

The Dodd-Frank effect

How the legislation will impact nearly every aspect of the financial services industry **Interviewed by Kristen Hampshire**

It has been touted as the most significant financial reform since Franklin D. Roosevelt's New Deal.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, created in response to the financial crisis of the last few years, was signed into law almost one year ago. While not all of its 387 rules have been adopted, the scope of reform will affect investment advisers, investors, business owners, management and the public for years to come.

According to Todd Crouthamel, a director, Audit & Accounting, and a member of the Investment Industry group at Kreisler Miller, Securities and Exchange Commission chairman Mary Schapiro said, "The purpose of the legislation is to create a more effective regulatory structure, fill regulatory gaps, bring greater public transparency and market accountability to the financial system, and give investors protections and input into corporate governance."

"By the time it is fully adopted, the Dodd-Frank Act will impact virtually every aspect of our financial lives," says Crouthamel. "The task is enormous, with 145 rules scheduled for adoption in the third and fourth quarters of 2011, plus 30 that are behind schedule."

Smart Business spoke with Crouthamel about the impact of this legislation on private fund investors and investment advisers.

How will this legislation impact private fund investors?

The Dodd-Frank Act increases the net worth and investments under management requirements for an individual to qualify to invest in private funds. The rules exclude the value of an investor's primary residence in determining net worth, and this will likely prohibit more investors from investing in private funds. SEC registration is also a significant issue. Many private fund advisers, who were previously not required to register with the SEC, will likely be required to register. This increased oversight may result in additional protections for the private fund investors; however, these protections will not be free. Private fund advisers are going to incur significantly more administrative costs in complying with the SEC requirements, and some of those costs may be passed along to investors.

What effect does the legislation have on SEC oversight of investment advisers?

The debate continues as to who should have regulatory oversight over registered in-



Todd Crouthamel
Director, Audit & Accounting
Kreisler Miller

vestment advisers. The SEC is overburdened and the number of exams that it can complete is relatively small in relation to the number of advisers. As such, advisers with assets under management of \$100 million or less are required to deregister with the SEC and to register with their state agencies.

The Dodd-Frank Act called for a study on enhancing adviser examinations. In January 2011, the SEC's Division of Investment Management reported the results of its analysis and recommended that Congress consider one, or a combination of, three approaches to strengthen the SEC investment advisers' examination program. First, it suggests authorizing the SEC to impose user fees on SEC-registered advisers to fund examinations. Second, it proposes authorizing one or more Self-Regulating Organizations to examine SEC-registered advisers. Finally, it recommends authorizing the Financial Industry Regulatory Authority to examine dual registrants for compliance under the Advisers Act. This could result in a political battle between the rules-based system by which broker/dealers are governed and the principles-based system governing registered advisers.

How does the Dodd-Frank legislation impact public company compensation disclosures?

In January 2011, the SEC adopted rules re-

garding shareholder approval of executive compensation and golden parachute compensation agreements. New rules also require additional disclosure and voting regarding golden parachute compensation agreements with certain executive officers in connection with merger transactions. All of these required votes under the new rules are non-binding; differences between investors' recommendations and actions taken by boards of directors could embarrass a company and lead to directors not being re-elected.

Finally, the proposed rules include provisions that require institutional advisers to report their say on pay votes. This provision has not yet been adopted, but it will certainly increase advisers' administrative costs.

What widespread financial reform is also included in this legislation?

The Dodd-Frank Act extends to credit rating agencies, which were at the center of the recent financial crisis. As a result, Dodd-Frank includes provisions designed to improve the integrity of these credit ratings, including requiring many of the agencies to submit an annual report regarding their internal controls governing the implementation and adherence to procedures and methodologies for determining credit ratings.

There are also new whistleblower rules that provide increased incentives to individuals who voluntarily provide the SEC with original information about a securities law violation, which leads to successful enforcement by the SEC, with sanctions of greater than \$1 million.

What can be expected going forward?

Because so much of the Dodd-Frank Act has not been finalized, it is difficult to determine what all of the final regulations will look like. For investment advisers, the challenge will be to stay current with new regulations and to ensure the firm's policies and procedures reflect the new regulations. For investors, the challenge will be to decipher additional reporting requirements and follow who will ultimately be responsible for oversight of the investors' advisers. Keeping a watchful eye over the coming months will be critical for advisers and investors alike to ensure they understand the latest developments and how they will be affected. <<

TODD CROUTHAMEL is a director, Audit & Accounting, and a member of the Investment Industry group at Kreisler Miller. Reach him at tcrouthamel@kmco.com or (215) 441-4600.

Insights Accounting & Consulting is brought to you by Kreisler Miller