The Glass Half-Full*

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Since passage of the Dodd-Frank Act, we — like most other law firms in this town — have devoted a fair amount of time identifying the compliance challenges and costs the Act imposes on financial firms. In the process, we also have identified some unintended consequences of the Act. This article, however, looks at the Act from a different perspective. Rather than add to the litany of compliance concerns, it highlights two features of the new law that could have a significant positive impact on the financial services industry and its customers. Those two features are the Financial Stability Oversight Council and the Bureau of Consumer Financial Protection. A positive result from these two new federal bodies is not guaranteed, but a case can be made that they will benefit both the industry and its customers.

The Dodd-Frank Act creates a forum for greater coordination and cooperation among federal financial regulators.

We have a fragmented federal financial regulatory system in which different agencies supervise different segments of the financial services industry. These agencies do not share common goals and objectives. Nor do they share a common approach to supervision. In the wake of the financial crisis, it became all too apparent that this "functional" approach to regulating firms according to business lines hampered the ability of regulators to fully appreciate developments that crossed business lines and to adopt coordinated supervisory policies. The Dodd-Frank Act did not rationalize this system. However, it did create one body — the Financial Stability Oversight Council — that may serve as a forum for greater coordination and cooperation among federal financial regulators.

The Council is an enhanced version of the President's Working Group. The President's Working Group was created by an executive order following

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the market crash of 1987. That Group had limited impact largely because it did not include all federal financial regulators. Also, while it is only an educated guess from the outside, it does not appear that its operation received a high priority from the agencies involved.

In contrast, the Oversight Council includes the heads of all federal financial regulatory agencies, and it is directed by Congress to —

- facilitate information sharing and coordination among member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;
- recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;
- provide a forum for discussion and analysis of emerging market developments and financial regulatory issues; and
- provide a forum for resolution of jurisdictional disputes among the members of the Council.

Fulfilling these duties will not be easy. Each agency that sits on the Council has retained its own statutory mandate and mission. Nonetheless, putting all federal financial regulators in the same room on a regular basis should help to minimize the potential for conflict and overlap in supervisory policies and practices, and that would be a real plus for financial services firms, particularly those subject to the jurisdiction of multiple agencies.

The Bureau of Consumer Financial Protection could restore public trust in the financial services industry.

The financial services industry universally opposed the creation of the Bureau of Consumer Financial Protection. The industry foresaw potential conflicts between consumer protection regulation and prudential regulation, and it was concerned that the Bureau might inhibit product innovation and market competition. As Raymond Natter and I discussed in the May issue of this newsletter, these fears are well founded. The authority granted to

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this agency is extremely broad and could be used to dictate the structure of financial markets and the design of financial products and services offered in such markets. Yet, it is possible that the Bureau will help restore public trust in the financial services industry.

The Dodd-Frank Act gives the Bureau several objectives, including ensuring that —

- consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
- Federal consumer financial law is enforced consistently; and
- markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

The implementation of these objectives could reduce public concerns and confusion over particular industry practices and products. Moreover, the implementation of these objectives need not occur at the expense of product innovation or market competition. The Act requires the Bureau to consider the impact of its regulations on consumer access to financial products and services and the cost of such products and services. Therefore, like the Council, we may find that the Bureau carries more benefits than costs to the financial services industry.

Secretary Geithner's Principles

Whether either the Council or the Bureau produce the benefits outlined above remains to be seen. However, early signals from the administration suggest that these benefits are within reach. In a recent speech at New York University's Stern School of Business, Treasury Secretary Geithner set out several principles that will guide the implementation of the Dodd-Frank Act. Those principles include —

- Not layering new rules on top of old, outdated ones;
- Not risk killing freedom for innovation that is necessary for economic growth; and
- Bringing more order and coordination to the regulatory process.

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This is a good start. These principles recognize the need to balance regulation against innovation and economic growth. They also recognize the need to avoid overlapping and conflicting regulation. Hopefully, the Secretary will be able to encourage all federal financial regulators to follow them.

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