation.

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The Obama Administration is pushing to have a comprehensive financial regulatory reform bill ready for the President's signature by Memorial Day. However, due to the complexities of this legislation, this deadline may be overly ambitious. We will continue to monitor the changing landscape of potential derivatives regulation, and keep you apprised of the latest developments.



If you have any questions regarding this alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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