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The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or the "Act") has been called the most significant overhaul of our nation's financial system since the Great Depression. The following is one in a series of practical summaries of certain provisions of the Act that may be of interest to financial institutions. Please feel free to contact us with any questions regarding this summary.

The Dodd-Frank Act will be the focus of a September 30, 2010 seminar sponsored by Thompson Coburn. The two-hour seminar will address the Act's practical impact on bank activities and operations and those aspects of the Act that local and regional banks need to understand to prepare for new regulatory obligations. Guest presenters will include representatives from federal and state bank regulatory agencies, who will join attorneys from Thompson Coburn who focus their practice on financial institutions.

For further details and registration visit
<http://www.thompsoncoburn.com/doddfrank>

Dodd-Frank Act Summary on Transactions with Affiliates and Insiders

The Dodd-Frank Act includes several provisions that tighten the affiliate transaction rules contained in Sections 23A and 23B of the Federal Reserve Act, as well as the insider lending provisions set forth in other federal banking laws. Certain of these provisions are discussed below. Your company should evaluate these changes to determine the impact on any existing or future transactions with affiliates or insiders.

Expansion of "Covered Transactions" under 23A

Section 23A defines certain types of affiliate transactions as "covered transactions," which are subject to quantitative limits and certain collateral requirements. The Dodd-Frank Act expands the definition "covered transaction" to

include the following:

- Acceptance of Debt Obligations as Collateral. The acceptance of debt obligations issued by an affiliate as collateral for a loan or extension of credit to a non-affiliate is considered a "covered transaction."
- Securities Lending, Securities Borrowing and Derivative Transactions. A securities lending or borrowing transaction or a derivative transaction with an affiliate is considered a "covered transaction" to the extent that the transaction results in credit exposure to an affiliate.
 - Credit Exposure. It is unclear at this time what is specifically meant by, or how to quantify, "credit exposure." The Federal Reserve may issue regulations to clarify this issue.
 - Derivatives. The Act eliminates any distinction between credit derivatives and other derivatives, such as interest rate swaps, which in effect classifies all derivative transactions as "covered transactions" to the extent they result in credit exposure to an affiliate.

23A Collateral Requirements

Section 23A also requires that certain types of "covered transactions" be secured by minimum amounts of collateral of specific quality. The Dodd-Frank Act tightens these collateral requirements in the following ways:

- Timing of 23A Collateral Requirements. Both the quantitative and qualitative collateral requirements contained in Section 23A must now be met "at all times" rather than only at the time of the transaction. The practical effect, therefore, is that if the value of collateral declines, additional collateral must be provided.
- Asset Repurchase Agreements. Asset repurchase agreements have been designated as extensions of credit and, as a result, must now meet the collateral requirements in Section 23A.
- Debt Obligations as Collateral for Affiliate Transactions. The Act amends Section 23A to prohibit the use of an affiliate's debt obligations as collateral for a covered transaction with any affiliate, regardless of whether the debt obligations are securities.

Limits on Authority of the Federal Reserve to Grant Exemptions from 23A

Historically, the Federal Reserve has been authorized to issue exemptions for particular transactions from Section 23A by either order or regulation for all types of financial institutions. The Dodd-Frank Act substantially restricts this authority. First, although the Federal Reserve can still issue exemptions by regulation for all types of financial institutions, the Act requires that the Federal Reserve give 60 days' notice to the FDIC prior to issuing such a regulation. The FDIC may object to the exemptive regulation during this 60 day period if it determines that the exemption presents an unacceptable risk to the Deposit Insurance Fund. Second, the Act shifts authority to issue exemptive orders to other regulatory authorities, as summarized below by type of financial institution.

- State Member Banks. Under the Act, the Federal Reserve retains the authority

to issue exemptive orders from 23A with respect to state member banks. However, the FDIC must be given 60 days' notice and an opportunity to object based on the same standard described above.

- National Banks and Federal Savings Associations. The authority to issue exemptive orders from 23A for national banks and federal savings associations is shifted to the OCC. Prior to issuing an exemptive order, however, the OCC must obtain the concurrence of the Federal Reserve, and the FDIC must be given 60 days' notice and an opportunity to object based on the same standard described above.
- State Non-Member Banks and State Chartered Savings Associations. The authority to issue exemptive orders from 23A for state non-member banks and state chartered savings associations is shifted to the FDIC. Prior to issuing any such order, however, the FDIC must obtain the concurrence of the Federal Reserve and must also find that the order does not present an unacceptable risk to the Deposit Insurance Fund.

Elimination of Financial Subsidiary Exceptions from 23A

Section 23A limits covered transactions with an affiliate to 10% of the capital and surplus of the depository institution. Under 23A, financial subsidiaries, which are special purpose subsidiaries authorized under the Gramm-Leach-Bliley Act, are considered to be affiliates and, therefore, bank transactions with financial subsidiaries are generally subject to 23A. Historically, however, an exception has existed that exempts covered transactions with financial subsidiaries from the 10% of capital and surplus limitation. The Dodd-Frank Act eliminates this exception. As a result, financial subsidiaries are treated the same as any other affiliate of a depository institution, and covered transactions with them are subject to the 10% limit.

Transactions with Insiders

- "Extension of Credit" Definition Broadened. The Dodd-Frank Act broadens the statutory definition of "extension of credit" that is used under Regulation O to regulate insider lending. The definition is expanded to include credit exposure to a person resulting from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.
- Asset Purchase and Sale Transactions. The Dodd-Frank Act prohibits the purchase of an asset from, or sale to, an insider, unless the transaction is on market terms and, in the event the proposed transaction represents more than 10% of the capital stock and surplus of the insured institution, it has been approved in advance by a majority of the institution's board of directors not having an interest in the transaction.
 - Lease Transactions. Lease transactions involving insiders are not uncommon in the banking industry. The Act does not expressly address lease transactions, however, the regulations implemented pursuant to the Act may do so.

Effective Date

Most of the amendments discussed in this bulletin are expected to become effective

July 21, 2012, at the earliest, although this effective date could be postponed until as late as January of 2013. However, the restrictions relating to asset purchase and sale transactions with insiders may become effective as early as July 21, 2011.

If you have further questions regarding the Dodd-Frank Act, you may contact one of the Thompson Coburn Attorneys listed below:

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