COMMITMENT | EXCELLENCE | INNOVATION

ARNOLD & PORTER LLP

ADVISORY

November 2010

Foreign Banks and Nonbank Financial Companies Also Face Challenges from Dodd-Frank

Brussels
+32 (0)2 290 7800

Denver
+1 303.863.1000

London
+44 (0)20 7786 6100

Los Angeles
+1 213.243.4000

New York
+1 212.715.1000

Northern Virginia
+1 703.720.7000

San Francisco
+1 415.356.3000

Washington, DC
+1 202.942.5000

Foreign banks and nonbank financial companies (jointly, foreign financial companies) that are engaged in activities in the United States, whether or not through a direct office or subsidiary, are affected in significant ways by provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), Public Law 111-203.[1] Some provisions in the Act affect specific activities in which the foreign financial company might be engaged in the United States in the same manner and to the same extent as a US financial company. Other provisions of the Act specifically exempt foreign financial companies or treat them in a different or alternative manner than US financial companies. The Act leaves many areas unclear, including areas of importance to foreign financial companies, with details left to the regulatory agencies to sort out in the hundreds of regulations, studies and regulatory guidance that either are required or made necessary by the Act. These regulations, studies and guidance will be issued or conducted by the US Department of the Treasury, the new Consumer Financial Protection Bureau, and federal banking, housing, and securities regulators.[2] This Advisory will discuss some of the important provisions in the Act that may directly or indirectly affect foreign banks and foreign financial companies.

Title I—Financial Stability

Financial Services Oversight Council

The Act establishes the Financial Stability Oversight Council (Council), chaired by the Secretary of the Treasury, as an overseer of US financial system stability. The Council's 10 voting members are representatives from the various federal government agencies

1 For a general discussion of Dodd-Frank, please see the Arnold & Porter Advisory "Congress Finalizes Landmark Financial Regulatory Reform Legislation," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16134&key=2E2. In addition, Arnold & Porter has prepared a compendium of several Arnold & Porter Advisories on aspects of Dodd-Frank, *available at:* http://www.arnoldporter.com/public_document.cfm?id=16170&key=15A2.

2 Please see the Arnold & Porter Advisory "The Rulemakings Process Has Begun: The Dodd-Frank Act Requires More Than 180 Rulemakings" [http://www.arnoldporter.com/resources/ documents/Advisory-The_Rulemakings_Process_Has_Begun_The_Dodd-Frank_Act_Requires_More_Than_180_Rulemakings_80210.pdf].

responsible for regulation of financial services and an individual who is experienced in the insurance industry. Among its many functions, the Council is required to monitor the financial markets for trends affecting systemic risk. In addition, the Council has the authority to identify US or foreign nonbank financial companies that are considered to pose a threat to the stability of the US financial system and require those companies to be subject to supervision and regulation by the Board of Governors of the Federal Reserve System (Federal Reserve) and be subject to heightened prudential requirements, such as more stringent capital, liquidity, leverage, and risk management requirements.[3] Large bank holding companies (those with total consolidated assets of more than US$50 billion as of January 1, 2010), including foreign banks that are treated as bank holding companies under the Bank Holding Company Act, also will be subject to these heightened prudential requirements.

As defined in the Act, a "foreign nonbank financial company" is any company that is organized under the laws of a country other than the United States (other than a foreign bank that is treated as a bank holding company under the Bank Holding Company Act, (BHC Act)), and derives 85 percent or more of its annual gross revenues from, or has 85 percent of its consolidated assets related to, financial activities as defined in section 4(k) of the BHC Act (primarily banking, insurance, securities, and merchant banking activities).

Generally, it is expected that only the US activities of the foreign nonbank financial company, whether through a direct office or a subsidiary, would become subject to the heightened prudential requirements under Title I. This is because the Act provides that references to a ''company'' or a ''subsidiary'' when referring to a foreign nonbank financial company (except with respect to its designation as systemically significant) include only the US activities and subsidiaries of such foreign nonbank financial company, except as otherwise provided.

3 For a more in-depth discussion of Title I of the Act and provisions designed to address systemic risk, please see the Arnold & Porter Advisory "Dodd-Frank Act Addresses Systemic Risk," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16151&key=17B3.

The Council is required to consult with both the home country regulator of a foreign nonbank financial company, if any, in making a systemically significant determination regarding that company, and, with "appropriate foreign regulatory authorities" in generally exercising its duties with respect to foreign nonbank financial companies.

The definition of a foreign nonbank financial company excludes a foreign company that is, or is treated in the United States as, a bank holding company under the BHC Act. Under the International Banking Act (IBA), a foreign bank that maintains a branch, agency, or commercial lending company in the United States, and any company controlling that bank, is treated as if it were a bank holding company with respect to its US activities. However, as noted above, large foreign banks (that is, those with total consolidated assets of more than US$50 billion as of January 1, 2010), also will be subject to Title I's heightened prudential requirements to the same extent as a U.S. bank holding company. It should be noted that the Act is silent on whether only US assets will be considered when calculating this US$50 billion asset threshold.

In imposing Title I's heightened prudential requirements on foreign companies, the Council and the Federal Reserve are to take a number of factors into consideration, including the amount and nature of the US activities of the company, particularly whether it owns an insured depository institution; whether the particular company is subject to comprehensive supervision on a consolidated basis in its home country at a level similar to that provided to US financial companies; and whether "due regard" has been given to "the principle of national treatment and equality of competitive opportunity" in developing the Prudential Requirements. Exactly what will constitute "due regard" and how the various factors will be weighed by the Council are unclear at this point, pending the issuance of key regulations and additional guidance from the Council and the regulatory agencies. Foreign financial companies are encouraged to monitor the regulatory rulemaking process and participate by submitting comments to the regulatory agencies on these areas of importance to non-US financial companies.

Establishment or Termination of US Offices of Foreign Banks

Title I of the Act also amends the IBA to require the Federal Reserve to take into account additional factors relating to systemic risk when either reviewing the application of a foreign bank to establish a US branch, agency or commercial lending company in the United States, or when it is considering terminating a foreign bank's authority to maintain a branch, agency or commercial lending company in the United States.

The additional factor for consideration when reviewing an application by a foreign bank that has been determined to be a risk to the stability of the US financial system for approval to establish the branch, agency, or commercial lending company is whether the home country of a foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.

The Federal Reserve also will be able to terminate the authority of such a bank to operate a branch, agency or commercial lending company in the United States if it determines that the bank's home country has not in fact adopted an appropriate system of financial regulation or made demonstrable progress towards doing so.

Enhanced Capital Requirements

The so-called "Collins Amendment" (named after Senator Susan Collins of Maine) of Title I requires the federal banking agencies to establish minimum leverage capital and risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies (that is, bank holding companies and savings and loan holding companies), and nonbank financial companies supervised by the Federal Reserve.[4] In addition, the Collins Amendment terminates the ability of holding companies to use hybrid capital instruments such as trust-preferred securities as part of Tier 1 capital for all such securities issued on or after May 19, 2010. For those securities issued prior to that date, use of these securities is phased out over a period of time for depository institution holding companies that maintained total assets of at least US$15 billion as of December 31, 2009.

These new capital requirements will be applicable to any US-based depository institution or depository institution holding company owned by a foreign bank, but not to the parent foreign bank itself. Under Federal Reserve Supervisory Letter 01-1, issued January 5, 2001, current US bank holding company capital standards are not applicable to US bank holding companies that are owned by foreign banks that qualify as financial holding companies under section 4 of the BHC Act. Under the Collins Amendment, intermediate US holding companies will no longer be able to rely on Supervisory Letter 01-1 and will have to meet the new minimum capital requirements, effective five years after the date of enactment of the Act (*i.e.*, July 2015).

Title II—Resolution Authority

Title II of the Act gives the Secretary of the Treasury, upon the recommendation of the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC), the authority under certain extraordinary circumstances to circumvent the US bankruptcy process and place any bank holding company or nonbank financial company that is in default or in danger of default into receivership to be liquidated by the FDIC under a new expedited resolution process being developed by the FDIC.[5] The Act provides for special rules for dealing with liquidating insurance companies and broker dealers pursuant to the new Title II resolution authority. The provisions of Title II, however, are only applicable to US companies. Thus, the US bank holding company or savings and loan holding company subsidiary of a foreign financial company potentially could be subject to Title II's resolution provisions. The FDIC will continue to use the provisions of the Federal Deposit Insurance Act with respect to the receivership of insured depository institutions.

4 For additional analysis of the Collins Amendment, please see the Arnold & Porter Advisory, "Dodd-Frank Act Mandates Stricter Capital Requirements for Financial Institutions" *available at:* http://www.arnoldporter.com/public_document.cfm?id=16152&key=23C0.

5 For further information on Title II, please see the Arnold & Porter Advisory, "Dodd-Frank Act Creates New Resolution Process for Systemically Significant Institutions," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16155&key=12F3.

Title III—Transfer of OTS Authority

Regulatory Redistribution

Title III of the Act will be of particular interest to those foreign financial companies that own a US savings institution and thus are savings and loan holding companies under the Home Owners Loan Act (HOLA). The Treasury Department's Office of Thrift Supervision (OTS) regulates savings and loan holding companies and charters and regulates federal savings associations. Title III abolishes the OTS within a year to 18 months of the date of enactment of the Act and redistributes its supervisory authorities. Chartering and supervision of federal savings associations is given to the Treasury Department's Office of the Comptroller of the Currency (OCC), and the Federal Reserve will take over the supervision of savings and loan holding companies, using HOLA instead of the BHC Act. HOLA has enough flexibility to allow the Federal Reserve to tighten up supervision of savings and loan holding companies to a level that is more similar to its supervisory reach under the BHC Act.[6] In general, the Federal Reserve's supervision and regulation of bank holding companies is viewed as being more rigorous and pervasive than OTS supervision and regulation of savings and loan holding companies. Foreign financial companies that are savings and loan holding companies may need to make significant adjustments as the regulation of holding companies is shifted from the OTS to the Federal Reserve.

Increase in Minimum Deposits at US Branches of Foreign Banks

A provision in Title III also makes permanent the change from US$100,000 to US$250,000 in the federal standard maximum deposit insurance amount (SMDIA) that had originally been instituted in 2009 as a temporary measure and would have expired on December 31, 2013. Why should this matter to a foreign bank that has an uninsured branch in the United States and does not own a US bank that carries federal deposit insurance? Subject to certain exceptions, an uninsured state-licensed US branch of a foreign bank now may only establish accounts for customers who make an initial deposit of at least US$250,000. The initial deposit amount had been set at US $100,000 for many years until the FDIC issued regulations in 2009 pegging the initial deposit amount to the SMDIA, thus temporarily raising it to US$250,000. When the US$250,000 SMDIA was scheduled to go back to the US$100,000 SMDIA on January 1, 2014, the minimum deposit required to open an account at an uninsured state-licensed US branch of a foreign bank also would have gone back to US$100,000. The permanent increase in the SMDIA under the Act thus results in a permanent increase in the initial minimum deposit amount required to open a deposit account at an uninsured state-licensed US branch of a foreign bank.

To complicate the matter, this required minimum deposit is not applicable to the few foreign banks that maintain US-insured branches (the authority of a US branch of a foreign bank to obtain federal deposit insurance ended in December 1991). It also is not applicable to US branches of foreign banks that have licenses issued by the OCC (federal branches). When the FDIC amended its regulations in 2009, the OCC did not follow suit and thus OCC regulations still require only a minimum deposit of at least US$100,000 for federal branches.

Title IV—Increased Regulation of Investment Advisers

Title IV of the Act contains amendments to the US securities laws that would increase regulation of investment advisers by eliminating certain exceptions from the required registration with the Securities & Exchange Commission (SEC) for certain investment advisers to private funds. For example, the Act repeals the exemption from registration for investment advisers with fewer than 15 clients. However, certain currently exempt foreign-based investment advisers will continue to remain exempt provided that they meet certain conditions.[7]

6 For more information on the effect of the Act on savings associations and their holding companies, please see the Arnold & Porter Advisory, "Savings and Loan Holding Companies and their Subsidiaries Will Be Subject to New Regulatory Regimes under the Dodd-Frank Act," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16144&key=4E0.

7 For further information on the provisions of Title IV that affect investment advisers, please the Arnold & Porter Advisory, "Private Fund Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16196&key=26G0.

Title VI—Regulatory Enhancements

Moratorium on Certain New Charters

Many foreign financial companies have established banking subsidiaries in the United States that have not caused the foreign financial company to be required to register as a bank holding company with the Federal Reserve and as a result become subject to the restrictions on bank holding companies under the BHC Act. As noted above, neither savings and loan holding companies nor owners of certain other specified categories of banking institutions such as industrial banks, credit card banks, and limited purpose trust banks, subject to the provisions of the BHC Act. The Act imposes a three-year moratorium on applications by commercial firms for deposit insurance for, and most acquisitions of, industrial banks, credit card banks, and limited purpose trust banks. A firm is a "commercial firm" if its annual gross revenues, and those of its affiliates, derived from financial activities and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the particular company.

Title VI also requires the General Accountability Office (GAO) to conduct a study to determine if most of the BHC Act exemptions, including those for savings associations, industrial banks, credit card banks, and limited-purpose trust banks, should be eliminated completely. Foreign financial companies that own or control banking organizations currently exempt from having to register as bank holding companies need to remain cognizant of future developments regarding these BHC Act exemptions. If the exemptions are abolished, senior management at foreign financial companies owning a now non-exempt banking organization will have to analyze the increased costs and compliance burdens resulting from the loss of such exemptions and assess whether maintaining the banking charter can continue to be justified in light of such regulatory changes.

Merchant Banking Activities

Since the enactment of the Gramm-Leach-Bliley Act of 1999, many foreign banks have qualified under the BHC Act to be treated as if they are financial holding companies. Prior to the Act, aside from needing prior approval to purchase a savings association, financial holding companies did not need prior approval to engage in most nonbanking financial activities, including merchant banking activities (which are passive investments of limited duration in nonfinancial companies). The Act amends the BHC Act to require that a financial holding company obtain prior Federal Reserve approval to make a merchant banking acquisition if the total consolidated assets of the target exceed US$10 billion.

Lending Limits and Affiliate Transactions

The Act also amends the limitations on loans that a national bank may make to one borrower. This change in national bank lending limits is relevant to foreign banks with US branches and agencies because the IBA makes the lending limits for national banks applicable to both state-licensed and federally licensed branches and agencies of foreign banks. Among other provisions, the definition of "loan" for purposes of the lending limit restrictions has been broadened to include credit exposure to a person arising from a derivative transaction, repurchase (or reverse repurchase) agreement, or securities lending or borrowing transaction between the bank and the borrower.

The Act also expands the restrictions on transactions between affiliates in Section 23A of the Federal Reserve Act to include credit exposure arising from derivative transactions and securities borrowing or lending transactions with affiliates, thus subjecting those transactions to the quantitative and qualitative restrictions on affiliates required by Section 23A. Foreign banks should remember that the restrictions of Section 23A apply to transactions by a US insured depository institution subsidiary of a foreign bank with the head office of its foreign parent. In addition, Section 23A is applicable to transactions by the US branch, agency or commercial lending company of a foreign bank with an affiliate engaged in certain activities in the United States, such as securities and insurance underwriting.[8]

8 For more information regarding the changes made by the Act to lending limits and affiliate transactions, please see the Arnold & Porter Advisory " Financial Regulatory Reform: Tightening the Regulation of Affiliate Transactions, Extensions of Credit to Insiders, and Lending Limits," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16147&key=22H3.

Volcker Rule

Under the so-called "Volcker Rule," named for former Federal Reserve Chairman Paul Volcker, pursuant to regulations to be issued by the federal banking, securities and commodities regulators and subject to certain exceptions, a "banking entity" is prohibited from engaging in proprietary trading in most securities and financial instruments or sponsoring or investing in hedge funds or private equity funds. The term "banking entity" is defined for purposes of the Volcker Rule as an insured depository institution, any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of the IBA, and any subsidiary or affiliate of the foregoing. As defined, the term would capture foreign banks that maintain branches and agencies in the United States because, as noted above, such foreign banks are treated as bank holding companies pursuant to the IBA. The definition also captures foreign nonbank financial companies that own or control an insured depository institution such as an industrial bank that does not otherwise cause the owner thereof to become a bank holding company or savings and loan holding company. Even if it does not own an insured depository institution, a systemically significant nonbank financial company that engages in proprietary trading or sponsors or invests in hedge funds or private equity funds will be subject, by regulation, to additional capital requirements for, and additional quantitative limits with regards to, such proprietary trading and hedge fund/private equity fund sponsorship or investment.

Permitted proprietary trading and fund-related activities include activities conducted solely outside the United States under Sections 4(c)(9) and 4(c)(13) of the BHC Act by a banking entity that is not directly or indirectly controlled by a US-organized banking entity. However, offering interests in the funds held under this exemption to US residents is prohibited. What will be required in order to meet the "solely outside the United States" requirement for these exemptions is not yet known. Sections 4(c)(9) and 4(c)(13) of the BHC Act do not require that the foreign bank's activities take place wholly outside the United States, and the Federal Reserve has implemented and interpreted these BHC Act provisions to allow for some incidental activities in the United States. In contrast, the Volcker Rule exception tied to these two sections of the BHC Act requires that the transaction be conducted solely outside the United States. The Federal Reserve and the other regulatory agencies with responsibility to draft regulations to implement the Volcker Rule will have to clarify the applicability of these exemptions through such regulations. Foreign companies that are not subject to the BHC Act but are covered by the Volcker Rule due to their ownership of insured depository institutions such as industrial banks do not appear to be covered by the exemptions, and the ability of the regulators to expand the exemption to include such companies is not clear.[9]

The Volcker Rule has a protracted implementation period. It must be implemented in accordance with joint regulations issued by the US federal banking, securities and commodities regulators. Prior to the rulemaking, however, the Council must undertake a study (to be completed within six months after the Act's enactment) regarding, among other things, limitations on an insured depository institution's activities that pose a risk of undue losses, and provide recommendations to the regulators issuing the regulations. Regulations must be adopted within nine months of the completion of the Council's study. The effective date of the Volcker Rule is the earlier of 12 months after the date of the issuance of the regulations or two years after the date of enactment of this section (i.e., July 21, 2012). Even then, there is a two-year conformance/divestiture period, with three one-year extensions possible, and a special extended transition period for illiquid funds.

Title VII—Over the Counter Derivatives

The Act also creates a comprehensive new regulatory regime for most derivative transactions that were previously deregulated by the Commodities Futures Modernization Act of 2000. Among the most significant

9 For more information on the Volcker Rule, please see the Arnold & Porter Advisory "Banking Entities, Other Significant Financial Service Companies to Face Significant Restrictions Under New "Volcker Rule," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16129&key=1J1.

aspects of Title VII's provisions regarding regulation of derivatives are (i) new categories of regulated market participants (including "swaps dealers" and "major swaps participants"); (ii) mandatory clearing through regulated clearing organizations and mandatory trading through regulated exchanges or execution facilities; and (iii) the requirement that banks push out many swaps activities to affiliates. In order to foster global uniformity in the swaps area, US regulators are required to consult and coordinate with foreign regulatory authorities on the establishment of "consistent international standards" regarding the regulation (including fees) of swaps, entities engaging in swaps activities, and futures and options contracts.[10]

Under the Act, "swaps entities," which could include banks and US branches and agencies of foreign banks, will be prohibited from receiving any "federal assistance" with respect to their activities. "Federal assistance" includes access to the Federal Reserve Bank discount window for purposes of obtaining a loan. US banks and US branches and agencies of foreign banks maintain accounts at Federal Reserve Banks, and may from time to time borrow money from the Federal Reserve Bank backed by collateral in its collateral account at the Federal Reserve Bank.

The Act exempts insured depository institutions from this prohibition if their hedging and other similar risk-mitigating activities are directly related to the insured depository institution's activities or they are engaging in swaps related to assets that are permissible investments for a national bank, such as loans and other extensions of credit, foreign currency, bullion (including gold, silver, and certain other precious metals), and US government and agency securities. However, as the Act is written, US branches and agencies of foreign banks, most of which are uninsured, will not be able to take advantage of that exemption. This gap in equitable treatment for US branches and agencies of foreign banks was acknowledged as inadvertent in a colloquy on the floor of the United States Senate during the debate on the Act, so action at some point to correct this gap is expected.

Foreign banks are typically involved in foreign exchange activities, often through their US offices, so it is important to note the Act's significant provisions regarding the regulatory treatment of foreign exchange swaps and forwards. The Act provides that foreign exchange swaps and forwards will be considered to be swaps (and thus subject to jurisdiction of the Commodities Futures Trading Commission) unless the Treasury Secretary grants an exemption by making a written determination that either or both types of foreign exchange derivatives (i) should not be regulated as swaps; and (ii) are not structured in a manner so as to evade application of the Act. On October 29, 2010, the Treasury Department published a request for public comment on questions relating to the determination as to whether foreign exchange swaps and forwards should be exempted from the new regulations contemplated under Title VII of the Act. Treasury will accept written comments through November 29, 2010.

Title IX—Investor Protection and Securities Regulation[11]

Title IX of the Act is aimed at, among other issues, improvements for investors in securities and commodities, executive compensation, and Securities and Exchange Commission (SEC) governance.

In addition, pursuant to an amendment to the Securities Exchange Act of 1934, under regulations jointly issued by federal regulators (including the federal banking agencies and the SEC), persons who securitize assets, and those who originate assets to be used in a securitization, will be required to retain an economic interest in a portion of any asset that the securitizer transfers, sells, or conveys to a third party through the issuance of an asset-backed security. The term "securitizer" means an issuer of an asset-backed security

10 For additional information on Title VII of the Act, please see the Arnold & Porter Advisory "Dodd-Frank Wall Street Reform and Consumer Protection Act to Significantly Impact Derivatives Trading of Banks," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16138&key=26I2.

11 For additional information on some of the topics addressed in Title IX of the Act, please see the Arnold & Porter Advisories "The Corporate Governance and Executive Compensation Provisions in the Dodd-Frank Act—What to Do Now," *available at:* http://www.arnoldporter.com/public_document.cfm?id=16195&key=20F3.

or a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; the term "originator" means a person who through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and sells an asset directly or indirectly to a securitizer. Foreign financial companies, including US branches and agencies of foreign banks, could fall within the definition of either originator or securitizer depending upon their particular activities in connection with securitization transactions.

The Act requires that the regulations include certain mandatory requirements that will:

- Prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;
- Prescribe a general credit retention requirement of 5 percent of the value of the asset in question, with the percentage being greater or lesser under certain circumstances;
- Specify the permissible forms and minimum duration of the required risk retention;
- Be applicable regardless of whether the securitizer is an insured depository institution;
- Provide specified criteria for risk retention with respect to securitization of commercial mortgages and collateralized debt obligations; and
- Provide for certain exemptions, such as with respect to securities issued or guaranteed by the United States (Fannie Mae and Freddie Mac are ineligible for this exemption).

Title IX also provides for increased information sharing by the SEC with US and foreign authorities and extends the jurisdiction of US courts in actions or proceedings brought or instituted by the SEC or the United States alleging a violation of the anti-fraud provisions of the US federal securities laws to cover securities transactions outside the United States where conduct inside the United States constituted "significant steps in furtherance of the violation" or conduct occurring outside the United States that has a "foreseeable substantial effect" within the United States.

Conclusion

The Act imposes significant new regulatory requirements and obligations on foreign banks and nonbank financial companies operating in the United States. The full scope of the new challenges faced by foreign financial companies under the Act ultimately will be determined over the coming months by the regulatory agencies through the regulatory rulemaking process. Foreign financial companies should actively engage in the rulemaking process in order to ensure that the regulatory agencies fully consider their concerns as the regulations to implement these and other important provisions of the Act are written.

Arnold & Porter LLP has long represented large financial companies and their subsidiaries in resolving their regulatory and supervisory issues, including many foreign banks. We have been assisting such companies during the legislative process in understanding the implications of the Act and in various changes that were made or attempted to be made to the legislation during the last several months. We are available to respond to questions raised by the Act, or to help guide your business in responding to it. For further information, please contact your Arnold & Porter attorney or:

Kevin F. Barnard
+1 212.715.1020
Kevin.Barnard@aporter.com

A. Patrick Doyle
+1 212.715.1770
+1 202.942.5949
APatrick.Doyle@aporter.com

Alan Avery
+1 212.715.1056
Alan.Avery@aporter.com

Kathleen A. Scott
+1 212.715.1799
Kathleen.Scott@aporter.com