US BANKING REGULATION REFORM

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As the world economy limps out of the worst recession since the Great Depression (the "Great Recession"), an ambitious reform-minded U.S. Congress has turned its attention to overhauling the regulatory regime of the industry many experts believe was the root of the Great Recession: the banking and financial services industry.

Over the past year, the banking regulatory reform has taken a back seat to the contentious health care reform debate. Now that President Obama has signed his sweeping health care reform bill into law, the banking reform debate is taking center stage. On March 23, 2010, Senator Dodd (D-CT) and the Senate Banking Committee voted to send the 1,336 page "Restoring American Financial Stability Act" ("Proposed Senate Bill") to the full Senate for debate and vote. The U.S. House of Representatives passed their version of a banking Reform bill entitled "Wall Street Reform and Consumer Protection Act of 2009" on December 11, 2009 ("House Reform Bill"). Due to the complexity of the issue and the sheer size of these proposed House and Senate Bills, this article provides a brief general discussion of the current Senate Proposed bill and the obstacles that it faces in become a law.

General Discussion The stated intent of the ambitious Proposed Senate Bill is to "promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail,' to protect the American taxpayer by ending bailouts, [and] to protect consumers from abusive financial services practice[.]" The Proposed Senate Bill accomplishes this goal by (i) creating an interagency Financial Stability Oversight Council (the "Council"), (ii) increasing the authority of the various governmental agencies, (iii) curbing the financial institution's appetite for complexity and risk; and (iv) creating a consumer financial protection watchdog.

Financial Stability Oversight Council. The Proposed Senate Bill creates a new interagency council that will be mandated to identify risks to the financial stability of the United States, promote market discipline, and to respond to emerging threats of instability in the U.S. financial markets. The Council will make recommendations to the Federal Reserve Board concerning issues such as liquidity, capital, and risk management requirements. In addition, the Council will have the authority to require nonbank financial companies that pose a risk to the financial health of the United States. The Council will be chaired by the Secretary of the Treasury and consist of the Chairman of the Federal Reserve Board, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Chairman of the SEC, the Chairperson of the

FDIC, the Chairperson of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency and an independent member with insurance expertise.

Strengthening of the Federal Reserve. The Proposed Senate Bill strengthens the Federal Reserve regulatory authority by giving jurisdiction over financial holding companies with assets of more than $50 billion in assets and other "systemically significant" financial firms.[1] Traditionally, the Federal Reserve has been responsible for monetary policy and the regulation of the nation's depository institutions. The powers held by the Federal Reserve of regulation remain the same. However, the Proposed Senate Bill expands the Federal Reserve's power over a greater number of institutions. As many of the details have yet to play out, it is difficult to envision the realities of a Federal that can take control over investment banks and other "systemically significant" entities.

Liquidity Requirements and the Volcker Rule. In addition to the new oversight rules, the Proposed Senate Bill seeks to limit excessive complexity in financial institutions through stricter rules of capital, leverage, liquidity and risk management. As a part of this the Proposed Senate Bill introduces language akin to the so-called "Volcker Rule" requires regulators to implement regulations that prohibit banks, their affiliates and bank holding companies, from proprietary trading, investing in and sponsoring of hedge funds and private equity funds and would limit relationships between hedge funds and private equity funds. The Proposed Senate Bill only creates the mandate for such rules; it does not provide any of the details surrounding such regulations.

Consumer Protection Watchdog. The Proposed Senate Bill creates an independent Bureau of Consumer Financial Protection ("Consumer Protection Bureau") that will be charged with protecting consumers from unfair, abusive and deceptive financial product from banks with more than $10 billion in assets. In essence, the Consumer Protection Bureau will be a consolidation of consumer protection responsibilities that are currently handled by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Trade Commission.

Obstacles faced by the Proposed Senate Bill. The Proposed Senate Bill described above faces several hurdles before it becomes law. Primary amongst these hurdles is (i) the potential filibuster by the Senate Republicans, and (ii) the required reconciliation with a markedly different House Bill that was passed in December 2009. The passage of the recent health care reform has left an extremely contentious and partisan amongst Congress. In addition, the Senate Republicans have recently gained the necessary 41st seat required to maintain a filibuster. Irrespective of the partisan bickering, the American public broadly supports the passage of some form of financial reform. However, the form is still undecided. Currently, the primary point of contention between the Senate Republicans and Democrats focuses on the creation of the consumer financial protection agency. With the upcoming midterm elections, neither party wants to appear as the party who prevented banking regulatory reform. As such, it is likely that a version of the banking reform bill will be signed into law by the end of the year.

[1] The term “systemically significant” is not defined with specificity in the Proposed Senate Bill.

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