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FSOC and First Steps in Implementation of the Dodd-Frank Act

On October 1, 2010, the Financial Stability Oversight Council (FSOC) held its initial meeting. The FSOC was created by Congress as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) to serve as a super-regulator that coordinates financial regulation among the various federal financial regulatory agencies. Under the Dodd-Frank Act, the FSOC has voting board representatives from the Treasury Department, Federal Reserve Board, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), National Credit Union Administration, Federal Housing Finance Agency, Securities and Exchange Commission, Commodity Futures Trading Commission (CFTC), the new Consumer Protection Bureau, and a public representative appointed by the President, and will have non-voting board members from the new Office of Financial Research, the new Federal Insurance Office, a state banking commissioner, a state insurance commissioner, and a state securities commissioner. Currently, the FSOC's actions are being housed at the Treasury Department through the Office of the Undersecretary of Domestic Finance, which has established an FSOC Web page at *www.treas.gov/FSOC/*. The Federal Reserve is also involved in staffing much of the FSOC's initial operations.

At its initial meeting, the FSOC took some basic organizational actions to establish itself through the adoption of bylaws, a transparency policy and an "integrated implementation road-map" for coordination of FSOC and its member agencies' studies and rulemakings to implement the Dodd-Frank Act. At the meeting, FSOC also issued for public comment two advance notices of proposed rulemakings (ANPRs) on FSOC studies and future rulemaking recommendations mandated by the Dodd-Frank Act. The two ANPRs request public comment on considerations related to heightened Federal Reserve supervision of as yet-to-be-designated "systemically significant" non-bank financial companies under Title I of the Dodd-Frank Act, and a series of questions regarding a study that will lead to an FSOC rulemaking recommendation on the implementation of Section 619 of the Dodd-Frank Act (the Volcker Rule). The Volcker Rule will, upon its effectiveness on or before July 21, 2012, prohibit proprietary trading, and investment in and "sponsorship" of private investment funds, by depository institutions, their holding companies and affiliates. Public comments on the ANPRs were due by November 5, 2010, but there will be additional opportunities in the coming months to comment on the rules once they are actually recommended and then proposed.

A second government agency mandated by the Dodd-Frank Act, the Consumer Protection

Bureau, will coordinate the regulation of consumer finance. The Consumer Protection Bureau has not yet held public meetings, and the Administration has indicated that it may take 18 months to get the Bureau up and running. President Obama has tasked Harvard Law professor Elizabeth Warren with oversight of the establishment of that new agency.

The Federal Reserve Board and FDIC have also begun rulemaking to implement portions of the Dodd-Frank Act. These include FDIC proposals for plans on a new deposit insurance fund reserve ratio, dividend policy and deposit insurance assessment rates, unlimited deposit insurance for non-interest bearing transaction accounts, a permanent increase in deposit insurance amounts for other accounts to $250,000, initial rules for the FDIC's "orderly liquidation" authority over systemically significant nonbank entities and bank holding companies, an interagency proposal (together with Federal Reserve, OCC and the Office of Thrift Supervision) on use of measures of creditworthiness as alternatives to credit ratings, and a timetable for action on other Dodd-Frank rulemakings through March 2011. The Federal Reserve has issued: interim final rules on real estate appraisals and Regulation Z/Truth-In-Lending amendments; a proposal on revision of escrow account requirements for high priced jumbo mortgages; and a report to Congress on risk retention. The Federal Reserve in November established the Office of Financial Stability Policy and Research and placed economist J. Nellie Liang in charge of that new office. The National Credit Union administration has issued rules increasing share insurance limits to $250,000 and amending consumer credit rules.

The SEC and CFTC have also issued several rulemaking notices for a variety of rules to implement various parts of the Dodd-Frank Act, including SEC proposals on information on offerings of asset backed securities, fraud in connection with securities-based swap agreements, the Family Office exemption from the Investment Advisers Act, ownership and governance of securities swap clearing agencies, proxy voting reporting by institutional investment managers, proxy voting on executive compensation, municipal adviser registration (which went into effect October 1, has also resulted in amendments to the Municipal Securities Rulemaking Board (MSRB) bylaws and membership rules, and will also result in other MSRB rulemakings and a final SEC rulemaking), and CFTC proposals on agricultural swaps, reporting of pre-Dodd-Frank Act swap transactions, derivatives clearing organizations, definitions of regulatory terms to implement the new regime of swaps regulation under Title VII of the Dodd-Frank Act, registration of swap dealers and foreign boards of trade, compliance officer requirements, whistleblower rules, and conflict of interest policies. A Presidents' Working Group report released on October 21 indicates the SEC will also take up further action on addressing risks in money market mutual funds.

Many more rulemakings to implement the Dodd-Frank Act will be conducted over the next 18 months. This work is taking up an enormous portion of Staff time at the agencies involved. Keeping on top of pending proposals, and making changes to assure compliance with them once adopted, will pose a major challenge to regulated entities over the next several years, in terms of staffing, senior management and board time, development of information and compliance systems, and basic changes to how business is done.

The new Republican majority in the House of Representatives has indicated an interest in use of oversight hearings to exercise some influence over the agencies' actions in the rulemaking process to implement the Dodd-Frank Act. The involvement of Congress should make for an interesting administrative process over the next two years.

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