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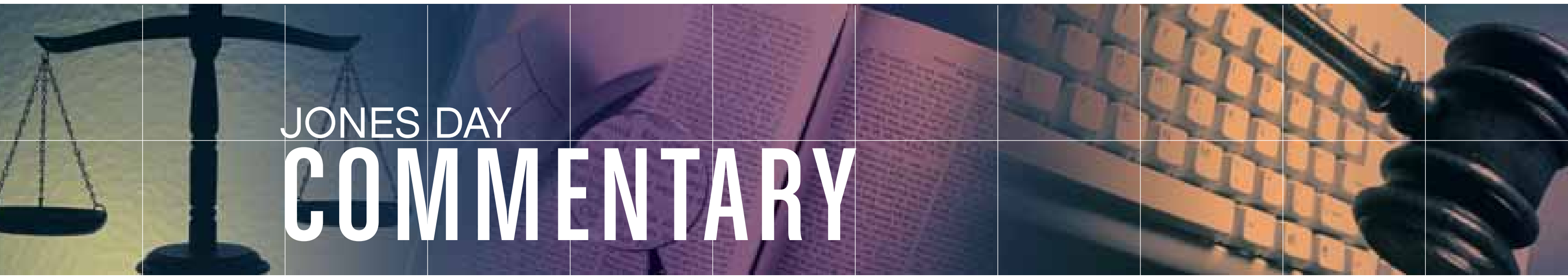

FINANCIAL REGULATORY REFORM: ADMINISTRATION WHITE PAPER ADVOCATES INCREASED SUPERVISION AND REGULATION OF FINANCIAL FIRMS, MARKETS, AND PRODUCTS

On June 17, 2009, the Treasury Department released an 88-page white paper, "Financial Regulatory Reform—A New Foundation: Rebuilding Financial Supervision and Regulation," detailing the Obama administration's recommendations for overhauling the nation's financial regulatory system in the wake of the global financial crisis. The plan urges Congress and regulators to adopt sweeping changes to financial sector regulation and oversight, dramatically increasing the federal government's role in nearly every aspect of the financial markets. The administration proposes both new substantive authorities and practices in government regulation and supervision, and a restructuring of the regulatory system, including the creation of new federal agencies, offices and councils. The following summarizes these proposals.

EXPAND FEDERAL POWER TO REGULATE NONBANK FINANCIAL FIRMS THAT POSE SYSTEMIC RISK

- Create a new Financial Services Oversight Council chaired by Treasury with the "authority to gather information from any financial firm" and the responsibility for "referring emerging risks to the attention of regulators with the authority to respond."
- Authorize the Federal Reserve to identify, supervise, and regulate "any financial firm whose combination of size, leverage, and interconnectedness could pose a threat to financial stability if it failed" (referred to as "Tier 1 Financial Holding Companies").

- Impose stricter capital, liquidity, and risk management standards on Tier 1 Financial Holding Companies than those applicable to other financial firms.
- Charge the Federal Reserve with overseeing systemically important payment, clearing, and settlement systems.
- Eliminate the SEC's Supervised Investment Bank Holding Company consolidated supervision program, and subject investment banking firms that seek consolidated supervision to regulation by the Federal Reserve.
- Authorize Treasury to employ a new special resolution regime—modeled after the FDIC's regime for insured depository institutions—to administer the resolution of failing bank holding companies and Tier 1 Financial Holding Companies.
- Amend Section 13(3) of the Federal Reserve Act to require Treasury approval for any extensions of credit by the Federal Reserve in "unusual and exigent circumstances."

REORGANIZE BANK REGULATORS AND INCREASE BANK REGULATION

- Eliminate the federal thrift charter and merge the Office of Thrift Supervision and the Office of the Comptroller of the Currency into a new agency, the National Bank Supervisor, to supervise and regulate all federally chartered depository institutions and all federal branches and agencies of foreign banks.
- Close "loopholes … for thrift holding companies, industrial loan companies, credit card banks, trust companies, and grandfathered 'nonbank' banks" and subject them to supervision and regulation by the Federal Reserve.
- Conduct a "fundamental reassessment" of current regulatory capital requirements for banks and bank holding companies, with a report due by December 31, 2009.
- Require Treasury and HUD to develop recommendations on the future of government-sponsored entities and the Federal Home Loan Bank system.

ENLARGE SUPERVISION AND REGULATION OF FINANCIAL MARKETS AND PRODUCTS

- Require banking agencies to promulgate regulations that require originators or sponsors of securitizations to retain a financial interest in the credit risk of the securitized exposure.
- Grant the SEC the authority to require "robust reporting" by asset-backed securities issuers.
- Regulate all OTC derivatives, including credit default swaps, by amending the Commodities Exchange Act and securities laws to require clearing through regulated central clearing agencies, dealer supervision and regulation, and CFTC and SEC recordkeeping and reporting.
- Require hedge funds, private equity funds, venture capital funds, and other private pools of capital to register with the SEC under the Investment Advisers Act.
- Give the SEC expanded authority to "promote transparency in investor disclosures" and to "establish a fiduciary duty for broker-dealers offering investment advice."
- Give the SEC authority to strengthen the regulation of credit rating agencies, and regulators to reduce their reliance on credit ratings in regulatory and supervisory practices.
- Give the SEC more authority to ensure "fair treatment" of investors and to hold companies accountable to their clients and investors.
- Control executive compensation through Financial Services Oversight Council review, increasing SEC disclosure and transparency requirements, allowing shareholders to have a nonbinding vote on compensation, and giving the SEC the power to require more independent compensation committees.
- Expand whistleblower protections and sanctions available in SEC enforcement actions.
- Request the SEC and CFTC to recommend ways to "harmonize" futures and securities regulation.
- Strengthen the regulatory framework for money market mutual funds to make them less susceptible to runs; President's Working Group on Financial Markets to prepare a report on whether more fundamental changes are necessary to money market mutual fund regulation.
- Create a new Office of National Insurance within Treasury to "coordinate policy in the insurance sector" and support insurance regulation modernization proposals.

INCREASE CONSUMER PROTECTION REGULATION

- Create a new independent federal agency, the Consumer Financial Protection Agency, with sole rulemaking authority for consumer financial protection statutes, and with supervisory, examination, and enforcement authority over "all entities subject to its regulations," including providers of credit, savings, payment, "and other consumer financial products and services."
- Disallow preemption of state consumer and investor protection laws.
- Establish a Financial Consumer Coordinating Council under the leadership of the Financial Services Oversight Council.

RAISE INTERNATIONAL REGULATORY STANDARDS

- Encourage the international community to strengthen capital standards for financial firms.
- Improve oversight of global financial markets.
- Coordinate supervision of internationally active financial firms.
- Enhance global crisis management tools.

Jones Day has deployed our "One Firm Worldwide" approach to help clients understand, react to, and participate in fast-moving legal and regulatory developments in the financial markets. Because financial regulatory reform touches upon many different aspects of our financial system, we have assembled a multidisciplinary Financial Regulatory Response team with decades of experience to address the full spectrum of client challenges arising from the global financial crisis. We will provide additional updates and commentary as new financial regulatory reform developments emerge.

LAWYER CONTACTS

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