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The Dodd-Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). The primary objective of the Act is reform of the financial services industry, including comprehensive regulation regarding credit rating agencies, asset securitizations, and municipal securities. Despite this primary focus, the Act will greatly impact nearly all U.S. public companies, many private fund managers and innumerable private offerings. The Act also provides new enforcement and management powers and mandates for the U.S. Securities and Exchange Commission (the "SEC") and numerous other agencies. In all, the Act will require significant action by 11 different federal agencies.

The scope and reach of the Act make it the most expansive financial reform since the passage of the Securities Act of 1933 (as amended, the "Securities Act") and the Securities Exchange Act of 1934 (as amended, the "Exchange Act"). Given this breadth, it is impossible to succinctly summarize the Act. The following, however, highlights certain of the most significant provisions of the Act regarding corporate governance, executive compensation, public company disclosure, private offerings, and federal investment adviser registration and regulation that we believe will have the most immediate and direct impact on our clients. This brief summary does not contain all of the provisions of the Act regarding these matters, and should you have questions or need additional information as to these or any other provisions of the Act, please contact us.

Provision / Section of the Act	Summary	Transition	Applicability
Corporate Governance Elimination of broker discretionary voting (§957)	Expands the scope and application of the New York Stock Exchange's existing rule prohibiting brokers from voting uninstructed shares for the election of directors, by making such prohibition applicable to exchange-listed companies and further prohibiting brokers from voting uninstructed shares on executive compensation matters, including say-on-pay proposals.	No effective date specified.	All exchange-listed public companies.

Provision / Section of the Act	Summary	Transition	Applicability
Corporate Governance Proxy access (§971)	Allows (but does not require) the SEC to adopt rules allowing shareholder proxy access to nominate candidates to the company's board of directors on the company's proxy statement.	Effective upon final SEC rulemaking, if any. The SEC proposed rules (the "Proposed Rules") for shareholder proxy access prior to the passage of the Act and has suggested that final rules providing for shareholder proxy access in the 2011 proxy season can be anticipated. The Proposed Rules would allow shareholders holding between one and five percent of a company's voting shares to have a director nominee included in the company's proxy statement. Under the Proposed Rules, shareholders seeking such access could aggregate shares to satisfy such ownership threshold, would be required to have held such shares for at least one year and would be required to represent that they would continue to hold such shares through the date of the company's next annual meeting. Whether the SEC will adopt final rules that follow the Proposed Rules remains to be seen.	All public companies.

Provision / Section of the Act	Summary	Transition	Applicability
Corporate Governance Disclosure of corporate leadership structure (§972)	Requires the SEC to adopt rules requiring disclosure in a company's proxy statement of the reasons the company allows one person, or different people, to serve as the company's chairman and chief executive officer. As of part of its new executive compensation rules adopted December 16, 2009 and effective February 28, 2010, the SEC requires companies to describe the leadership structure of the company's board, including disclosure about whether one person or different individuals serve as the company's chairman and chief executive officer, and why the company believes such structure is appropriate. By requiring the SEC to pass new rules mandating this disclosure, the Act prevents the SEC from later rescinding this disclosure requirement. The new rules can be expected to be substantially similar to the existing rule (Item 407(h) of Regulation S-K).	The SEC to adopt rules no later than January 17, 2011 (180 days after enactment of the Act).	All public companies.
Corporate Governance/Executive Compensation Non-binding shareholder "say-on-pay" vote (§951)	At least once every three years (and perhaps more frequently, depending on the outcome of the company's shareholder vote noted below), public companies must have a non-binding shareholder say-on-pay vote for certain executive officers. At least once every six years, public companies must have a vote regarding the frequency of such vote (i.e. whether the say-on-pay vote will be held every one, two or three years).	Effective for shareholder meetings held on or after January 21, 2011 (six months after enactment of the Act), public companies must hold both a say-on-pay vote and a vote on the frequency of the vote for say-on-pay.	All public companies.
Corporate Governance/Executive Compensation Mandatory disclosure of and non-binding shareholder vote on golden parachute arrangements (§951)	Public companies seeking shareholder approval of an acquisition, merger or other similar transaction must disclose in their proxy statement any compensation to be paid to a named executive officer that relates to the transaction and must hold a non-binding shareholder vote to approve any such compensation.	Effective for shareholder meetings held on or after January 21, 2011 (six months after enactment of the Act).	All public companies.

Provision / Section of the Act	Summary	Transition	Applicability
Corporate Governance/Executive Compensation Compensation committee independence (§952)	Requires the exchanges to establish independence standards for compensation committee members.	The SEC to adopt rules requiring the exchanges to prohibit listing of non-compliant companies (but with the allowance of a cure period) no later than July 16, 2010 (360 days after enactment of the Act).	Public companies, subject to certain exceptions including, but not limited to, controlled companies, limited partnerships and certain foreign private issuers.
Corporate Governance/Executive Compensation Compensation committee authority to retain independent advisers (§952)	Companies must give their compensation committees the authority and appropriate funding to retain advisers (who each must be "independent" pursuant to new SEC rules), including compensation consultants, legal counsel and other advisers. Companies must disclose their use of compensation committee consultants (but not the use of legal counsel and other advisers) and whether such consultant's work has raised any conflicts of interest and how the company is addressing any such conflict. This expands the existing disclosure obligation under Item 407(e)(3) of Regulation S-K regarding use of compensation committee consultants, which was revised to require additional disclosure in the SEC's new executive compensation rules adopted December 16, 2009 and effective February 28, 2010.	The SEC to adopt rules requiring the exchanges to prohibit listing of non-compliant companies (but with the allowance of a cure period) and rules regarding consultant and adviser independence no later than July 16, 2010 (360 days after enactment of the Act). The new compensation committee disclosure requirement is effective for shareholder meetings held on or after July 21, 2011 (one year after enactment of the Act).	All public companies, other than controlled companies.

Provision / Section of the Act	Summary	Transition	Applicability
Corporate Governance/Executive Compensation Disclosure of pay relative to performance (§953)	Requires the SEC to adopt rules requiring disclosure in a company's proxy statement regarding the relationship between executive compensation paid and the company's performance.	No effective date specified.	All public companies.
Corporate Governance/Executive Compensation Disclosure of internal pay equity (§953)	Requires the SEC to adopt rules requiring disclosure in a company's proxy statement regarding the total annual compensation of the company's CEO, the median annual total compensation of all of the company's other employees and the ratio of the CEO's compensation to the median employee compensation.	No effective date specified.	All public companies.
Corporate Governance/Executive Compensation Clawbacks (§954)	Exchanges must adopt rules to require listed companies to have a policy that: 1) discloses the company's policy for awarding incentive-based compensation based on financial information reportable under the securities laws and 2) provides for the recovery of certain "erroneously awarded" incentive compensation paid to all current and former executive officers in a three-year look-back period in the event of an accounting restatement of Exchange Act reports triggered by material noncompliance with reporting requirements under the securities laws. Such clawback must be triggered with respect to all executive officers, whether or not such individual was involved with the mistake that caused the restatement. The clawback provision under the Act expands the corresponding provision of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") by: 1) applying it to all executive officers (rather than just the CEO and CFO), 2) applying it irrespective of whether such executive engaged in the misconduct and 3) reaching back to restatements within three years, rather than one year.	No effective date specified.	All exchange-listed public companies.

Provision / Section of the Act	Summary	Transition	Applicability
Public Company Disclosure Small issuer exemption from §404(b) of Sarbanes-Oxley (§989G(a))	Codifies the SEC's continued delays in the implementation of Sarbanes-Oxley §404(b) (auditor attestation regarding management's assessment of the effectiveness of internal controls), with respect to companies that are not "large accelerated filers" or "accelerated filers," by permanently exempting such companies from §404(b) of the Sarbanes-Oxley Act.	Effective July 21, 2010 (immediately upon enactment of the Act).	All public companies that are not "large accelerated filers" or "accelerated filers."
Public Company Disclosure Mine safety disclosure (§1503)	Companies that operate coal or mineral extraction mines (including metals, nonmetals and stone) must provide safety disclosure in each Exchange Act report filed with the SEC.	Effective for all Exchange Act reports filed after August 20, 2010 (30 days after enactment of the Act).	All public companies that operate (directly or through subsidiaries) coal or other mines.
Public Company Disclosure Disclosure of payments by resource extraction companies (§1504)	Public "resource extraction" companies (companies in the commercial oil, natural gas or mineral industries) must disclose in their annual reports any payments (other than *de minimis* payments) to a foreign government or the U.S. federal government for the commercial development of oil, natural gas or minerals.	The SEC to adopt rules no later than April 17, 2010 (270 days after enactment of the Act), which shall apply to annual reports for any fiscal year ending after the first anniversary of the date such rules are adopted.	All companies required to file annual reports with the SEC that engage in the commercial development of oil, natural gas or minerals.
Private Offerings Change in definition of "accredited investor" (§413)	The individual net worth standard for determining that an individual is an "accredited investor" (under Rule 501(a)(5) of the Securities Act) will now exclude the natural person's primary residence in considering whether the individual meets the $1 million net worth threshold. On July 22, 2010 the SEC issued a Compliance & Disclosure Interpretation ("C&DI"), noting that the Act does not define "value" or address the treatment of mortgage or other indebtedness for purposes of the net worth calculation. Pending implementation of new SEC rules regarding the net worth calculation, the amount of related indebtedness secured by the primary residence should be excluded (but in an amount not exceeding the fair market value of the residence) from the net worth calculation. Indebtedness secured by the primary residence in excess of the fair market value of such residence is to be treated as a liability and deducted in the net worth calculation.	Effective July 21, 2010 (immediately upon enactment of the Act). The SEC's July 22, 2010 C&DI explains that although the SEC will need to adopt rules under the Act, this provision of the Act is immediately effective. The threshold standard for the net worth test ($1 million) also will be inflation-adjusted every 4 years beginning on July 21, 2014.	All Regulation D private offerings.

Provision / Section of the Act	Summary	Transition	Applicability
Investment Adviser Registration Provisions Elimination of the "fewer than 15 clients" exemption from the registration requirements of the Investment Advisers Act of 1940 (the "Advisers Act") (§403)	Will eliminate the registration exemption under the Advisers Act for investment advisers with fewer than 15 clients in the preceding 12 months who do not hold themselves out as an investment adviser.	Effective July 21, 2011 (one year after enactment of the Act). Notably, the Act does not grandfather investment advisers relying on the current exemption from registration.	Investment advisers, particularly those relying on the current exemption.
Investment Adviser Registration Provisions Limitation on the intrastate exemption and CFTC-registered exemption for small "private funds" (§402 and §403)	Adds a new definition to the Advisers Act, "private fund," which is a company exempt from registration and regulation under the Investment Company Act of 1940 (the "Investment Company Act"), because it has fewer than 100 investors (§3(c)(1)) or is a privately-offered fund in which all investors are qualified purchasers under the Investment Company Act (§3(c)(7)). Under the Act, investment advisers to "small" private funds (those that are advisers solely to private funds and have less than $150 million in assets under management in the U.S.) can no longer rely on: 1) the intrastate exemption of the Advisers Act (§203(b)(1)), or 2) the exemption under the Advisers Act for certain advisers registered with the CFTC (§203(b)(6)) (but in the case of no. 2, only if after the date of enactment, the business of the private fund adviser becomes predominantly that of giving securities-related advice).	Effective July 21, 2011 (one year after enactment of the Act).	Investment advisers under §3(c)(1) or §3(c)(7) of the Advisers Act, including hedge funds, private equity funds and certain venture capital funds.

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Investment Adviser Registration Provisions New exemptions from registration under the Advisers Act (among others, §407 and §408)	Provides new exemptions for private fund advisers, including an exemption for foreign private advisers and for small business investment company advisers. In addition, the Act provides exemptions for 1) advisers to "venture capital funds" (which term must be defined by the SEC by July 21, 2011) (§407) and 2) for any adviser that acts as an adviser solely to private funds and has less than $150 million in assets under management in the U.S. §408). Investment advisers relying on the venture capital exemption or small private fund adviser exemption will be subject to additional recordkeeping and reporting requirements with the SEC.	The SEC to adopt rules to define "venture capital fund" no later than July 21, 2011 (one year after enactment of the Act) and no time is specified for rulemaking with respect to the small private fund exemption, which is effective July 21, 2011 (one year after enactment of the Act).	Investment advisers.
Investment Adviser Registration Provisions Family office exclusion (§409)	Adds a new provision to the Advisers Act to exclude "family offices" from the definition of "investment adviser." Despite this pending exclusion, the Act will grandfather certain entities with investment advisers that advise certain 1) employees with existing investments in the family offices, 2) family-controlled companies and 3) registered investment advisers under the Advisers Act who are co-investors with such family office prior to January 1, 2010. Such grandfathered entities will continue to be considered "investment advisers" for purposes of general anti-fraud liability under the Advisers Act.	Effective July 21, 2011 (one year after enactment of the Act).	Investment advisers in family offices that sponsor private funds that serve as investment vehicles for family members and charitable foundations.

Provision / Section of the Act	Summary	Transition	Applicability
Investment Adviser Registration Provisions Increased assets under management threshold for federal registration under the Advisers Act (§410)	Increases the minimum threshold requirement for an investment adviser's total assets under management (from $25 million to $100 million) in order to be permitted to register as an investment adviser with the SEC (rather being subject to state Blue Sky Laws that would require separate registration with each state in which such adviser would otherwise be subject to registration). The Act provides certain exemptions from the assets under management threshold, including those investment advisers that would be required to register in 15 or more states.	Effective July 21, 2011 (one year after enactment of the Act). It is unclear as to whether final SEC rules will grandfather federally-registered investment advisers that meet the current threshold but that do not meet the new standard upon its effectiveness.	Potentially all investment advisers with more than $25 million but less than $100 million in assets under management whom would be required to be registered as investment advisers in less than 14 states.

This document is intended to provide you with general information about issues related to the Dodd-Frank Wall Street Reform and Consumer Protection Act. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed below or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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