

PUBLICATION

Dodd-Frank Wall Street Reform And Consumer Protection Act, Part 6

August 3, 2010

Increased Liability and Enforcement

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). The Act contains several provisions which increase the liability for certain securities violations. These provisions are designed to (i) increase the scope of liability for certain bad acts and (ii) strengthen the enforcement capabilities of the SEC. A summary of the key liability and enforcement provisions of the Act is below.

Aiding and Abetting Liability. The Act amends Section 15 of the Securities Act of 1933 relating to "Liability of Controlling Persons" by creating subsection (b), which provides, for purposes of actions brought by the SEC under Section 20(b) or (d), any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of the Securities Act, or of any rule or regulation issued under the Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided. In addition, the Act amends Section 20(e) of the Securities Exchange Act of 1934 relating to "Liability of Controlling Persons and Persons who Aid and Abet Violations" by changing the standard for liability from "knowingly" to "knowingly or recklessly." Similar language was added to Section 48 of the Investment Company Act of 1940 and to Section 209 of the Investment Advisers Act of 1940.

Civil Penalties Allowed. The Act authorizes the SEC to impose civil penalties in cease and desist proceedings under the Securities Act, the Exchange Act, the Investment Company Act and the Investment Advisers Act.

Extraterritorial Jurisdiction of the Securities Act. The Act also amends Section 22 of the Securities Act to provide that in actions brought by SEC or the United States under Section 17(a) of the Securities Act (relating to fraudulent interstate transactions), U.S. courts have jurisdiction over such actions that involve (1) 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 foreign investors, or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States. The Exchange Act and the Investment Advisers Act are amended accordingly. The Act further authorizes a study to determine whether jurisdiction for private rights of action under the antifraud provisions of the Exchange Act should be extended extraterritorially as well.

Short Sale Regulation. The Act amends Section 9 of the Exchange Act to add a new provision establishing liability for manipulative short sales of any security. This new provision makes it unlawful for any person, directly or indirectly, by use of mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Act also amends Section 15 of the Exchange Act and requires that brokers or dealers provide notice to their customers stating that customers can elect not to allow their fully paid securities to be used in connection with short sales, and provides that if the broker or dealer uses the customer's securities in connection with short sales, the broker or dealer must provide notice to the customer that the broker or dealer might receive compensation in connection with the lending of the customer's securities.

Loans of Securities. The Act amends Section 10 of the Exchange Act to add subsection (c), making it unlawful to effect, accept or facilitate a transaction involving the loan or borrowing of securities in contravention of SEC rules. This section also provides two years for the SEC to establish rules designed to increase the transparency of information available to brokers, dealers and investors with respect to the loan or borrowing of securities.

If you have questions about this or any other securities-related issues, please contact one of the attorneys listed below or your Baker Donelson attorney.

Baker Donelson is pleased to present a series of Alerts related to the Dodd-Frank Wall Street Reform and Consumer Protection Act. To read the complete series, [click here](#).