Dodd-Frank Act of 2010
Principal Effects on Non-U.S. Companies

October 2010

Further information
If you would like further information on any aspect of the Dodd-Frank Act of 2010 please contact a person mentioned below or the person with whom you usually deal.

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Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "**Act**"), which was signed into law on 21 July 2010, is comprehensive in scope and will have a significant effect on the regulation and supervision of the U.S. financial system. While the Act will have greatest impact on U.S. companies, and particularly those in the financial services sector, it will also affect many non-U.S. companies whose securities are listed on a U.S. national securities exchange or who are otherwise required to file reports under the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), with operations, investors or assets located in the United States. This memorandum summarizes the provisions of the Act that are most likely to affect these companies. With several limited exceptions, it generally does not address portions of the Act that are directed specifically at U.S. or non-U.S. banking entities.

While a number the Act's provisions took effect upon enactment, in many cases the Act directs or authorizes the U.S. Securities and Exchange Commission (the "**SEC**"), other U.S. regulatory agencies and other entities (including U.S. national securities exchanges) to adopt rules to implement the provisions of the Act. Due to discretion afforded these bodies, consultation that in many cases is mandated prior to rulemaking and ambiguities in the language of certain sections of the Act, the final impact of the Act, including its application to non-U.S. companies, will not be fully clear until the rule making process has been completed.

The full text of the Act is available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf.* The following are summaries of the relevant provisions of the Act and may not be complete. In addition, this memorandum does not cover all provisions of the Act that may apply to non-U.S. companies. Should you have any questions regarding a particular provision of the Act or the Act's application to your company or business, please contact your Hogan Lovells relationship attorney.

Securities Law Enforcement

Whistleblower protections. The Act expands the SEC's program for making monetary awards to whistleblowers. Section 922 of the Act adds a new Section 21F to the Exchange Act, which mandates the SEC to compensate persons that provide information regarding violations of U.S. federal securities laws in enforcement actions where the SEC has levied at least $1 million in sanctions. The Act also extends to whistleblowers an express private right of action in U.S. courts against employers who retaliate against them. To be eligible, a person must provide original information relating to a violation of the securities laws to the SEC derived from the individual's own independent knowledge or analysis, not previously known to the SEC that is from another source, and not exclusively derived from external, publicly available information. Sections 929A and 922 of the Act expand existing whistleblower protections under the U.S. Sarbanes-Oxley Act of 2002 ("**Sarbanes-Oxley**") to employees of subsidiaries of publicly-traded entities that are subject to Sarbanes-Oxley and extend protections afforded by certain other provisions of Sarbanes-Oxley. While these provisions took effect on 22 July 2010 (one day after enactment), the SEC has until 17 April 2011 (270 days after enactment) to adopt rules to govern the process of administering awards. By final rule adopted on 15 September 2010, the SEC repealed its prior bounty program, which had been superseded by the provisions of the Act.

Extraterritorial reach. Section 929P(b) of the Act adds subsections to each of the U.S. Securities Act of 1933, as amended (the "**Securities Act**"), Exchange Act and Investment Advisers Act of 1940, as amended (the "**Investment Advisors Act**"), providing that U.S. federal district courts have *jurisdiction* over actions instituted by the SEC or the U.S. Department of Justice ("**DOJ**") alleging certain anti-fraud violations involving (a) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the transaction occurs outside the United States and involves only non-U.S. investors or (b) conduct occurring outside the United States that has a foreseeable substantial effect within the United States. In view of the fact that prior to the Act, U.S. district courts had jurisdiction over all actions brought by the SEC or DOJ alleging violations of the foregoing statutes, the implications of the Act's provisions are unclear. In particular, Section 929P(b) does not expressly alter the geographical scope of the anti-fraud provisions to which it applies.

Because Section 929P(b) applies to actions instituted by the SEC or the DOJ, it does not affect the recent Supreme Court decision *In Morrison v. National Australia Bank Ltd.,* No. 08-1191, 2010 WL 2518523, 2010 U.S. LEXIS 5257 (June 24, 2010), which rejected the notion that the principal anti-fraud provision of the Exchange Act provides a private right of action to a foreign purchaser of a foreign security on a foreign securities exchange (the so-called "foreign cubed" situation). Although it is possible that the SEC may take the view that the Act now permits it to bring actions that appeared to be outside the scope of the anti-fraud provisions under the Supreme Court's decision in *Morrison,* the appropriate interpretation of the effects of Section 929P(b) may be subject to future court review. These provisions took effect on 22 July 2010 (one day after enactment).

In addressing the *Morrison* decision, Section 929Y of the Act directs the SEC to solicit comment and subsequently conduct a study to determine the extent to which private rights of action under the anti-fraud provisions of the Exchange Act should be extended to cover (a) conduct within the United States that constitutes a significant step in furtherance of the violation (even if the transaction occurs outside the United States and involves only non-U.S. investors) and (b) conduct occurring outside the United States that has a foreseeable substantial effect within the United States. The SEC must submit its report no later than 21 January 2012 (18 months after the date of enactment).

Civil penalties in cease and desist proceedings. Section 929P(a) of the Act amends Section 8A of the Securities Act and Section 21B(a) of the Exchange Act to authorize the SEC to impose civil (including money) penalties in cease and desist proceedings conducted before an SEC administrative law judge if, among other things, the SEC finds that such penalties are in the public interest. Section 929P(a) effects similar provisions to the U.S. Investment Company Act of 1940, as amended (the "**Investment Company Act**"), and the Investment Advisers Act. These provisions eliminate the need for the SEC to obtain a court order imposing civil penalties following a cease and desist order against several categories of market participants. These provisions took effect on 22 July 2010 (one day after enactment).

Control person liability. Section 929P(c) of the Act amends Section 20(a) of the Exchange Act and provides that the SEC may impose joint and several liability on control persons in relation to injunctive proceedings and money penalties in civil actions brought under Section 21(d) of the Exchange Act. For these purposes, a person may be deemed to be a control person, i.e., to control another, if he or she possesses the power to direct the management and policies of the second person, whether through the ownership of voting securities, by contract, or otherwise: a control person is most likely to be a company's director, officer or senior management. There had been uncertainty as to whether control person liability applied in SEC enforcement actions. These provisions took effect on 22 July 2010 (one day after enactment).

Aiding and abetting liability. Sections 929M and 929O of the Act add new provisions to Section 15 of the Securities Act and amend Section 48 of the Investment Company Act and Section 20(e) of the Exchange Act to grant to the SEC express authority to bring enforcement actions (including in respect of criminal prosecutions and actions for monetary penalties and injunctive relief) in U.S. federal district courts against persons (individuals, issuers, legal and other advisers, among others) that knowingly *or recklessly* provide substantial assistance to another person in violation of the Securities Act or the Exchange Act. Analogous amendments are also made to the Investment Advisers Act under Section 929N of the Act. Prior to enactment, (a) courts were split as to whether knowledge was required in an aiding and abetting violation, (b) the SEC could not bring aiding and abetting claims under the Securities Act or the Investment Company Act and (c) the SEC was limited to seeking injunctive relief under the Advisers Act. The Act does not go so far as to create a *private* right of action against aiders and abettors, however. These provisions took effect on 22 July 2010 (one day after enactment).

Sharing of information. Section 929K of the Act amends Section 24 of the Exchange Act to permit the SEC to share information about a company to any U.S. federal agency, the U.S. Public Company Accounting Oversight Board ("**PCAOB**"), any self-regulatory organization, any non-U.S. securities or law enforcement authority or any state securities or law enforcement authority, in each case without waiving any privilege applicable to that information. The Act also provides that federal agencies, the PCAOB, self-regulatory organizations and state securities and law enforcement authorities do not waive privilege by sharing information with the SEC (unless the information was obtained from a self-regulatory organization or the PCAOB and is being used by the SEC in an action against such organization). These provisions took effect on 22 July 2010 (one day after enactment).

Protecting confidentiality. Section 929I of the Act amended Section 24 of the Exchange Act to provide that the SEC may not be compelled to disclose records and information provided to the SEC pursuant to the examinations provisions of the Exchange Act. Analogous amendments were made to the Investment Advisers Act and the Investment Company Act. These provisions took effect on 22 July 2010 (one day after enactment). The effect of these amendments was to exempt records and information provided to the SEC pursuant to the examinations provisions of the Exchange Act from the provisions of the U.S. Freedom of Information Act ("**FOIA**"). These provisions were repealed, however, by an act signed into law by President Obama on 5 October 2010. The SEC must now rely on the more limited Exemption 8 under FOIA, which excludes from the scope of FOIA information contained in or related to *reports* prepared by, on behalf of or for the use of the SEC in regulating any agency responsible for the regulation or supervision of financial institutions. The 5 October 2010 act makes clear that any entity for which the SEC is responsible for "regulating, supervising, or examining" will be deemed to be a financial institution for purpose of Exemption 8.

Corporate Governance Reforms

Broker discretionary voting. Section 957 of the Act amends Section 6(b) of the Exchange Act to require U.S. national securities exchanges to prohibit its broker members from voting securities held in "street name" (i.e., shares held, but not beneficially owned, by a broker) in relation to the election of directors and the approval of executive compensation, including golden parachute provisions. The Act also permits the SEC to enact rules prohibiting discretionary voting on other "significant matters". The Act does not prescribe a time by which exchanges must establish such policies. Before the Act was passed, the New York Stock Exchange LLC ("**NYSE**") had amended its Rule 452 to eliminate discretionary voting by brokers with respect to the election of directors. On 26 August 2010, the NYSE proposed rule changes that would prohibit its broker members from voting uninstructed shares on matters relating to executive compensation.

Compensation committee independence. Section 952 of the Act adds a new Section 10C to the Exchange Act that directs the SEC to instruct U.S. national securities exchanges to require compensation committee members of U.S.-listed companies to be "independent" of the issuer. These standards are substantially similar to the standards of Exchange Act Rule 10A-3 applicable to audit committees. In determining independence, the Act requires national securities exchanges to consider the source of a director's compensation and whether the director has an affiliate relationship with the issuer, with a subsidiary of the issuer or with an affiliate of a subsidiary of the issuer. The Act grants national securities exchanges authority to exempt companies from the requirements of Section 10C as they deem appropriate. These compensation committee independence requirements would not apply to any foreign private issuer (as defined in Rule 3b-4 under the Exchange Act) that elects to disclose to its shareholders annually the reasons that it does not have an independent compensation committee.

The Act also provides that companies' compensation committees be adequately funded and retain sole discretion to hire consultants and legal and other advisers and, prior to retaining such consultants or advisers, take into account factors that may affect such appointees' independence. The SEC is required to adopt rules no later than 16 July 2011 (360 days after enactment). It remains to be seen to what extent the SEC will apply the compensation committee requirements to foreign private issuers and/or whether it will adopt some version of accommodation to non-U.S. practices and procedures (such as it has done in respect of audit committee requirements).

Companies, including foreign private issuers, listed on a U.S national securities exchange, more than 50% of whose voting securities are controlled by a single person, group or other issuer are not subject to any of these compensation committee provisions.

Executive compensation clawback. Section 954 of the Act adds a new Section 10D to the Exchange Act that requires the SEC to instruct U.S. national securities exchanges to prohibit the listing of equity securities for issuers that do not adopt "clawback" policies to recoup incentive compensation payments to executive officers based on erroneous data where the issuer is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirement under U.S. securities laws. The Act expands upon the clawback provisions of Sarbanes-Oxley, which apply only to CEO and CFO compensation, only for the first 12 month period following a restatement (rather than three years) and only if the restatement is due to misconduct. The Act does not specify a time by which action must be taken to implement these expanded executive compensation clawback provisions. It remains to be seen whether the SEC determines such clawback policies should apply to foreign private issuers.

A number of other corporate governance provisions included in the Act, such as say-on-pay, proxy access, executive compensation disclosure, majority voting and CEO/Chairman structure, are not expressly extended to foreign private issuers. It is possible, although in the view of the authors of this memorandum unlikely, that the SEC will seek to extend directly such provisions to foreign private issuers.

Volker Rule

Section 619 of the Act (often referred to the Volcker Rule, as it reflects certain recommendations of former Federal Reserve Board Chairman, Paul A. Volcker) amends the U.S. Bank Holding Company Act of 1956 to prohibit certain entities from engaging in proprietary trading and restricts such entities from sponsoring or investing in hedge funds or private equity funds or maintaining other relationships with such funds. Section 619 applies principally to "**banking entities**", i.e.,

- insured depository institutions (effectively, U.S. banks or savings associations, the deposits of which are insured by the U.S. Federal Deposit Insurance Corporation);
- companies that control an insured depository institution (such as bank holding companies and industrial loan companies or industrial firms that control industrial loan companies);
- companies treated as bank holding companies under Section 8 of the U.S. International

Banking Act of 1978 (such as a non-U.S. bank with a branch or agency in the United States or a company that controls such a bank); and

- affiliates and subsidiaries of any such companies), including former securities firms that converted to bank holding companies and, subsequently, to financial holding companies.

The restrictions of Section 619 relating to proprietary trading and fund investments described below do not apply to "**Supervised NBFCs**", i.e., nonbank financial companies ("**NBFC**") "predominately engaged in financial activities" that are supervised by the Board of Governors of the U.S. Federal Reserve System (the "**Board**"). The Board has not yet adopted the rules that will be used in determining which NBFCs will be supervised. The Act provides that Supervised NBFCs will be subject to such additional capital requirements and quantitative limits as the SEC, the U.S. Commodities and Futures Trading Commission (the "**CFTC**") and U.S. federal banking regulators will promulgate pursuant to authority granted by the Act.

Proprietary Trading. Section 619 prohibits a banking entity from engaging in proprietary trading, with limited exceptions. Proprietary trading is defined as purchasing or selling, or otherwise acquiring or disposing of any security, derivative, commodity future or any option on any security, derivative or commodity future for its own trading account for the purpose of selling investments in the near term or with the intent to sell to profit from near-term price fluctuations.

The Act permits the following proprietary trading activities (subject to any restrictions or limitations that federal banking regulators, the SEC or the CFTC may impose by rulemaking pursuant to the Act):

- purchasing, selling or otherwise acquiring or disposing of securities or instruments in connection with underwriting or as part of market-making activities to the extent that they are designed not to exceed the reasonably expected near-term demands of clients, customers and counterparties;

- the sale or securitization of loans if conducted in a manner otherwise permitted by law;

- purchasing, selling or otherwise acquiring or disposing of securities or other instruments on behalf of customers;

- investments in obligations of the United States or any agency of the United States, a state or a municipality, certain instruments issued by Ginnie Mae, Fannie Mae, Freddie Mac or a Farm Credit System institution;

- hedging activities in connection with "positions, contracts or other holdings of the banking entity that are designed to reduce the specific risks to a banking entity in connection with and related to such positions, contracts or other holdings";

- certain investments in small business investment companies;

- under certain conditions, the purchase, sale, acquisition or disposition of securities or other instrument by an insurance company or its affiliate for its general account; and

- other activities as the SEC or the CFTC may determine.

Section 619 expressly permits proprietary trading that occurs "solely outside of the United States" undertaken by a non-U.S. banking entity that is not directly or indirectly controlled by a banking entity organized under the laws of the United States or of one of the states of the United States.

Sponsorship of, and investment in, private equity and hedge funds. Section 619 prohibits a banking entity from acquiring or retaining “any equity, partnership or other interest in” or sponsoring a hedge or private equity fund. The Act defines sponsorship of a fund to include any of the following activities: (i) acting as a general partner, managing member or trustee of a fund, (ii) selecting or controlling (or having employees, officers, directors or agents who constitute) a majority of the directors, trustees or management of the fund or (iii) sharing the same name or a variation of the same name with the fund for corporate, marketing, promotional or other purposes. Hedge funds and private equity funds include funds that would be an investment company under the Investment Company Act, but for the exemptions under Sections 3(c)(1) (funds with fewer than 100 beneficial owners) and 3(c)(7) (funds whose only investors are "qualified purchasers") of that act, as well as any other funds as the appropriate federal banking regulators, the SEC or the CFTC shall designate by rulemaking.

The Act expressly permits sponsorship and investment in private equity and hedge funds in the following circumstances:

- a banking entity may invest in a private equity fund or hedge fund that it has sponsored, as long as (i) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary or investment advisory services and only to persons that are customers of such services of the banking entity, (ii) the banking entity acquires or retains no more than a *de minimis* investment or invests only for the purpose of providing seed capital, (iii) no later than one year after the fund has been established the investment must be reduced to 3% or less of the fund's total ownership interests, (iv) the investment does not exceed 3% of the banking entity's Tier 1 capital, (v) the banking entity complies with certain affiliate transaction restrictions set forth under Sections 23A and 23B of the U.S. Federal Reserve Act, (vi) the banking entity does not, directly or indirectly, guarantee, assume or otherwise insure the obligations or performance of the fund, (vii) the banking entity does not share the same name or variation of the same name with the fund for corporate, marketing, promotional or other purposes, (viii) no director or employee of the banking entity takes or retains an ownership interest in the fund (other than persons that are directly engaged in providing investment advisory or other services to the fund) and (ix) the banking entity discloses in writing to actual and prospective investors that losses of the fund will be borne solely by investors in the fund and not by the banking entity;

- a non-U.S. banking entity that is not directly or indirectly controlled by a banking entity organized under the laws of the United States or of one of the states of the United States may invest in a private equity or hedge fund "solely outside of the United States", provided that no ownership interest in such fund is offered for sale or sold to a resident of the United States;

- a banking entity may invest in one or more small business investment companies; and

- as federal banking regulators, the SEC or the CFTC may by rulemaking determine.

The U.S. Financial Stability Oversight Council ("**FSOC**") is required, within six months of enactment of the Act, to complete a study making recommendations on the implementation of Section 619. Federal banking regulators, the SEC and the CFTC must consider the findings of the FOSC and adopt implementing rules within nine months of completion of the FOSC's study. Section 619 will become effective on the earlier of (i) 12 months after the issuance by federal banking regulators, the SEC and the CFTC of such rules and (ii) two years after the enactment Section 619. (The latest possible time that Section 619 will take effect is 21 July 2012.) From this time, banking entities will be afforded a two-year transition period to bring their activities and investments into compliance with Section 619. The Board is empowered to grant up to three one-year extensions to this two-year transition period. In addition, the Board is permitted to grant an extended exemption of five years for certain “illiquid funds”, which at 1 May 2010 were invested principally in, or contractually committed to principally invest in, illiquid assets.

Regulation D

The Act changes a number of provisions applicable to private offerings of securities conducted pursuant to Rule 506 of Regulation D ("**Regulation D**") under the Securities Act.

Definition of "accredited investor". Section 413 of the Act, which took effect on enactment, modifies the $1 million net worth standard in the definition of "accredited investor" of Regulation D to provide that the value of a natural person's primary residence is excluded when calculating an investor's net worth. Although the $1 million net worth standard is to stay in place for at least four years, the SEC is permitted to review other aspects of the accredited investor definition at any time. The SEC is directed to review the definition not less frequently then every four years beginning in 2014 and to modify the definition as it considers appropriate for “the protection of investors, in the public interest, and in light of the economy”.

In July 2010, pending adoption of amendments to its rules, the staff of the SEC issued interpretive guidance that clarifies that for the purpose of determining whether an investor satisfies the net worth standard in the definition of "accredited investor", any indebtedness secured by an investor's primary residence up to its fair market value may be excluded. Indebtedness secured by the residence in excess of the value of the residence will be treated as a liability and deducted from the investor's net worth.

Bad actor provisions. Section 926 of the Act requires the SEC to adopt rules, similar to those in Rule 262 of Regulation A under the Securities Act (an exemption for small public offerings), that disqualify offerings and sales of securities in private placement transactions under Rule 506 of Regulation D by a person that (i) is subject to a final order of a state securities regulator or federal or state banking authority that either bars the person from associating with, or engaging in, the relevant regulated business or entity, or is based on any law or regulation that prohibits fraudulent, manipulative or deceptive conduct or (ii) has been convicted of a felony or misdemeanor in connection with the purchase or sale of a security involving false filings with the SEC. The SEC must adopt rules by 21 July 2011 (one year of enactment of the Act).

Beneficial Ownership Reporting Provisions

Time to file report. Section 929R of the Act amends Section 13 of the Exchange Act to authorize the SEC to shorten (to a period that the SEC determines is appropriate) the 10 calendar day period in which a beneficial owner of more than 5% of voting equity securities of an issuer registered under Section 12 of the Exchange Act must initially report its ownership to the SEC on Schedule 13D. The Act also eliminates the obligation for issuers to send reports on Schedule 13D to the U.S. national securities exchange on which the relevant securities are listed.

Reporting of securities underlying swaps. Prior to enactment of the Act, a person that entered into a securities-based swap arrangement was in many cases not deemed to have a reportable beneficial ownership interest under Section 13 of the Exchange Act in respect of securities underlying the swap. Section 766 of the Act alters this by expressly adding to each of Section 13(d)(1) and Section 13(g)(1) of the Exchange Act a reference to beneficial ownership resulting from the purchase or sale of a security-based swap. Whether investors will need to report beneficial ownership of securities underlying a security-based swap will be determined by the SEC, which has been instructed to undertake rulemaking in consultation with “prudential regulators” and the U.S. Secretary of the Treasury, having regard to whether "the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and… is necessary to achieve the purposes of [the Act]”. The SEC must adopt final rules no later than 16 July 2011 (360 days after enactment).

Credit Rating Agency Reforms

Rescission of Rule 463(g). Rule 939G of the Act nullifies Rule 463(g) under the Securities Act, which had exempted nationally registered statistical rating organizations ("**NRSROs**") from being treated as "experts" for purposes of liability under Section 11 of the Securities Act for, and had excluded credit rating[s from the written consent requirements of Section 7 of the Securities Act in respect of, ratings-related disclosure made in registration statements filed with the SEC. The rescission of Rule 463(g) subjects NRSROs to heightened liability if they consent to the inclusion of a credit rating in a registration statement filed with the SEC in connection with a securities offering. Companies that have historically included credit ratings in their registration statements (such as issuers of debt securities or preferred shares) will either need to obtain the consent of the relevant NRSRO (which may not be possible, as NRSROs to date have generally been unwilling to provide such consents) or remove the credit rating information. The repeal of Rule 436(g) took effect on 22 July 2010 (one day after enactment). Section 939 of the Act removes references to credit ratings from the Exchange Act and the Investment Company Act, and directs the SEC to develop alternate standards of creditworthiness. These amendments will become effective two years after enactment.

The SEC has issued guidance that clarifies that "issuer disclosure-related ratings information” (which includes information that relates only to changes to a credit rating, the liquidity of the registrant, the cost of funds for the registrant or the terms of agreements that refer to credit ratings) may continue to be included in issuers' filings without the NRSRO's consent and registration statements that became effective prior to 22 July 2010 can continue to be used until the time the issuer files its next post-effective amendment, provided in each case that there are no subsequently incorporated periodic or current reports. The SEC has also provided six-month temporary no-action relief to permit asset-backed issuers to omit credit rating disclosure required by Regulation AB under the Securities Act from a prospectus that is part of a registration statement relating to an offering of asset-backed securities.

Rule 436(g) applies in the context of public offerings registered with the SEC and not to private placement transactions, such as those conducted pursuant to Rule 144A under the Securities Act. A significant number of private placement transactions are, however, conducted on the basis of disclosure documentation that approximates what would be prepared in a U.S. registered offering. In particular, it has been market practice with respect to certain types of non-registered security offerings to disclose actual or expected credit ratings in offering documents with the consent of the relevant NRSRO. Since the rescission of Rule 463(g), it is unclear whether NRSROs will take steps to prevent the inclusion of their ratings in private placement offering documents (for instance, by withholding their rating letter).

Sarbanes-Oxley Internal Controls Exemption

Section 989G of the Act exempts companies that are subject to the reporting obligations of the Exchange Act, but are neither "accelerated filers" nor "large accelerated filers" (generally companies with a worldwide market capitalization of less then $75 million), from the current requirement to provide an auditor attestation report on internal controls pursuant to Section 404(b) of Sarbanes-Oxley. The SEC adopted final rules reflecting the exemptions on 15 September 2010. Section 989G also directs the SEC to study how to reduce the burden of complying with such requirements for companies whose market capitalization is between $75 million and $250 million. These provisions took effect on 22 July 2010 (one day after enactment).

Foreign Auditors

Work papers. When Sarbanes-Oxley was adopted in 2002, it subjected non-U.S. public accounting firms to its requirements if the firms performed certain services in connection with an audit of a company registered under (or that is otherwise required to file reports pursuant to) the Exchange Act. Section 929J of the Act expands Section 106 of Sarbanes-Oxley to provide that non-U.S. public accounting firms must provide their work papers to the SEC or the PCAOB on request if the firm (i) performs materials services upon which a registered public accounting firm relies in the conduct of an audit, (ii) issues an audit report, (iii) performs audit work or (iv) conducts interim reviews. Each non-U.S. public accounting firm that performs work for a U.S. domestic registered public accounting firm must designate the U.S. firm as its agent upon which the SEC or PCAOB can service requests under section 106 of Sarbanes-Oxley. These provisions took effect on 22 July 2010 (one day after enactment).

Sharing information with non-U.S. authorities. Section 981 of the Act amends Section 105 of Sarbanes-Oxley to permit the PCAOB, at its discretion, to provide information relating to a non-U.S. public accounting firm to a non-U.S. auditor oversight authority without the loss of its confidential or privileged status. These provisions took effect on 22 July 2010 (one day after enactment).

Additional Disclosures for Issuers Regarding Conflict Minerals and Mining

Conflict minerals. Section 1502 of the Act directs the SEC to promulgate rules requiring annual disclosure by companies that are required to file reports under the Exchange Act as to whether certain conflict minerals (gold, tin ore (cassiterite), tantalum ore (“coltan” or columbite-tantalite) and tungsten ore (wolframite) and other minerals so designated by the U.S. Secretary of State) are necessary for the functionality or production of products they manufacture, and whether the minerals originated in the Democratic Republic of the Congo or an adjoining country (Angola, Burundi, the Central African Republic, Rwanda, Sudan, Tanzania, Uganda and Zambia). Companies within the scope of these provisions may be required to provide certified reports regarding the measures they have undertaken to exercise due diligence on the source and chain of custody of such minerals, and the report would have to include an independent private sector audit of such measures. Such rules must be adopted by the SEC by 17 April 2011 (270 days after enactment).

Payments made by companies engaged in resource extraction. Section 1504 of the Act directs the SEC to adopt rules requiring companies engaged in resource extraction (companies that engage in the commercial development of oil, natural gas or minerals) that are required to file reports under the Exchange Act to disclose to the SEC in their annual reports information relating to any payment made to non-U.S. governments (including non-U.S. state-owned companies) or the U.S. federal government for purposes of commercial development of such resources. The SEC must adopt rules no later than 17 April 2011 (270 days after enactment); these rules will apply to annual reports for fiscal years ending after the first anniversary of the rules’ adoption.

Mine safety. Section 1503 of the Act mandates that companies that are required to file reports under the Exchange Act and operate, or have a subsidiary that operates, a coal or other mine disclose mine safety information (including the number of violations, citations, the dollar value of proposed assessments and total fatalities) in each annual report filed with the SEC. This section took effect on 20 August 2011 (30 days after the enactment of the Act).

Private Fund Investment Advisers

Sections 402 and 403 of the Act amend Sections 202(a) and 203(b)(3) of the Investment Advisers Act to eliminate the "15 or fewer" client exemption that is currently relied upon by many advisers to conduct business in the United States without registering with the SEC. Advisers to hedge funds and private equity funds will generally be required to register with the SEC if they have $150 million of assets under management.

The Act provides a new exemption from the registration requirements of the Investment Advisers Act for "foreign private advisers". To fall within the exemption, the adviser must (i) have no place of business in the United States, (ii) have, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser, (iii) have assets under management attributable to U.S.-based clients and investors in private funds of less than $25 million (or such higher amount as the SEC may deem appropriate) and (iv) not hold itself out to the public in the United States as an investment adviser. The exemption for foreign private advisers is narrower than the exemption under current Section 203(b)(3) of the Investment Advisers Act because it mandates that advisers "look through" the private fund and include U.S. fund investors as well as the fund itself in determining whether the adviser exceeds the limit of 15 clients and investors in the United States. The Act also either exempts or empowers the SEC to adopt exemptions from, the registration requirements under the Investment Advisers Act for: (i) venture capital advisers (Section 407), (ii) small business investment company advisers (Section 403), (iii) family offices (Section 409) and (iv) investment advisers of private funds with less than $150 million of assets under management in the United States (Section 408). On 12 October 2010, the SEC proposed rules that would define the scope of "family offices" under the Investment Advisers Act and exclude such offices from the purview of that act.

Section 419 provides that these provisions generally will become effective on 21 July 2011 (one year after enactment). There is no mandated period by which the SEC must conclude its rulemaking activities in respect of the provisions.

Derivatives

Prior to enactment of the Act, swap transactions were largely unregulated in the United States and took the form of private, bilateral agreements between swap counterparties. Title VII of the Act contains detailed provisions that seek to address perceived potential systemic risks presented by the lack of transparency and the processes used by counterparties to offset their exposure prior to enactment. The Act does this by, among other things, requiring the centralized clearing of all swaps that the SEC and the CFTC deem to be suitable for a clearing process. If the swap is of the sort that must be cleared centrally, it must be executed on a regulated exchange or a swap execution facility (subject to certain exceptions for "end-users"). The Act also requires that swap dealers and major swap participants be registered with the SEC or the CFTC. The mandatory registration requirements will have significant implications, especially for swap market participants that are not currently registered with the CFTC or the SEC. These newly-registered participants will be subject to extensive regulation, including with respect to information disclosure, business conduct, duties to counterparties, recordkeeping and capital and margin requirements. Buy-side institutions, such as hedge funds and other collective investment vehicles, may now be required to register as major swap participants as a result of their activity in the swap market.

The new derivatives rules will apply only to swap activities in the United States, but may be applicable to non-U.S. activities that have a direct and significant connection with activities in, or that have an effect on, U.S. commerce or contravene rules designed to prevent the evasion of U.S. derivatives laws.

On 13 October 2010, the SEC adopted interim rules that require certain swap dealers and other parties to report any security-based swaps entered into prior to adoption of the Act to a registered security-based swap data repository or to the SEC. The full impact of these provisions of the Act, however, will not be known until the SEC and the CFTC promulgate their proposed rules, and until final rules are adopted. The Act empowers the SEC and the CFTC to consult with non-U.S. regulatory authorities to establish consistent international standards for the regulation of security-based swaps and enter into information-sharing arrangements with such authorities. The derivatives provisions of the Act generally take effect on, and the SEC and CFTC generally must conclude rulemaking by, 16 July 2011 (360 days after enactment).

Section 738 of the Act empowers CFTC to adopt regulations requiring non-U.S. boards of trade having direct access to U.S. customers to register with, and provide certain information to, the CFTC and adopt certain minimum standards with respect to, among other things, publicly-provided daily trading information, position limits and requirements for market participants to limit, reduce or liquidate positions necessary to address price manipulation, excessive speculation, price distortion or disruption of the delivery or cash settlement process. These requirements do not apply to non-U.S. boards of trade previously granted direct access to U.S. customers by the CFTC until 17 January 2011 (180 days after the effective date of the Act).

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