

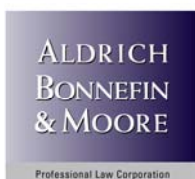
Aldrich Bonnefin & Moore, PLC

Conferees Approve Conference Report of Historic Regulatory Reform Bill

Early Friday morning, June 25, 2010, the House and Senate Conferees approved their conference report on the sweeping financial regulatory reform bill, renamed the Dodd-Frank Act. This brings to fruition a process that has been in the works for more than a year. Both the House and Senate must pass the revised bill, and the President must then sign it before it becomes law. All of that is now almost certain to happen.

The report and the bill are not (as of June 25) available for review. Nevertheless, based on public reports, the following is a list of several notable, and outstanding, issues that have been resolved by the conferees:

- Derivatives. The Lincoln amendment, which sought to limit the ability of federally insured banks to trade derivatives, has been split in two by the Peterson amendment. Banks will be able to conduct derivatives activities to hedge their own risk in the bank itself, while others would have to be conducted in an affiliate. Banks will be able to retain interest rate swaps, foreign exchanges, and credit derivatives relative to cleared investment grade entities, gold and silver. Derivatives required to go under an affiliate include cleared and non-cleared commodities, energies and metals, all equities, and any non-cleared credit default swaps.
- The Volcker Rule. The final version includes a variation on the Volcker rule, allowing banks to invest in as much as 3% of the total ownership interests in private equity and hedge funds. However, a bank's collective investments in such funds would be limited to 3% of the bank's Tier 1 capital. The conferees also closed a loophole by reinstating the "Hotel California" provision, which would prevent bank holding companies from converting to investment banking status to escape the provisions of the Volcker rule.
- The Collins Amendment on Capital. The original Collins amendment would have excluded trust preferred securities and other financial instruments from holding-company Tier 1 capital. The conferees agreed to grandfather existing trust



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preferred securities for all bank holding companies with less than \$15 billion in total assets. Holding companies with more than this amount in total assets would have five years, including a three-year phase-in period, to comply with the measure.

- New Underwriting Standards. Conferees agreed on new underwriting standards. Regulators would define a class of mortgages that would meet a requirement that lenders ensure that borrowers can repay their loans. These mortgages would be considered qualified and be protected from legal liability, such as the buyer's right to rescind the loan and seek damages. In defining qualified loans, regulators will need to consider several issues, including suitable debt-to-income ratios and fully documented income verification. Certain loan features, such as negative amortization, prepayment penalties, and balloon payments would prevent a loan from meeting this qualified standard.
- Risk Retention. Conferees agreed to include a narrower version of the Senate risk retention proposal, which exempts lenders packaging qualified mortgages into securities from a 5% risk retention provision.
- Preemption. The conferees adopted preemption language that would only allow the Office of the Controller of Currency to preempt state laws if those laws would "prevent or significantly" interfere with the business of banking.
- SOX Section 404(b) exemption. Conferees agreed to a provision that would permanently exempt companies with less than \$75 million in market capitalization from compliance with the Sarbanes-Oxley Act's Section 404(b) auditor attestation requirements.
- Bank Tax. The bill authorizes a special assessment on financial institutions with more than \$50 billion in assets and hedge funds with more than \$10 billion in assets.
- Interchange. The Durbin amendment, allowing for regulation of debit card interchange rates, contains exclusions for federal benefit programs and for certain prepaid cards.
- An autonomous consumer protection bureau will be established.

While debate over the merits of the 2000-page bill is sure to continue, the final vote of the conference committee means that the legislation can no longer be altered, short of unforeseen circumstances. The House is expected to begin considering the final legislation on Tuesday, June 29. If the bills pass each house, President Obama is expected to sign it into law by July 4. Aldrich Bonnefin & Moore, PLC is closely monitoring these developments. In the event this final bill is passed and signed into law, we will offer detailed analyses and full support to our clients, including Bankers' Compliance Group members.