



SECURITIES AND DERIVATIVES REFORM IN 2010

A Guide to the Legislation

By CCH Attorney-Editor Staff



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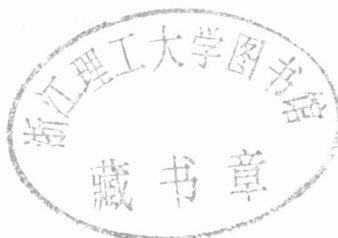
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Securities and Derivatives Reform in 2010: A Guide to the Legislation offers comprehensive analysis of the securities, derivatives and corporate governance provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, in particular, Titles I, II, IV, VII, VIII, IX, XII, XV and XVI of the Act. Signed into law on July 21, 2010, the Dodd-Frank Act has transformed the way broker-dealers, hedge funds, investment advisers, credit rating agencies, accountants, public companies, mutual funds and other financial institutions—and the attorneys who advise these entities—must operate. Thus, a thorough understanding of these changes will be vital to participants in the U.S. securities and derivatives industry.

The legislation's far-reaching reforms contain numerous investor protections, including greater oversight of credit rating agencies, important securitization reforms, strict corporate governance measures and expanded SEC enforcement powers. The Act also imposes regulatory oversight of the over-the-counter derivatives market, including mandatory clearing and trading and real-time reporting of derivatives trades. The Act introduces a new Volcker Rule that limits the amount of money a bank can invest in hedge funds. Among other measures, the legislation establishes a 10-member Financial Stability Oversight Council to oversee systemic risk and institutes a process for the orderly dissolution of large, failing financial firms.

Written by the CCH staff of attorney-editors, the book explains every provision of this complex legislation affecting the securities and derivatives industry. Explanations include discussion of the relevant legislative history (committee reports, colloquies, testimony, etc.), analysis of SEC guidance and industry reaction, citations to new and amended law sections, and editorial comments and caution notes.

Significantly, the work also features practical commentary and observations from leading authorities. Contributors include members of the CCH Securities Advisory Board: Ralph Ferrara of Dewey & LeBoeuf LLP, James Doty of Baker Botts LLP, Simon Lorne, Vice Chairman of Millennium Partners LP, Ann Yerger, Executive Director of the Council of Institutional Investors, Andrew Bernstein of Cleary Gottlieb Steen & Hamilton LLP, and Steven Lamb of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

This publication also reproduces the full text of the Dodd-Frank Act, the existing laws as amended or repealed (*e.g.*, affected sections of the Securities Exchange Act of 1934), and the related committee reports. Finally, a wealth of finding devices—a Table of Effective Dates, a Table of Laws Added, Amended or Repealed, a Table of Provisions Not Amending Existing Laws, and a Topical Index—offer alternate pathways into this voluminous legislation.

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CCH appreciates the contributions of our experts for their insight and practical analysis of the new law. Their analysis is not intended as legal advice. Readers should seek advice based on their own particular circumstances from an independent advisor.



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¶1 Features of This Publication

This publication is your complete guide to the securities and derivatives provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law by President Barack Obama on July 21, 2010. The core feature of this work is the Explanation portion. Written by the CCH staff of attorney-editors, the explanations discuss and analyze the Dodd-Frank Act provisions, explaining the changes, the historical context, the congressional intent and the practical impact. To clarify the law's purpose and effect, the explanations integrate relevant pieces of the legislative history—committee reports, statements, floor remarks, colloquies and congressional testimony—that bring meaning to the statutory text. CCH editorial comments and caution notes throughout the explanations alert readers to statutory inconsistencies, uncertainties, related provisions and other concerns.

The work also includes practical commentary, guidance and observations from leading practitioners. This feature will help attorneys prepare for and navigate the new requirements, alerting them to the practical realities affecting their clients and the industry as a whole. Contributors include esteemed members of the CCH Securities Advisory Board: Ralph C. Ferrara, James Doty, Simon Lorne, Ann L. Yarger, Alan L. Beller, Andrew A. Bernstein and Stephen P. Lamb.

In addition, the publication reproduces the full text of the Dodd-Frank Act provisions affecting securities and derivatives practitioners, *i.e.*, Titles I, II, IV, VII, VIII, IX, XII, XV and XVI. It also provides the text of existing securities and commodity futures laws as amended by the legislation. Further, the work reproduces the Conference Committee's joint explanatory statement, the Senate Banking Committee report, and a letter from Senators Christopher Dodd and Blanche Lincoln explaining the derivatives provisions in Title VII.

The book also contains numerous other features designed to help you locate and understand the changes made by this legislation. These features include cross references to related materials, detailed effective dates, and numerous tables and indexes. A more detailed description of these features appears below.

EXPLANATIONS

Explanations are designed to give you a complete and accessible understanding of the new laws. Explanations are arranged by subject and follow the organizational structure of the law for ease of use. There are several options for locating explanations on a given topic. These are:

- A detailed table of contents at the beginning of the publication listing all of the explanations of the new laws;
- A table of contents preceding each chapter; and
- An extensive topical index covering the subject matter of the legislation.

The explanations contain special features to aid in your complete understanding of the new laws. These include:

- A brief overview of the new laws;

- Discussion of background or prior law, as applicable, that puts the law changes into perspective;
- Analysis of legislative history (committee reports, statements, floor remarks, colloquies and congressional testimony) where available and appropriate;
- Editorial aids, including cautions and comments, that highlight the law's impact, related provisions, inconsistencies in the statutory text, and other concerns;
- Practical commentary, guidance and observations from leading securities law experts;
- Captions at the end of each explanation identifying the law sections added, amended or repealed, as well as the Act sections containing the changes;
- Cross references to the law and committee report paragraphs related to the explanation; and
- A caption highlighting the effective date of each law change, marked by an arrow symbol.

The Explanations begin at ¶ 55.

DODD-FRANK ACT

The full text of the Dodd-Frank Act provisions affecting the securities and derivatives industry appears at ¶ 10,001 *et seq.* This consists of Titles I, II, IV, VII, IX, XII, XV and XVI, as well as the preliminary sections of general applicability. Cross references to explanation paragraphs related to each provision are also provided.

LAWS ADDED, AMENDED or REPEALED

The existing laws as amended or repealed appear at ¶ 20,005. This component presents the amendments to existing laws in context, showing the new language in *italics*. Covered material consists of the added, amended and repealed provisions of the major securities and commodity futures laws, *e.g.*, the Commodity Exchange Act, the Investment Advisers Act, the Investment Company Act, the Sarbanes-Oxley Act, the Securities Act, the Securities Exchange Act, the Securities Investor Protection Act, and the Trust Indenture Act.

COMMITTEE REPORTS

The publication reproduces the relevant committee reports and related materials. These include: the Conference Committee's joint explanatory statement discussing the final bill (see ¶ 50,001 *et seq.*); the Senate committee report (S. Rep. No. 111-176) explaining the Senate bill (see ¶ 54,000 *et seq.*); and a joint letter from Senators Christopher Dodd and Blanche Lincoln explaining the derivatives provisions in Title VII (see ¶ 56,001).

The Conference Committee Report for the Dodd-Frank Act consists only of the Act itself. The Act text is reproduced in the "Dodd-Frank Act" portion of this publication. There is no narrative conference report explaining the Act's purpose and its individual provisions apart from the Conference Committee's joint explanatory statement noted above.

TABLES and INDEX

The publication also contains tables and other finding devices. A Table of Effective Dates listing provisions containing major effective dates offers a reference bridge between existing or new law sections and Act sections. The table also indicates the retroactive or prospective nature of the laws. Compliance dates for prescribed rules and regulations, as well as mandated studies and reports, also are included. The effective dates table begins at ¶ 60,001.

A Table of Statutes Added, Amended or Repealed lists the existing law provisions changed by the Dodd-Frank Act. It contains an alphabetically organized list of existing laws (*e.g.*, Commodity Exchange Act, Investment Advisers Act, etc.) and the new, amended or repealed provisions. This table is located at ¶ 61,001.

A Table of Act Sections Not Amending Existing Laws lists all the Dodd-Frank Act provisions that do not change existing laws but are new, stand-alone sections that, as of enactment, have not been codified. This table is located at ¶ 62,001.

Finally, a Topical Index provides an alternate means of finding information in the explanations. It lists major topics and subtopics, with references to the paragraph number of explanations on point. The index appears at the end.

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