

The Wall Street Reform and Consumer Protection Act

December 7, 2009

OVERVIEW

On December 2, 2009, the House Financial Services Committee (the "Committee") passed the Financial Stability Improvement Act (H.R. 3996), financial stability legislation in response to the recent economic crisis, by a party-line vote of 31-27 without the participation of the Committee's 10 members from the Congressional Black Caucus, who boycotted the mark-up. This bill will be part of a comprehensive package of financial system reforms, the Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173), that will be considered on the House floor the week of December 7, 2009. Specifically, H.R. 4173 incorporates nine major pieces of legislation approved by the Committee, including the Financial Stability Improvement Act. H.R. 4173, if cleared by the House Committee on Rules panel, is expected to be ready for House action on December 9, 2009, with debate to be conducted according to each title in the package.

LEGISLATIVE STATUS

H.R. 4173 was referred to the Committee, and in addition to the Committees on Agriculture, Energy and Commerce, the Judiciary, Rules, the Budget, Oversight and Government Reform, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. Congress currently anticipates beginning its recess on December 18, 2009 and returning to session early in January 2010.

SUMMARY

The Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173) includes:

- Financial Stability Improvement Act of 2009 (H.R. 3996);
- Federal Insurance Office Act of 2009 (H.R. 2609), creating a federal insurance office (cleared by House Financial Services);
- Consumer Financial Protection Agency Act of 2009 (H.R. 3126), creating a Consumer Financial Protection Agency;
- Over-the Counter Derivatives Markets Act (H.R. 3975), tightening regulation of over-the-counter derivatives;
- Capital Markets legislation (including the Private Fund Investment Advisers Registration Act, Accountability and Transparency in Rating Agencies Act, and the Investor Protection Act), to strengthen investor protections; and
- Corporate and Financial Institution Compensation Fairness Act of 2009 (H.R. 3269), cleared by the House in July 2009 to address executive compensation.

Highlights of the Wall Street Reform and Consumer Protection Act of 2009

Improving Financial Stability and Enhancing Prudential Regulation

H.R. 3996 specifically targets systemic risk within the financial system and the potential harm that regulatory gaps and large, interconnected companies can pose to the economy. H.R. 3996 will create an inter-agency oversight council that will identify and monitor financial firms and activities that can potentially undermine the nation's financial stability. Once identified, these firms and activities will be subject to stricter oversight, standards and regulation. The bill also establishes an orderly process for dismantling any large failing financial institution in a way that protects taxpayers and minimizes the impact to the financial system. Under H.R. 3996, any costs incurred for dismantling a failed financial company will be paid first from the assets of the failed firm at the expense of shareholders and creditors. Any shortfall would then be covered by a "dissolution fund" pre-funded by large financial companies having assets more than \$50 billion and hedge funds with assets of more than \$10 billion.

Corporate and Financial Institution Compensation Fairness Act of 2009

There are four major components of H.R. 3269 based on the "Say-on-Pay" legislation passed by the House in 2007 and the compensation-related legislative proposals released by the Treasury Department: (1) the application of "say-on-pay" on public companies; (2) an independent compensation committee requirement for public companies; (3) an incentive based compensation disclosure requirements that would apply to all "financial institutions" with more than \$1 billion in assets; and (4) incentive based compensation standards that would apply to all "financial institutions" with more than \$1 billion in assets.

Over-the-Counter Derivatives Markets Act

This legislation requires, *inter alia*, clearing and trading on exchanges or electronic platforms of all standardized transactions between dealers and other large market participants and also divides jurisdiction over swaps between the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission ("CFTC"). The SEC would oversee activity in swaps that are based on securities like equity and credit-default swaps. The CFTC would be responsible for all other swaps, including those based on interest rates and currencies.

Consumer Financial Protection Agency

The bill creates an independent Consumer Financial Protection Agency ("CFPA") with the sole mission of protecting consumers when they borrow money, make deposits, or obtain other financial products and services. The legislation also scales back the broad authority of the Comptroller of the Currency that has been exercised to exempt federally chartered banks from state consumer protection laws. Merchants, retailers and other nonfinancial businesses will be excluded from the regulation and oversight of the CFPA when they extend credit directly to consumers for the purchase of goods or services.

Capital Markets

The bill closes the regulatory loopholes for hedge funds and private pools of capital, enhances the transparency and accountability of credit rating agencies, and sets forth a myriad of provisions to enhance the authority and reach of the SEC in order to further protect investors and the financial systems. The bill includes the Private Fund Investment Advisers Registration Act, the Accountability and Transparency in Rating Agencies Act, and the Investor Protection Act of 2009.

Federal Insurance Office Act

A Federal Insurance Office will provide national policymakers with access to the information and resources needed to respond to crises and mitigate systemic risks. The Federal Insurance Office and the United States Trade Representative will share the authority to enter into and negotiate agreements with foreign entities.

LINKS

A copy of the Wall Street Reform and Consumer Protection Act (H.R. 4173) can be found at http://www.house.gov/apps/list/press/financialsvcs_dem/hr4173.pdf.

The press release relating to H.R. 4173 issued by the House Committees on Financial Services on December 3, 2009 can be found at http://www.house.gov/apps/list/press/financialsvcs_dem/press_120309.shtml.

Please feel free to contact us if you have any questions.

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