

Securities Insight: Dodd-Frank Wall Street Reform and Consumer Protection Act

Although the far-reaching Dodd-Frank Act has been the law of the securities landscape for nearly four years now, Wall Street (and Main Street) continues to feel its rumblings, as federal regulators work to implement a host of provisions affecting the securities, capital markets and financial services landscape.

Top three recent issues

1. Executive Compensation

- Responding to what was perceived as a lack of transparency and accountability in corporate board rooms, Dodd-Frank imposed additional disclosure and other requirements on public companies in the area of executive compensation. These include measures with names like say-on-pay, golden parachute, compensation clawback (for incentive-based compensation), pay for performance and pay ratio disclosure.
- The provisions directly affect what public companies must report in their SEC filings and in some cases what they are allowed to do. Indirectly, the provisions could influence what or how corporations pay their top executives. Public companies will need to track peers, get precedent language and stay on top of their compliance obligations.

2. Conflict Minerals

- To address the concern that the purchase and use of certain minerals, such as gold, cassiterite and columbite–tantallite, in products were funding armed groups in the conflict in the Democratic Republic of the Congo and surrounding countries, lawmakers wrote the conflict minerals provision of the Dodd-Frank Act to make companies more accountable for the sourcing of the minerals they use.
- Effective May 31, 2014, companies that manufacture products containing conflict minerals that are necessary for the products' functionality or production will be required to file a newly created Form SD disclosing the origin of certain materials (i.e., the conflict minerals). Public companies will need to track peers, get precedent language and stay on top of their compliance obligations.

3. The Volcker Rule

- Seeking to discourage risk-taking by banking entities, and more generally to reinforce the division between commercial and investment banks, the Volcker Rule prohibits insured depository institutions and their affiliates from engaging in "proprietary trading" and from acquiring, investing in or sponsoring hedge funds or private equity funds. The final rule became effective on April 1, 2014, with most banks having until July 2015, to comply, though certain larger banks are subject to the reporting requirements as early as June 30, 2014.
- The Volcker Rule significantly curtails many banks' investment and trading activities, which in turn affects their customers and business partners (private funds, insurers, traders, asset managers). Depository institutions will need to understand their obligations under the rule, including required disclosures to shareholders, and will want to know how their peers are dealing with the new requirements.

In Legal Practice

Although Dodd-Frank was adopted in 2010, the rules implementing the various provisions of the Act are still being adopted. Some of the Dodd-Frank provisions require **new disclosures in SEC filings**, such as the Form 10-K or the proxy statement, or even require **new forms to be filed** such as Form SD. Lawyers representing companies subject to the Dodd-Frank regulations must keep themselves apprised of new rulemaking by the SEC and other agencies in response to Dodd-Frank so that they can advise their clients of these changes. If they are drafting or reviewing SEC filings **they will need to be aware of new disclosure requirements** to ensure that they are addressed appropriately in their clients' SEC filings. In doing so, they may want to review the disclosure of other SEC filers so that they can examine how similar companies addressed the disclosure requirements or are complying with the new regulations. For example, with respect to **executive compensation issues**, lawyers may be called upon to advise corporate clients and their boards about compliance with Dodd-Frank and how to effectively disclose required information to the SEC through periodic reports and proxy statements. Those lawyers who advise manufacturing company clients who use **conflict minerals** in their products will need to be up-to-speed on Form S-D disclosure and other requirements relating to conflict minerals. Finally, lawyers representing banks or private investment funds will want to be knowledgeable about the **Volcker Rule** and its potential impact on their business and SEC disclosures.

How Knowledge Mosaic® Can Help

1. **Executive compensation:** See executive compensation disclosures by public companies, proxy statements soliciting "say-on-pay" voting, executive employment agreements describing incentive-based compensation clawback policies, plus guidance (SEC Comment Letters and No-Action Letters) and commentary (Law Firm Memos) on any of the above using Knowledge Mosaic. View all public comments submitted to the SEC on proposed rules, and use our Dodd-Frank Tracker to follow new rulemaking in the area of executive compensation.
2. **Conflict minerals:** Locate risk-factor language describing company concerns related to conflict mineral disclosure obligations. Review new Form SD filings (including required Conflict Minerals Reports), and set up alerts on these filings. Locate SEC guidance (Comment Letters, No-Action Letters) and expert commentary (Law Firm Memos) on the above. Follow legal challenges to the rule in the Securities Daily News and Blogwatch.
3. **The Volcker Rule:** Locate risk-factor language describing financial institution concerns related to Volcker Rule obligations. Review Annual and Quarterly Reports by banks analyzing potential effects of the rule on operations and possible material effects. Set up alerts—or find SEC Comment Letters—on this disclosure. Locate SEC guidance and track new legislation refining the Rule (e.g., exempting Collateral Debt Obligations).

Learn more about Knowledge Mosaic and how it can support your business today.

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