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Dodd-Frank Wall Street Reform and Consumer Protection Act

The SEC and Dodd-Frank Act One Year Later

Brian Zophin, Partner
Coral Gables, FL

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Dodd-Frank Act

Sarbanes-Oxley Act of 2002 Section 404(b)

- Dodd-Frank Act allowed permanent exemption for small reporting companies (less than $75 million public float) for independent auditor to report on internal control over financial reporting ("ICFR")
- Final report to Congress on 404(b) study regarding companies with public float between $75M and $250M was published by the SEC on April 22, 2011
- Section 404(b) should still apply to domestic registrants and foreign private issuers whose market capitalization is between $75M and $250M
- Investors view auditor's attestation on ICFR as beneficial
- Financial reporting is considered more reliable when auditor involved with ICFR assessments based
- Smaller Reporting Companies are still required to include management's attestation – need to maintain an effective and substantive internal control framework and process

Recommended

- No new exemptions
- PCAOB monitor inspection results and consider publishing observations

Dodd-Frank Act

Sarbanes-Oxley Act of 2002 Section 404(b)

(Continued)

Small Company Job Growth and Regulatory Relief Act

The proposed bill, which was introduced by the House Financial Services Capital Markets and Government Sponsored Enterprises Subcommittee on October 5, 2011, increases the market capitalization threshold for a full 404(b) exemption from $75 million to $350 million. It also provides that any company with a market capitalization between $500 million and $1 billion that registers with the SEC after the date of enactment can defer compliance with Section 404(b) for five years; after five years, a company that has been in compliance can opt out of Section 404(b) by a majority vote of its shareholders.

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Dodd-Frank Act

Financial Services Industry Risk Committees

Certain nonbank, public financial companies and certain public bank holding companies are to form a separate risk committee

The committee would be:

- Responsible for risk oversight in the company
- Include appropriate number of independent directors based on factors such as size and nature of the organization
- Required to have at least one risk management “expert”
- No direct requirement for the SEC
- Federal Reserve Board is required to issue final rule on implementation by July 2012
- Board of Directors still ultimately accountable for risk oversight
- May need to revisit Board and Committee charters

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Dodd-Frank Act

Compensation Committee Requirements Updates

Proposed rules would require:

- Publicly traded companies to have compensation committees that include only independent directors
- Allow securities exchange and association listings to define independence (but offer considerations such as nature of the director's compensation and relationships between director and company
- Compensation committees would be responsible for appointing, compensating and overseeing compensation consultants and other advisors – do not have to be independent of issuer, but committee has to consider existing affiliations and relationships the consultant has with the company and compensation committee members and any other financial relationships such as stock ownership
- Enhanced disclosures regarding compensation consultants and fees
- New requirements may also affect nominating committee procedures

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Dodd-Frank Act

Executive Compensation (Continued)

- Pay Versus Performance and Pay Equity Disclosures
  - The Dodd-Frank Act requires the SEC to amend the proxy statement rules to include the following:
    - Information regarding the relationship between financial performance including changes in total shareholder return and executive compensation actually paid
    - The $ amount of median annual total compensation for all employees of the organization excluding the CEO and ratio of CEO total compensation to employee median total comp.
    - SEC is expected to propose rules between Jan. and June 2012
    - The Burdensome Data Collection Relief Act – Repeal

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Dodd-Frank Act

Executive Compensation (Continued)

- Hedging Disclosure
  - SEC to issue rules requiring disclosure in proxy materials of whether employees and directors are allowed to hedge the value of any equity security granted to them or owned by the director or employee
  - Disclosure will allow investors and other stakeholders interested in understanding whether executives, directors or employees are permitted to purchase financial instruments that serve to protect negative changes in the company's stock value
  - May cause companies to modify policies regarding hedging
  - Expected to propose rules between January and June 2012

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Dodd-Frank Act

Proposed Rules

- Dodd-Frank Act Implementation Specialized Disclosures
  - Mine safety
  - Payments by resource extraction issuers
  - Conflict minerals

Dodd-Frank Act

Mine Safety

- Mine safety disclosure proposal would require public companies that are operators or have subs that are operators of a coal or other mine to provide periodic reports to the SEC regarding:
  - Health and safety violations
  - Orders and citations, related assessments and legal actions
  - Mining-related fatalities

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Dodd-Frank Act

Resource Extraction Issuers

- Include in an annual report, information relating to any payment made by the issuer, or by a subsidiary or another entity controlled by the issuer, to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas or minerals.
- Information required would include “type and total amount of payments made”

Dodd-Frank Act

Conflict Minerals

What does it affect?

- All companies that file reports with the SEC under the Exchange Act
- Issuers who manufacture or outsource manufacturing of their products and conflict minerals are used in product or production process
  - Conflict minerals must be “necessary” to the functionality or production

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Dodd-Frank Act

Conflict Minerals (Continued)

- What are they and how are the used?
  - Cassiterite – Tin, tin alloys, tin plating, solders for joining pipes and electronic circuits
  - Columbrite-tantalite – Tantalum which is used in electronic components, including mobile phones, computers, video game consoles, digital cameras, carbide tools, jet engines, etc.
  - Gold – Jewelry, electronic equipment, communications equipment and aerospace equipment
  - Wolframite – Tungsten, which is used in metal wires, electrodes and contacts in electronic, lighting, electrical, heating and welding applications
  - Plus other minerals as determined by the Secretary of State to finance conflict in the Democratic Republic of Congo and its adjoining countries (“DRC Countries”)

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Dodd-Frank Act

Conflict Minerals (Continued)

Proposed Disclosures

- Reasonable country of origin inquiry
- Due diligence on source and chain of custody
- Description of products that are not DRC conflict free
- Provide Conflict Minerals Report in annual report and post on website
  - Must obtain independent audit conducted in accordance with standards established by U.S. Comptroller General