Davis Polk

# Regulatory Implementation Slides

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The following slides show the effective dates for various agency rulemakings required, and statutory amendments made, by the Dodd-Frank bill. It is important to keep in mind that the rules issued by the various regulators will likely also have their own implementation timeframes.

The slides focus on timing and implementation and are not intended to be relied on as stand-alone descriptions of the Dodd-Frank bill. Rather, the slides should be read together with the Davis Polk memo, Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Passed by the House of Representatives on June 30, 2010, published on July 9, 2010.

The Dodd-Frank bill contains two different floating "transfer dates" which apply to two different portions of the Dodd-Frank bill, banking regulation and consumer regulation. Transfer of powers from the OTS to the other banking regulators and changes to the banking laws are based off the "**transfer date**," which occurs one year after the bill is enacted, and may be extended by up to 6 months by the Treasury Secretary. The Treasury Secretary must publish any extension of the transfer date in the Federal Register within 270 days of enactment.

Transfer of consumer protection power to the Consumer Financial Protection Bureau occurs on the "**designated transfer date**," which is a date between 6 and 12 months after the enactment of the bill designated by the Treasury Secretary, subject to an extension to up to 18 months after enactment. The Treasury Secretary must publish the designated transfer date within 60 days of enactment.

The Dodd-Frank bill becomes law one day after the President signs it.

# Nonbank Financial Companies: Path to Designation as Systemically Important



**Definition of "Financial Company"**
To qualify as a nonbank financial company, 85% or more of the company's consolidated gross revenue or consolidated total assets must be attributable to activities that are financial in nature. Can include subsidiaries of bank holding companies.

**Consequences of Systemically Important Designation**

- Activities restrictions in Section 4 of the Bank Holding Company Act **will not** apply.
- Enforcement provisions of Section 8 of the Federal Deposit Insurance Act will apply to systemically important nonbank financial companies and their nondepository institution subsidiaries. With respect to functionally regulated subsidiaries, the Fed must recommend enforcement action to primary financial regulatory agencies first, but has back-up authority.
- The Fed may require reports under oath and conduct certain examinations, and the Council may required certified reports.
- Heightened prudential standards and capital standard, including those under the Collins Amendment, will apply. Transition periods are unclear
- Additional capital and quantitative limits under the Volcker Rule will apply.

**Key Point**
Nonbank financial companies could be designated as systemically important **before** prudential standards are in place. This will put enormous pressure on the Fed and the Council to come up with policies and regulations very quickly. It may also mean that initial standards for the intermediate holding company requirement are individually negotiated.

Council proposes to designate a nonbank financial company as systemically important.

Within 30 days of receiving notice of a proposed designation, the company can request a hearing before the Council to contest the designation.

The hearing must take place within 30 days of the company's request.

The Council will render a final decision within 60 days of the hearing.

Within 180 days after the Council's final designation, the company must register with the Federal Reserve. Registration is designed to collect information deemed necessary by the Federal Reserve, in consultation with the Council, to carry out its systemic oversight authority.

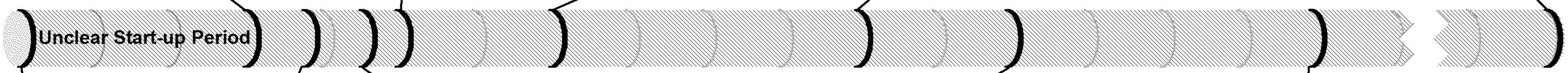
Proposed Designation

Proposed Designation + 30 days

Proposed Designation + 60 days

Final Designation ≤ Proposed Designation + 120 days

Final Designation + 180 Days




Proposed Designation + 10 days

Final Designation + 30 days

Final Designation + 90 Days

Date bill becomes law

If the Council seeks to invoke the emergency exception to normal notice and comment, the company can request a hearing within 10 days.

Proposed Designation + 25 days

Within 30 days of the Council's final determination, the company may seek judicial review.

**Intermediate Holding Company Requirement**

- Not later than 90 days after of the Council's final determination, or such longer period as the Fed deems appropriate, the Fed may require a systemically important nonbank financial company to establish and conduct activities that are determined to be financial in nature or incident thereto in an intermediate holding company.
- Notwithstanding the 90 day requirement, the Fed must require establishment of an intermediate holding company if necessary to supervise the company's financial activities or ensure that Fed supervision does not extend to commercial activities.
- The parent company is subject to reporting and examination requirements and must serve as a source of strength to the intermediate holding company.
- The bill does not require the Fed to issue rules to implement this provision until 18 months after enactment. It appears that if the Fed wants to impose the intermediate holding company requirement on the initial systemically important nonbank financial companies, it will either have to come up with rules more quickly or individually negotiate the initial standards.

**Effective Immediately**

- ***Council*** – The Financial Stability Oversight Council (the "**Council**") is established, but five of the ten voting members must be appointed, including two with the advice and consent of the Senate.
- ***OFR*** – The Office of Financial Research (the "**OFR**") is established, but the Director must be appointed by the President with the advice and consent of the Senate. The OFR can request information from any financial company for purposes of assessing threats to U.S. financial stability.
- ***Systemically Important Designation*** – The designation process can start immediately after enactment, even though enhanced prudential standards will not yet be in place.
- ***Foreign Nonbank Financial Companies*** – Systemically important designation is based on criteria including U.S.-related assets, liabilities and operations.

Under the emergency exception, the hearing must take place within 15 days of the company's request and the Council must render a final decision within 30 days of the hearing.

The Council must reevaluate its designation of each systemically important nonbank financial company at least annually.

**Within 18 Months After Enactment**

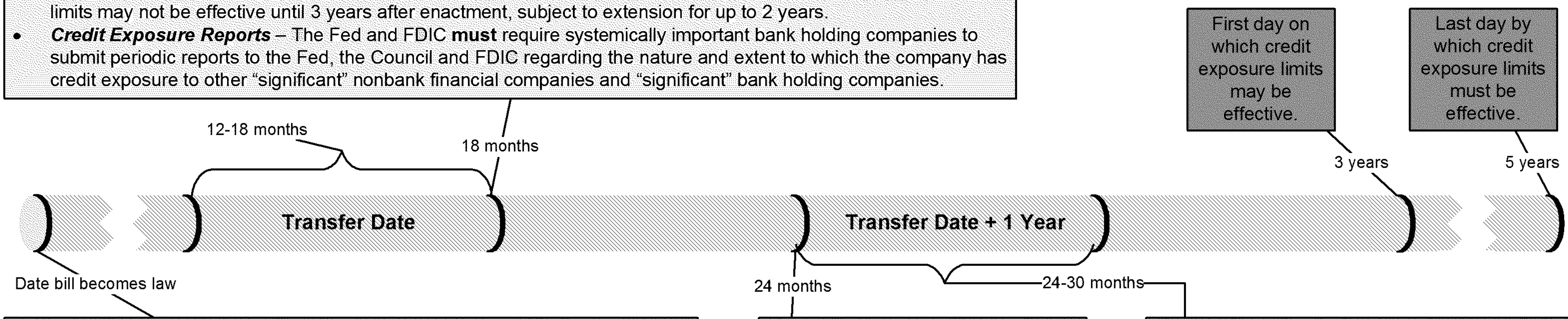
- ***General*** – The Fed **must** issue final rules that impose risk-based capital requirements, leverage limits, liquidity requirements and overall risk management standards. The Fed **may** issue final rules that impose enhanced public disclosure, short-term debt limits and another prudential standards the Fed deems appropriate.
- ***Stress Tests*** – The Fed must issue rules implementing the stress testing regime. The Fed must conduct annual stress tests on systemically important bank holding companies, which must also conduct semiannual internal stress tests. Financial companies with $10 billion or more in assets must also conduct annual internal stress tests.
- ***Early Remediation*** – The Fed, in consultation with the Council, must issue final rules implementing requirements for early remediation of financial distress that increase in stringency as the financial condition of the company declines.
- ***Living Wills*** – The Fed **must** require systemically important bank holding companies to submit living wills to the Council, the FDIC and the Fed for the company's "rapid and orderly resolution" in the event of material financial distress or failure. Living wills generally must include full descriptions of the company's ownership structure, assets, liabilities, contractual obligations, and the company's interconnectedness, with both affiliates and counterparties.
- ***Credit Exposure Limits*** – The Fed **must** prescribe rules to limit the risks posed to any systemically important bank holding company by the failure of any individual company. The rules **must** prohibit a systemically important bank holding company from having credit exposure to any unaffiliated company that exceeds 25% of the capital stock and surplus of "the company," presumably the systemically important bank holding company. The credit exposure limits may not be effective until 3 years after enactment, subject to extension for up to 2 years.
- ***Credit Exposure Reports*** – The Fed and FDIC **must** require systemically important bank holding companies to submit periodic reports to the Fed, the Council and FDIC regarding the nature and extent to which the company has credit exposure to other "significant" nonbank financial companies and "significant" bank holding companies.

**Key Point**

Bank holding companies with $50 billion or more in assets will be considered systemically important **before** prudential standards are in place. This will put enormous pressure on the Fed and the Council to come up with interim regulations very quickly.

**Other Notable Requirements**

- Basel 2.5 – Heightened requirements on trading book exposures due to be effective January 2011.
- Basel III – Heightened capital requirements and new leverage and liquidity measures to be effective at the end of 2012 if economic recovery is assured.
- The Fed can, on its own, create prudential standards not enumerated in the statute.




**Effective Immediately**:

- ***Automatic Systemic Designation*** – Bank holding companies with $50 billion or more in assets are automatically subject to enhanced prudential standards. No Council determination is required. No opportunity for notice or appeal.
- ***Council*** – Financial Stability Oversight Council (the "**Council**") is established, but 5 of the 10 voting members must be appointed, including 2 with the advice and consent of the Senate. As soon as it is operational, the Council may make recommendations to the Fed regarding enhanced prudential standards to apply to systemically important companies.
- ***OFR*** – The Office of Financial Research (the "**OFR**") is established, but the Director must be appointed by the President with the advice and consent of the Senate.
- **"Hotel California"** – Systemically important bank holding companies that received TARP funds will automatically be considered systemically important nonbank financial companies upon de-banking.

**Contingent Capital**

Within 2 years, the Council must issue a report on contingent capital requirements. After the study, the Fed may issue rules with respect to contingent capital.

*The **Transfer Date** is defined as 12 months after enactment, subject to an additional 6 month extension. The Treasury Secretary must publish any extension in the Federal Register within 270 days after enactment.

**Risk Committees**

- Within 1 year after the transfer date, the Fed must issue final rules requiring risk committees at publicly traded bank holding companies with at least $10 billion in assets.
- The rules issued by the Fed must take effect no later than 15 months after the transfer date.

The **Collins Amendment's** minimum risk-based and leverage capital requirements are addressed in a separate slide.

# Systemic Oversight of Nonbank Financial Companies



**Within 18 Months After Enactment**

- ***General*** – The Fed **must** issue final rules that impose risk-based capital requirements, leverage limits, liquidity requirements and overall risk management standards. Fed **may** issue final rules that impose enhanced public disclosure, short-term debt limits and another prudential standards the Fed deems appropriate.
- ***Stress Tests*** – The Fed must issue rules implementing the stress testing regime. The Fed must conduct annual stress tests on systemically important nonbank financial companies, which must also conduct semiannual internal stress tests. Other financial companies with $10 billion or more in assets must also conduct annual internal stress tests.
- ***Early Remediation*** – The Fed, in consultation with the Council, must issue final rules providing for early remediation of financial distress that increase in stringency as the financial condition of the company declines.
- ***Living Wills*** – The Fed **must** require systemically important nonbank financial companies to submit living wills to the Council, the FDIC and the Fed for the company's "rapid and orderly resolution" in the event of material financial distress or failure. Living wills generally must include full descriptions of the company's ownership structure, assets, liabilities, contractual obligations, and the company's interconnectedness, with both affiliates and counterparties.
- ***Credit Exposure Limits*** – The Fed **must** prescribe rules to limit the risks posed to any systemically important nonbank financial by the failure of any individual company. The rules **must** prohibit a systemically important nonbank financial from having credit exposure to any unaffiliated company that exceeds 25% of the capital stock and surplus of "the company," presumably the systemically important nonbank financial company. The credit exposure limits may not be effective until 3 years after enactment, subject to extension for up to 2 years.
- ***Credit Exposure Reports*** – The Fed and FDIC **must** require systemically important nonbank financial companies to submit periodic reports to the Fed, the Council and FDIC regarding the nature and extent to which the company has credit exposure to other "significant" nonbank financial companies and "significant" bank holding companies.
- ***Intermediate Holding Companies*** – The Fed must issue criteria for determining whether to require a nonbank financial company to conduct its financial activities in an intermediate holding company. The Fed could impose such a requirement within 90 days after the company is notified of its designation.
- ***Safe Harbor*** – The Fed, in consultation with the Council, **must** issue rules exempting certain classes of U.S. nonbank financial companies from designation as systemically important. The Fed must review and update such regulations at least every 5 years.

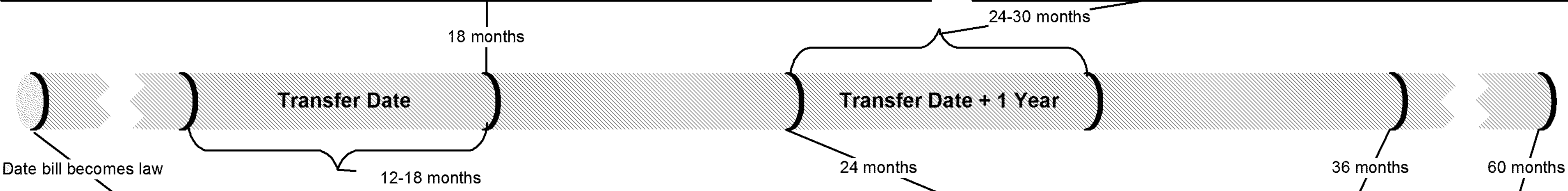
**Key Point**
Nonbank financial companies could be designated as systemically important **before** prudential standards are in place. This will put enormous pressure on the Fed and the Council to come up with interim regulations very quickly.

*The **Transfer Date** is defined as 12 months after enactment, subject to an additional 6 month extension. The Treasury Secretary must publish any extension in the Federal Register within 270 days after enactment.

The **Collins Amendment's** minimum risk-based and leverage capital requirements are addressed in a separate slide.

**Risk Committees**

- Within 1 year after the transfer date, the Fed must issue final rules requiring risk committees at publicly traded systemically important nonbank financial companies.
- The rules issued by the Fed must take effect no later than 15 months after the transfer date.
- Once rules are effective, the risk committee must be established within 1 year of designation.




**Effective Immediately**

- ***Council*** – The Financial Stability Oversight Council (the "**Council**") is established, but 5 of the 10 voting members must be appointed, including 2 with the advice and consent of the Senate. As soon as it is operational, the Council may make recommendations to the Fed regarding enhanced prudential standards to apply to systemically important nonbank financial companies.
- ***Systemically Important Designation*** – The Council may designate a nonbank financial company as "systemically important." The designation process can start immediately after enactment, even though standards for systemically important companies are not yet in place.
  - A nonbank financial company designated by the Council can request a hearing within 30 days of being notified of the designation, and a final determination will be made within 90 days of such a request.
  - The bill is silent on disclosure of such a designation, but securities laws would require disclosure.
- ***OFR*** – The Office of Financial Research (the "**OFR**") is established, but the Director must be appointed by the President with the advice and consent of the Senate.

**Contingent Capital**
Within 2 years, the Council must issue a report on contingent capital requirements. After the study, the Fed may issue rules with respect to contingent capital.

First day on which credit exposure limits may be effective.

Last day by which credit exposure limits must be effective.

**Effective Immediately**

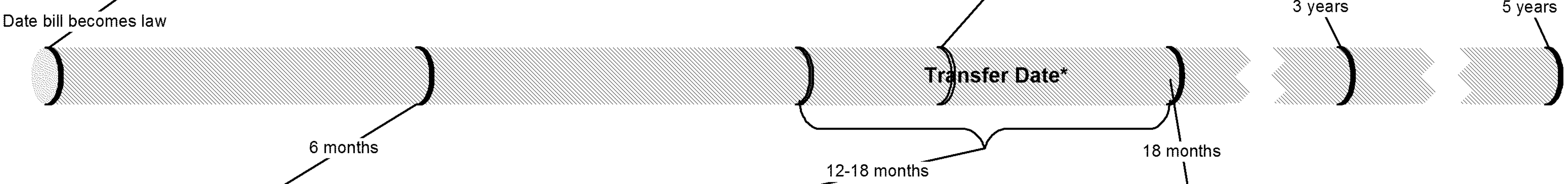
- ***Break-Up for "Grave Threat"*** – Upon a finding by the Federal Reserve, with approval of 2/3 vote of the Council, that a systemically important company poses a "grave threat" to financial stability, the Federal Reserve must take actions necessary to mitigate such risk, including: (1) limiting the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company; (2) restricting the ability to offer a financial product or products; (3) ordering termination of activities; (4) imposing conditions on the manner in which the company conducts activities; and (5) if the Federal Reserve determines that such actions are inadequate to mitigate a threat to U.S. financial stability, requiring the company to sell or otherwise transfer assets or off-balance sheet items to unaffiliated entities.
- ***M&A Transactions by Systemically Important Nonbanks –*** Systemically important nonbank financial companies are considered bank holding companies for purposes of the prior approval requirements in Section 3 of the Bank Holding Company Act;
- ***Large Nonbank Acquisitions*** – A systemically important company must give the Federal Reserve advance notice of certain transactions involving a company having $10 billion or more in assets that engages in activities that are financial in nature.
- ***Reporting Requirements*** – The Council may require a systemically important company to submit certified reports to keep the Council informed as to the extent to which the **activities or operations** of the company could disrupt the financial markets.

**Key Point**
Council also may recommend regulation of any activity or practice by any financial company.

**Liability Cap**
Within 9 months of the Council's study, the Federal Reserve must issue rules limiting M&A transactions that would result in a company holding greater than 10% of the aggregate consolidated liabilities of all financial companies.

First day on which concentration limit rules may be effective.

Last day by which concentration limit rules must be effective.




**Council Study on Concentration Limits**
Council must complete a study on the prohibition on acquisitions by firms where the total assets of the resulting company would exceed 10% of aggregate U.S. liabilities.

**Effective on the Transfer Date:**

- ***New Financial Stability Factor*** – The Federal Reserve must consider the impact of acquisitions on U.S. financial stability in approving or disapproving proposed bank and nonbank acquisitions.
- ***Large Nonbank Acquisitions*** – Financial holding companies must provide prior notice to the Federal Reserve before acquiring a company engaged in financial activities that has $10 billion or more of consolidated assets.

*The **Transfer Date** is defined as 12 months after enactment, subject to an additional 6 month extension. The Treasury Secretary must publish any extension in the Federal Register within 270 days after enactment.

**Within 18 Months After Enactment:**

- ***Concentration Limits*** – The Federal Reserve must issue rules with respect to large, interconnected bank holding companies with more than $50 billion in assets and systemically important nonbank financial companies, which **must** include, among other requirements, concentration limits. The rules regarding concentration limits cannot be effective until 3 years after enactment, subject to a 2 year extension. The concentration limit requirement contains two prongs:
  (1) General Directive – The Federal Reserve must prescribe standards to limit the risks that the failure of any individual company could pose to a systemically important company.
  (2) Specific Limit on Credit Exposure – The rules issued by the Federal Reserve must prohibit systemically important companies from having credit exposure to any unaffiliated company that exceeds 25% of the capital stock and surplus of the company.
- ***Growth Restriction –*** The Federal Reserve and the FDIC must issue rules requiring systemically important companies to submit orderly plans and the penalties applicable if the living will is deficient, including more stringent capital, liquidity or leverage requirements **or restrictions on the growth, activities, or operations of the company or its subsidiaries** until such company submits a credible plan.

# Appointment of a Receiver for Orderly Liquidation



**Recommendation to Appoint FDIC as Receiver**

- The FDIC and the Fed, by a 2/3 vote each (or, in the case of a broker-dealer, 2/3 of the members of the Federal Reserve and SEC each, or, in the case of an insurance company, 2/3 of the members of the Federal Reserve and the Director of the Federal Insurance Office), recommend to the Treasury Secretary that the FDIC should be appointed receiver for the financial company.
- The Treasury Secretary consults with the President to determine whether to appoint the FDIC as receiver for the financial company.
- Upon such a determination:
  - If the board of directors of the company consents, the FDIC is immediately appointed as receiver.
  - If the board objects, the Treasury Secretary must petition the U.S. District Court for the District of Columbia (the "**District Court**") for an order authorizing the Secretary to appoint the FDIC as receiver (the "**Petition**").

**Orderly Liquidation Plan**

The FDIC may not use any of its funding as receiver for any covered financial company unless and until it shall have submitted an orderly liquidation plan for such company that is acceptable to the Treasury Secretary. The FDIC and the Treasury Secretary must reach an agreement that provides a specific plan and schedule for the repayment of the borrowings from Treasury.

**Termination of Receivership**

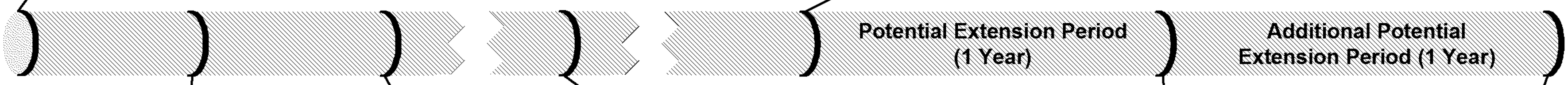
The appointment of FDIC as receiver will terminate 3 years after the date of appointment.

**Possible Extension**

- FDIC may extend the receivership for 2 separate 1-year periods upon a certification that such an extension is necessary to maximize the net present value return of, or minimize the loss on, the disposition of assets and to protect the stability of the U.S. financial system.
- After 2 such extensions have expired, the FDIC may extend the receivership only as necessary to complete ongoing litigation in which the FDIC as receiver is a party, and provided that the receivership must terminate within 90 days of the completion of such litigation.

Day 0

Appointment + 3 years




Day 1 – Appointment of FDIC as Receiver

Appointment + 1 day

Appointment + 60 days

Appointment + 4 years

End of first extension period

Appointment + 5 years

End of second extension period, subject to further extension only to complete ongoing litigation

**Within 24 Hours of the Petition**

- The District Court must determine whether the Treasury Secretary's determination that the covered financial company is in default or in danger of default, and the determination that the covered financial company satisfies the definition of "financial company," are arbitrary and capricious.
- If the District Court does not make a determination within 24 hours of receipt of the petition, the petition will be granted automatically by operation of law.
- The company can appeal the decision to the U.S. Court of Appeals for the D.C. Circuit and then the Supreme Court, in each case on an expedited basis.

**Within 24 Hours of Appointment of FDIC as Receiver**, the Treasury Secretary must provide written notice of the recommendations of the Fed and the FDIC or SEC, as appropriate, and the determination by these agencies and the Treasury Secretary to certain high-ranking members of Congress. The notice must include a summary of the basis for the determination, the company's financial condition, and the effect of exercise of the resolution authority.

**Periodic Reporting Requirements**

- Within 60 days of the appointment of the FDIC as receiver for the covered financial company, the FDIC must prepare reports for Congress, including information on the company's financial condition and the FDIC's plan to wind down the company.
- The FDIC must publish these reports, subject to maintaining appropriate confidentiality, and must supplement them on at least a quarterly basis.
- The FDIC and the primary financial regulatory agency for the company, if any, must appear before Congress to testify about the report within 30 days of its issuance.

# Creation of the Orderly Liquidation Authority



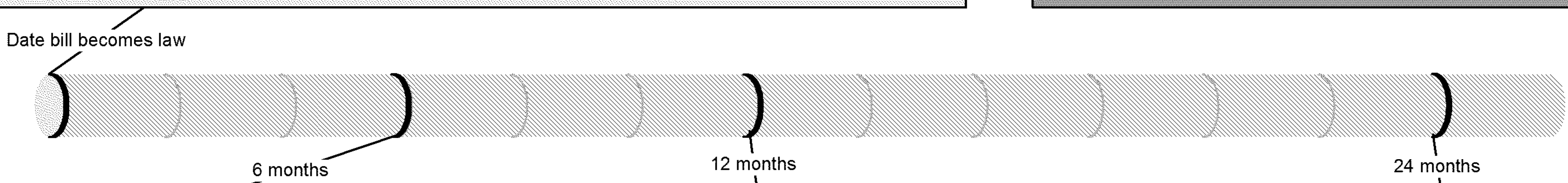
**Key Point**
The resolution authority is effective immediately, however, the bill imposes no deadlines for agency rulemaking.

**Effective Immediately**

- The FDIC, in consultation with the Council, must prescribe any rules and regulations necessary and appropriate to implement the resolution authority and must seek to harmonize these rules and regulations with the insolvency laws that would otherwise apply.
- The FDIC must establish policies with respect to the use of funds under its resolution authority.
- The FDIC may issue regulations governing the termination of receiverships under its resolution authority.
- The FDIC, in consultation with the Treasury Secretary, must issue regulations regarding assessments.
- The SEC and FDIC, in consultation with SIPC, must issue joint rules to implement the orderly liquidation of covered brokers and dealers.
- The FDIC must issue regulations that prohibit the sale of assets of a covered financial company to certain persons who have engaged in improper conduct with, or caused losses to the covered financial company.
- The FDIC must issue rules and regulations related to the recoupment of compensation from certain senior executives and directors of covered financial companies.
- The FDIC and the Federal Reserve, in consultation with the Council, must issue rules and regulations related to their authority to ban certain executives or directors of a covered financial company from participation in the affairs of any financial company for at least 2 years for certain actions.

**Resolution Authority Fees**

- No pre-funded dissolution fund.
- FDIC's resolution expenses are funded by borrowings from Treasury up to certain maximum amounts equal to certain percentages of the book or fair value of the covered financial company's assets.
- Borrowings must be repaid within 5 years (which may be extended by the Treasury Secretary), (1) by making assessments on claimants that received "additional payments" or other "amounts" from the FDIC in order to recover any benefits they received in excess of what they would have recovered in a Chapter 7 liquidation and (2) by making assessments for any shortfall on large financial companies with assets of $50 billion or more and any systemically important nonbank financial companies.




Not later than 6 months after enactment, the U.S. District Court for the District of Columbia (the "**District Court**") must establish rules and procedures to govern the conduct of its proceedings, including procedures to ensure that, within 24 hours of receipt of the Treasury Secretary's petition, it can determine whether the Treasury Secretary's determination that the company is a "financial company" and that it is in default or danger of default is arbitrary and capricious.

**Required Studies – Not Later than 12 Months After Enactment**

- ***Secured Creditor Haircuts*** – The Council must complete a study on whether a haircut on secured creditors "could improve market discipline and protect taxpayers" and make recommendations to Congress on whether and how to implement any such haircuts.
- ***International Coordination*** – The GAO must submit a report to Congress and the Treasury Secretary on international coordination relating to the orderly resolution of financial companies. The bill also requires the Federal Reserve, in consultation with the Administrative Office of the United States Courts, to conduct a study on international coordination relating to the resolution of systemically important financial companies under the Bankruptcy Code and applicable foreign law.
- ***Implementation of Prompt Corrective Action*** – The GAO must submit a report to the Council on the implementation and effectiveness of prompt corrective action. The Council must submit a report to Congress within 6 months on actions taken in response to the report.
- ***Judicial and Bankruptcy Processes*** – The GAO and Administrative Office of the U.S. Courts to monitor the activities of the District Court and conduct separate studies on the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code. Each must provide a report to Congress 1, 2 and 3 years after enactment and, thereafter, every fifth year after enactment.

**Rulemaking Related to Qualified Financial Contracts**

- Not later than 24 months after enactment, the primary Federal financial regulatory agencies shall prescribe joint final or interim final regulations requiring that financial companies maintain such records with respect to qualified financial contracts that the agencies deem necessary or appropriate to assist the FDIC as receiver.
- If the agencies do not issue rules within 24 months, the Treasury Secretary, in consultation with the FDIC, will issue such rules.

**Within 6 Months of Enactment**
- ***Council Study*** – The Council must complete a study and make recommendations on implementing the provisions of the Volcker Rule.
- ***Issuance of Transition Rules*** – The Federal Reserve must issue rules implementing the initial transition period and potential extension period for proprietary trading.

"**Proprietary trading**" means engaging as a principal for a banking entity's or a systemically important nonbank financial company's "**trading account**" in any transaction to purchase, sell or otherwise acquire or dispose of, any security, derivative, contract of sale of a commodity for future delivery, option on any such security, or other security or financial instrument that regulators may, by rule, determine.

"**Trading account**" means any account used for acquiring or taking positions in the securities or instruments described in the definition of "proprietary trading" principally for the purpose of selling in the **near term**, or otherwise with the intent to resell in order to profit from short-term price movements, and any such other accounts as regulators may, by rule, determine.

6 months


Date bill becomes law

15 months

**Effective Date: 2 years**
(although unlikely, could be sooner – timing keyed to final issuance of rules by regulators)

4 years

Last day by which proprietary trading activities must be conformed absent an extension.

7 years

Last day by which proprietary trading activities must be conformed.

**Within 9 Months of the Council's Study**
- ***General Rulemaking*** – Each of the regulators must consider the findings of the Council study and adopt rules to carry out the Volcker Rule.
- ***Capital and Quantitative Limits on Permitted Proprietary Trading*** – If regulators determine that additional capital requirements and quantitative limits, including diversification requirements, are "appropriate" to protect the safety and soundness of **banking entities** or systemically important **nonbank** financial companies engaged in permitted proprietary trading, they must adopt rules imposing such additional requirements and limitations on the permissible categories of proprietary trading.
- ***Limits on Permitted Activities*** – Regulators must issue rules to limit otherwise permitted activities upon a finding that such activity would involve material conflicts of interest, exposure to high-risk trading strategies, or pose a threat to the banking entity or to U.S. financial stability.

**Upon the Effective Date**
- ***Ban on Proprietary Trading*** – Subject to transition periods and exemptions for "permitted activities," a **banking entity** may not engage in proprietary trading.
- ***Additional Capital and Other Requirements on Systemically Important Nonbank Financial Companies*** – Although systemically important **nonbank** financial companies are not subject to the flat prohibitions on proprietary trading, the Federal Reserve is required, subject to transition periods and exceptions for "permitted activities," to impose additional capital requirements and other quantitative limits on their proprietary trading activities.

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# Volcker Rule: Sponsoring and Investing in Hedge Funds and Private Equity Funds



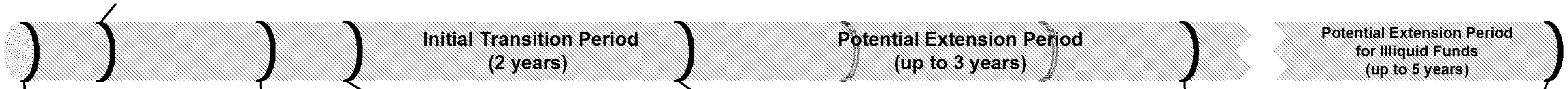
**Within 6 Months of Enactment**

- ***Council Study*** – The Council must complete a study and make recommendations on implementing the provisions of the Volcker Rule.
- ***Issuance of Transition Rules*** – The Federal Reserve must issue rules implementing the initial transition period (including extensions) for sponsoring or investing in funds and the extended transition period for illiquid funds.

To "**sponsor**" a fund means:
(1) to serve as a general partner, managing member, or trustee; (2) in any manner to select or to control a majority of the directors, trustees, or management of a fund; or (3) to share with the fund the same name or a variation of the same name for corporate, marketing, promotional or other purposes.

An "**illiquid fund**" is defined as a private equity or hedge fund that, as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments and venture capital investments, and which makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets.

6 months




Date bill becomes law

15 months

**Effective Date: 2 years**
(although unlikely, could be sooner – timing keyed to final issuance of rules by regulators)

4 years

Last day by which fund activities and investments must be conformed or divested, absent extension.

7 years

Last day by which fund activities and investments with extensions must be conformed or divested, absent extension for investments in illiquid funds.

12 years

Last day by which illiquid funds must be conformed or divested.

**Within 9 Months of the Council's Study**

- ***General Rulemaking*** – Each of the regulators must consider the findings of the Council study and adopt rules to carry out the Volcker Rule.
- ***Capital and Quantitative Limits on Permitted Sponsoring and Investing*** – If regulators determine that additional capital requirements and quantitative limits, including diversification requirements, are "appropriate" to protect the safety and soundness of **banking entities** or systemically important **nonbank** financial companies engaged in permitted sponsoring or investing, they must adopt rules imposing such additional requirements and limitations on the permissible categories of sponsoring or investing.
- ***Additional Capital Standards During Transition Period*** – Regulators must issue rules to impose additional capital and other requirements, as appropriate, on sponsoring or investing in hedge funds or private equity funds by a **banking entity** during the transition period.
- ***Limits on Permitted Activities*** – Regulators must issue rules to limit otherwise permitted activities upon a finding that such activity would involve material conflicts of interest, exposure to high-risk trading strategies, or pose a threat to the banking entity or to U.S. financial stability.

**Upon Effective Date**

- ***Ban on Sponsoring or Investing in Private Equity and Hedge Funds*** – Subject to transition periods and exceptions for "permitted activities," a **banking entity** may not sponsor or invest in a hedge fund or private equity fund.
- ***23A / 23B Limits*** – A **banking entity** that serves, directly or indirectly, as the investment manager, investment adviser or sponsor of a hedge fund or private equity fund, or that organizes and offers a fund as a permitted activity (and any affiliate of such banking entity) is prohibited from entering into a Section 23A covered transaction with any such fund, subject to an exemption for prime brokerage transactions, and any such banking entity will be subject to Section 23B as if the banking entity were a member bank and the fund were an affiliate thereof.
  - Systemically important nonbank financial companies will be subject to additional capital charges and restrictions addressing risks and conflicts of interests addressed by the Section 23A / 23B limits above.
- ***Additional Capital and Other Requirements on Systemically Important Nonbank Financial Companies*** – Although systemically important **nonbank** financial companies are not subject to the flat prohibitions on sponsoring or investing in hedge funds or private equity funds, the Fed is required, subject to transition periods and exceptions for "permitted activities," to impose additional capital requirements and other quantitative limits on their sponsoring and investing activities.

# Affiliate Transactions and Lending Limits



**Covered Transactions Currently Include:**

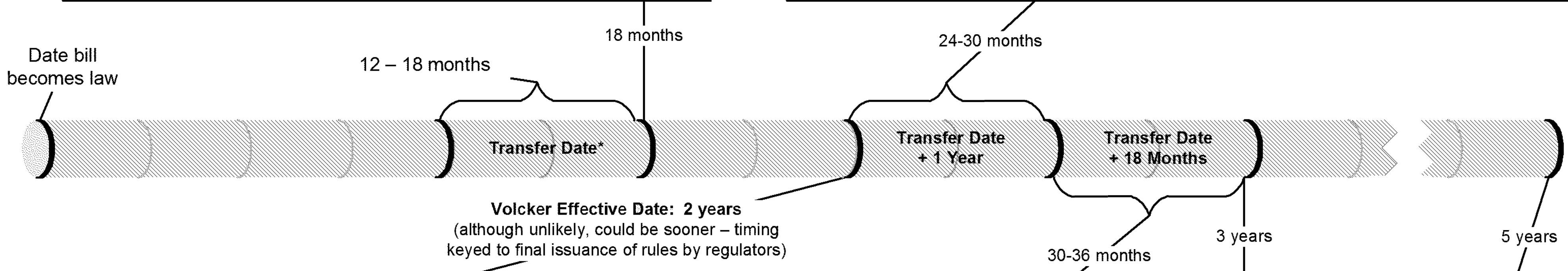
(1) any loan or extension of credit to an affiliate;
(2) any purchase of, or investment in, securities issued by an affiliate;
(3) any purchases of assets, including assets subject to an agreement to repurchase from an affiliate, unless specifically exempted by the Fed (which is not a broad exclusion);
(4) any transaction in which the covered bank holding company accepts securities issued by an affiliate as collateral for a loan or extension of credit to any entity;
(5) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate.

**Concentration Limits for Systemically Important Firms**

- **Rules Issued** – Within 18 months after enactment, the Fed must issue rules to limit the risks posed to any systemically important company by the failure of any individual company. The rules **must** prohibit a systemically important bank holding company from having credit exposure to any unaffiliated company that exceeds 25% of the capital stock and surplus of "the company," presumably the systemically important bank holding company.
- **Rules Effective** – The concentration limits so prescribed may not take effect until 3 years after enactment, subject to extension for up to two years.

**Effective One Year After the Transfer Date:**

- **Expansion of "Covered Transactions"** – The scope of transactions treated as "covered transactions" is expanded to include: (1) credit exposure on derivatives transactions; (2) credit exposure resulting from securities borrowing and lending transactions; and (3) acceptance of affiliate-issued debt obligations as collateral for a loan or extension of credit.
- **Collateral Requirements** – The bill requires collateral to be maintained at all times for covered transactions required to be collateralized. Debt obligations issued by an affiliate may not be posted as acceptable collateral.
  - The bill expands the scope of covered transactions required to be collateralized to include credit exposure on repos, as well as on the new covered transaction categories of derivatives and securities borrowing and lending.
- **Exemptive Authority** – The bill revises process for granting exemptions under Sections 23A and 23B.
- **Netting Arrangements** – The Federal Reserve is authorized to issue rules or interpretations to determine how netting agreements may be taken into account in determining the amount of a covered transaction with an affiliate, including whether a covered transaction is fully secured.
- **Financial Subsidiaries** – The bill prospectively eliminates exceptions for transactions with financial subsidiaries under Section 23A.
- **Definition of "Affiliate"** – The definition of "affiliate" is expanded to include an investment fund for which a covered bank, or an affiliate thereof, is an investment adviser.
- **National Bank Lending Limits Apply to Derivatives** – Credit exposures on derivatives, repos and reverse repos are treated as extensions of credit for the purposes of national bank lending limits.




**Upon the Effective Date of the Volcker Rule:**

- **23A / 23B Limits on Banking Entities** – A banking entity that serves, directly or indirectly, as the investment manager, investment adviser or sponsor of a hedge fund or private equity fund, or that organizes and offers a fund as a permitted activity, and any affiliate of such banking entity, is prohibited from entering into a Section 23A covered transaction with any such fund, subject to an exemption for prime brokerage transactions, and any such banking entity will be subject to Section 23B as if the banking entity were a member bank and the fund were an affiliate thereof.
- **Additional Capital and Other Requirements on Systemically Important Nonbanks to Address 23A / 23B** – The appropriate regulators must adopt rules imposing additional capital charges and other restrictions on systemically important nonbanks to address the same types of risks and conflicts of interest addressed by the Section 23A / 23B limits applicable to banking entities.

**Effective 18 Months After the Transfer Date:**

- **State Lending Limits Treatment of Derivatives Transactions** – An insured state bank may engage in a derivatives transaction only if state lending limit law in the state where the bank is chartered takes into account credit exposure from derivatives transactions.

First day on which concentration limits for systemically important companies may be effective

Last day by which concentration limits for systemically important companies must be effective

*The **Transfer Date** is defined as 12 months after enactment, subject to an additional 6 month extension. The Treasury Secretary must publish any extension in the Federal Register within 270 days after enactment.

# Section 716: Swaps Pushout Rule



**Prohibition Against Federal Assistance to Swaps Entities***

- Subject to transition periods and certain exemptions, bans Federal assistance being provided to any swaps entity with respect to any swap or security-based swap or other activity of the swaps entity.
- Federal assistance means the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under Section 13(3)(A) the Federal Reserve Act, or FDIC insurance or guarantees, for the purpose of making any loan or purchasing any stock, equity interest or debt obligation of any swaps entity; purchasing the assets of any swaps entity; guaranteeing any loan or debt issuance of any swaps entity; or entering into any assistance arrangement, including tax breaks, loss sharing or profit sharing with any swaps entity.
- “Swaps entity” includes registered swap dealers and major swap participants, but excludes insured depository institutions that are major swap participants but not swap dealers, as well as depository institutions and covered financial companies that are in a conservatorship, receivership or a bridge bank operated by the FDIC.
- Insured depository institutions may push the swaps business to an affiliate so long as it is part of a bank holding company or savings and loan holding company and Sections 23A and 23B of the Federal Reserve Act are complied with, subject to such other requirements as may be prescribed by the Federal Reserve and the CFTC or SEC.
- Prohibition on Federal assistance does not apply to insured depository institutions that limit their swaps activities to (i) hedging and similar risk mitigating activities related to the bank’s activities and (ii) swaps involving rates or reference assets that are permissible for investment by a national bank under the National Bank Act (12 U.S.C. §24(Seventh)), other than non-cleared credit default swaps (including swaps referencing the credit risk of asset-backed securities).

**Liquidation Required**

- All FDIC insured or systemically important swaps entities that are put into receivership or declared insolvent as a result of their swap activity are subject to the termination or transfer of that swap activity.

**Swaps Entities and Banking Combinations**

- Any bank or bank holding company is prohibited from becoming a swaps entity unless it conducts its swaps activity in compliance with standards to be set by its prudential regulator.
- In adopting such standards, the regulator must take into consideration, among other enumerated factors, the entity’s expertise, managerial and financial strength, and control management systems for existing and new markets.

**Financial Stability Oversight Council**

- The Council is authorized to determine, when systemic risk is not being effectively mitigated by the other provisions of the legislation, that individual swaps entities may no longer access Federal assistance with respect to any swap or other activity of the swaps entity.

**Other Swaps Entities**

There does not appear to be a similar transition period for swaps entities that are not depository institutions.

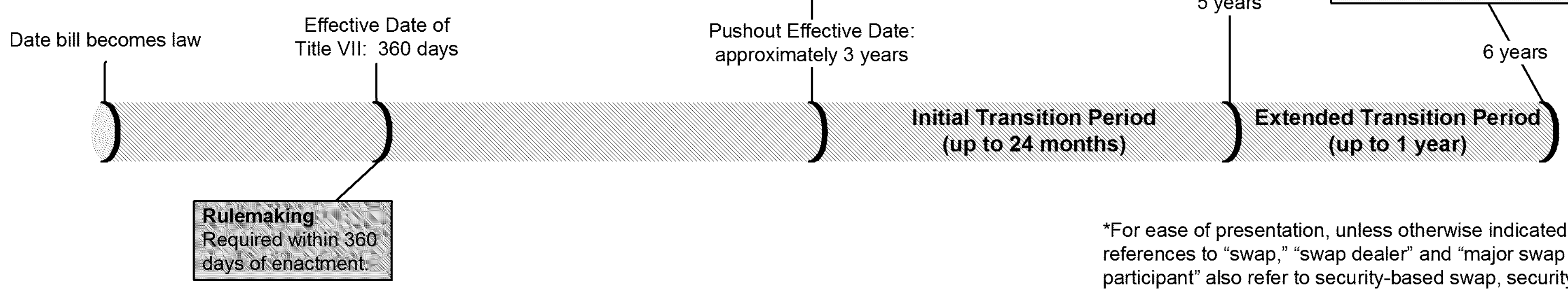
**Transition Period For Insured Depository Institutions**

The Swaps Pushout Rule requires the appropriate Federal banking agency, in consultation with the SEC and CFTC, to permit insured depository institutions up to 24 months after the effective date to divest the swaps entity (which may including pushing out the swaps entity to an affiliate) or cease activities that require registration as a swaps entity. In so doing, the regulators must consider the potential impact of the divestiture on:

- Mortgage and small business lending;
- Job creation; and
- Capital formation versus the negative impact on banks, FDIC and the Federal Insurance Deposit Insurance Fund.

**Potential Extension for Insured Depository Institutions**

The transition period may be extended by the appropriate Federal banking agency, after consultation with the SEC and CFTC, for up to an additional year.




*For ease of presentation, unless otherwise indicated references to “swap,” “swap dealer” and “major swap participant” also refer to security-based swap, security-based swap dealer and major security-based swap participant.

# Collins Amendment Timeline

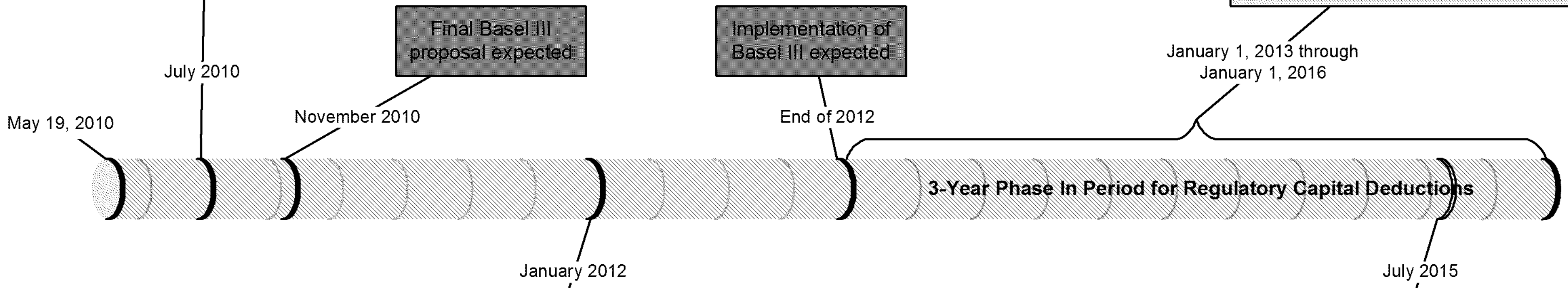


**Key Point**
Potential coordination between the implementation of the Collins Amendment with the implementation of Basel III standards

**Requirements of the Collins Amendment Do Not Apply to:**
- TARP-preferred securities
- Capital instruments issued before May 19, 2010 by depository institution holding companies with less than $15 billion in total consolidated assets as of December 31, 2009.
- Any Federal home loan bank
- Any small bank holding company with less than $500 million in assets.

**Effective Immediately**
- ***Retroactive Effect*** – Capital instruments issued on or after May 19, 2010 are immediately subject to the regulatory deductions required by the Collins Amendment.

**Phase in of Regulatory Capital Deductions for Large Institutions**
- With respect to depository institution holding companies with $15 billion or more in total consolidated assets, regulatory capital deductions will be phased in incrementally over 3 years.

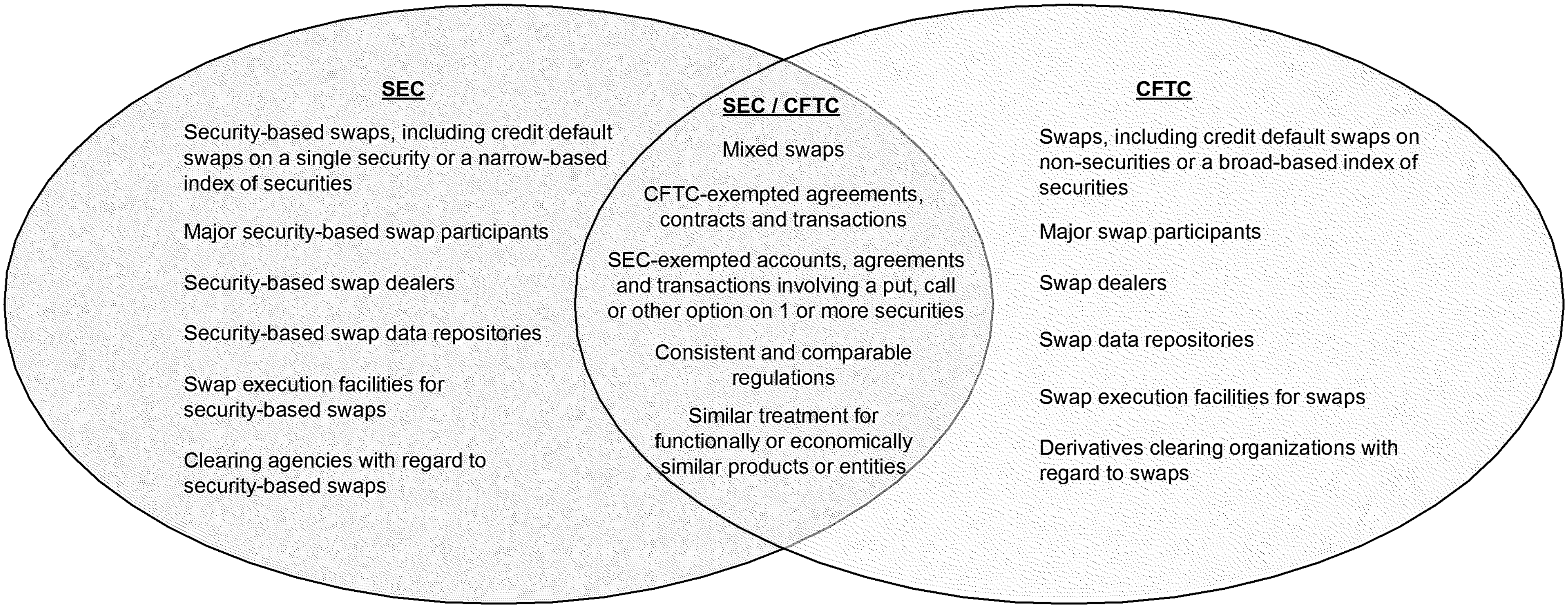


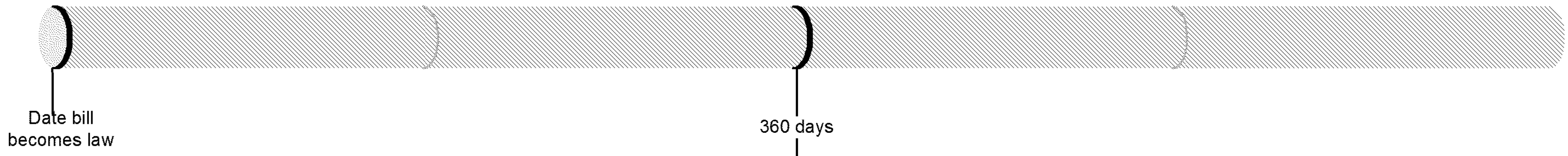

**Within 18 Months After Enactment**
- ***Minimum Leverage and Risk-Based Capital Requirements*** – The banking regulators must issue rules to establish minimum risk-based capital and leverage standards applicable to insured depository institutions, insured depository institution holding companies, and systemically important nonbank financial companies.
- ***Capital Requirements for Systemically Risky Activities*** – The banking regulators must issue rules establishing capital requirements to address certain risk activities, including risks arising from:
  - Significant volumes of activity in derivatives, securitized products, financial guarantees, securities borrowing and lending, and repos;
  - Concentrations in assets for which reported values are based on models; and
  - Concentration in market share for any activity that would substantially disrupt financial markets if the institution were forced to unexpectedly cease the activity
- ***Report on Holding Company Capital Requirements*** – The GAO, in consultation with banking regulators, is required to conduct a study on the use of hybrid capital instruments as a component of Tier 1 capital for banking institutions and bank holding companies.
- ***Report on Foreign Bank Intermediate Holding Company Capital Requirements*** – The GAO, in consultation with banking regulators, is required to conduct a study of capital requirements applicable to U.S. intermediate holding companies of foreign banks.

**5-Year Grandfather of Requirements for Certain Institutions**
- ***Thrift Holding Companies*** – For all thrift holding companies, the minimum leverage and capital requirements of the Collins amendment will take effect 5 years after enactment.
  - For capital instruments issued by thrift holding companies with $15 billion or more in assets **before** May 19, 2010, regulatory capital deductions are phased in between 2013–2016.
  - For capital instruments issued by thrift holding companies with less than $15 billion in assets issued **before** May 19, 2010, regulatory capital deductions are permanently grandfathered.
- ***BHC Subsidiaries of Certain Foreign Banking Organizations*** – For bank holding company subsidiaries of foreign banking organizations that have relied on the exemption from the Federal Reserve's capital adequacy guidelines under Supervision and Regulation Letter SR-01-1, the minimum capital and leverage requirements and the regulatory capital deductions for debt or equity instruments issued **before** May 19, 2010 will take effect 5 years after enactment.

# Derivatives Jurisdictional Division and Rulemaking






**CFTC and SEC Rulemaking Guidelines:**

- With certain explicit exceptions, the CFTC and SEC must individually promulgate required rules within 360 days of enactment.
- The CFTC or SEC must determine by order the status of novel derivative products that may have elements of both securities and futures within 120 days of the other Commission's request to do so. The requesting Commission may petition for review of any such order by the U.S. Court of Appeals for the D.C. Circuit.
- If either the CFTC or SEC believes that a rule of the other violates the jurisdictional division or does not treat functionally or economically similar products similarly, that Commission may petition for review of the rule by the U.S. Court of Appeals for the D.C. Circuit.

# Swap Dealers and Major Swap Participants*



**Rules to be Promulgated within 360 Days of Enactment**

- The CFTC and SEC must adopt rules imposing minimum capital and initial and variation margin requirements on all non-cleared swaps for swap dealers and major swap participants that are non-banking entities, and the prudential regulators must adopt rules imposing capital and margin requirements for swap dealers and major swap participants that are banking entities.
- CFTC / SEC must prescribe business conduct standards, including, among others:
  - The duty for swap dealers and major swap participants to verify eligible contract participant status;
  - Disclosure of swap characteristics such as risks and material incentives or conflicts of interest; and
  - Fair and balanced communication.
- CFTC / SEC may prescribe standards for timely and accurate confirmation, processing, netting, documentation and valuation of all swaps.
- CFTC / SEC must prescribe the requirements of chief compliance officer reporting.

The ban on Federal assistance to swaps entities (including swap dealers and major swap participants) is discussed in the slide entitled "Section 716: Swap Pushout Rule."

Date bill becomes law

1 year

CFTC / SEC must require the registration of swap dealers and major swap participants within 1 year of enactment.

**Registered Swap Dealers/Major Swap Participants Must:**

- Meet minimum capital requirements and minimum initial and variation margin requirements;
- Submit, and make available for inspection, reports regarding their transactions, positions and financial condition;
- Maintain daily trading records of their swaps and all related records and recorded communications;
- Maintain daily trading records for each customer or counterparty in a form that is identifiable with each swap transaction;
- Maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions;
- Conform with CFTC / SEC-prescribed business conduct standards;
- Obtain necessary information to perform any required function and providing the information to the CFTC / SEC or prudential regulator;
- Implement conflict-of-interest systems and procedures; and
- Designate a chief compliance officer and set forth its responsibilities.

**Enhanced Business Conduct Requirements**

Swap dealers and major swap participants are subject to enhanced business conduct requirements when acting as an advisor, offering to enter into, or entering into a swap with a governmental agency or entity, pension plan, endowment or retirement plan.

*For ease of presentation, unless otherwise indicated references to "swap," "swap dealer" and "major swap participant" also refer to security-based swap, security-based swap dealer and major security-based swap participant.

# New Swaps Entities*



**Swap Dealer**
Swap dealer means any person who:
- holds itself out as a dealer in swaps;
- makes a market in swaps;
- regularly enters into swaps with counterparties as an ordinary course of business for its own account; or
- engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps;

provided that, for CFTC-regulated swap dealers, but not for SEC-regulated security-based swap dealers, an insured depository institution should not be considered a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.

A person may be designated as a swap dealer for 1 or more types, classes or categories of swaps or activities without being classified as a swap dealer for all types, classes or categories of swaps or activities.

**Swap Execution Facility**
A swap execution facility is a trading system or platform, other than a designated contract market or national securities exchange, in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trade facility that facilitates the execution of swaps between persons.

**Expanded Definitions**
The bill expands the definitions of futures commission merchant, commodity pool, commodity pool operator, futures introducing broker and securities broker (but not dealer), among others, to include activities in swaps.

**Major Swap Participant**
Major swap participant means any person other than a swap dealer, that:
- maintains a substantial position in swaps for any of the major swap categories as determined by the CFTC / SEC, excluding positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) under ERISA for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;
- has outstanding swaps that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or
- is a financial entity that is highly leveraged relative to the amount of capital it holds, is not subject to capital requirements established by an appropriate Federal banking agency, and maintains a substantial position in outstanding swaps in any major swap category as determined by the CFTC/SEC.

The definition of major swap participant does not include, for CFTC-regulated major swap participants, but not for SEC-regulated major security-based swap participants, a captive financing entity whose primary business is to provide financing and that uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures.

A person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

**Swap Data Repository**
Swap data repository means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

*For ease of presentation, unless otherwise indicated references to "swap," "swap dealer" and "major swap participant" also refer to security-based swap, security-based swap dealer and major security-based swap participant.

# Clearing, Exchange Trading and Reporting of Swaps*



**Mandatory Clearing Requirement**

- All swaps that the CFTC / SEC has determined should be cleared must be submitted to a clearing house for clearing, unless an exception applies.
- A swap is not required to be cleared if 1 of the counterparties is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the CFTC / SEC how it generally meets its financial obligations associated with entering into non-cleared swaps.
  - The application of the clearing exception is solely at the discretion of the counterparty that meets the conditions listed above.
  - If the counterparty is an issuer of securities registered under the Securities Act or reporting under the Exchange Act, an appropriate committee of the issuer's board or governing body must review and approve its decision to enter into swaps that are subject to clearing exception.
- The CFTC / SEC on an ongoing basis must review "each swap," or any group, category, type or class of swaps, to determine if they should be required to be cleared.
- Clearing houses must submit to the CFTC / SEC "each swap," or any group, category, type or class of swaps, that they plan to accept for clearing.
- After making a determination, the CFTC / SEC may stay the clearing requirement for a group, category, type or class of swaps for up to 90 days pending a review of its terms.

**CFTC/SEC Clearing Rules**

Within 1 year, the CFTC / SEC must promulgate rules establishing and governing:

- Clearing house's submission for review of a swap, or a group, category, type or class of swaps;
- Review of a clearing house's clearing of a swap, or group, category, type or class of swaps that has been accepted for clearing; and
- Prevention of evasion of the clearing requirement or abuse of the commercial end-user exemption.

Date bill becomes law | 360 days (Effective Date) | 450 days | 540 days

Clearing/Exchange Trading Requirement Not in Effect | Clearing/Exchange Trading Requirement in Effect

**Uncleared Swap Reporting**

- One counterparty to a swap that is not cleared must report the swap to a registered swap repository or, if there is no repository that accepts the swap, to the CFTC / SEC.

**Exchange Trading Requirement**

- All transactions involving swaps subject to the clearing requirement must be executed on an exchange or swap execution facility, *unless* no exchange or swap execution facility trades the swap or the clearing exception applies.
- All swaps with a counterparty that is not an eligible contract participant must be exchange-traded.

**Real-Time Trading Reports**

- The CFTC / SEC must promulgate rules requiring real-time public reporting of certain swaps, though the rules must ensure anonymity.

**Post-Enactment Swaps**

- Swaps entered into on or after the date of enactment must be reported within 90 days after the effective date, or within such other time after entering into the swap as the CFTC / SEC may prescribe by rule.
- Swaps entered into after enactment but before the clearing requirement is effective are exempt from clearing if reported within this time period.

**Pre-Enactment Swaps**

- Swaps entered into before the date of enactment must be reported within 180 days after the effective date and such reporting exempts these swaps from the clearing requirement.

*For ease of presentation, unless otherwise indicated references to "swap," also refer to security-based swap.

# Accredited Investors



Date bill becomes law

**Modification of "Accredited Investor" Threshold**
The bill provides that, apparently upon enactment and for 4 years following enactment, the net worth threshold for accredited investor status for natural persons is $1 million, excluding the value of the investor's primary residence.

1 year

**Initial Review of Definition of "Accredited Investor"**
Beginning 1 year after enactment, the SEC is authorized to review the definition of the term "accredited investor," as applied to natural persons, and to promulgate rules adjusting the provisions of the definition that do not relate to the net worth threshold.

3 years

**GAO Study**
Within 3 years of enactment, the GAO must conduct a study on the criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds, and submit a report regarding the same to Congress.

4 years

**Periodic Review of "Accredited Investor" Definition**

- 4 years after enactment and every 4 years thereafter, the SEC is required to review the entirety of the definition of the term "accredited investor," as applied to natural persons, and is authorized to modify the definition "as appropriate for the protection of investors, in the public interest, and in light of the economy."
- However, should the SEC retain a net worth threshold for natural persons, the SEC must set it to an amount exceeding $1 million, excluding the value of an investor's primary residence.

**Private Fund SRO Study**
Within 12 months of enactment, the GAO study on feasibility of forming a private fund self-regulatory organization must be complete.

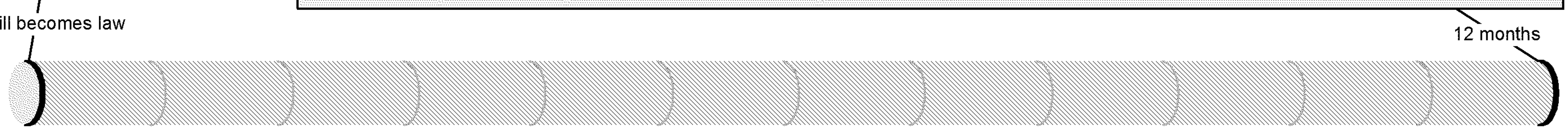
**Rules Issued Within 12 Months After Enactment**

- ***SEC / CFTC Disclosure Rules*** – The SEC and CFTC must, after having consulted with the Council, jointly issue rules regarding the form and content of reports required to be filed with both agencies by dually-registered advisers.
- ***Definition of "Venture Capital Fund"*** – The SEC must issue final rules defining the term "venture capital fund" for purposes of the registration exemption provided to advisers of such funds.

**Effective 12 Months After Enactment**

- ***"Private Investment Adviser" Registration Exemption Eliminated*** – Unless another exemption is available, investment advisers subject to the Investment Advisers Act but previously exempt from registration under this provision must be registered by this time.
- ***Exemption for Advisers to Venture Capital Funds*** – Advisers to venture capital funds are exempt from SEC registration. Such advisers would, however, be subject to record keeping and reporting requirements as determined by the SEC.
- ***AUM Threshold for SEC Registration*** – Investment advisers generally must have greater than $100 million in assets under management to qualify for SEC registration. Consequently, advisers below this threshold may be required to register with state authorities.
- ***Family Offices*** – Family offices, a term to be defined by the SEC, are excepted from the definition of the term "investment adviser," generally placing such entities outside the purview of the Investment Advisers Act. The SEC, however, is not given a deadline to define the term "family office."
- ***Foreign Private Advisers*** – Investment advisers that, among other things, have no place of business in the U.S. and have, in total, fewer than 15 clients and investors in the U.S. in private funds and aggregate assets under management attributable to clients and investors in the U.S. in private funds of less than $25 million, or such higher amount as the SEC may, by rule, determine, are exempt from SEC registration.
- ***Recordkeeping Requirements*** – Advisers to private funds must maintain records and reports, subject to SEC inspection, regarding each private fund advised by the adviser. Such records and reports must include details on each private fund's (1) assets under management; (2) use of leverage; (3) counterparty credit risk exposure; (4) trading and investment positions; (5) valuation policies and practices; (6) types of assets held; (7) side arrangements or side letters; and (8) trading practices. The SEC may require maintenance of additional records and reports.
- ***Qualified Client Standard to Be Adjusted for Inflation*** – Within 1 year of enactment, and periodically thereafter, the SEC must adjust for inflation any dollar threshold contained in rules permitting an investment adviser to charge certain clients performance-based fees, notwithstanding the Investment Advisers Act's general prohibition against doing so. Thus, the $750,000 assets under management and $1.5 million net worth tests for determining a client's status as a "qualified client" would be adjusted for inflation no later than 1 year after the date of enactment and every 5 years thereafter.

**Voluntary Registration**
Effective immediately, any investment adviser may voluntarily register with the SEC, subject to the rules of the SEC.



**Short Sales Disclosures**
The SEC is required to adopt rules regarding public disclosure of short sale information and is provided discretionary authority to adopt rules regarding broker-dealer disclosure to customers regarding short sales and securities lending activity.

**Permitted SEC Rulemaking**

- ***Point of Sale Disclosure*** – the SEC may issue rules requiring certain point of sale disclosures to retail investors. If the SEC does issue any such rules, they must require disclosure of information about investment objectives, strategies, costs and risks, and any compensation or financial incentive received by a broker-dealer or other intermediary in connection with the retail customer's purchase of the product.
- ***Pre-Dispute Arbitration*** – the SEC is authorized to conduct a rulemaking to reaffirm or prohibit the use of mandatory arbitration pre-dispute agreements between broker-dealers and investment advisers.
- ***SRO Filing Procedures*** – SRO rules become effective if the SEC fails to approve or disapprove the rule filing within specified times. The category of rule filings that are "effective on filing" is expanded to include fees charged to non-members, such as market data fees. Effect on rules filed before enactment is unclear.

**Rulemaking on Fiduciary Duty**
After the fiduciary duty study is completed, the SEC may commence rulemaking to specify a standard of conduct for investment advisers and broker-dealers in providing personalized investment advice to retail customers. No timing is specified for rulemaking.

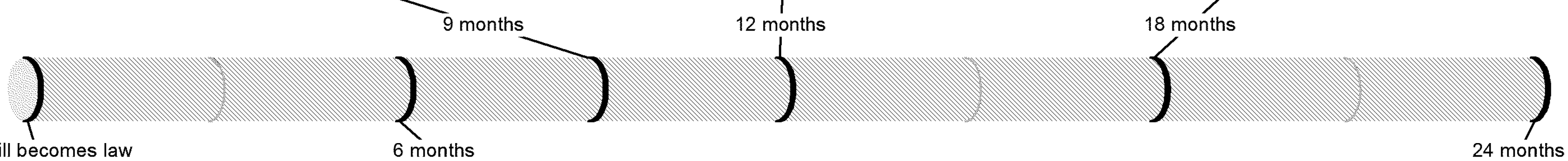
**Whistleblower Protection**
Within 9 months of enactment, the SEC must issue final regulations implementing additional whistleblower protections, including providing whistleblowers with a bounty and creating a private right of action against employers who retaliate against whistleblowers. The SEC must also submit annual reports to Congress on the whistleblower award program.

**Within 1 Year After Enactment**

- ***SRO for Private Funds Study*** – The GAO must conduct a study on the feasibility of forming a self-regulatory organization to oversee private fund.
- ***Aiding and Abetting Study*** – The GAO must submit to Congress a report studying the impact of authorizing a private right of action against aiders and abettors
- ***Disqualifying "Bad Actors" from Reg D Offerings*** – The SEC must issue rules to disqualify certain an offering of sale of securities under Regulation D by certain "bad actors."

**Within 18 Months After Enactment**

- ***Study on Conflicts of Interest*** – The GAO must submit a study to Congress on the potential for investor harm resulting from conflicts of interest between securities underwriting and analyst functions within the same firm.
- ***Mutual Fund Advertising Study*** – The GAO must submit a report to Congress regarding advertising practices of mutual funds and recommendations to improve investor protection.




**Effective Immediately**

- ***Office of Investor Advocate*** is established within the SEC, but the Investor Advocate must be appointed by the SEC Chairman. Investor advocate will report directly to the SEC Chairman and is charged with assisting retail investors. Will submit annual reports on Congress on its activities. The SEC is required to establish procedures to issue a formal response to all recommendations of the Office of Investor Advocate within 3 months of its submission.
- ***Investor Advisory Committee*** is established within the SEC. While membership is specified, it is not clear how members are appointed. Membership will represent, among others, individual investors and state securities commissions. The SEC is required to issue a public statement assessing any findings or recommendations of the committee.

**Within 6 Months After Enactment**

- ***Fiduciary Duty Study*** – The SEC must submit a report to Congress on whether any legal or regulatory gaps exist in the protection of retail customers relating to the standard of care for brokers, dealers and investment advisors, and whether any additional statutory authority would be required to resolve such gaps.
- ***Financial Planner Study*** – The GAO must submit a report regarding the effectiveness of state and federal regulations to protect consumers from individuals who hold themselves out as financial planners.
- ***SEC Study on Improving Access to Registration Information*** – The SEC must complete a study, including recommendations, on ways to improve investor access to registration information about investment advisers, broker-dealers and their respective associated persons.
- ***PCAOB Review of Auditors of Broker-Dealers*** – The PCAOB will have oversight authority over auditors of registered broker-dealers.
- ***SEC Study on Investment Adviser Examinations*** – The SEC must complete a study regarding investment adviser examinations and oversight, including whether a new SRO should be designated to oversee investment advisers.

**Within 2 Years After Enactment**

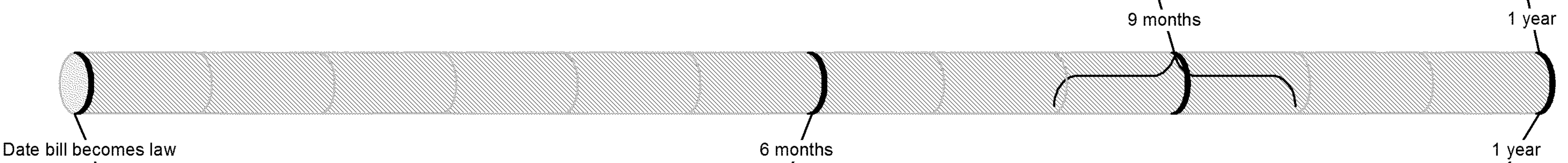
- ***Implementation of Rules Regarding Registration*** – Not later than 18 months after the completion of the SEC's study, the SEC must issue rules to implement any recommendations of the SEC's study on improving investor access to registration information.
- ***Study on Financial Literacy*** – The SEC must submit a report to Congress on current financial literacy among investors and ways to improve financial literacy.
- ***Study on Short Selling*** – The SEC must complete a study on the state of short selling, with particular attention to the impact of recent rule changes and the incidence of failure to deliver shares sold short and delivery of shares.
- ***Transparency of Securities Lending*** – The SEC must adopt rules designed to increase the transparency of information available regarding securities lending.

**The SEC Must Implement Rules Requiring the Following (no specific timeframe given):**

- ***Executive Compensation Disclosures*** – The SEC must require each issuer to disclose in any proxy statement or consent solicitation for an annual meeting a clear description of any compensation required to be disclosed, including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer. The SEC must also require disclosure of (1) the median annual total compensation of all employees, except the CEO; (2) the annual total compensation of the CEO; and (3) the ratio of the median employee annual total compensation to that of the CEO.
- ***Clawbacks*** – The SEC must, by rule, direct national securities exchanges and associations to prohibit the listing of any security of an issuer that does not implement a policy providing (1) for disclosure of the issuer's policy on incentive-based compensation that is based on financial information, and (2) that the issuer will recover incentive compensation paid to certain current or former executive officers in the event the issuer is required to prepare an accounting restatement due to the material noncompliance with any financial reporting requirements.
- ***Disclosure of Hedging by Insiders*** – The SEC must, by rule, require each issuer to disclose in the annual proxy statement or consent solicitation material whether any employee or board member is allowed to engage in any hedging transaction with respect to any equity securities.

**Incentive-Based Compensation**
Within 9 months after enactment, Federal financial regulators must jointly prescribe regulations to (1) require covered financial institutions to report the structures of all incentive-based compensation arrangements and (2) prohibit incentive-based payment arrangements that encourage inappropriate risks by providing employees, directors or principal shareholders with excessive compensation or that could lead to material financial loss to the covered financial institution.

**Independence of Compensation Committees**
Within 360 days after enactment, the SEC must issue rules directing the national securities exchanges to prohibit the listing of any security of an issuer that does not have an independent compensation committee. The SEC's rules must provide reasonable opportunity for an issuer to cure noncompliance with this requirement.




**Effective Immediately**

- ***Broker Discretionary Voting***
  The listing exchanges must prohibit broker discretionary voting in connection with the election of directors, executive compensation, or any other significant matter, as determined by the SEC.

**Say on Golden Parachutes**

- In any proxy or consent solicitation for a meeting of shareholders occurring 6 months after the date of enactment of the Act where shareholders are asked to approve an M&A transaction, companies must provide their shareholders with a non-binding shareholder vote on whether to approve payments to any named executive officer in connection with such M&A transaction.

**Say on Pay**

- Not less frequently than once every three years, at any annual or other meeting of shareholders held 6 months after the date of enactment of the Act where the proxy statement for such meeting is required to disclose compensation, companies must provide their shareholders with a non-binding shareholder vote on whether to approve the compensation of executives.
- Shareholders will also be provided with a non-binding shareholder vote, at least once every six years, to determine whether this vote should be held every one, two or three years.

**Retaining Compensation Consultants and Other Advisers**

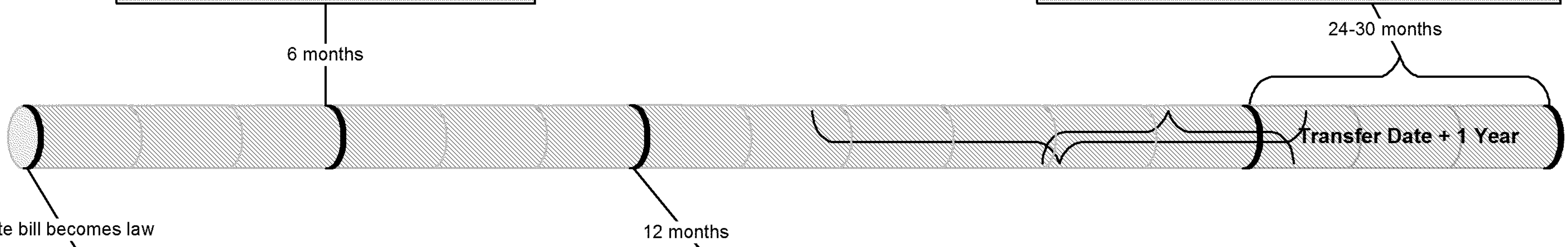
- ***General*** – The compensation committee of an issuer may, in its sole discretion, retain a compensation consultant, legal counsel and other advisers. If the compensation committee retains an adviser, the compensation committee must be directly responsible for the compensation and oversight of such adviser's work.
- ***Independence of Compensation Consultants and Other Advisers*** – The SEC must identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to the compensation committee. The committee may only select such an adviser after taking into consideration those factors identified by the SEC.
- ***Disclosure*** – In any proxy or consent solicitation for an annual meeting, or special meeting in lieu thereof, that is 1 year after enactment, each issuer must disclose in the proxy statement or consent material, in accordance with regulations of the SEC, whether its compensation committee retained a compensation consultant and whether the work raised any conflict of interest.

*The **Transfer Date** is defined as 12 months after enactment, subject to an additional 6 month extension. The Treasury Secretary must publish any extension in the Federal Register within 270 days after enactment.

**Risk Committees at Public Companies**

- Not later than 1 year after the transfer date, the Federal Reserve must issue final rules requiring risk committees at publicly traded bank holding companies with at least $10 billion in assets and systemically important nonbank financial companies.
- The rules issued by the Federal reserve must take effect no later than 15 months after the transfer date.

**Disclosures Regarding Chairman and CEO Positions**
Not later than 6 months after enactment, the SEC must issue rules that require an issuer to disclose in the annual proxy statement the reason why the issuer has separated or combined the offices of chairman and CEO.




**Proxy Access**
Effective immediately, the SEC may issue rules permitting the use by shareholders of proxy solicitation materials supplied by an issuer for the purpose of nominating individuals for membership on the board of directors of the issuer.

**Board Committee Approval Required for Certain Swap Exemptions**
Effective 1 year after enactment, any issuer of registered securities or reports under the Exchange Act wishing to use the swaps clearing exemption must have an appropriate committee of the board of directors review and approve the use of swaps subject to the exemption.

# Institutional Changes to Bank Regulation

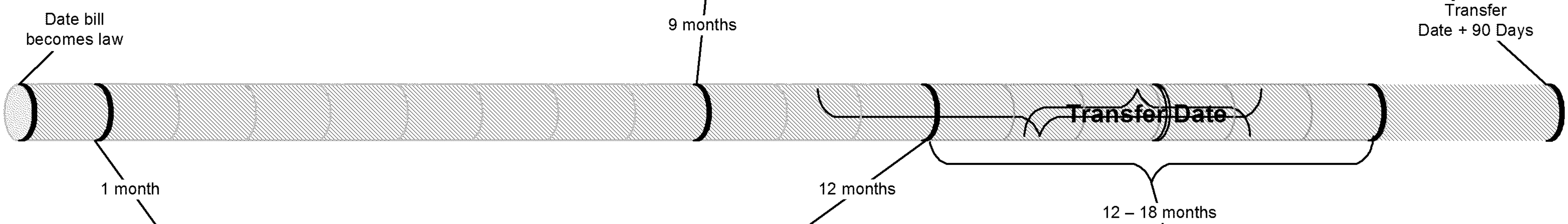


**Notice of Transfer Date Extension**

- Within 270 days, the Treasury Secretary must publish in the Federal Register any extension of the transfer date.
- The transfer date may be extended to a date not later than 18 months after enactment by the Treasury Secretary in consultation with the heads of the Fed, OCC, OTS and FDIC, upon a written determination that the extension is necessary to promote an orderly process, and the Treasury Secretary must provide a description of the steps to effect a timely transition.
- No explicit authority for the Secretary to extend the transfer date once it has been published.

*The **Transfer Date** is defined as 12 months after enactment, subject to an additional 6 month extension.

**OTS is Abolished**
Employees and property of the OTS are divided between the OCC and the FDIC.




**Audit of Emergency Assistance Programs**
Within one month after enactment, the GAO must start a 1-time audit of all loans or other financial assistance provided by the Federal Reserve between December 1, 2007 through the date of enactment. The audit must consider operational integrity, internal controls, conflicts of interests and whether specific participants were disproportionately favored.

**Report on Emergency Assistance Audit**
Not later than 12 months after enactment, the GAO must complete its audit of the Federal Reserve's emergency assistance programs. Within 3 months of completing the audit, the GAO must submit a report to Congress describing the results of the audit.

**Before the Transfer Date:**

- ***Carryover of Certain Rules*** – The Fed, OCC and FDIC must determine which regulations of the OTS will continue in effect.

**On the Transfer Date:**

- ***Federal Reserve*** – Assumes OTS's powers with respect to thrift holding companies and their non-depository institution subsidiaries, as well as rulemaking authority relating to thrift transactions with affiliates, loans to insiders and tying arrangements. Maintains authority over state member banks.
- ***OCC*** – Assumes OTS's powers with respect to federal thrifts, as well as rulemaking authority over all thrifts (except for the limited rulemaking authority transferred to the Federal Reserve).
- ***FDIC*** – Assumes OTS's powers other than rulemaking with respect to state thrifts.
- ***FDIC Board*** – The director of the Bureau of Consumer Financial Protection takes the FDIC board seat previously held by the OTS Director.

# Changes to Holding Company Regulation



**Expanded FDIC Enforcement**

- The FDIC is authorized to make special examinations of any insured depository institution, systemically important nonbank financial company or bank holding company with $50 billion or more total consolidated assets pursuant to its authority under the liquidation authority in Title II of the bill.
- The FDIC is also granted back-up authority with respect to any depository institution holding company that engages in conduct or threatens conduct, including any acts or omissions, that pose a foreseeable and material risk to the Deposit Insurance Fund. Both grants of authority are limited to companies that are not in "generally sound condition."

**Covered Transactions Currently Include:**

- any loan or extension of credit to an affiliate;
- any purchase of, or investment in, securities issued by an affiliate;
- any purchases of assets, including assets subject to an agreement to repurchase from an affiliate, unless specifically exempted by the Fed (which is not a broad exclusion);
- any transaction in which the covered bank holding company entity accepts securities issued by an affiliate as collateral for a loan or extension of credit to any entity; and
- the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate.

*The **Transfer Date** is defined as 12 months after enactment, subject to an additional 6 month extension. The Treasury Secretary must publish any extension in the Federal Register within 270 days after enactment.

**State Lending Limits**.
An insured state bank is prohibited from engaging in derivative transactions unless the state's lending limit laws take into consideration credit exposure to derivative transactions.

Date bill becomes law

**Transfer Date***

12-18 months

**Transfer Date + 1 Year**

24-30 months

**Transfer Date + 18 Months**

30-36 months

**Effective On the Transfer Date:**

- ***Limitations on Transactions with Insiders*** – An insured depository institution is prohibited from engaging in asset purchases or sales transactions with its officers, directors or principal shareholders unless on market terms and, if the transaction represents greater than 10% of the capital and surplus of the institution, has been approved by a majority of disinterested directors.
- ***Source of Strength*** – The Fed, FDIC or OCC, as appropriate, must issue rules to require a bank or thrift holding company to serve as a source of financial strength for any depository institution subsidiary. The rules must take effect within 1 year after the transfer date.
- ***Well Capitalized and Well Managed*** – All bank holding companies engaged in expanded financial activities must be well capitalized and well managed at the holding company level, as well as at the depository institution level.
- ***Repeal of Fed-Lite*** – The Fed has expanded authority to examine, prescribe regulations or otherwise take any action pursuant to any provision of the Bank Holding Company Act or Section 8 of the Federal Deposit Insurance Act with respect to all subsidiaries of a bank holding company, including functionally regulated subsidiaries, although the Federal Reserve is still limited in its ability to subject functionally regulated subsidiaries to capital adequacy standards.
- ***Standards for Interstate Acquisitions*** – The Fed may approve a Section 3 application by a bank holding company to acquire control, or substantially all of the assets of a bank only if the bank holding company is well capitalized and well managed. The federal banking agencies may approve interstate merger transactions only if the resulting bank will be well capitalized and well managed after the transaction.
- ***Expanded Federal Reserve Enforcement*** – The bill requires the Fed to examine bank permissible activities conducted by a non-depository institution, non-functionally regulated subsidiary of a bank holding company at the same standards and frequency as if the activities were conducted by the lead depository institution. The lead federal banking agency is given back-up authority.

**Effective One Year After the Transfer Date:**

- ***Expansion of "Covered Transactions"*** – Section 23A of the Federal Reserve Act is amended to: (1) treat credit exposure on derivatives transactions and securities borrowing and lending transactions with affiliates as covered transactions and subject to the Section 23A collateral requirements; (2) require collateral be maintained at all times for covered transactions required to be collateralized; (3) expand the definition of "affiliate" to include an investment fund for which a covered bank, or an affiliate thereof, is an investment adviser; (4) prospectively eliminate exceptions for transactions with financial subsidiaries; (5) revise the process for granting exemptions under sections 23A and 23B; and (6) allow the Fed to determine how netting agreement may be taken into account in determining the amount of a covered transaction with an affiliate.
- ***Source of Strength*** – The rules issued by the Fed, FDIC or OCC, as appropriate, with respect to bank or thrift holding companies serving as a source of strength for depository institution subsidiaries must take effect.
- ***National Lending Limits*** – Credit exposures on derivatives, repurchase agreements and reverse repurchase agreement are treated as extensions of credit for the purpose of national bank lending limits. Accordingly, banks must take into account these exposures for purposes of affiliate transaction limitations, insider transaction limits and lending limits that apply to unaffiliated third parties.
- ***Lending Limits to Insiders*** – The types of transactions subject to insider lending limits are expanded to include derivative transactions, repurchase agreements, reverse repurchase agreements and securities borrowing or lending transactions

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# Systemically Important Payment, Clearing and Settlement Activities



**Consequences of Designation for Entities Engaged in the Systemically Important Activity**

- ***Examination and Enforcement*** – Systemically important financial market utilities and payment, clearing and settlement activities that are regulated by the SEC or CFTC or certain other federal regulators are subject to prudential regulation, including rulemaking, examination and enforcement, by such regulator, with back-up authority provided to the Federal Reserve.
- ***Reporting Requirements*** – The Federal Reserve or the Council may require any designated institution to report data to the Federal Reserve or the Council, but must first coordinate with other agencies to determine if the information is otherwise available.

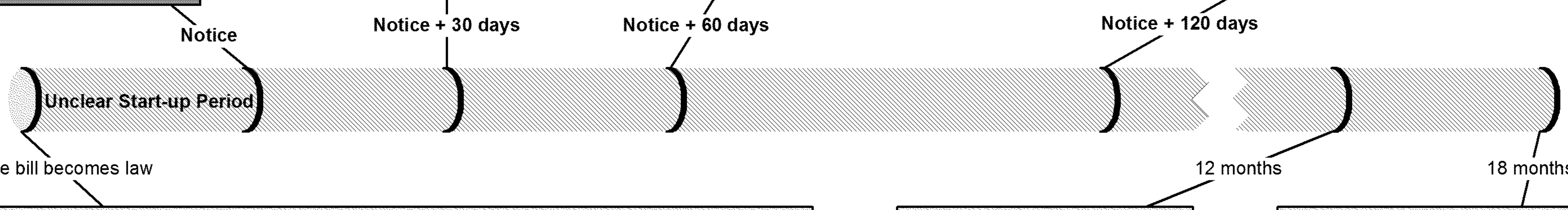
**Key Point:** Payment, clearing and settlement activities and financial market utilities could be designated as systemically important before risk management standards are put in place and before the safe harbor rules have been issued. This will put enormous pressure on regulators to come up with rules and policies and quickly.

**Notice of Proposed Designation**
Council proposes to designate a payment, clearing or settlement activity or financial market utilities as systemically important by publishing a notice in the Federal Register.

Last day by which the financial institution that conducts the designated activity or the financial market utility may request a hearing before the Council; subject to emergency exceptions as declared by Council.

The hearing must take place within 30 days of the company's request. If no hearing is requested, the Council must notify the institution of its final decision no later than 30 days after the last date on which a hearing could have been requested.

**Final Decision**
If a hearing is requested, the Council must render a final decision within 60 days of the hearing.




**Effective Immediately**

- ***Council*** – The Financial Stability Oversight Council (the "**Council**") is created, but the Director of the Bureau of Consumer Financial Protection and the independent member with insurance expertise must be appointed by the President with the advice and consent of the Senate.
- ***Systemically Important Designation*** – The Council is authorized to designate a payment, clearing or settlement activity or financial market utilities as systemically important.
- ***Standards for Systemically Important Activities*** – The SEC, CFTC and other federal regulators, in consultation with the Federal Reserve and the Council, are authorized to prescribe risk management standards for systemically important payment, clearing or settlement activities, taking into consideration relevant international standards and existing prudential requirements, with back-up authority provided to the Federal Reserve. Where appropriate, the standards must establish a threshold level of engagement in the activity at which the financial institution will become subject to the standards.
- ***Information-Gathering*** – The Council is authorized to require any financial institution to submit information for the purpose of assessing whether any payment, clearing or settlement activity engaged in or supported by the financial institution is systemically important.

**Risk Management and Supervision Program**
The CFTC and the SEC, after coordinating with the Federal Reserve, must submit to Congress a jointly developed risk management supervision program for designated clearing entities.

**Safe Harbor**
Within 18 months after enactment, the Federal Reserve, in consultation with the Council, must issue rules to exempt certain types or classes of nonbank financial activities from the prudential and other requirements applicable to systemically important nonbank financial companies in Title I. The safe harbor is partly intended to mitigate duplication between the requirements applicable to systemically important nonbank financial companies and companies that engage in systemically important payment, clearing or settlement activities.

**Notice of Designated Transfer Date**

- **Within 60 days** of enactment, the Treasury Secretary, in consultation with the heads of the Fed, FDIC, FTC, National Credit Union Administration Board, OCC, OTS, HUD and OMB, must designate a date for the transfer of consumer financial protection functions to the Bureau (the "**designated transfer date**") that is **within 6 to 12 months** of enactment.
- The Secretary may, in consultation with the above-mentioned regulators, extend the date to **up to 18 months** after enactment upon a written determination that the extension is necessary.

Until the designated transfer date, existing agencies will continue to exercise their consumer protection roles.

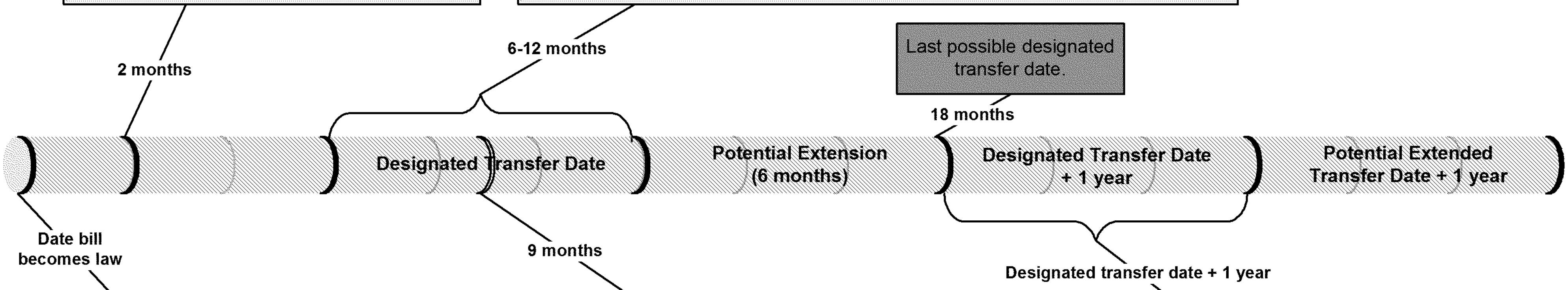
**Designated Transfer Date**

The designated transfer date occurs between 6 and 12 months after enactment, subject to extension to up to 18 months after enactment.

- General transfer to the Bureau of consumer financial protection functions (research, rulemaking, issuance of orders or guidance, supervision, examination and enforcement activities and powers) of the Federal Reserve, the FDIC, the FTC, the NCUA, the OCC, the OTS and HUD, subject to certain carveouts.
- State law preemption provisions become effective.
- Funding mechanism (up to 10 – 12% of Federal Reserve operating expenses plus potential for additional $200 million appropriation annually) becomes effective.

**Key Point**

There will be a long transition and start-up period, during which existing agencies will continue to exercise their consumer protection roles, although the Bureau will have access to funding and certain rulemaking and other authority upon enactment.




**Effective Immediately**

- The Consumer Financial Protection Bureau (the "**Bureau**") is established. The Director is to be appointed by the President and confirmed by the Senate.
- The Bureau gains general rulemaking authority and authority to supervise nondepository covered persons under the bill (but not yet under the enumerated consumer financial laws – see Designated Transfer Date).
- Bureau must coordinate supervisory action with prudential regulators and state bank supervisors with respect to very large insured banks and thrifts.
- Treasury Secretary can direct the Federal Reserve to transfer to the Bureau such sums as are necessary to carry out its authorities, until the permanent funding mechanism becomes effective on the designated transfer date.

**Interchange Fees**

Within 9 months of enactment, the Federal Reserve must issue final rules to establish standards for assessing whether interchange fees with respect to an electronic debit transaction are "reasonable and proportional to the actual cost" of processing the transaction.

**Within One Year After the Designated Transfer Date**

- The Bureau, in consultation with the FTC, must define "nondepository covered persons."
- The Bureau gains authority to restrict use of mandatory pre-dispute arbitration agreements between covered persons and consumers for consumer financial products or services.
- Bureau gains authority to prescribe disclosure rules with respect to consumer financial products or services; Bureau must propose rules and model disclosures for mortgage loan transactions.

# Insurance Provisions



Rep. Frank stated recently that there will be a "major push" in Congress to provide for an optional federal charter after the passage of broader financial regulatory reform, although he personally intends to stay neutral in the debate.

The business of insurance is exempt from the authority of the new consumer protection agency.

**Key Point**
Although regulatory reform does not establish an optional federal insurance charter, the FIO will serve certain functions that lay the groundwork for establishing federal insurance expertise.

**Federal Insurance Expertise**
The Fed may gain practical insurance supervisory experience to the extent insurers are designated as systemically important.

0-18 months

**FIO Report** – Within 18 months, the the FIO must submit a report to Congress on improving U.S. insurance regulation, which must cover, among other things: costs and benefits of potential federal regulation of insurance; feasibility of regulating only certain lines at the federal level; regulatory arbitrage; developments in the international regulation of insurance; consumer protection; and potential consequences of subjecting insurance companies to a federal resolution authority.

18 months

Date bill becomes law

24 months

**Institutional Changes**

- ***FIO*** – The Federal Insurance Office (the "**FIO**") is created with the power to monitor the insurance industry, recommend to the Council any insurers that should be treated as systemically important, represent the U.S. in the International Association of Insurance Supervisors and determine whether state insurance measures are preempted by international agreements. FIO is given information gathering powers, including authority to issue subpoenas, which extend to any insurer that meets a minimum size threshold that the FIO may establish.
- ***Council*** – The Financial Stability Oversight Council (the "**Council**") is established, but the director of the Consumer Financial Protection Bureau and the independent member with insurance expertise must be appointed by the President with the advice and consent of the Senate. The director of the FIO and a sitting state insurance commissioner will also serve as non-voting members. The Council may designate a nonbank financial company as "systemically important" and the FIO may recommend insurers and their affiliates for designation, even though standards for systemically important companies will not yet be in place.
- ***OFR*** – The Office of Financial Research (the "**OFR**") is established, but the Director must be appointed by the President with advice and consent of the Senate. The OFR, acting on behalf of the Council, can request information on any financial company, **including insurance companies**, and financial activities from sources including member agencies and financial companies.

**Participation in National Producer Database**
Beginning 24 months after enactment, a state may not collect any fees relating to licensing of an individual or entity as a surplus lines broker unless the state participates in the national insurance producer database of the National Association of Insurance Commissioners.

We did not fully address provisions relating to nonadmitted insurance and reinsurance reform.

# Timeline of New Fees



**Deposit Insurance Reforms**

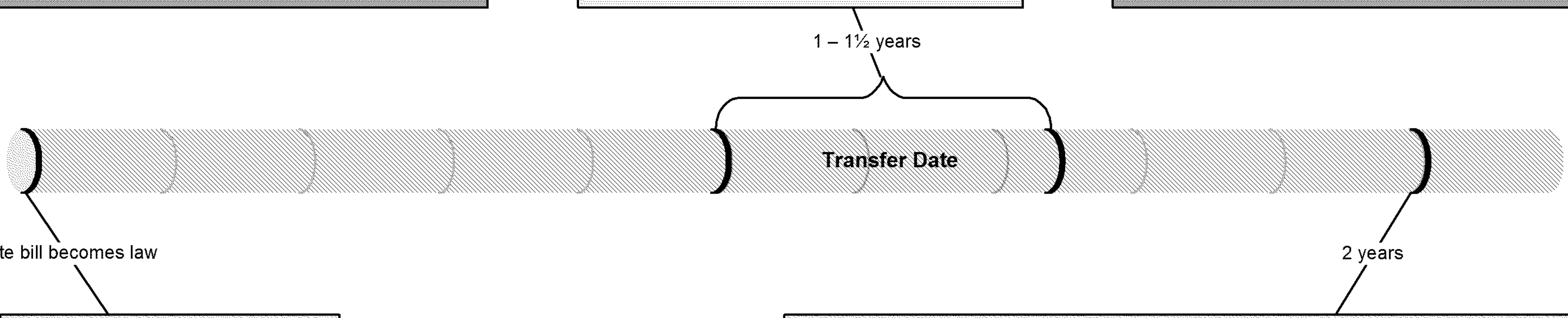
- ***Definition of "Assessment Base"*** – The FDIC is required to amend its regulations to define the term "assessment base" with respect to an insured depository institution, as an amount equal to the depository institution's average consolidated assets minus its equity. Permits FDIC to reduce the assessment base for custodial banks and banker's banks.
- ***Deposit Insurance Fund Reserve Ratio*** – The FDIC must take steps as may be necessary for the DIF reserve ratio to reach 1.35% of estimated insured deposits by September 30, 2020. In setting assessments necessary to meet this requirement, the FDIC must "offset" the impact of the new reserve ratio requirement on insured depository institutions with less than $10 billion in total consolidated assets.

*The **Transfer Date** is defined as 12 months after enactment, subject to an additional 6 month extension. The Treasury Secretary must publish any extension in the Federal Register within 270 days after enactment.

**Effective on the Transfer Date:**
The Federal Reserve is required, and the OCC and FDIC are given authority, to assess fees on certain entities that they supervise. In the case of the Federal Reserve and OCC, fees are assessed as the relevant regulator deems "necessary or appropriate" to carry out supervisory responsibilities, and in the case of the FDIC, fees are assessed to cover the costs of examinations.

**Resolution Authority Fees**

- No pre-funded dissolution fund.
- FDIC's resolution expenses are funded by borrowings from Treasury up to certain maximum amounts equal to certain percentages of the book or fair value of the covered financial company's assets.
- Borrowings must be repaid within 5 years, first, by making assessments on claimants that received "additional payments" or other "amounts" from the FDIC in order to recover any excess benefits they received in the liquidation (*i.e.*, amounts in excess of their minimum recovery rights) and, second, by making assessments for any shortfall on large financial companies with assets of $50 billion or more and any systemically important nonbank financial company.




**Effective Immediately:**

- ***SIPC Fees*** – The minimum assessment paid by SIPC members will be set at 0.02% of the gross revenues from the securities business.

**Broker-Dealer Fees**
The PCAOB must begin the allocation, assessment and collection of fees with respect to broker-dealers beginning the first full fiscal year after enactment.

**Assessments on Large Bank Holding Companies and Systemically Important Nonbank Financial Companies**

- Beginning 2 years after enactment, the Treasury Secretary and the Council must establish an assessment schedule applicable to bank holding companies with total consolidated assets of $50 billion or greater and systemically important nonbank financial companies sufficient to fund the budget of the Office of Financial Research, which includes the expenses of the Council.
- The assessment schedule must take into account differences among such companies based on, among other factors: (1) the degree of leverage of the company; (2) the amount and nature of the financial assets of the company; (3) the amount and types of the liabilities of the company, including the degree of reliance on short-term lending; (4) the extent and types of off-balance sheet exposures of the company; (5) the extent and types of the transactions and relationships of the company with other systemically important companies; (6) whether the company owns an insured depository institution; (7) nonfinancial activities of the company; and (8) any other factors the Council determines appropriate.