The Dodd-Frank Act:
From a U.S. Economy Perspective

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Impacts of Dodd-Frank on Financial Institutions

- Increases the Degree of Regulation and Related Costs
- Subjects Institutions to Double or Triple Regulators
- Prohibits Certain Profitable, Not Particularly Risky, Businesses
  - (Volcker Rule)
- Makes Other Business Less Profitable, More Expensive
  - (Derivatives)
- Increases Capital Requirements
- May Increase Risk (Risk Retention)
Affected Institutions

- U.S. Banking Organizations
- Non-U.S. Financial Organizations with US Bank Branch or Agency (Deemed to be BHCs)
- Larger US Broker-Dealer Organization (now parts of banks; Hotel California provisions)
- Private Funds (to a lesser extent)
- Public Funds (double regulation)
- Systemically Important Organizations
- Major Swap Participants
- End-Users of Derivatives
Creates Regulatory Uncertainty as to Transactions Which Regulator Has Authority?

- Are Trades Subject to CFTC or SEC? or Both?
- If SEC, is it a Security-Based Swap or Security?
- What is Regulated as Insurance?
- What is the realm of state contract law?
  - (all contracts with contingencies are "swaps")
Creates Regulatory Uncertainty as to Entities Who Will be Regulated?

- Major Swap Participant
- Systemically Significant Nonbank Financial Institution
- Entities Subject to Orderly Liquidation Authority
Creates Double Regulation

• Registered Investment Company That Uses Swaps will be regulated both by the SEC and the CFTC
• Any Sell side Entity Engaged in Derivatives likely to be both SEC and CFTC Regulated
• To say nothing of Bank Regulation
• Private Fund Advisers Also Likely to be SEC and CFTC Regulated
Added Enforcement Risks

- CFPB will have an enforcement mandate
- SEC trying to regain credibility post-Madoff, Goldman, Stanford
- CFTC trying to prove value
- FERC trying to fend off CFTC incursion
- Banking regulators trying to prove consumer friendly
- Whistleblowers trying to make money?
Capital Requirements and Risk Retention

• Must raise more capital under Basel III, even if slowly
• Does central clearing and limits on derivatives reduce or increase risk to the system?
• Skin in the game
Expense for Funds and Advisers: Big and Small

- Big Advisers: SEC Registration
- Big Funds: Potential Regulation as MSP, SSNFC
- Small Advisers: Multi-State Registration-Regulation
- Public Funds: Dual SEC and CFTC Regulation
- Multi-Country Regulation?
International Tensions?

• Foreign Banks Subject to Volcker
  – If have US Branch

• Foreign Banks Must Create US Swaps Entity
  – Inefficient and Costly

• Foreign Advisers Must Register with the SEC
  – Even if De Minimis US Business

• US Customers Precluded from Investing in Foreign Banks' Funds (Volcker Rule)

• Foreign Futures Exchanges Must Follow US Positions Limits (No Empirical Support for Value)

• Will There be Retaliation? Protectionism?
Quality Issues

- Typos
- Undefined Terms
- Overbroad Terms
- Impracticality
  - (Credit Rating Agency)
- Impossibility
  - (Hedge Fund Capital Regulation?)
- Did Not Address Actual Problems?
How Did We Get Something So Bad? (Speaking as a Technocrat)

• Role of Congress
  – Avoiding Blame
  – Claiming Credit
  – Lobbying Dollars to Come

• Role of the Press
  – Story with a Narrative
  – Story with Bad Guys
  – Pretend Expertise

• Role of the Academics
  – Belief in the Big Idea
  – Fame and Power
  – Limited Practical Experience

• Role of the Regulators
  – Beleaguered (SEC, Fed)
  – Empowered (CFTC)
How Did We Get Something So Bad?

(Continued)

• Role of the Financial Institutions
  – Demonized
  – Cowed
  – Ignored
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