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Keeping Up with Dodd-Frank Implementation

In the eighteen months since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), U.S. financial regulators have engaged in an unprecedented amount of rulemaking activity. The implications of Dodd-Frank, the most comprehensive reform of the U.S. financial regulatory system since the Great Depression, are far-reaching and difficult to follow.

Dodd-Frank contains over 315 rulemaking requirements and 145 study and reporting provisions. Many of the rulemaking and study requirements have ambitious deadlines for finalization. In light of the monumental amount of work and the limited timeframe, regulators have been working at a frenetic pace. However, missed deadlines are becoming a relatively common occurrence, creating significant legal uncertainty. More than 130 deadlines have been missed and approximately 190 rules have yet to be proposed.

Indeed, the financial regulators still have a long road ahead. The rulemakings and studies that are yet to be finalized, in many cases, are on the most contentious and complex aspects of Dodd-Frank, such as rules relating to OTC derivatives, broker-dealer fiduciary standards, systemic risk regulation and resolution authority, replacement of references to credit ratings, and proprietary trading of commercial banks and their affiliates (the so-called Volcker Rule). Due to the complexity and controversy surrounding many of these rule proposals, there have been and continue to be numerous opportunities to favorably influence rulemakings through notice-and-comment, public hearings, congressional input and oversight hearings, and a variety of other channels.

In such an environment, it is critical to stay abreast of the multitude of Dodd-Frank-initiated regulatory activities in order to identify impacts on business operations, to address issues with regulators before rules are finalized, and to ensure the adequacy of internal compliance systems. The level of regulatory activity requires monitoring of a broad range of agencies (sometimes agencies with which industry participants have not worked previously) and constant vigilance, which is quite labor- and cost-intensive. Many aspects of rulemaking are crystallized long before a rule is finalized, and affected parties that come late to the game may find that it is too late to affect the outcome. By contrast, businesses that consistently and actively engage with the congressional and regulatory process are more likely to have an impact on the ultimate regulatory framework.

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