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WHITE PAPER

June 2018

President Trump Signs First Major Financial Services *De*regulation Law in a Decade

President Trump has signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act ("Act"), with the principal goals of promoting U.S. economic growth, recalibrating burdensome rules, and strengthening consumer protections.

The Act amends an array of banking, capital formation and consumer protection standards. While the Act revises several key provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the basic structure of the Dodd-Frank Act remains in place.

The Act relieves regulatory burden by raising the primary asset threshold for application of enhanced prudential standards from $50 billion to $250 billion in total consolidated assets so that fewer companies are subject to these standards.

This Jones Day *White Paper* explains the most significant provisions of the Act and provides an overview of its potential import for the financial services industry.

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EXECUTIVE SUMMARY

On May 24, 2018, President Trump signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act ("Act")[1] recalibrating several significant banking, consumer finance, and securities measures enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] The Act passed both chambers of the U.S. Congress on bipartisan votes.[3]

The Act leaves intact the basic structure of the Dodd-Frank Act while providing tailored regulatory relief from some of the most burdensome provisions, with the primary goals of promoting U.S. economic growth and expanding consumer access to credit. The targeted scope of the Act is the result of an agreement in principle under which the Senate reportedly would consider a broader package of regulatory relief legislation offered by the House of Representatives at a later date. Accordingly, it is possible that additional regulatory relief legislation will be considered going forward.

A centerpiece of the Act is raising the asset thresholds at which U.S. bank holding companies ("BHCs") are subject to the enhanced prudential standards set forth in the Dodd-Frank Act and rules adopted by the Board of Governors of the Federal Reserve System ("Federal Reserve Board").[4] The Act raises the threshold for application of enhanced prudential standards to BHCs from $50 billion to $250 billion in total consolidated assets while granting the Federal Reserve Board authority to require enhanced prudential standards for any BHCs with total consolidated assets between $100 billion to $250 billion to prevent or mitigate risks to U.S. financial stability or to promote safety and soundness.

Foreign banking organizations ("FBOs") with more than $100 billion in global total consolidated assets remain subject to all applicable enhanced prudential standards, including the requirement for an intermediate holding company. FBOs with less than $100 billion in global total consolidated assets may no longer be subject to several U.S. enhanced prudential standards such as those for filing resolution plans, conducting liquidity stress testing, and adhering to a single counterparty credit limit.

The Act provides regional banks and community banks with a wide array of exemptions from many requirements of the Dodd-Frank Act, amending capital calculations, qualified residential mortgage designations, application of the Volcker Rule, and examination schedules, among other relief measures.

The Act also contains an array of banking, capital formation, and consumer protection provisions that apply to financial institutions regardless of asset size. Additionally, the Act subjects consumer reporting agencies to new requirements regarding fraud alerts.

Most of the Act became effective upon enactment, but some provisions will require agency action to implement fully and others will take effect according to their terms at later dates.

This *White Paper* provides an overview of the principal provisions of each title of the Act and concludes with observations on the potential impacts the Act may have on the financial services industry.

OVERVIEW OF PRINCIPAL PROVISIONS OF THE ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT

Title I—Improving Consumer Access to Mortgage Credit

In an effort to expand consumer access to mortgage credit, Title I of the Act amends a series of mortgage-related provisions of the Dodd-Frank Act. Some of the mortgage-related amendments in the Act apply to any mortgage lender. For example, the Act amends the Truth in Lending Act to eliminate the three-business-day waiting period between the date of mortgage disclosures and the date of mortgage closing in circumstances where a creditor extends to a borrower a second offer of credit that would lower the annual percentage rate of the mortgage. (Act, § 109).

Most of the mortgage-related amendments apply in ways that predominantly impact mortgages that are originated and retained by community banks and credit unions. A few representative provisions are described below.

Qualified Mortgages. The Act designates residential mortgages that are originated and held in portfolio by banks and credit unions with less than $10 billion in assets as "qualified mortgages" eligible for safe harbor protection against lawsuits. Residential mortgage loans with negative amortization or interest-only features, loans that do not comply with certain

prepayment penalty limitations, and loans with points and fees greater than 3 percent of the loan are not qualified mortgages. (Act, § 101).

Rural Appraisals. The Act exempts federally related mortgages under $400,000 from real estate appraisal requirements if the property is located in a rural area and the insured depository institutions and insured credit unions has contacted at least three appraisers who were unable to complete an appraisal in a reasonable time frame. Loans that are originated in reliance on this exemption may be sold or transferred only under limited conditions such as failure or sale to another regulated portfolio lender. (Act, § 103).

Home Mortgage Disclosure Act ("HMDA") Disclosures. The Act rolls back HMDA reporting requirements for insured depository institutions and insured credit unions that originate fewer than 500 closed-end mortgage loans or fewer than 500 open-end lines of credit in each of the two prior years, provided the originator does not have a "needs to improve" rating under the Community Reinvestment Act for the prior two most recent examinations. (Act, § 104).

Title II—Regulatory Relief and Protecting Consumer Access to Credit

Title II of the Act simplifies and streamlines provisions of the Dodd-Frank Act and the provisions of other laws and rules that apply to financial institutions regardless of asset size and that apply to community banks specifically. Representative provisions are described below.

Representative Amendments that Apply Regardless of Asset Size

Bank Secrecy Act Diligence and Verification for Mobile and Online Account Opening. The Act permits insured depository institutions and their affiliates to verify an individual's identity with the individual's scanned driver's license or personal identification card in connection with the request to open an account or obtain a financial product or service through the website or mobile application of the institution or its affiliate. After the driver's license or identification card is used for this purpose, the financial institution or its affiliate must permanently delete the scanned image and any copy of the image. This section of the Act preempts any conflicting state laws to the extent of the conflict. (Act, § 213).

Reducing Identity Fraud. To reduce the prevalence of "synthetic identity fraud which disproportionately affects vulnerable populations," the Act requires the Commissioner of the Social Security Administration ("Commissioner") to maintain a database consisting of the names, Social Security numbers, and dates of birth of individuals. The database may be used, with the consent of the individual, by financial institutions and their service providers, subcontractors, agents, and assignees to verify identity electronically in extending credit and other situations in which a consumer reporting agency is permitted by the Fair Credit Reporting Act to furnish a consumer report. The Commissioner may conduct audits and monitoring to deter fraud and misuse by entities that are permitted to use the database. (Act, § 215).

Treasury Report on Risks of Cyber Threats. Within one year from the date of enactment of the Act, the Secretary of the Treasury must submit a report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services on material risks of cyber threats to financial institutions and the U.S. capital markets, and how the federal banking agencies and the Securities and Exchange Commission ("SEC") are assessing and coordinating those risks. (Act, § 216).

Representative Amendments that Apply to Smaller BHCs and Community Banks

The Volcker Rule. The Act exempts insured depository institutions and their affiliates from application of the Volcker Rule, provided they and their parent company have $10 billion or less in total consolidated assets and have total trading assets and trading liabilities of 5 percent or less of their total consolidated assets. (Act, § 203).

For all banking entities, regardless of asset size, the Act removes a restriction in the Volcker Rule that prohibited a bank-affiliated investment adviser from using its name on hedge funds and private equity funds, and allows such funds to share the same name or a variation of the same name, if several conditions are met: the fund's name may not use the word "bank," and the investment adviser may not be an insured depository institution, a BHC, or an FBO that is deemed to be a BHC and may not share or use the same name as any of these types of entities. (Act, § 204).

Federal Reserve Small Bank Holding Company Policy. The Act requires the Federal Reserve Board to revise the "Small Bank Holding Company and Savings and Loan Holding Company Policy Statement" (12 CFR Part 225, Appendix C) within 180 days of enactment by raising the threshold from $1 billion to $3 billion in assets. This broader set of small bank holding companies is excluded from the Basel I-based minimum risk-based capital requirements of the Collins Amendment within the Dodd-Frank Act (12 U.S.C. 5371(b)(5)). (Act, § 207). Recognizing that small BHCs have less access to equity financing, the Federal Reserve Board's Policy Statement permits the formation and expansion of small BHCs with higher debt levels than generally permitted for larger BHCs if the small BHC meets certain conditions.[5]

Extended Examination Cycle. The Act expands eligibility for the 18-month examination cycle from well-managed and well-capitalized banks with $1 billion in assets to comparable banks with $3 billion in assets. (Act, § 210).

Title III—Service Members Civil Relief Act

Title III of the Act clarifies and adds several protections for vulnerable populations, veterans, consumers, and homeowners. Representative provisions are described below.

Credit Report Security Freezes. The Act places new requirements on consumer reporting agencies. The Act amends the Fair Credit Reporting Act to increase the time period within which consumer reporting agencies must provide fraud alerts for consumer files from 90 days to at least one year after a consumer informs the agency that he or she has been a victim of fraud or identity theft. The Act requires consumer reporting agencies to permit consumers to place or remove a security freeze on their credit report, free of charge, and to notify consumers of the right to a security freeze by specific notice language titled "Consumers Have the Right to Obtain a Security Freeze." The specific notice language in the summary of consumer rights to obtain a security freeze also covers an initial or extended fraud alert as an alternative to a security freeze. Consumer reporting agencies must allow consumers to make requests for a security freeze, initial or extended fraud alert, active duty fraud alert, and opt out of use of information in a credit report through a webpage, but that webpage may not be the only mechanism for making these requests. The Act requires the Federal Trade Commission to establish a single webpage that includes a link to each page of each consumer reporting agency's webpage. (Act, § 301).

GAO Report on Consumer Reporting Agencies. Within one year of the date of enactment of the Act, the U.S. Comptroller General must submit to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services a report that reviews the current legal and regulatory framework for consumer reporting agencies and identifies any gaps in the rulemaking, supervision, or enforcement by state and federal agencies under the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, and any other relevant statutes. The report would also review who owns a consumer's credit data, the causes of consumer reporting errors, responsibilities of data furnishers to provide accurate information, and data security, among other subjects. (Act, § 308).

Immunity for Reporting Suspected Elder Financial Abuse. The Act provides immunity from any civil suit or administrative proceeding for officers and employees of covered financial institutions, such as banks, investment advisers, broker-dealers, and insurance companies, based upon disclosure of suspected financial exploitation of a senior citizen to a state or federal financial agency, law enforcement agency, the SEC, or a state or local agency that administers adult protective services, provided that the officer or employee has undergone training that meets certain requirements on identifying and reporting the suspected exploitation of a senior citizen. A covered financial institution will have immunity from any civil suit or administrative proceeding from a whistleblower allegation of suspected exploitation of a senior citizen, provided certain persons who come into contact with senior citizens have received appropriate training. (Act, § 303).

Protections for Veterans. The Act amends the Fair Credit Reporting Act to provide free and ongoing electronic credit monitoring to active duty service members and to require the exclusion of certain medical debt from credit reports of veterans. (Act, § 302). Mortgage foreclosure relief for service members under the Servicemember Civil Relief Act is made permanent, and VA lenders must demonstrate a material benefit when a mortgage is refinanced. (Act, §§ 309 and 313).

Title IV—Tailoring Regulations for Certain Bank Holding Companies

Title IV of the Act provides regulatory relief with respect to enhanced prudential standards and liquidity coverage ratio requirements and provides capital relief for custodial banks. Representative provisions are described below.

Enhanced Prudential Standards. The Act raises the asset threshold for application of the enhanced prudential standards for BHCs, as set forth in the Dodd-Frank Act and the Federal Reserve Board's rules, from $50 billion to $250 billion in total consolidated assets. This amendment is effective immediately for BHCs with total consolidated assets of less than $100 billion and becomes effective 18 months following enactment for BHCs with between $100 billion and $250 billion in total consolidated assets, unless the Federal Reserve Board acts earlier.

The Act amends the prudential requirement for a risk committee by raising the asset threshold from $10 billion to $50 billion in total consolidated assets. The Federal Reserve Board may require any publicly traded BHC with less than $50 billion in total consolidated assets to establish a risk committee as the Board determines necessary or appropriate to foster sound risk management practices. With respect to capital stress testing, the Act ends company-run stress tests entirely for BHCs with under $250 billion in assets, replaces mandatory annual and semiannual stress testing with periodic testing, and eliminates the requirement for using an adverse scenario in company-run and supervisory stress testing.

The Federal Reserve Board may apply enhanced prudential standards, by order or rule, to an individual BHC or to a category of BHCs with between $100 billion and $250 billion in total consolidated assets if the Board determines that it is appropriate to do so to prevent or mitigate risks to U.S. financial stability or to promote safety and soundness, and considers the BHC's or a group of BHC's capital, risk, complexity, financial activities, size, and other appropriate risk-related factors. None of the enhanced prudential standards amendments made by the Act limits the Federal Reserve Board's authority to differentiate among companies in consideration of their capital, risk, complexity, financial activities, size and other appropriate risk-related factors, or limits the federal banking agencies' authority to promote safe and sound operations.

In sum, the Act raises the threshold for application of enhanced prudential standards from $50 billion to $250 billion in total consolidated assets, except that the thresholds for risk committees and supervisory stress testing differ, and the Federal Reserve Board may determine to impose a lower threshold for a particular BHC to prevent or mitigate U.S. financial stability or to enhance safety and soundness.

The Act adds a specific rule of construction to make clear that the enhanced prudential standards amendments do not alter the authority of the Federal Reserve Board regarding FBOs with $100 billion or more in global total consolidated assets. The Act specifies that nothing in the Act may be construed to impact the legal effect of the Federal Reserve Board's final rule, "Enhanced Prudential Standards for [BHCs] and [FBOs]" as the rule applies to FBOs with $100 billion or more in global total consolidated assets. Further, the Act specifies that nothing in the Act limits the authority of the Federal Reserve Board to require an intermediate holding company, carry out enhanced prudential standards, or tailor regulation of such FBOs. Accordingly, the Act does not amend enhanced prudential standards for FBOs with more than $100 billion in global total consolidated assets.

Because the Act does not differentiate between U.S. BHCs and FBOs that are considered BHCs due to their U.S. operations, an FBO with less than $100 billion in global consolidated assets may obtain regulatory relief from some enhanced prudential standards, such as for resolution planning, liquidity stress testing, and single counterparty credit limits, as the asset threshold applied to FBOs was previously set at $50 billion and is now set at $250 billion. (Act, § 401).

Supplementary Leverage Ratio for Custodial Bank Deposits. The Act requires the federal banking agencies to amend the regulatory capital rules to specify that when calculating the supplementary leverage ratio, BHCs and banks engaged in custody, safekeeping, and asset servicing may exclude certain funds deposited with the Federal Reserve System, the European Central Bank, and central banks of member countries of the Organisation for Economic Co-operation and Development if assigned a zero risk weight under U.S. capital rules and the sovereign debt of the member country is not in default and has not been in default for the past five years. (Act, § 402).

Treatment of Municipal Obligations. The Act requires the federal banking agencies to amend the Liquidity Coverage Ratio rules.

Title V—Encouraging Capital Formation

Title V of the Act is intended to encourage economic growth by facilitating capital formation. Representative provisions are described below.

Improving Access to Capital. The Act makes it easier for small- to medium-sized public companies to use exemptions from securities registration by expanding the exemption from registration under Regulation A issued by the SEC, which is designed to facilitate access to capital for smaller companies by subjecting them to fewer disclosure requirements. (Act, § 508).

Parity for Closed-End Investment Companies. The Act requires the SEC to promulgate rules to allow closed-end investment companies to use securities offering and proxy rules available to other issuers. If the SEC fails to propose rules within one year, and to finalize rules within two years, after the date of enactment of the Act, qualifying registered closed-end funds will be deemed to be eligible issuers. (Act, § 509).

Expanding "Investment Company" Exception to Cover Venture Capital Funds. In an effort to reduce registration and disclosure requirements, the Act broadens the scope of an exemption from the definition of "investment company" in the Investment Company Act to include a "qualifying venture capital fund"—a venture capital fund that does not exceed $10 million in aggregate capital contributions and uncalled committed capital and that has no more than 250 beneficial investors (an increase from the prior criterion of 100 beneficial investors). (Act, § 504).

Encouraging Employee Ownership. The Act relieves some investor disclosure requirements by expanding the exemption from registration for certain securities sales by nonreporting companies that offer securities to employees, consultants, and advisers through compensation plans. Under the Act, the maximum amount of securities that can be sold within the exemption is increased from $5 million to $10 million. (Act, § 507).

SEC Staff Study on Algorithmic Trading. The Act requires the staff of the SEC to report to the Senate Committee on Banking, Housing, and Urban Affairs and to the House Committee on Financial Services of the House of Representatives on the risks and benefits of algorithmic trading in the U.S. capital markets. (Act, § 502).

Prospective SEC Crediting of Overpayments. The SEC must offset toward future payments any overpayments of assessments and fees by a national securities exchange or a national securities association (i.e., the Financial Industry Regulatory Authority), provided the exchange or association notifies the SEC of the overpayment no later than 10 years after the payment. This amendment is effective prospectively only. (Act, § 505).

Title VI—Protections for Student Borrowers

Protection in the Event of Death or Bankruptcy. The Act amends the Truth in Lending Act to prohibit private education lenders from accelerating a debt or declaring the debt in default upon the bankruptcy or death of the cosigner. Similarly, the holder of a private education loan must release a cosigner from the obligation upon the death of the student borrower. These amendments apply to private education loans entered into 180 days or more after the date of enactment of the Act. (Act, § 601).

Rehabilitation of Private Education Loans. The Act amends the Fair Credit Reporting Act to allow a delinquent private student borrower to make a one-time request to a financial institution to remove a reported default from a consumer report if the borrower satisfies the requirements of a loan rehabilitation program offered by a financial institution that includes making consecutive on-time monthly payments that demonstrate ability and willingness to repay the loan. (Act, § 602).

POTENTIAL IMPACTS ON THE FINANCIAL SERVICES INDUSTRY

The Act represents the first major financial services *de*regulation law in the decade during and since the financial crisis. If Congress remains committed to considering additional regulatory relief measures, the Act will not be the last major deregulation law going forward.

Although the new law does not alter the fundamental structure of the Dodd-Frank Act, when the law is implemented fully, financial institutions may see a meaningful reduction in regulatory burden and compliance costs. This is particularly the case for regional and smaller banks and BHCs, but all sizes of banks and BHCs may see some amount of reduction of regulatory burden and compliance costs. Additionally, the Act seeks to facilitate the formation of capital through a variety of steps, some of which potentially cover banks and BHCs, and could encourage economic growth. At the same time, many provisions of the Act enhance important protections for consumers, veterans, private student loan borrowers, and vulnerable populations.

The recalibration of application of enhanced prudential standards rules and targeted capital relief provided by the Act may foster mergers between and among community and regional banks and acquisitions by larger banks. While large FBOs with small U.S. operations will remain subject to most of the current enhanced prudential standards, FBOs with less than $100 billion in total global consolidated assets may see relief from the prudential standards for resolution planning, liquidity stress testing, and single counterparty credit limits. Altogether, these changes, and perhaps more to come, demonstrate the imperative for regular review and revision of the Dodd-Frank Act and other federal laws to ensure they are accomplishing their intended objectives.

ENDNOTES

1 The Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155, 115th Cong. (2018) is available at https://www.congress.gov/bill/115th-congress/senate-bill/2155/text.

2 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

3 The U.S. House of Representatives passed S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, on May 22, 2018, by a vote 258 to 159 with thirty-three Democrats voting in favor and one Republican voting against; the U.S. Senate passed the bill on March 14, 2018, by vote of 67 to 31 with sixteen Democrats and one Independent joining the unanimous Republican support.

4 Dodd-Frank Act, § 165; 12 C.F.R. Part 252 (Regulation YY).

5 *See* 80 Fed. Reg. 20153 (April 15, 2015), 12 C.F.R. Appendix C to Part 225.

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