

***The Dodd-Frank Wall Street  
Reform and  
Consumer Protection Act –  
Points of Interest for Institutional  
Investors***

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Law and Regulations, thus far:

***1,350 Pages***



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Summaries and Analyses of the Act:

*Many Thousands of  
Pages*



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Estimate:

*243 New Rules and Regulations  
and 67 Reports  
will be written*



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My time today:

*12 minutes*



Several topics of import and interest to institutional investors:

- Say on Pay, and Related Says
- Changes in Derivative Markets
- Proxy Access
- Changes that affect your members and beneficiaries



*Say on Pay,  
Say When on Pay,  
Say on Golden Parachutes,  
Pay Versus Performance*

- After January 21, 2011: companies must submit the compensation of the named executive officers to a shareholder vote
- No less than triennially, as the shareholders choose (“Say When on Pay”)



- Vote is non-binding; will not overrule any Board or Company decision, *but*
  - Expect companies to be sensitive to shareholder votes and desires
  - A company's concern: if it does not address shareholder concerns expressed in a vote, then what?
  - Law firms and others are recommending that their clients review shareholder voting guidelines, and employ shareholder outreach to learn about desires, issues in advance





## ➤ Say When on Golden Parachutes

- For any shareholder approval of an acquisition or merger, the company must submit all Golden Parachute arrangements to a separate shareholder vote
- Stated in a “clear and simple form” and with the aggregate total for each executive
- Also non-binding on the company

## ➤ Pay Versus Performance

- The SEC is to issue rules requiring companies to provide information that “shows the relationship between executive compensation actually paid and the financial performance of the issuer”



- CEO Executive Compensation Comparisons
  - Show CEO compensation in relation to the median pay of all other company employees



## *Changes in the Trading of Derivatives*

- Most of the (previously unregulated) over-the-counter derivatives must be traded on regulated exchanges
- New restrictions on banks' trading and actions with regard to their clients
- New restrictions on banks with FDIC insurance and other federal benefits or protections



## *Changes in the Proxy Access Rules*

- Adopted by SEC on August 25; published in Federal Register on September 16
- Rules provide for important, direct access to proxy statements of public companies to nominate and solicit support for a limited number of director candidates
- Changes the playing field -- shareholders' nominees must be listed on ballots distributed to shareholders
  - Until now, shareholders had to pay for separate ballots and mailings



- Applies to all SEC reporting companies (over \$75 million)
  - All investment companies, controlled companies
  - Not foreign private issuers, but includes foreign companies that report on US SEC forms
  
- Maximum number of nominees available for access: 25% of the board
  - The nominating shareholder (or group) with the highest percentage of shares wins
  - Nominees must be independent



- Access is given to sizeable, long-term and non-control shareholders
  - 3%
  - 3 years
  - Continued ownership after the election.
  - Shareholder must not hold the shares with the purpose or effect of changing control of the company or to gain a number of seats that exceeds the maximum number of nominees
  
- Ownership of group members may be aggregated



- Would have gone into effect middle of November
- *U.S. Chamber of Commerce and The Business Roundtable v. SEC*
  - Petition with Court of Appeals seeking review of the rules



- *U.S. Chamber of Commerce and The Business Roundtable v. SEC*
  - Arguments:
    - Costs to companies
    - Will benefit “special interest investors such as labor union pension funds and state pension funds...”
    - First Amendment argument: “it forces companies to fund and carry election-related speech that is opposed by a company’s duly-elected board of directors”





- Arguments:
  - “This special interest-driven rule will give small groups of special interest activist investors significant leverage over a business’ activities. This will undermine a company’s ability to grow and create jobs.”



- Arguments:
  - Proxy access has waited more than 65 years, so there is no discernable harm in staying the rules
- October 4: SEC announced a stay, pending the Court's review



*A major impact,  
for your members and beneficiaries:*

## *The Consumer Financial Protection Bureau*

- Single federal agency for all rules on mortgages and credit cards – whether issued by federally-chartered bank, a state-chartered credit union, a group of investors, or otherwise
- All banks and non-bank lenders will be subject to federal examination – with application of the same rules and regulations



- Consumer protection activities now performed by seven different agencies will be consolidated
  - Tighter oversight
  - Write new rules, discard old ones
  
- A stated goal: eliminate fine print and confusing terms in lending agreements



## *Other issues addressed by the Act:*

- Systemic Risk Regulation
- Orderly Liquidation of Financial Companies
- The Volcker Rule on Proprietary Trading and Hedge Fund Regulation
- Swaps Pushout Rule
- Bank Capital Rules
- Swaps and Derivative Trading Rules
- Regulation of Advisers to Hedge Funds and Others
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*Other issues addressed:*

- Deposit Insurance Reforms
- Amendments to Regulation of Bank and Thrift Holding Companies
- Payment, Clearing and Settlement Issues
- Emergency Stabilization and Federal Reserve Governance
- Clawback Rules on Executive Compensation
- Whistleblower Provisions, to aid the SEC's Enforcement Program
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*Other issues addressed:*

- Additional Investor Protections and Improvements to the Regulation of Securities, including Strengthening of Regulation of
  - Broker-Dealers
  - Credit Rating Agencies
  - Municipal Securities
- And other topics



*Future issues to be addressed:*

- Reforms on compensation for executives and top-tier traders
- Rules on issues to be considered and regulators' steps on any necessary break-up of a large banks

*An unresolved issue:*

- The future of housing policy and the strength of the housing market





## *The most important take-away*

- Active and vocal participation in the system works.
- A coalition of State and Local Funds and organizations has helped to achieve major changes on major issues.
- Please continue to participate.

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