

Dodd-Frank Financial Reform Act

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In reviewing the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), we found two very different sections worthy of brief note.

Small Issuers exempted from auditor certificates as to accounting controls.

Section 989G of the Dodd-Frank Act, eliminated immediately, the need for an auditor's certification as to management's assessment of the adequacy of an issuer's accounting controls for issuers that are categorized as non-accelerated filers or smaller reporting companies. This costly residuum of Section 404 of Sarbanes-Oxley was scheduled to be effective for the upcoming fiscal year after several years of extensions by SEC rule making. Smaller issuers were anticipating the additional audit fees associated with such certification and had incurred substantial fees in enhancing accounting controls to satisfy such audit. A small benefit conferred to some issuers by Congress.

SEC enforcement powers expanded against aiders and abettors and for foreign violators.

Section 929M of the Dodd-Frank has added a new subsection to Section 15 of the Securities Act of 1933 providing that "any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of the [Securities Act] or of any rule or regulation issued under this [Securities Act], shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided." This legislation, with similar provisions being added to Section 48 of the Investment Company Act and Section 209 of the Investment Advisers Act, appears to be a confirmation of the law (most recently articulated in 2008, by the *U.S. Supreme Court in Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc.*) that although there is no private right of action for aiding and abetting violations of Section 10(b) of the Securities Exchange Act of 1934, the enforcement powers of the SEC could be brought to bear against such ancillary violators.

In addition, Section 929P of Dodd-Frank, amended Section 20(e) of the Exchange Act by expanding the basis for aiding and abetting liability beyond knowing violators to reckless violators. Although not overriding Stoneridge, as to private actions, Section 929Z of Dodd-Frank directs the Comptroller General to report to Congress within one year as to the impact of authorizing a private right of action against aiders and abettors.

Section 929P(b) of Dodd-Frank authorizes extraterritorial enforcement by the SEC against "conduct within the United States that constitutes significant steps in furtherance of the violation [of various antifraud provisions of the Securities Act, the Exchange Act and the Advisers Act] even if the securities transaction occurs outside the United States and involves only foreign investors" or "conduct occurring outside the United States that has a foreseeable substantial effect within the United States." This new legislation effectively reverses the Supreme Court's June 2010 decision, *Morrison v. National Australia Bank*, as to SEC enforcement authority.