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New Banking Law Takes First Step in Rolling Back Dodd-Frank Reforms

On May 24, 2018, President Trump signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Act"), marking the first set of much anticipated roll-backs of the Dodd-Frank Act of 2010. Although heralded in the media as a dramatic step away from regulatory reforms introduced by Dodd-Frank, the changes included in the Act will generally have the greatest impact on small banks. However, in the coming weeks, financial regulators are expected to unveil proposed revisions to the Volcker Rule regulations that are expected to have a more significant impact on large banking institutions.

Some of the Act's more noteworthy changes include removal of certain Volcker Rule limitations on hedge fund and private equity fund naming conventions, the exemption of most small banks from the purview of the Volcker Rule, reduced regulatory burdens for small and medium-sized bank holding companies, changes favorably affecting custodial banks' supplementary leverage ratio calculations, expansion of public securities offering rules to closed-end exchange listed funds, and beneficial capital treatment of certain real estate exposures and municipal obligations that make investments in such assets more attractive to banks under bank capital rules.

1. Limited Removal of Volcker Rule Naming Restrictions. The Act removes a Volcker Rule limitation that prohibited a bank-affiliated investment adviser from using its name on hedge funds and private equity funds, provided that: (i) the adviser's name does not include the word "bank"; and (ii) the adviser is not an insured depository institution, a company that controls an insured depository institution, or a foreign banking entity subject to U.S. banking laws (or does not share the same or a variation of the same name with those types of banking organizations).

2. Exemption of Small Banks from the Volcker Rule. Banks with less than $10 billion in assets that have total trading assets and trading liabilities accounting for 5% or less of total assets, and affiliates of such banks, will be exempt from the Volcker Rule, significantly reducing their compliance burdens.

3. Reduced Regulatory Burdens for All But the Largest Bank Holding Companies. The Act eliminates the need for bank holding companies with less than $250 billion in assets to comply with most aspects of "enhanced prudential standards," including resolution planning, stress testing, and single-counterparty credit limits.

4. Favorable Custodial Bank Treatment of Riskless Assets for Calculating Supplementary Leverage Ratios. The Act allows custodial banks—bank holding companies and insured depository institution subsidiaries of bank holding companies predominantly engaged in custody, safekeeping, and asset servicing activities—to exclude from the denominator of their supplementary leverage ratio the following types of assets: central bank reserves from the Federal Reserve System, the European Central Bank, and non-defaulting OECD-member central banks. These assets are now excluded because Congress has deemed such assets to have zero risk. In effect, those changes mean that custodial banks will now need to hold less Tier 1 Capital (e.g., common equity).

5. Parity for Closed-End Funds Regarding Offering and Proxy Rules. The Act instructs the SEC to, within two years, finalize rules to allow a closed-end investment company that is registered under the Investment

Company Act of 1940 and is listed on a national securities exchange, or an investment company that makes periodic repurchase offers pursuant to Investment Company Rule 23c-3 (commonly known as interval funds), to follow the same securities offering and proxy rules that are available to operating companies.

6. Beneficial Treatment of Certain Securities for All Banking Organizations. The Act makes adjustments to the capital rules treatment of some high volatility commercial real estate exposures and improves the treatment of municipal obligations under the Basel III liquidity coverage ratio, regardless of size and activities of the banking organization. The changes make ownership of such assets modestly less burdensome under the capital rules.

For further information about this Alert, please contact Mark Nuccio or your usual Ropes & Gray asset management practice contact.