



Summary of Manager's Amendment to the March Dodd Bill

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I. Bank Holding Company Amendments (Title VI)

- **Volcker Rule**
 - All purely technical and uninteresting, except for the following changes (insertions underlined):
 - **Definition of proprietary trading.** The definition of proprietary trading, which is purchasing or selling securities for the trading book of the company, is expanded to include "for the trading book (or such other portfolio as the Federal banking agencies may determine)".
 - **Discretion to implement restrictions on exceptions.** A similar change is made to the exceptions to the definition. While proprietary trading does not include certain purchases or sales of securities, this is now qualified by "subject to such restrictions as the Federal banking agencies may determine".
 - **Hedging exception.** The exception from the definition of proprietary trading for "hedging activities" is now specifically "risk-mitigating hedging activities".
 - **Insurance carve out.** The Council study should also study how the Volcker Rule would "appropriately accommodate" the business of insurance which is regulated by state insurance company investment laws.
- **Securities holding company regime.** Clarifies that the supervisory, capital, and risk management provisions of the securities holding company regime shall not apply to banks.
- Broader limits on lending to insiders will take effect two years after the bill's enactment.

II. Resolution Authority (Title II)

- All technical, other than the following notable changes:
- **Board consent to receivership not sufficient.** Deletes the element of "default or in danger of default" which allows the board to consent to the appointment of a receiver. Will require a determination by the Treasury Secretary, and a review by the bankruptcy panel, of whether a company meets the criteria for "default or in danger of default" and neither the Treasury Secretary nor the bankruptcy panel can rely on consent.
- **Liquidation and wind up.** Requires the receiver to liquidate and wind up a company in resolution, by changing the "may" to "shall."
- **Claims determination.** Requires the receiver to determine claims in accordance with the requirements of Section 210(a), and the FDIC's regulations, by changing "may" to "shall."
- **Limitations on cherry-picking authority.** Limits the FDIC's cherry-picking power so that it can't be exercised in the context of bridge financial companies in order "to contain or address serious adverse effects to financial stability of the United States."
- **Additional payments.** Similarly, a company that receives additional payments, including as a creditor transferred to a bridge financial company, can be assessed at a higher rate for purposes of the Orderly Liquidation Fund.

III. Derivatives (Title VII)

- **Council's Role in Exemptions from Clearing and Trading.** Requires that, in order to exempt a swap from clearing and exchange trading under its "permissive exemption", the CFTC/SEC must (i) provide written notice to the Council and (ii) the Council must not have made a determination or notified the CFTC/SEC in 60 days that the exemption "would pose a threat to the stability of the United States financial system."
 - As in the Dodd bill, the "permissive exemption" requires that the CFTC/SEC may only exempt a swap from clearing and exchange trading if one of the parties is a non-dealer/MSP and does not meet the eligibility requirements of any clearinghouse that clears the swap.
- **Council's Role in Exemptions from Margin for Non-Cleared Swaps.** Requires that, in order to exempt a dealer/MSP from margin requirements on a non-cleared swap, the relevant regulator (banking regulator for banks, CFTC/SEC for non-banks) must (i) provide written notice to the Council and (ii) the Council must not have made a determination or notified the regulator in 60 days that the exemption "would pose a threat to the stability of the United States financial system."
 - As in the Dodd bill, the relevant regulator may only exempt a dealer/MSP from the margin requirements related to a non-cleared swap if (i) one of the parties is not a dealer/MSP; (ii) the swap is being used by that participant as part of an effective hedge under GAAP; and (iii) that participant is predominantly engaged in activities that are not financial in nature.

IV. Consumer Financial Protection Bureau (Title X)

- **Expanded exclusion for SEC-regulated entities.** Expands the exclusion from the Bureau's authority of persons regulated by the SEC to cover any person required to be registered with the SEC under the Securities Exchange Act of 1934, including: companies that elect to be regulated as a business development company under the Investment Company Act of 1940; self-regulatory organizations; credit rating agencies; securities information processors; and municipal securities dealers.
- **Bureau / SEC rulemaking cooperation.** Requires SEC and Bureau coordination of rulemaking only where "feasible." Requires the SEC to develop procedures for providing advance notice to the Bureau when the SEC is initiating such a rulemaking.
- **Limited recovery for state attorneys general.** Strikes the specific authorization for state attorneys general to recover damages from a national bank on behalf of state residents for violation of an applicable provision of federal or state law.
- **Fees.** Strikes a provision terminating the right of agencies transferring powers to the Bureau to continue to collect fees for conducting consumer financial protection functions.
- **Consumer information requests.** Adds requirement that covered persons comply with consumer requests for information concerning a consumer financial product or service obtained from the covered person, but excludes from the disclosure obligation confidential commercial information, information collected to prevent fraud or money laundering, or to detect or make a report regarding other unlawful conduct, or other nonpublic or confidential information.
- **Bureau authority to define "qualified mortgage".** Transfers from federal banking agencies to the Bureau the authority to prescribe regulations regarding revisions to the criteria that define a "qualified mortgage" in the context of the prohibition on certain types of prepayment penalties.

- **Remittance transfers.** Restores disclosure obligations on providers of remittance transfers, although to a less restrictive degree than in the House bill.
- **Expanded application of Truth in Lending Act.** Amends the Truth in Lending Act to cover credit transactions and consumer leases below \$50,000 (instead of \$25,000).

V. Federal Reserve System Provisions (Title XI)

- **Eliminates 13(3) Lending to Financial Market Utilities.** Eliminates the authority of the Federal Reserve to lend under section 13(3) to financial market utilities that the Financial Stability Oversight Council determines to be systemically important.
- **FDIC and Fed to Determine Liquidity Events.** Provides that the Fed and the FDIC, rather than the Fed and the Council, will determine when a liquidity event has occurred for purposes of allowing the FDIC to create a liability guarantee program.
- **Disclosure of Participants in Emergency Lending Programs.** Does not limit disclosure of the identities of participants in emergency lending programs to participants going forward.
- **Treasury's Role in Guarantee Program.** Modifies the Treasury Secretary's role in establishing policies and procedures for the guarantee program from concurrence to consultation while still requiring Treasury concurrence for terms and conditions.
- **Appropriations for Guarantee Program.** Deletes language authorizing appropriations to the FDIC for the guarantee program.
- **Termination of Credit Facility.** Establishes that a credit facility will be deemed terminated 24 months after it ceases to extend credit or loans.

VI. Broker-Dealer Regulation (Title IX, Subtitles A, I, E)

- **SRO Filing Procedures.** Modifies the effective date of filing for self-regulatory organization rulemakings from the date of publication on the SRO website to the date of publication in the Federal Register, unless the SEC fails to send the filing to the Federal Register for filing within 15 days after the filing is posted on the SRO's website, in which case the date of publication is deemed to be the date the notice is published on the SRO's website.
- **Securities Lending.** Modifies the time period for rulemaking on securities lending to 2 years after the enactment of the act from 1 year.
- **Investor Advisory Committee.** Modifies the number of members of the Investor Advisory Committee that must represent individual investors and institutional investors from a minimum of 12 to 10 and a maximum of 20 from 22.
- **Point of Sale Disclosures.** Requires that any documents or information that the SEC requires to be disclosed to retail investors, in connection with the Act's grant of authority to the SEC to issue rules regarding disclosure to retail investors, include information about investment objectives, strategies, costs, and risks, and any compensation or financial incentive received by a broker-dealer or other intermediary in connection with the retail customer's purchase of the product.
- **GAO Study on Conflicts of Interest.** Requires a new GAO study within 18 months after the enactment of the Act regarding the potential conflicts of interest that exist between securities underwriting and securities analyst functions within the same firms.
- **SEC Study on Investor Access to Information About Investment Advisers and Broker-Dealers.** Requires a new SEC study within 6 months after the date of enactment of the Act

regarding ways to improve access of investors to registration information about investment advisers, broker-dealers and their associated persons, and requires the SEC to implement any recommendations of the study.

- **GAO Study on Financial Planners.** Requires a new GAO study within 180 days after the enactment of the Act to evaluate the effectiveness of state and federal regulations to protect consumers from misleading financial advisor designations, oversight structure and regulations for financial planners and gaps in the regulation of financial planners.

VII. Executive Compensation (Title IX, Subtitle E)

- **Internal Pay Equity.** Incorporates Senator Menendez amendment #70, requiring the SEC to amend Item 402 of Regulation S-K to require companies to disclose: (1) the median annual total compensation of all employees, except the CEO; (2) the annual total compensation of the CEO; and (3) the ratio of the median employee annual total compensation to that of the CEO. Annual total compensation for the purposes of this disclosure is calculated in accordance with the rules governing the calculation of the “Total” column in the Summary Compensation Table.
- **Broker Discretionary Vote Eliminated for Certain Matters.** Amends the Exchange Act to prohibit broker discretionary voting in connection with a shareholder vote with respect to the election of directors, executive compensation or any other significant matter, as determined by the SEC. Incorporates Senator Menendez amendment #72, which prohibits broker discretionary voting in connection with a shareholder vote with respect to executive compensation. Under this provision, listing exchanges are not prohibited from allowing broker discretionary voting on other matters. Last year, the SEC eliminated broker discretionary voting in director elections for meetings held on or after January 1, 2010.
- **Clawback (recovery of “erroneously awarded compensation”).** Clawback provision of the bill would no longer be an amendment to Section 16 of the Exchange Act, but would instead constitute a new Section 10D of the Exchange Act.
- **For Financial Institutions Only.** Requires the Fed to consult with the OCC and the FDIC, rather than act alone, in establishing standards making it an unsafe and unsound practice for the holding companies of depository institutions to provide an employee, director or principal shareholder with compensation that is excessive or could lead to material financial loss to the bank holding company.

VIII. Investor Protection and Securities Regulation (Title IX, Subtitle B)

- **SEC authority to restrict mandatory pre-dispute arbitration.** Corrects technical error by changing language concerning parties to arbitration from “broker, dealer, or municipal securities dealer” to “investment adviser.”
- **Whistleblower protection.** Adds subsection which prohibits awards paid to whistleblowers who gain the information in question through an audit of financial records that is required under securities laws, and for whom such submission would be contrary to the requirements of section 10A of the Exchange Act.
- **Covered Securities Under Securities Act**
 - Requires the SEC to conduct rulemaking within 360 days of the enactment of the bill to determine whether to designate a class of securities as securities that are not deemed to be covered securities because of their small size or scope.

- Provides that the SEC, not a state securities commissioner, has power to determine that an issuer attempted to comply with the SEC's private placement filing requirements and thus its issuance remains a covered security, even if the SEC failed to review the filings within the required 120 days from filing. The SEC's determination must be made in the required 120 days.

IX. Asset Backed Securitization (Title IX, Subtitle D)

- Removes the word "material" from the requirement that the Federal banking agencies and SEC jointly prescribe regulations "to require any securitizer to retain an economic interest in a material portion of the credit risk" of securitized assets.
- Clarifies the definition of originator as "A person who: (A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and (B) sells an asset to a securitizer."

X. Regulation of Advisers to Hedge Funds and Others (Title IV)

- Prohibits the SEC from defining the term "client" for purposes of Sections 206(1) and 206(2) of the Advisers Act to include investors in a private fund. Consistent with current law.

XI. Financial Stability (Title I)

- **Back-Up Authority to Fed.** Gives the Fed back-up authority to take the recommended supervisory or enforcement action with respect to functionally regulated subsidiaries and insured depository institutions if the primary financial regulatory agency does not take action within 60 days of receiving the recommendation, as if the functionally regulated subsidiary or insured depository institution were a bank holding company.
- **Appeals Process for Financial Stability Standards.** If the Council rescinds its recommendation of new or heightened standards for a systemically important financial activity, and a primary financial regulatory agency decides that such standards should remain in effect, the agency must have a procedure for entities under its jurisdiction to appeal the decision.
- **Council role in derivatives exemptions.** Specifies that making determinations regarding exemptions, where necessary, to the derivatives title (Title VII) is a duty of the Council. See Title VII for further detail on the Council's role in specific exemptions proposed by other regulators.
- Defines a "nonbank financial company supervised by the Board of Governors" as a nonbank financial company which the Council has determined to be systemically important and therefore required to be supervised by the Board of Governors.

XII. Institutional Arrangements (Title III)

- **Rulemaking for Thrifts.** Provides that rulemaking authority relating to thrifts will be exercised jointly by the OCC and the FDIC. The draft bill had granted this rulemaking authority solely to the OCC.
- **FDIC Assessment Authority.** Expands the FDIC fee assessment authority to permit it to assess exam fees as it "determines is necessary or appropriate to carry out [its] responsibilities."

XIII. Credit Rating Agencies (Title IX, Subtitle C)

- **No Antifraud Defense.** Clarifies that Exchange Act's prohibition against regulating the substance of credit ratings or the procedures and methodologies by which they are determined may not be construed as affording a defense to an antifraud action or proceeding brought by the SEC.
- **Independent Board.** Requires each NRSRO to have a board of directors with at least one-half, but no fewer than two, independent members, some portion of which must be users of NRSRO ratings and enumerates the Board's duties. When the NRSRO is a subsidiary, permits the parent's board to satisfy requirements by assigning duties to a committee meeting certain independence criteria. Exception possible for small NRSROs.

XIV. Municipal Securities (Title IX, Subtitle H)

- Clarifies that the term municipal advisor does not include broker-dealers or municipal securities dealers serving as an underwriter, any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice.

XV. Insurance (Title V)

- Clarifies that the Office of National Insurance may require submission of data or information from any person authorized to write insurance or reinsurance risks and issue contracts or policies in at least one state.

XVI. Improving Access to Mainstream Financial Institutions (Title XII)

- New title added to the bill.
- Authorizes Treasury Secretary to establish multiyear grants, cooperative agreements and other programs to expand access to mainstream financial institutions and provide alternatives to Payday loans. Authorizes the Community Development Financial Institutions Fund to make grants to community development financial institutions to support small dollar loan programs.

XVII. SEC Management and Self-Funding (Title IX, Subtitles F, J)

- No substantive changes.

XVIII. Corporate Governance (Title IX, Subtitle G)

- No changes.

XIX. Payment, Clearing and Settlement (Title VIII)

- No changes.

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