

# Understanding How the Dodd-Frank Financial Reform Bill Impacts the 2011 Proxy Season and the SEC and Securities Laws Generally

Michael Halloran and Kit Addleman  
Partners, Haynes and Boone, LLP



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# Haynes and Boone, LLP



**Michael Halloran (Speaker and Co-Author)** is a partner in the Washington, D.C. and Silicon Valley offices of Haynes and Boone. He focuses his practice in securities and corporate law, specifically with financial services and technology-based companies. He has extensive experience handling public offerings, venture capital and private financings as well as mergers and acquisitions.

From 2006 until 2008, Michael served as Counselor to the Chairman and Deputy Chief of Staff of the SEC. In those roles, he advised on the SEC's program to promote investor protection and capital formation and administered the divisions and offices of the SEC that have a legal focus, such as Corporation Finance, Investment Management, Trading and Markets, Enforcement, and the Office of Chief Accountant. From 1990 until 1996, Michael served as Group Executive Vice President and General Counsel with Bank of America Corporation. In that role, he served as Chief Worldwide Legal Officer and was advisor to the Board and senior management. Scott Benfield assisted Mr. Halloran with the preparation of these materials.



**Kit Addleman (Co-Author)** is a partner in the Dallas and Fort Worth offices of Haynes and Boone. She defends companies and their executives and directors against charges of civil and criminal misconduct, particularly investigations and litigation by the Securities and Exchange Commission (SEC) and Department of Justice. Kit also counsels public corporations, investment advisors, hedge funds and broker-dealers concerning compliance with the securities laws and SEC rules.

Prior to joining Haynes and Boone, Kit was regional director of the Atlanta Regional Office of the SEC and led the enforcement, examination and bankruptcy programs for the SEC in five Southeastern states from 2007 to 2009. Kit has 20 years of experience with the SEC and held enforcement leadership positions in its Fort Worth, Atlanta and Denver offices.



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# Compensation Committee

- §952 adds a new Section 10C to 1934 Act
- Requirement for Compensation Committee member independence – 10C(a)
  - a condition of listing on a national securities exchange
  - SEC to issue rules by July 2011 – 10C(f)
- Factors for determining independence – 10C(a)(3)
  - sources of compensation including consulting, advisory or other fees paid by the company
  - whether the member is affiliated with the company or any subsidiary or affiliate
- NYSE and NASDAQ listing requirements already specify standards

# Comp Committee Consultants

- New §10C(b)-(d) to 1934 Act
- Compensation committees to have sole discretion in retaining and overseeing advisors (including counsel), and companies are required to provide funding for reasonable compensation – same as §10B for independent accountant (added by Sarbox).
- Committees will have to “take into account” “factors that affect the independence” of compensation consultants, legal counsel, and other advisers before retaining them - §10(b)(2).

# Comp Committee Consultants (cont.)

- SEC will promulgate rules regarding factors to consider in determining independence including:
  - other services provided by the advisor or the advisor’s company,
  - percentage of the advisor’s revenue coming from the issuer;
  - conflict of interest policies; and
  - the advisor’s stock ownership in the company and business or personal relationships to committee members.
  - Why should stock ownership be a negative?
  - “Business or personal relationship” will set up a Delaware case-law independence inquiry (i.e., Oracle, HealthSouth cases)

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# Comp Committee Consultants

- Committee is not required to select independent advisors. Theoretically, the Committee could “take (independence) factors in account” and select someone who is not independent, e.g., company legal staff compensation personnel.

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# Proxy Impact

- Proxy must disclose whether compensation committee used a comp consultant and provide information about conflicts of interest - §10C(c)(2).
  - This does not apply to legal counsel or other advisors.
- Clear preference for independence of all advisors.
  - Rise of independent compensation counsel
- SEC rules by July 2011 requiring exchanges to prohibit listing of companies that do not comply with the requirements - §10C(f).
- The Act exempts certain types of companies and the exchanges can establish other exemptions when appropriate.
  - It appears “controlled companies” are exempt from all of §10C
  - Limited partnerships, open-end mutual funds, foreign private issuers and companies in bankruptcy proceedings are exempt from §10C(a)

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# Responsive Strategies

- Begin information gathering on Compensation Committee members, consultants and advisors.
- Consider early revision of authority/charter to retain compensation consultants and advisors, and consider how far to go on independence of all advisors (e.g., use of inside benefits counsel).
- Watch SEC rulemaking and provide comment.
  - e.g., ability to use inside benefits counsel with appropriate safeguards

# Compensation Disclosures - §953

- SEC is also to issue rules requiring public companies:
  - To include with compensation disclosures the relationship between executive compensation actually paid and the company's "financial performance" (may include a graphic representation). - §953(a)(i)
    - given existing SEC requirement for a graph on stock values performances, clear intention is to require other performance metrics (e.g., revenues, earnings, etc.) of the issuer

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# Compensation Disclosures

- SEC is also to issue rules requiring public companies (*continued*):
  - To disclose in proxy statements whether any employee or director (or designee) is permitted to purchase financial instruments designed to hedge or offset decreases in value of the company's stock. §953 (adds new §14(j) to 1934 Act).

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# More Compensation Disclosure

- SEC is also to issue rules requiring public companies to disclose (in proxy statements and other filings which include comp disclosures) §953(b):
  - the median of the annual total compensation of all employees other than the chief executive officer;
  - the annual total compensation of the chief executive officer; and
  - the ratio of the two.
- Act does not specifically permit the SEC to exclude companies from these requirements.
- No deadline stated for SEC rules – seems immediate.

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# Shareholder Proxy Access - §971

- Dodd-Frank authorizes SEC Rulemaking to require proxy solicitations by issuer to include board nominees submitted by shareholders. Defeats possible litigation?
- Adopted by SEC Wednesday, August 25, 2010 – new Rule 14a-11
  - Ownership percentage - 3% only (no other percentages depending on issuer size)
  - Holding period – 3 years
  - Carve out for non-accelerated filers – 3 years
  - SEC's previous proposals - 5%, triggers

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# Shareholder Proxy Access - §971

- Can public companies adopt bylaws prohibiting proxy access under the SEC's Adopting Release?
  - If state law, or governance provisions in bylaws, prohibit proxy access, then state law will be respected. Facilitating Shareholder Director Nominations, Exchange Act Release Nos. 33-9136, 34-62764 (August 25, 2010).

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# Shareholder Proxy Access

- SEC Rulemaking to require proxy solicitations by issuer to include board nominees submitted by shareholders (*continued*)
  - full employment for proxy solicitation and proxy advisory forms
  - 14a – 8(viii) now allows shareholder proposals on director election process
    - could lower 3% / 3 years
    - SEC respects state law and private ordering under state law



# Corporate Governance

- Disclosure regarding reasons or basis for issuer's selection of same or separate individuals as CEO and Chairman - §972, adding new Section 14B to 1934 Act
- Apparent preference for separation
- SEC to issue rules and exempt issuers for which disclosure would be disproportionate burden

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# Responsive Strategies

- Compensation disclosure will require significant work, when required.
- Begin thinking of data compilation and processes now.
- Similarly, consider means and processes for shareholder nominees and proposals.

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# Clawback Requirements - §954

- SEC required to issue rules for exchanges to require companies, as a condition of listing, to develop and implement policies for “erroneously awarded compensation.”

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# Clawback Requirements (cont.)

- Rule of the SEC shall require each issuer to implement policies providing:
  - For disclosure of company's policy on incentive-based compensation based on financial information; and
  - For recovery from executive officers of incentive-based compensation if the company is required to prepare an accounting restatement due to material non-compliance with financial reporting requirements.
    - no misconduct required

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# Application of Clawbacks

- Compare to Sarbanes-Oxley Act, Section 304 which is limited to CEO and CFO and requires misconduct by them
  - Decision in SEC v. Maynard Jenkins, former CEO of CSK Auto
  - Settlement in SEC v. Walden O'Dell, CEO of Diebold
- “Clawback” in Dodd-Frank applies to compensation received during the three-year period preceding the date on which the company is required to prepare restatement.
- No application to stock sale proceeds, but does apply to “stock options awarded as compensation” (use Black Scholes valuation?).
- No deadline for developing rules.



# Responsive Strategies

- Based on SEC's recent use of previous "clawback" provision, new rules are expected promptly.
- Review incentive and performance based compensation arrangements.
- Consider and evaluate various policies for restatement and compensation clawbacks.

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# Say on Pay - §951

- Section 14A(a) added to 1934 Act
- Effective six months after enactment (January 2011), shareholders must be allowed:
  - at least once every three years, a non-binding vote to approve executive compensation; and
    - approval is on the full compensation disclosure section in proxy statement (per SEC Rule 402), not by individual recipient)
  - at least every six years, a separate vote on how frequently the say on pay vote should be held (every 1, 2, or 3 years).



## Say on Pay (cont.)

- This proxy season, most shareholders will vote on both, unless your meeting is before January 21, 2010.

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# Say on Change in Control Pay - §951(b)

- Section 14A(b) added to 1934 Act
- Effective January 21, 2011, any proxy statement or solicitation to approve a merger or similar transaction must:
  - disclose all executive officer golden parachute arrangements;
  - disclose the aggregate golden parachute pay and applicable conditions; and
  - provide a separate non-binding vote on such arrangements (unless already subject to a vote under say-on-pay above (whether or not approved?).
    - in the aggregate or person by person?



# Say on Change in Control Pay

- The SEC has authority to create exemptions and consider burdens upon companies - §939(e).
- Institutional investment managers must disclose their votes - §939(d).

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# Responsive Strategies

- Take immediate steps to comply for the 2011 proxy season and avoid negative result of vote.
  - Consider separate votes on parachute payments to trigger exemption from vote at time of merger
- Revisit executive compensation arrangements with an eye to shareholder scrutiny.
- Open dialog with significant shareholders.
- Provide information sufficient to explain rationale for compensation components.



# Miscellaneous Disclosures

- Disclosures for Certain Public Companies:
  - Use of products in the Manufacturing Process
    - Columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives (described as “conflict minerals” from the Democratic Republic of the Congo or adjoining country).
  - Coal and other mine safety information, including reporting shutdowns and patterns of violations.
  - Payments to “resource extraction issuers”
    - Oil, natural gas or minerals.
- SEC has 270 days to issue rules related to new disclosure requirements.

# A Point for Smaller Issuers

- Sarbanes-Oxley Act 404(b) amended to exempt non-accelerated filers – issuers with less than \$75 million public market float (i.e., shares not held by affiliates) from the requirement of an accounting firm attestation requirement of the issuer’s internal controls report.
  - See in re Ephraim Fields, IA and hedge fund GC who sold to “mark the close” below price that would cause Hawk Corporation to exceed \$75 million in market cap and require 404 compliance
- GAO study within three years regarding costs and benefits of exemption



## A Point for Smaller Issuers (cont.)

- No change to requirement of management assessment of internal controls and procedures under 404(a)
- SEC study and report on means for reducing burdens of SOX compliance for companies with market cap of \$75 million to \$250 million; not limited to 404(b)

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# Accredited Investors and Reg. D Changes

- Modifications to Accredited Investor Definition for natural persons - §413
  - Effective right now - \$1 million net worth is exclusive of residence
  - SEC “may” review and modify after 4 years and every 4 years thereafter “in light of economy” [all time first]

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## Accredited Investor and Reg. D Changes (cont.)

- Regulation D Rule 506 limitation – “Bad Actors” disqualified from using exemption
  - same bad actor definition as for Reg A (Rule 252 incorporated in §926(1))
  - effective 1 year after date of enactment
- GAO to study accredited investor definition and eligibility to invest in private funds – 3 years - §415

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## Accredited Investor and Reg. D Changes (cont.)

- SEC promptly issued new Interpretations (179.01 and 255.47) which confirm the exclusion of value of primary residence is effective on enactment of Act and also state the mortgage debt up to the value of the home may also be excluded when determining net worth, but mortgage debt in excess of value should be considered a liability and deducted from net worth. Will result in judgment by issuer (possible market research?) on those values to satisfy its "reasonable belief" requirement under Regulation D, and also in changes to investor questionnaires.



# Responsive Strategies

- Obtain information on presence or use of “conflict minerals” to incorporate in disclosures.
- If issuer engages in private placements:
  - Review subscription materials and change to comply with new standards for accredited investors, and
  - Check backgrounds of, and get representations from, officers, directors and others engaged in offering – starting 1 year from enactment (July 21, 2011).

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# Whistleblower Payments - §922

- New Section 21F of 1934 Act
- Bounty to whistleblowers – Extended beyond simply insider trading in Exchange Act §21A(e). Sarbanes Oxley had whistleblower protections, but not bounty payments.
- Investor Protection Fund established from which awards paid - §21F(g) funded by SEC monetary sanctions

# Whistleblower Payments (cont.)

- Payments for providing “original information” re a violation of securities laws that led to a successful action either by SEC, DOJ, SRO, State AG, foreign equivalents of same
  - “Original Information” includes the whistleblower’s independent knowledge or analysis - §21F(a)(3)(A)
    - Thus, the information need not come from the informant’s independent knowledge, but could arise from analysis provided to the regulator (shades of Harry Markopolous)
  - Where money sanctions exceed \$1 million
  - SEC “shall pay” an award of 10 to 30 percent of collected sanctions - §21F(b)
    - amount discretionary with SEC

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# Whistleblower Payments (cont.)

- Exclusions for auditors, government employees and persons convicted of criminal violation related to the conduct.
- Whistleblower can sue to appeal negative determination by SEC on entitlement or amount - §21F(f)
- SEC annual report to congress - §21F(g)(5)
- Overall encouragement to encourage and pay whistleblowers



# Whistleblower Protections - §922 (cont.)

- Protection from retaliation – Section 21F(h)
  - for providing information to the SEC, testifying or assisting in an investigation or action by the SEC, or for making disclosures as required or protected by SOX.



# Whistleblower Protections (cont.)

- New cause of action for whistleblowers subjected to harassment, demotion, or misconduct without having to go to DOL as provided in SOX
  - Case may be brought in US district court; can get jury trial – §922(c) revising 18 U.S.C. §1514A(b)(2)
  - Statute of limitation: 6 years after violation or 3 years after discovery
  - Relief includes reinstatement, 2 times back pay with interest, and compensation for all costs and legal expenses



# Whistleblower Protections (cont.)

- Predispute arbitration agreements are not valid – §922(c) revising 18 U.S.C. §1514A
- Confidentiality protected as much as possible
- IG one time report in 2½ years on promotion by SEC of program



# Whistleblower Protections (cont.)

- Title VII (§743 adding §23 to the Commodities Exchange Act) provides similar protections for whistleblowers reporting violations of the Commodities Exchange Act, but with the following differences:
  - Statute of Limitation: 2 years after violation §23(h)(1)(B)(iii)
  - Relief is for back pay (not 2 times back pay) §23(h)(1)(C)(ii)
- Title X (§1057) provides protections for:
  - employees working for consumer financial products and services reporting violations of the Consumer Financial Protection Act
  - Statute of Limitation: Short (only 180 days after violation)
  - Court action available if Secretary of Labor fails to act on reported violation
  - Similar to the existing SOX protections

# Responsive Strategies

- Although SEC has until April 2011 for rulemaking, bounty and protections are applicable now per §924
  - SEC already receiving claims under this provision (BNA, Corporate Accountability Reporter, Sept. 10, 2010, Vol. 8 No. 35, pp 935-936).
  - SEC must establish a separate whistleblower office.
  - Plaintiff's lawyers believe SEC regulations will likely adopt a first-to-file provision
- Address potential for employees to report externally
  - Penalty sizes and whistleblower payments provide incentives to employees to skip internal reporting; significantly ups the ante.
  - Review compliance programs and training.
  - Incentivize employees to report internally.
  - Increase vigilance on potential misconduct.
- Provide training on anti-retaliation

# Credit Rating Agency Reform - §931 – 939H

- §937 – all 1 year after enactment
- SEC Office of Credit Ratings reporting directly to SEC Chairman
  - annual exams; public reports on exams
    - of code of ethics and conflicts policies



# Credit Rating Agency Reform (cont.)

- significant rulemaking on disclosure and conflict - §932(R)
  - disclose 5 material assumptions on each rating
  - report to SEC on persons employed by rated issuers
  - rules to prevent sales and marketing from influencing ratings
  - disclosures on ratings methodologies
- standards for credit rating analysts
  - training and testing - §936
- independent Board for NRSROs – 1/2 of Board or committee of parent board- §932(t)



# Credit Rating Agency Reform (cont.)

- authority for enforcement against associated persons
- NRSROs must have a CCO who reports to SEC
- In 1 year all Federal agencies must remove references to credit ratings in Regs and substitute standards of credit worthiness - §939A
- Removal of statutory references to credit ratings - §939 (banking, SEC)



# Credit Rating Agency Reform (cont.)

- Multiple studies by SEC or Comptroller General
  - standardized ratings terminology, etc. - §939(h)
  - possible independent professional organization for analysts - §939E
  - probable SRO which would make ratings assignments of, and fees for rating, asset-backed securities (so-called “Francken Amendment”)
  - can suspend registration by NRSRO for a class of securities for failure – over a sustained period of time to produce ratings that are accurate, e.g., structured products - §932

# Credit Rating Agency Exposure

- Private Rights of action against NRSROs - §933
  - Same enforcement and penalty provisions for statements made as for accounting firm or securities analysts
  - Statements shall not be deemed forward looking statements (not entitled to 21E safe harbor)
  - Liable if knowingly or recklessly failed: 1) to conduct a reasonable investigation of facts or 2) to obtain reasonable verification of those facts from other competent, independent sources
- SEC can non-censure or suspend associated NRSRO persons - §932(a)(3)

# Credit Rating Agency Exposure

- Rule 436(g) is extinguished; a rating will be considered a part of the registration statement and Securities Act Section 11 liability will apply
  - SEC staff clearly disagrees, adopting Compliance and Disclosure Interpretations (C&DI), Section 233.04 six days after Dodd-Frank was signed into law
- Result:
  - Consent required if the issuer includes the credit rating in its registration statement or prospectus unless the rating information is included only for the purposes of satisfying disclosure requirements. C&DI, Section 233.04 (July 27, 2010)
  - However, consent not required if the credit rating is included in the context of a risk factor discussion regarding the risk of failure to maintain a certain rating or for disclosure of a credit rating change. C&DI, Section 233.04 (July 27, 2010)
  - CRA due diligence – Ford Motor ABS story right after effectiveness of Dodd-Frank (NRSROs pulled ratings pending due diligence) C&DI, Section 233.04 (July 27, 2010)
- Question: Could the CRA refuse to let the issuer state that the credit rating is based on the CRA's "authority as an expert" thus eliminating Section 11 liability and the need for consent?

# Credit Rating Agency Exposure

- Rulemaking to revise Regulation FD to apply to NRSROs
  - Removes exemption for credit rating agencies
  - Easy to solve this problem: Confidentiality agreement exception still applies
- Apps and reports are “filed” not just “furnished”
- Internal controls for determining credit ratings, attested by CEO
  - §932(a)(3)
- August 10, 2010 proposed rulemaking by FDIC, OCC and OTS to remove credit ratings from their risk-based capital rules  
(Advance Notice of Proposed Rulemaking Regarding Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies, FDIC PR-185-2010)

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# Broker-Dealer Impact

- Notice to customers their securities are being lent in connection with short sales and receiving comp - §929X(e).
- Proxy voting restrictions
  - exchange rules to prohibit voting by member firms on election of directors and other “significant matters”
  - specific shareholder instruction required for broker to vote proxies
  - SEC to define significant matters
- Authority to SEC to restrict customer arbitration agreements - §921 (Investment Advisors client agreements too)

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# Broker-Dealer Impact (cont.)

- Likely imposition of investment advisor type Fiduciary Duty on BD's for retail (natural person) investors, after 6 months SEC study – (Sec. 913).
- SEC Rules to require retail investor disclosures before purchase - §919 - in effect.
- SIPC – Cash account coverage increased from \$100K to \$250K - §929H
- By April 21, 2011, SEC jointly with banking regulators and FHFA to prescribe regulations or guidelines that prohibit any types of incentive compensation that encourages inappropriate risks by registered brokers dealers, banks, bank holding companies and investment advisors (registered or not), by providing “excessive compensation” or that could lead to material financial loss. Limited to entities with over \$1 billion in assets. - §956(b)
  - §956(b) was aimed at excessive compensation of executives but could reach lower level employees
  - Days after Dodd-Frank was signed into law, legislation was introduced to repeal this section (HR5998, Rep. Hensarling, R-Tex).

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# ABS Credit Risk Retention - §941 - 946

- Adds Section 15G to 1934 Act
- Applies to any issuer of asset backed securities (ABS) and any organizer or originator – 15G(a)(3) & (4) – can be bank, broker, anyone, and not limited to mortgages (can be credit card receivable ABSs).
- Fed banking agencies are enforcers against banks and SEC is enforcer against everyone else. - 15G(f)

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# ABS Credit Risk Retention - §941 - 946 (cont.)

- Risk Retention Requirement -- “skin in the game” – can be split between loans originator and securitizer and can’t hedge it - §15G(c)(1)(A)
  - not less than 5% - §15G(c)(1)(b)
  - will be complete exemption for “qualified residential mortgages” - §15G(e) – a joke because that’s what caused the crisis. Another one for Barney Frank! No clear definition – left up to Fed Banking agencies. SEC, HUD, FHFA, joint regulations, “taking into consideration a lower risk of default”; setting (undefined) mortgagor income payment requirements, mortgage, insurance, etc.


# ABS Credit Risk Retention - §941 - 946 (cont.)

- synthetic ABSs never exempt - §15G(e)(6).
- will be less where loans in ABS comply with “low credit risk” requirements established by regulators.
- will be complete exemption for FHA loans.
- Rulemaking by SEC, HUD, FHFA and banking agencies for final standards - §15G(b)(1) – within 9 months after enactment – (A) can’t hedge the requirement. (B) can “adjust” up? the requirement - §15G(e)
- Registration statements and filings - §945 added §7(d) to 1933 Act



## ABS Credit Risk Retention - §941 - 946 (cont.)

- Disclosure of underlying assets - §942 added §7(c) to 1933 Act
- Study within 90 days of (1) effect of new credit risk retention requirement and (2) FASB 166 & 167!
- Study by FSOC within 180 days on effect of risk retention requirements, including whether proactive adjustments to risk retention percentage can minimize real estate bubbles.



## SEC: Studies for Future Regulation – §913,14,17,18,19,29

- Studies include:
  - SEC financial literacy of retail investors; methods to include disclosures to all investors - §917 – 2 years.
  - Comptroller General – investment banking and analyst conflicts – 18 months - §919A – possible specific codification of Global Analyst Research Settlements of 2003 – separation of functions – Harm to IPOs?
  - risks and conflicts of bank proprietary trading
  - Comptroller General – mutual fund advertising - §918 – 18 months

## SEC: Studies for Future Regulation – §913,14,17,18,19,29 (cont.)

- Comptroller General – financial planners - §919C
- SEC – investor access to IA and BD disciplinary information - §919B – 6 months – notably including arbitration proceedings. SEC has to implement in 18 months.
- SEC – need for enhanced SEC exam and enforcement resources for investment advisers - §914 – including possible SRO for Investor Advisors. – 6 months
- SEC BD fiduciary duty study for retail BD's (see above) – 6 months - §913
- Comptroller Private rights of action against aiders and abettors post *StoneRidge* decision - §929Z



# SEC: Increased Funding

- SEC budget increases
  - \$1.3 billion in 2011 to \$2.25 billion in 2015
- Establishment of “Reserve Fund”
  - from registration fees for securities under Securities Act and Investment Company Act
  - One year deposit limited to \$50 million
  - Balance limited to \$100 million
  - Use as necessary, up to \$100 million per year, to carry out functions of SEC

# Expansion of SEC Enforcement Powers

- Aiding and abetting liability now based on “recklessly” (and not just “knowingly”) for SEC enforcement actions, and added for all statutes - §929 M, N and O
- Authority to impose “collateral BARS” sanctions - §925 – i.e., bar a person as a BD, IA, TA, NRSRO, MSD all at once. Division of Enforcement probably did it anyway as a condition to settlement.
- Nationwide service of process - §929E

# Expansion of SEC Enforcement Powers (cont.)

- Civil money penalties in cease-and-desist proceedings - §929P(a) - \$7500 to \$150,000 for natural person.
  - Administrative proceedings may be brought against anyone the SEC believes violated securities laws, including hedge fund managers, officers, directors, etc.
  - These proceedings are no longer limited to regulated entities, such as broker dealers or investment advisors
- Extra-territorial reach of SEC and DOJ actions under anti-fraud provisions - §929P(b)
  - (1) conduct within U.S. that constitutes significant steps in furtherance of transaction outside the U.S.
  - (2) conduct outside U.S. that has foreseeable substantial effect within U.S.

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# Other SEC Changes

- Foreign Public Accounting Firms that perform material services subject to SEC and PCAOB jurisdiction - §929J
- Adds PCAOB oversight authority of auditors for all broker-dealers, not just those that are public companies – Madoff problem.
- SEC Office of Investor Advocate §915 – identify problems both retail and institutional investors have and report to Congress! SEC has to respond within 3 months; Office of Municipal Securities; Office of Credit Ratings

# Other SEC Changes (cont.)

- Paid Investor Advisory Committee - §911 – 10 to 20 members representing both individual and institutional investors. SEC has to assess recommendations of committee and disclose action it will take, if any
- SEC filing required within 180 days of Wells Notice, or sign off required within 180 days of inspection/exam - §929U
- Clarification of Authority to gather info from public - §912 – relief from rigors of Paperwork Reduction Act. Watch for more mandatory responses to SEC questions!

# SEC Reform

- §961 - §968 – A series of post Madoff, post Bear Stearns and Lehman reforms of the SEC mostly consisting of:
  - SEC and Comptroller General annual reports and certifications to Congress on SEC internal supervisory controls, procedures applicable to the staff who perform exams, enforcement investigation and reviews of corporate financial securities filings, triennial reports on effectiveness of SEC supervisors competence of SEC staff, efficiency of communications between SEC units and disciplinary actions against employees who fail to perform
  - an annual financial controls audit, a report on the oversight of exchanges
  - establishing an IG telephone hot line
  - hiring an independent consultant to examine “the need for comprehensive reform of the SEC”
  - a study on “revolving door” employees
- Note: This is bipartisan. A good deal of the basis for this is contained in “The SEC: Designed for Failure,” Minority Staff Report of House Committee on Oversight and Government Reform, by Darrell Isaac (R-CA), Ranking Member (May 18, 2010)  
<http://republicans.oversight.house.gov/images/stories/Reports/20100518SECreport.pdf>

# CONCLUSIONS

- Overall flavor of power to institutional investors (proxy access – 3%; say-on-pay Investor Advisory Committee; office of Investor Advocate)
- Lots of retail investor reforms. (Investor Advocate, Investor Advisory Committee, financial literacy, mutual fund advertising, and BD fiduciary duty studies, etc.) – when that had nothing to do with the financial crisis.
- Open hostility to predispute arbitration agreements.
- Creating lots of new SEC Offices which really already exist (credit ratings, municipal securities, Investor Advocate).
- Whistleblowers for securities law violations had nothing to do with crisis.
- Distrust of SEC – many provisions involve a study and reform of the SEC itself, or require joint decision making with other agencies.
- Many provisions run in contrary directions within themselves, which will make it difficult for regulators to figure out which way to go, or result in mealy-mouthed difficult to comply with regulations. Rather than make provisions come down one way or the other, they drafted them both ways to reflect political deficiencies. ABS provisions are a prime example (“improve access of consumers to credit on reasonable terms” versus “ensure high quality underwriting standards”).



Kit Addleman

[kit.addleman@haynesboone.com](mailto:kit.addleman@haynesboone.com)

214.651.5783 (Dallas, TX)



Michael Halloran

[michael.halloran@haynesboone.com](mailto:michael.halloran@haynesboone.com)

202.654.4567 (Washington, D.C.)

408.660.4153 (Silicon Valley, CA)

## Contact Information