March 20, 2018

Senate Passes Act Limiting Scope of Dodd-Frank Act

On March 14, 2018, the Senate voted 67-31 in favor of the Economic Growth, Regulatory Relief and Consumer Protection Act. The legislation, if enacted into law, would represent one of the most significant changes to the Dodd–Frank Wall Street Reform and Consumer Protection Act since its adoption in 2010.

Among other things, the legislation would amend the Bank Holding Company Act of 1956 to exempt banks with assets valued at less than $10 billion from the "Volcker Rule," which prohibits insured depository institutions, companies that control insured depository institutions, and companies that are treated as bank holding companies or are an affiliate or subsidiary thereof from engaging in proprietary trading or entering into certain relationships with hedge funds and private-equity funds. The legislation would also raise the threshold for designation of a bank holding company as a Systemically Important Financial Institution ("SIFI") from $50 billion in assets to $250 billion in assets. Banks designated as SIFIs must, among other requirements, adhere to stricter rules and oversight and produce "living wills" describing how they would liquidate their assets in the event of a bankruptcy.

The legislation would also exempt small and regional banks falling below the new, higher asset thresholds from certain requirements for loans, mortgages, and trading, and would allow them avoid other federal oversight such as stress tests and leverage ratio requirements.

The legislation would also increase from $5 million to $10 million the threshold under SEC Rule 701(e) promulgated under the Securities Act of 1933 above which issuers must provide risk factor disclosure and financial statements to employees receiving stock-based compensation in reliance on the exemption from Section 5 registration provided by Rule 701, and would amend Section 3(c)(1) of the Investment Company Act of 1940 to increase, in the case of "qualifying venture capital funds" (namely, venture capital funds that have not more than $10,000,000 in aggregate capital contributions and uncalled committed capital), the number of investors below which the qualifying venture capital fund would be excluded from the definition of "investment company." That threshold would be 250, rather than 100, which is the currently applicable threshold for all funds seeking to rely on the Section 3(c)(1) exception.

The legislation is now subject to reconciliation and a vote in the House of Representatives.

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