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Bank M&A in the Wake of Dodd-Frank

MICHAEL J. AIELLO AND HEATH P. TARBERT

Financial regulatory overhauls generally produce waves of mergers and acquisitions. Notwithstanding congressional intent, Dodd-Frank promises to be no different. This article examines Dodd-Frank's key provisions governing bank M&A transactions as well as those critical aspects of the legislation most likely to drive future consolidation within the banking industry.

Earlier this year, Congress enacted the most sweeping overhaul of U.S. bank regulation in decades. Although the Dodd-Frank Wall Street Reform and Consumer Protection Act[1] ("Dodd-Frank" or the "Act") regulates a host of financial activities beyond the traditional banking sector, the enhanced regulation of depository institutions and their holding companies is a central theme running throughout Dodd-Frank's 2,300 pages.

PAST AS PROLOGUE?

Legislative tsunamis are nothing new for the banking sector.[2] Within the last 30 years, a number of major pieces of federal legislation have fundamentally changed the business of banking. The most prominent examples include the Garn-St. Germain Act of 1982, the Riegle-Neal Act of 1994, and the Gramm-Leach-Bliley Act of 1999.[3] Each successive regulatory overhaul has historically

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produced a similar result — a significant wave of mergers and acquisitions.[4] If past is prologue, then one should expect widespread consolidation within the U.S. banking industry in the next few years. In fact, some experts are "pegging late 2010 as the start of a massive wave of bank mergers that bearish observers say could erase one in four U.S. lenders in the next five years."[5]

Ironically, many of the deals certain to come in the wake of Dodd-Frank will not occur because of the Act's M&A provisions, but rather, in spite of them. Dodd-Frank includes several important provisions governing bank M&A deals. Rather than encouraging M&A transactions as prior statutes have, the Act erects a number of regulatory barriers to completing them. As discussed below, the Act: (1) imposes a well-capitalized and well-managed requirement on would-be acquirers; (2) establishes concentration limits on liabilities and deposits; (3) directs regulators to block deals perceived to pose a systemic risk; and (4) places a moratorium on the acquisition of "nonbank banks" by commercial firms. At the same time, however, other aspects of Dodd-Frank fundamentally alter the U.S. banking sector such that the Act's various barriers to M&A transactions may become altogether insignificant. The most critical of these features are: (1) capital constraints; (2) back-to-basics prohibitions; and (3) compliance costs threatening the viability of smaller banks. These latter aspects of Dodd-Frank — when combined with (4) ripening economic conditions for industry consolidation — will likely play a leading role in triggering the next wave of bank M&A activity. Although Congress did not intend the Act to produce a groundswell in bank M&A transactions, that result may be inevitable nonetheless.

DODD-FRANK'S M&A PROVISIONS

Dodd-Frank's M&A provisions do not expressly encourage deal activity, but will unquestionably have a considerable impact on the structuring of bank M&A deals in the decades ahead.

Well-Capitalized/Well-Managed Requirement

Of all Dodd-Frank's M&A provisions, Section 607 may have the most significant impact on future deal flow. That provision amends the Bank

Holding Company Act of 1956 ("BHCA") to require a bank holding company to be both "well capitalized and well managed" before acquiring control of a bank located in another state.[6] Dodd-Frank similarly amends the Bank Merger Act of 1960 ("BMA") to require any insured depository institution seeking regulatory approval of an interstate merger to be well capitalized and well managed.[7] At first glance, this requirement may not seem particularly onerous. However, before the passage of Dodd-Frank, applicants seeking approval of an M&A transaction under the BHCA or the BMA had to be only "adequately capitalized and adequately managed." Although the well-managed standard involves considerable discretion among regulators, the required capital ratios leave little room for flexibility. Bank regulators regard a depository institution as well capitalized if it has a total risk-based capital ratio of 10.0 percent or greater, a Tier 1 risk-based capital ratio of 6.0 percent or greater, and a leverage ratio of five percent or greater.[8] Under the pre-Dodd Frank standard of adequately capitalized, the required total and Tier 1 risk-based ratios were only 8.0 percent and 4.0 percent, respectively.[9] The requisite leverage ratio was 4.0 percent, or as low as 3.0 percent if the bank had a CAMELS rating of 1.[10] Although some regulators customarily demand higher capital ratios prior to approving merger or acquisition applications, Dodd-Frank may push them to raise any unwritten, de facto limits even higher.[11]

Dodd-Frank thus imposes what could be a substantial burden on many banks planning to execute M&A strategies in the next few years. The well-capitalized standard may become an even greater barrier to transactions as the definition of Tier 1 capital becomes narrower and other assets and activities are assessed additional capital charges.

Concentration Limits

Consistent with Congress's explicit goal of ending the "too-big-to-fail" paradigm, Section 622 of Dodd-Frank establishes concentration limits for any insured depository institution, any company that controls such an institution, and any entity that the newly established Financial Stability Oversight Council designates as a systemically important "nonbank financial company."[12] The Act expressly does so by prohibiting any of these entities from acquiring or merging with another institution that would result in any institution having more than 10 percent of the aggregate U.S.-based liabilities of all these entities combined. In addition to the overall limit on liabilities, Section 623 of Dodd-Frank amends the BHCA, the BMA, and the Home Owners' Loan Act to provide that an interstate acquisition or merger may not be approved where any single depository institution would control more than 10 percent of all FDIC-insured deposits.[13] Dodd-Frank permits regulators to lift the concentration limit threshold if an M&A transaction involves a depository institution either in default or in danger of default, or if the acquisition will be consummated with the FDIC's assistance.[14] As a practical matter, most M&A deals are unlikely to reach the aggregate size at which these provisions could be invoked to block them. Nevertheless, Dodd-Frank's concentration limits could complicate the kind of mega-mergers the banking industry has witnessed during the past two decades.

Systemic Risk Factor

Dodd-Frank introduces an additional hurdle intended to prevent mega-mergers. For the past 50 years, the Federal Reserve Board ("FRB") has had the power to prevent bank and nonbank acquisitions under Sections 3 and 4 of the BHCA based on competitive, financial, managerial, community, supervisory, and other relevant factors.[15] Pursuant to the BMA, the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), the Federal Deposit Insurance Corporation ("FDIC"), and the FRB have enjoyed the ability to block M&A transactions on similar grounds.[16] Dodd-Frank amends both the BHCA and BMA to add another factor to the list: systemic risk. Specifically, bank regulators must now consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[17] Exactly what the regulators believe may constitute a risk to U.S. financial stability remains to be seen.

To be sure, the systemic risk factor is unlikely to affect the vast majority of bank M&A deals in the United States. Typical mergers between regional and community banks are almost certainly not implicated. But for deals between large banks of equal size, the systemic risk factor — along with the concentration limits discussed above — may prove problematic. Furthermore, the systemic risk factor may complicate M&A deals involving banks and affiliates engaged in activities where financial stability concerns are more acute, such as the administration of payment, clearing, and settlement systems or material participation in the overnight funding markets. The same may be true for acquisitions of nonbank entities engaged in operations perceived as substantially riskier than traditional banking. Perhaps that is why Dodd-Frank also mandates that the FRB pre-approve a financial holding company's acquisition of any company where the entities or assets to be acquired exceed $10 billion.[18]

Acquisition Moratorium on Nonbank Banks

For the last several decades, a respectable segment of the bank M&A market has been the acquisition of nonbank banks by both regulated financial institutions and commercial companies.[19] Some policymakers have long opposed these entities on the ground that commercial companies have been able to enter the business of banking erstwhile avoiding regulation as bank holding companies or savings and loan holding companies.[20] Dodd-Frank marks a modest but significant victory for those seeking the elimination of nonbank banks. The Act places a three-year moratorium on the establishment of any new industrial bank, credit card bank, or trust bank eligible to accept FDIC-insured deposits. Equally important, the three-year moratorium applies to any transaction where a nonbank bank would become directly or indirectly controlled by a commercial firm.[21] In that respect, Dodd-Frank directs regulators to disapprove any change in control where an industrial bank, credit card bank, or trust bank would be held by a company with 85 percent or more of its consolidated annual gross revenues derived from non-financial activities.[22] Predictably, there is an exception for the acquisition of any nonbank bank in danger of default. The moratorium may also be lifted when a change of control occurs in the context of a larger merger between two commercial firms. Outside these limited exceptions, however, the moratorium will undoubtedly complicate transactions involving the sale of nonbank bank subsidiaries, making it more difficult for both regulated holding companies and commercial firms to find a willing bidder.

DODD-FRANK'S OVERALL IMPACT

While Dodd-Frank's various provisions governing M&A transactions are intended to make deals more difficult, the Act may nonetheless spur substantial consolidation. Overall, the Act's impact on the banking industry will be profound, and when combined with the harsh economic conditions still lingering from the financial crisis, will likely produce a wave of M&A transactions reminiscent of those following the passage of Garn-St. Germain, Riegle-Neal, and Gramm-Leach-Bliley.

Capital Constraints

Arguably the most challenging aspect of Dodd-Frank for all banks is the set of increased capital and leverage constraints the Act imposes. Many policymakers understood the chief lesson of the financial crisis to be that banks had too little capital and too much leverage.[23] Congress's predictable remedy was to mandate more capital and less leverage. That motif runs throughout the Act, but is perhaps best evidenced in Section 171, often referred to as the Collins Amendment.[24] Section 171 directs regulators to establish uniform minimum risk-based capital and leverage capital requirements for depository institutions and their holding companies — with an important catch. These requirements, which are to serve as a floor, must not be "quantitatively lower than the generally applicable … requirements that were in effect for insured depository institutions" on July 21, 2010. The significance of this statutory language should not be missed in its subtlety. In essence, this provision requires that capital and leverage requirements for regulated holding companies be identical to the strictest ratios applied to subsidiary banks supervised by the FDIC.

For nearly two decades, however, holding companies have enjoyed the ability to issue trust-preferred securities ("TruPS"), cumulative preferred shares, and other instruments treated as Tier 1 capital, but the FDIC has not permitted these options for depository institutions. With approximately $150 billion of TruPS outstanding in the United States, Congress's immediate elimination of TruPS would have been catastrophic.[25] Dodd-Frank instead permanently grandfathers all TruPS issued by financial institutions with consolidated assets of less than $15 billion while applying a phase-out scheme for larger institutions.[26] Although Dodd-Frank thus averted a potentially devastating result, the grandfathering rules provide little solace to financial institutions seeking additional capital. Since no new issuances of TruPS will qualify as Tier 1 capital going forward, banks must return to more rudimentary varieties of capital — such as tangible common equity — that may be less attractive to investors than high-yielding TruPS. In addition, the redemption of outstanding TruPS for larger banks may prove difficult under current market conditions.[27]

Dodd-Frank also compels regulators to design enhanced capital requirements for certain activities considered to pose material risks to the financial system. These activities include derivatives, securitized products, financial guarantees, securities borrowing and lending, and repurchase agreements.[28] Only time will tell how burdensome these new capital charges will be. What is certain, however, is that capital requirements will be higher than in the past. Section 616 of Dodd-Frank, for example, mandates "countercyclical" capital requirements for all insured depositories and their regulated holding companies.[29] As a consequence, regulators will be demanding more capital just as financial institutions are beginning to recover from the lagging effects of the financial crisis. Finally, Dodd-Frank codifies the longstanding source-of-strength doctrine, which requires holding companies to provide financial assistance to their subsidiary depositories in times of distress.[30] Once again, all these components of Dodd-Frank can mean only one thing: higher capital requirements across the board.

More stringent capital and leverage requirements will likely decrease profitability in the banking sector. Historically, declining profits have been a chief reason for M&A activity, as banks naturally consolidate to achieve economies of scale. For those financial institutions unable to satisfy the new requirements of Dodd-Frank, placing themselves on the auction block may be the sole means by which they can escape FDIC receivership. As of June 30, 2010, there were 829 institutions on the FDIC's "problem" bank list, representing more than $400 billion in assets.[31] That figure is expected to rise once regulators begin imposing higher capital and stricter leverage requirements in the absence of any meaningful economic recovery.

Back-to-Basics Prohibitions

A second motif running throughout Dodd-Frank is the notion that banks must get back to the basics. In other words, many believe that some banks have strayed too far from traditional lending and deposit-taking activities into exotic businesses that present undesirable risks to the Deposit Insurance Fund and the taxpayers who ultimately back it.[32] Dodd-Frank includes several provisions specifically aimed at dislodging from large money-center banks certain activities perceived as having unjustifiable risks. The most important of these provisions is Section 619, more commonly known as the "Volcker rule." This provision generally prohibits depository institutions and their affiliates from engaging in proprietary trading and from investing in or sponsoring private equity and hedge funds.[33] Although the Volcker rule is intricate and its impact on the banking industry is largely unclear, Congress's unambiguous intent was to force banks and their holding companies to divest these business segments over the next decade.[34] Apart from the obvious deal activity generated from divestments, the Volcker rule may indirectly fuel M&A strategies within the traditional lending sector as banks begin to refocus on their core business segments. Alternatively, a few institutions may conclude that their insured depositories are immaterial in comparison with those activities prohibited by the Volcker rule — ultimately choosing to "debank" by partnering with a willing buyer of their subsidiary bank. In short, Dodd-Frank's back-to-basics prohibitions will give rise to M&A transactions in the banking sector in a variety of ways.

Too-Small-to-Succeed

For community banks, Dodd-Frank presents a different — and arguably greater — challenge. As noted above, a major goal of Congress was to end the paradigm of "too-big-to-fail," and Dodd-Frank includes a variety of measures toward that end.[35] In its attempt to achieve that goal, however, Congress may have unintentionally created a parallel category that is equally problematic: "too-small-to-succeed." By enacting a 2,300-page statute that directs or empowers regulators to promulgate over 500 separate regulations — many of which will adversely affect the banking sector — Congress has all but guaranteed that regulatory compliance costs will increase dramatically over the next decade.[36] Because compliance costs often involve economies of scale, community banks will undeniably be at a disadvantage vis-à-vis their regional and national counterparts. Furthermore, economics of scale appear to be even more significant in the context of consumer financial regulation.[37] Yet according to President Obama, Dodd-Frank's provisions "represent the strongest consumer financial protections in history,"[38] largely by creating a new Consumer Financial Protection Bureau ("CFPB") with a self-sustaining budget and expansive rulemaking and enforcement authorities.[39] Although community banks and regional institutions with assets of less than $10 billion will avoid primary supervision by the CFPB, the new agency's substantive rules will nonetheless govern all financial institutions. Because small banks generally focus more heavily on consumers than the large money-center banks, they likely will be disproportionately affected. Finally, Dodd-Frank has a number of provisions related to mortgage lending and loan origination that additionally will increase the regulatory burdens on community banks. In the wake of Dodd-Frank, therefore, small banks may have no choice but to merge with similarly-sized institutions merely to survive.

Economic Conditions

Dodd-Frank's impact would not sting as much if the banking industry were not still reeling from the worst financial crisis since the Great Depression. In addition to the Act, a number of economic conditions make the banking industry ripe for a forthcoming merger wave. First, many financial institutions are teetering on the brink of collapse. One common measure of a bank's likelihood of failure is the so-called Texas Ratio, which compares the value of non-performing assets against certain forms of capital. A Texas Ratio of 1:1 (100 percent) or more historically has been indicative of impending insolvency. Somewhat alarmingly, a recent report notes that "[t]here are 451 remaining banks … with Texas Ratios above 100 percent, with total assets of $239 billion."[40] Assuming there is value left in them, those banks would appear to be prime takeover targets. Second, a number of factors — including increased deposit insurance premiums, taxes, and other costs — have made it "increasingly challenging for banks to generate the kind of returns that justified historical valuation multiples."[41] Third, many healthy banks are on the prowl for acquisitions. Since the financial crisis began, conservative banks with strong capital bases have been able to "expand their geographic footprint and take advantage of significantly depressed market valuations."[42] Private equity firms are also beginning to shore up regional players that will likely begin acquiring smaller banks and bidding in FDIC-sponsored asset sales.[43] Finally, there remains the fact that in the United States there are "more banks per capita … than in any other developed economy."[44] According to some, the "industry still suffers from over-capacity in that there are nearly 8,000 banks and thrifts today."[45] All of this is an economic recipe for further consolidation, which will likely be hastened by Dodd-Frank.

CONCLUSION

Time and again, major financial regulatory reforms have produced waves of mergers and acquisitions involving banks and their affiliates. Dodd-Frank promises to be no different. Yet what distinguishes this Act from prior congressional measures is that its provisions raise — rather than lower — the barriers to consummating M&A transactions. Despite Dodd-Frank's well-capitalized and well-managed requirements, concentration limits, systemic risk factor, and moratorium on nonbank banks, further consolidation within the banking industry is all but certain to become the trend over the next several years. Driving that trend will be Dodd-Frank's pressure on bank capital, heavy-handed regulation of certain activities, and imposition of increased supervisory and compliance burdens that may leave financial institutions with no alternative but to become bidders before the market dictates that they must be targets. Present economic conditions will only amplify those driving forces, with the likely result being a surge in bank M&As in the wake of Dodd-Frank.

NOTES

1 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, Jul. 21, 2010, 124 Stat. 1376.

2 For purposes of this article, the terms "banking" and "banks" refer generally to all kinds of insured depositories unless otherwise noted. The term "financial

institutions" encompasses both insured depositories and their holding companies unless used differently in context.

[3] *See* Garn-St. Germain Depository Institutions Act of 1982, Pub. L. 97-230, Oct. 15, 1982, 96 Stat. 1469; Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. 103-328, Sept. 29, 1994, 108 Stat. 2338; Gramm-Leach-Bliley Financial Services Modernization Act of 1999, Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338.

[4] *See* Steven J. Pilloff, Board of Governors of the Federal Reserve System Staff Study No. 176, *Bank Merger Activity in the United States, 1994-2003* (2004); Stephen A. Rhoades, Bd. of Governors of the Fed. Reserve Sys. Staff Study No. 174, *Bank Mergers and Banking Structure in the United States, 1980-1998 (2000)*; J. Alfred Broaddus Jr., Federal Reserve Bank of Richmond, *The Bank Merger Wave: Causes and Consequences*, 84(3) Economic Quarterly 1 (Summer 1998).

[5] Matt Monks, *Consolidation Wave May Swamp 25% of Banks Within 5 Years*, American Banker (Aug. 11, 2010) http://www.americanbanker.com/specialreports/175_15/consolidation-wave-1023905-1.html.

[6] Bank Holding Company Act of 1956 § 3(d)(1)(A), 12 U.S.C.A. § 1842(d) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 607(a), 124 Stat. 1376 (2010). Another provision of the Bank Holding Company Act of 1956, § 4(l)(1), 12 U.S.C.A. § 1843(l) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 606(a), 124 Stat. 1376 (2010), requires a bank holding to qualify as a financial holding company before expanding its activities geographically.

[7] Federal Deposit Insurance Act of 1950 § 44(b)(4)(B), 12 U.S.C.A. § 1831u(b) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, § 607(b), 124 Stat. 1376 (2010).

[8] FDIC Rules and Regulations § 325.103(b)(1)(i)-(iv), 12 C.F.R. § 325.103 (*pursuant to* Federal Deposit Insurance Act of 1950 § 38, *amended by* Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, § 131, 105 Stat. 2236).

[9] FDIC Rules and Regulations § 325.103(b)(2)(i)-(iv), 12 C.F.R. § 325.103 (*pursuant to* Federal Deposit Insurance Act of 1950 § 38, *amended by* Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, § 131, 105 Stat. 2236).

[10] *See* FDIC Statements of Policy, Uniform Financial Institutions Rating System, 62 Fed. Reg. 752 (Jan. 6, 1997).

[11] Pauline B. Heller & Melanie L. Fein, Federal Bank Holding Company Law § 3.05(2) (Law Journal Press, 25th ed. 2010).

[12] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203,

§ 622, 124 Stat. 1376 (2010).

[13] Bank Holding Company Act of 1956 § 4(i)(8)(A), 12 U.S.C.A. § 1843(I) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 623(b)(1)(A), 124 Stat. 1376 (2010); Federal Deposit Insurance Act of 1950 § 18(c)(13)(A), 12 U.S.C.A. § 1828(c) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 623(a), 124 Stat. 1376 (2010) (this section of the Federal Deposit Insurance Act is also known as the Bank Merger Act of 1960); Home Owners' Loan Act of 1933 § 10(e)(2), 12 U.S.C.A. § 1467a (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 623(c)(1)(E), 124 Stat. 137 (2010). Previously, the 10 percent concentration limit on insured deposits was contained solely in Section 3 of the BHCA, and thus applied only to a bank holding company's acquisition of a "bank" as defined by the BHCA.

[14] Federal Deposit Insurance Act of 1950 § 18(c)(13)(B), 12 U.S.C.A. § 1828(c) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 623(a), 124 Stat. 1376 (2010) (this section of the Federal Deposit Insurance Act is also known as the Bank Merger Act of 1960); Bank Holding Company Act of 1956 § 4(i)(8)(B), 12 U.S.C.A. § 1843(i) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 623(b)(1)(A), 124 Stat. 1376 (2010).

[15] Bank Holding Company Act of 1956 §§ 3 - 4, 12 U.S.C.A. §§ 1842 - 1843 (2001).

[16] Bank Merger Act of 1960, 12 U.S.C.A. § 1828(c) (2001).

[17] Bank Holding Company Act of 1956 § 3(c)(7), 12 U.S.C.A. § 1842(c) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 604(e)(1), 124 Stat. 1376 (2010); Bank Holding Company Act of 1956 § 4(j)(2)(A), 12 U.S.C.A. § 1843(j) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 604(e)(1), 124 Stat. 1376 (2010); Federal Deposit Insurance Act of 1950 § 18(c)(5), 12 U.S.C.A. § 1828(c) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 604(f), 124 Stat. 1376 (2010) (this section of the Federal Deposit Insurance Act is also known as the Bank Merger Act of 1960).

[18] Bank Holding Company Act of 1956 § 4(k)(6)(B), 12 U.S.C.A. § 1843(k) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 604(e)(2), 124 Stat. 1376 (2010).

[19] *See* Maretno A. Harjoto, Ha-Chin Yi, & Tosporn Chotigeat, *Why Do Banks Acquire Non-Banks?*, Journal of Economics and Finance (Springer, April 16, 2010), http://www.springerlink.com/content/j22750443145j605; J.H. Boyd, S.L. Graham, R.S. Hewitt, *Bank Holding Companies Mergers with Nonbank Financial Firms: Effects on*

the Risk of Failure, 17(1) Journal of Banking and Finance 43-63 (Feb. 1993); Janice M. Moulton, *Nonbank Banks: Catalyst for Interstate Banking*, Federal Reserve Bank of Philadelphia Business Review 3 (Nov./Dec. 1985), http://www.philadelphiafed.org/research-and-data/publications/business-review/1985/brnd85jm.pdf.

[20] *Examining the Regulation and Supervision of Industrial Loan Companies*, Before the S. Comm. on Banking, Housing, and Urban Affairs, 110th Cong. (Oct. 4, 2007) (statement of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System).

[21] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 603(a)(2), 124 Stat. 1376 (2010).

[22] Bank Holding Company Act of 1956 § 4(k), 12 U.S.C.A. § 1843(k) (2001). For definition of "commercial company," *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 602, 124 Stat. 1376 (2010).

[23] *See* 111 Cong. Rec. E1350 (daily ed. Jun. 30, 2010) (statement of Rep. Issa).

[24] Introduced by Senator Susan Collins of Maine on May 7, 2010.

[25] Jennifer Salutric & Joseph Willcox, Federal Reserve Bank of Philadelphia, *Emerging Issues Regarding Trust Preferred Securities*, 13(3) SRC Insights 8 (First Quarter 2009), http://www.philadelphiafed.org/bank-resources/publications/src-insights/2009/first-quarter/Insights1_09.pdf.

[26] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 171(b)(4), 124 Stat. 1376 (2010).

[27] Jeff Horwitz, *Redeeming TruPS Is Attractive But Not Always Feasible*, American Banker (Sept. 3, 2010).

[28] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 171(b)(7), 124 Stat. 1376 (2010).

[29] Bank Holding Company Act of 1956 § 5(b), 12 U.S.C.A. § 1844(b) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, § 616(a), 124 Stat. 1376 (2010); Home Owners' Loan Act of 1933 § 10(g)(1), 12 U.S.C.A. § 1467a(g)(1) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, § 616(b), 124 Stat. 1376 (2010); International Lending Supervision Act of 1983 § 908(a)(1), 12 U.S.C.A. § 3907(a)(1) (2001), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, § 616(c), 124 Stat. 1376 (2010).

[30] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 616(d), 124 Stat. 1376 (2010).

[31] Federal Deposit Insurance Corporation, All FDIC-Insured Institutions, Quarterly Banking Profile 3 (Second Quarter 2010), http://www2.fdic.gov/qbp/2010jun/qbp.pdf.

[32] Letter from Jeffrey Merkley & Carl Levin, United States Senators, to Federal Reserve Board, Securities and Exchange Commission, Commodity Futures Trading Commission, Federal Insurance Commission, Office of the Comptroller of the Currency (Aug. 3, 2010), http://levin.senate.gov/newsroom/release.cfm?id=326927.
[33] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 619, 124 Stat. 1376 (2010); *see also Prohibiting Certain High-Risk Investment Activities by Banks and Bank Holding Companies*, Before the S. Comm. on Banking, Housing, and Urban Affairs (Feb. 2, 2010) (statement of Paul A. Volcker, Chairman, President's Economic Recovery Advisory Board).
[34] *See* Heath Tarbert, *The Vagaries of the Volcker Rule*, International Financial Law Review (Sept. 2010).
[35] Title I—Financial Stability, §§ 101-176 (to concentrate system risk supervision of the financial system); Title II—Orderly Liquidation Authority, §§ 201-217 (resolution authority to liquidate systemically significant non-bank financial companies and bank holding companies outside of the normal bankruptcy proceedings); Title XI—Federal Reserve System Provisions §§ 1101-1109 (narrows lending authority in 'unusual exigent circumstances').
[36] *See* Press Release, U.S. Chamber of Commerce, U.S. Chamber Says Congress 'Failed' in Its Attempt to Reform Financial System (Jul. 15, 2010); *see also* James Chessen, Chief Economist, American Bankers Association, *The Dodd-Frank Bill Has Enormous Consequences for Community Banks*, Banks and The Economy (Jul. 13, 2010), http://banksandtheeconomy.blogspot.com/2010/07/dodd-frank-bill-has-enormous.html.
[37] Neil B. Murphy, *Economies of Scale in the Cost of Compliance with Consumer Credit Protection Laws: The Case of the Implementation of the Equal Credit Opportunity Act of 1974*, 10 Journal of Bank Research 248-50 (Winter 1980); Frederick J. Schroeder, *Compliance Costs and Consumer Benefits of the Electronic Fund Transfer Act: Recent Survey Evidence*, Board of Governors of the Federal Reserve System Staff Study No. 143 (1985).
[38] Barack Obama, President of the United States, Remarks at Signing of Dodd-Frank Wall Street Reform and Consumer Protection Act (Jul. 21, 2010).
[39] *See generally* Title X—Bureau of Consumer Financial Protection, §§ 1001-1100H (created to implement and enforce federal consumer financial law).
[40] *See* Keefe, Bruyette & Woods, *Banks: Bringing Back the KDW Takeover List* 7 (Jun. 30, 2010).
[41] *See* PriceWaterHouseCoopers, Transaction Services, On the road again — Transactions in an opportunistic market: US Financial Services M&A — An analysis and outlook 14 (2010).
[42] *See id*. at 13.

[43] For example, Thomas H. Lee Partners and Warburg Pincus each recently invested approximately $134.7 million in Sterling Financial Corporation, based in Spokane, Washington. *See* Shasha Dai & Josh Beckerman *Sterling Financial Completes $730M Recap*, Wall Street Journal Blog (Aug. 26, 2010), *reported at* http://blogs.wsj.com.

[44] *See* Robert DeYoung, William C. Hunter & Gregory F. Udell, Federal Reserve Bank of Chicago, *Whither the Community Bank? Relationship Finance in the Information Age*, Chi. Fed Letter No. 178 (Jun. 2002).

[45] *See id.*