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Financial services firms are struggling to meet a broad range of global regulatory and legal demands on data across the enterprise. The implementation of the Dodd-Frank Act has broadened these demands such as the new Commodity Futures Trading Commission (CFTC) requirements for the recordkeeping of swaps trading records (Regulations 23.201-203). Bloomberg Vault offers a comprehensive solution for Dodd-Frank Act record-keeping, including pre- and post-trade communication such as voice, social media, email, files, and documents tagged by counter-party and correlated to trades.

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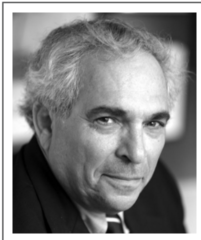
The Dodd-Frank Act: Where Are We Now?

By Alix Stuart

A year ago, Chesapeake Energy announced that its famously wealthy founding CEO, Aubrey McClendon, was retiring. What it didn't mention in the announcement was that Chesapeake had received one of the most negative shareholder votes on executive compensation in the short history of say-on-pay in the United States. Only 20 percent of shareholders supported the pay package in June 2012, compared to the 90 percent and better the majority of other companies saw.

Indirect as it may be, Chesapeake's CEO change may be one of the most tangible outcomes to emerge from the nearly 900 pages of Dodd-Frank Act legislation signed into law in July 2010. Indeed, many regulatory watchers say the non-binding shareholder vote on executive compensation may be the most successful provision of the landmark reform law. Chesapeake's stock rose in the immediate aftermath of news that Chesapeake was forcing out the entrenched CEO, and it has gone up about 30 percent since McClendon's successor was named in May.

Many of the other provisions are either too new to tell if they are working as intended, still being ironed out, or have yet to be proposed. Regulators have implemented just over 50 percent of the 398 required by the law, according to a Jan. 2 tally by law firm Davis Polk, and 27.6 percent have not yet even been proposed. Those that have come to fruition are creating a lot of administrative and compliance work, but so far show few real benefits, experts say. "The bottom line is that it's still early days," says Hal Scott, director of the Center on Capital Markets Regulation, a research organization that has been tracking implementation closely.


Scott

Banking on Rules

Crafted in the wake of the 2008 financial crisis, the main point of Dodd-Frank was to stabilize the financial system, so that banks like Lehman Brothers wouldn't collapse again and others like AIG wouldn't find themselves in the position of needing billions of taxpayer dollars to survive. Whether the legislation is doing that—or even has the capacity to do it—is up for debate.

It's unclear what would happen if a big bank gets in trouble, for example, since the Federal Deposit Insurance Corp.'s "single point of entry" plan in which shareholders and unsecured creditors would be wiped out to foster an orderly liquidation of the assets remains untested. Momentum is gathering for banks around the world to face higher capital holding requirements as Dodd-Frank statutes overlap with Basel III efforts, but many loose ends remain.

Meanwhile, the repurchase agreements, or "repos," that were at the heart of Lehman's problems in 2008 are still problematic. Dodd-Frank does not address them in much detail, but the daily amount outstanding declined from $7 trillion to less than $5 trillion over the course of 2008, and it has stayed in that range ever since, according to Federal Reserve data on the 21 primary dealers. That decline alleviates the original problem, but creates others, namely, decreased liquidity among banks that are operating in defense mode. "There are areas where there has been some significant improvement, but I would not say we're prepared for the next crisis," says David Skeel, a professor at the University of Pennsylvania Law School and author of *The New Financial Deal: Understanding the Dodd-Frank Act and Its (Unintended) Consequences*.

One of the most contentious rules for banks that could have the broadest effect on corporate finance is the Volcker rule, approved in early December by the five regulatory agencies tasked with implementing it. In theory, it aims to stop banks from trading on their own account. In reality, "it is a complete mess, because it's really hard to distinguish the things that are not allowed, like proprietary trading, from what is allowed, such as market making and making trades for clients," Skeel says.

In recent testimony before the House Committee on Financial Services, Securities Industry and Financial Markets Association CEO Kenneth Bentsen pointed out that the rule is overly complex for banks to implement and lacks a clear enforcer, both of which contribute to high compliance costs that are likely to erode equity valuations. Big banks, meanwhile, are seeking relief from some aspects of the Volcker Rule, and many are projecting minimal impact on earnings at this point.

Sunshine and Swaps

Perhaps the most complete area of Dodd-Frank rulemaking revolves around derivatives oversight and, in particular, the swaps market. The law gave the Commodity Futures Trading Commission authority to require all standardized derivatives to trade on open exchanges or swap execution facilities, and move through central clearinghouses to increase transparency and reduce risk. All transactions must now be reported to the CFTC, as well, so regulators can track them.

The CFTC is still writing rules, but has finalized many of the major ones. The good news: Non-financial companies that use swaps for hedging avoided the very real possibility that they would have to take on the compliance-laden designation of swaps dealers. The bad news: Heavier compliance burdens on swaps dealers will make the transactions more expensive and in some cases impractical to execute. "The Dodd-

Frank rules in this area took a market that had zero regulation and brought it to nearly 100 percent regulation," says Susan Ervin, a partner with Davis Polk. "This really could not fail to affect some of the major ways people do business."

A thorny area right now is who must report a swap transaction to the CFTC. Dealers who are subject to Dodd-Frank for other reasons will typically do it for clients, but those that aren't, particularly foreign ones, are balking. That's likely to lead to a market shift, says Andrea Kramer, a partner with the law firm McDermott Will & Emery, in which U.S. companies only trade with dealers who will report for them. At the same time, it's unclear to what extent overseas-based counterparties with some business in the United States will have to comply with Dodd-Frank, an issue the CFTC is expected to clarify in coming months.

The larger question, of course, is what the CFTC will—and can—do with the data it receives. "There will be greater transparency, but it's going to be very hard to have meaningful regulatory surveillance over the entire market," says Ervin. That's in part because the CFTC is a small, underfunded agency, and in part because many swaps will continue to be customized transactions with any number of variables that are hard to compare. One swap for oil could run for six months and involve 100,000 barrels, another could

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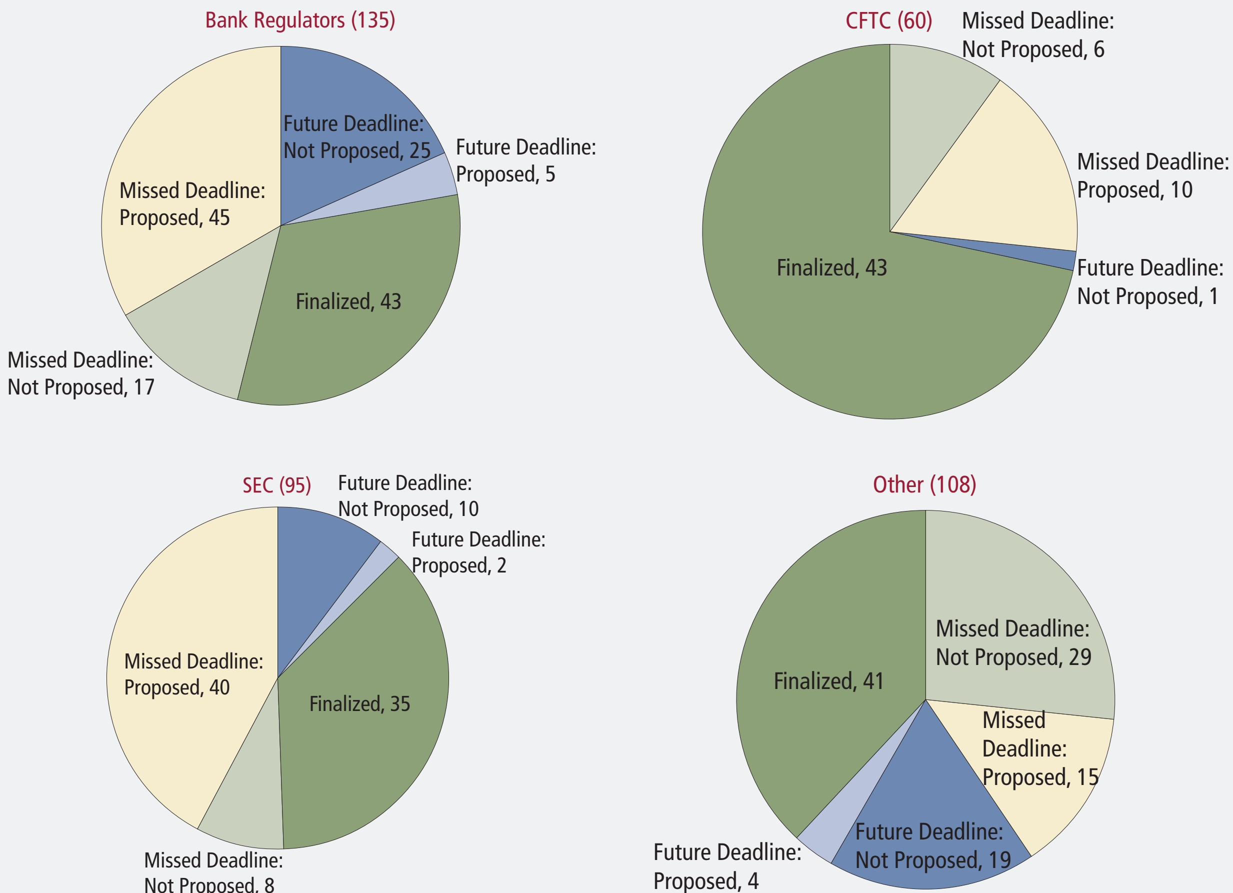
DODD-FRANK RULEMAKING PROGRESS BY AGENCY

The following graphs from Davis Polk estimate what progress has been made on Dodd-Frank Rule requirements by the SEC, CFTC, bank regulators, and others, as of Nov. 1, 2013. Values in parentheses refer to number of rulemaking requirements.



Source: DavisPolk.

How Dodd-Frank Pressures Corp. Governance

By Karen Kroll

Just how much have the governance provisions of the Dodd-Frank Act actually enhanced corporate governance? It depends on who you ask.

While some bemoan the law's scattershot approach to governance, most say that its biggest effect is that it has caused investors and boards to communicate more with each other. And nearly everyone agrees that's a good thing.

The biggest change to governance has come from a provision of Dodd-Frank that provides investors with an advisory vote on executive compensation plans, known as "say on pay." While most companies have received majority votes on their plans, the fear of a low tally has forced many companies to make changes to executive compensation.

Say-on-pay has also pushed boards to reach out to investor groups to assess their views on pay plans, and that has opened the door to a wider discussion on other governance topics. "This one small provision in the Dodd-Frank Act has been a catalyst for engagement between companies and their shareholders," says Amy Borrus, deputy director with the Council of Institutional Investors.

The new channels of communication could have a big effect on how investors register their displeasure with the board, say governance experts. In the past, shareholders who were unhappy with a company's executive compensation program had one option: to vote the directors out, notes Robert McCormick, chief policy officer with proxy advisory firm Glass Lewis & Co. That's not always the action shareholders might feel is in the best interests of the organization. "Now, they can send a more direct message," McCormick says.

Indeed, most corporate boards are well aware of the power of these votes, even though they're non-binding and about 98 percent passed in 2013, according to Equilar. Given that so many votes are supported by wide margins, directors don't want their firms to be in the minority that either fail or just barely pass, Borrus says. "They want a strong margin of support."

To achieve that, board members are more actively reaching out to investors. A study, "The First Year of Say-on-Pay Under Dodd-Frank: An Empirical Analysis and Look Forward," by researchers at Wake Forest and Vanderbilt, concluded, in part: "Mandatory say-on-pay seems to have encouraged management to be more responsive to shareholder concerns about executive pay and corporate governance."

While governance advisers generally agree the increase in dialogue between investors and shareholders is a positive development, some say say-on-pay hasn't changed the overall compensation picture that much. Expectations that the provision would reduce CEO compensation levels, for example, haven't been met, notes Patrick McGurn, executive director at proxy advisory firm ISS. He says some politicians probably looked at say-on-pay as a way of dealing with broader issues of income disparity and runaway executive pay. "But say-on-pay hasn't done that anywhere."

Others say it doesn't get at underlying problems with executive compensation plans. Allowing just a straight up or down vote on executive compensation "is kind of a blunt instrument," says William Kelly, a partner with the law firm Davis Polk. "You don't get nuanced lessons."

According to Kelly, some of the difficulties with the governance provisions of Dodd-Frank are that they are too varied and inconsistent in approach. "Certainly, there's no coherent theory of corporate governance that you can get from Dodd-Frank," says Kelly.

David Lynn, a partner and co-chair of the corporate finance practice at law firm Morrison & Foerster, says Dodd-Frank falls short on governance reforms, at least compared to the Sarbanes-Oxley Act. SOX, he says, was an attempt to learn from the wrongdoing that occurred at companies like WorldCom and Enron, and thus focused on the internal control function and auditor independence. In contrast, Dodd-Frank takes a "scattershot" approach and includes a grab-bag of items that were making headlines at the time, Lynn says. "You can't say that if we'd had say-on-pay the financial crisis wouldn't have happened."

Disclosure Provisions

Lynn

Several Dodd-Frank governance provisions require companies to disclose information on everything from the independence of their compensation committee members to the ratio of CEO compensation to that of rank-and-file employees. Again, the potential effect–not all the regulations have been issued–likely will be mixed, say governance advisers.

One is Section 952, which deals with the independence of compensation committee members as well as any compensation consultants a company might engage. The rules the SEC adopted in January 2013 determine independence based on several factors, including any other services provided by the consultant as well as the business or personal relationship between the consultant and members of the compensation committee.

So far, the regulations don't appear to have had much of an effect. "I think this was a solution in search of a problem," McGurn says, as the NYSE and Nasdaq already had requirements regarding compensation committee and consultant independence. "It's probably good to have the statutes modernized, but the practice had outpaced the rate of change" in the

> "Certainly, there's no coherent theory of corporate governance that you can get from Dodd-Frank."
>
> William Kelly, Partner, Davis Polk

legislation, he adds.

Section 953 of Dodd-Frank requires companies to compare and disclose the ratio of total CEO compensation to the median total compensation of all other employees. The SEC proposed rules on the pay ratio disclosure in September 2013, with a sixty-day comment period, but it has yet to issue final rules. Many companies say they are concerned the disclosure will be misleading and difficult to compile.

Charles Elson, law professor and chair with the John L. Weinberg Center for Corporate Governance at the University of Delaware, says he is also opposed to the required disclosure. "It's more a political thing; to shock," he says. Still, Elson sees one potential benefit to the rule. "It will force boards to look at pay in the totality of the organization," Elson says.

Section 953 also requires companies to disclose information on pay-for-performance executive compensation practices. Although the SEC has yet to adopt rules on this provision, a number of companies already provide such information, reasoning that it's an effective means of selling the rationale behind their compensation programs, McGurn says.

The next section, 954, requires the SEC to direct the stock exchanges to prohibit companies from listing securities if they haven't developed and implemented compensation claw-back policies. These rules also are also still in the works.

"This is one of the most heavily anticipated from investors' point of view," McGurn says. While Sarbanes-Oxley also included a claw-back provision, it applied just to the CEO and CFO. "Clawbacks under Dodd-Frank are closer to the adage, 'If you didn't earn it, you must return it,'" he says. The policies would apply to "any current or former executive officer of the issuer who received incentive-based compensation."

However, many companies already disclose their claw-back policies, McCormick points out. Indeed, according to a 2012 Ernst & Young report, 86 percent of the Fortune 100 companies do so, up from 18 percent in 2006. "Shareholder pressure was sufficient; it really pushed companies to do more."

Similarly, many companies already disclose whether their directors and employees can hedge any decreases in the market value of their stock—another requirement contained within Section 955 of Dodd Frank. "You can see these in most Fortune 500 companies' proxy statements," Lynn says. The SEC has yet to propose and adopt these rules.

If No Dodd-Frank?

The fact that many companies have begun implementing some of the provisions contained within Dodd-Frank even before the SEC has issued final rules prompts the question: Would investor activism have led to these changes, even without the legislation?

Again, opinions differ. "If there were no governance provisions within Dodd-Frank, probably from a governance standpoint, we'd be in the same place," Elson says. State

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PROXY ACCESS

While the proxy access provision of the Dodd-Frank Act was overturned by a federal court, the SEC's rules on private ordering, which is used to gain proxy access on a company-by-company basis, was left intact.

In 2011, the U.S. Court of Appeals for the District of Columbia vacated the Security and Exchange Commission's Rule 14a-11, which would have allowed shareholders with at least three percent of the shares outstanding to nominate up to 20 percent of a company's board.

However, shareholders still can use what's known as private ordering to gain proxy access on a company-by-company basis. This year, 12 shareholder proposals appeared on ballots, according to ISS Governance. That was up from nine in 2012. While average support dropped from 35.6 to 30.8 percent, three proposals received majority support, up from two in 2012. Additionally, investors' votes indicated "a strong preference for proposals with minimum ownership thresholds of three percent of shares outstanding for three years," ISS said in its 2013 Proxy Season Review.

Even before 2011, proxy access proposals already were moving along at the state level, says Charles Elson, law professor at the University of Delaware. He points out that Delaware enacted proxy access rules in 2009.

However, that doesn't mean that the SEC's rule was superfluous. In a 2009 paper, "Delaware's New Proxy Access: Much Ado About Nothing?" Lisa Fairfax, professor of law at the George Washington University Law School, argues that potential action by the SEC actually prompted Delaware's actions. "While not necessarily a persistent check, Delaware nevertheless shapes it laws with the background understanding that its failure to sufficiently protect the interests of shareholders and the corporation could trigger federal intervention."

—Karen Kroll

For Financial Services and Regulated Industries

How Bloomberg's Cloud Tackles Dodd-Frank Recordkeeping

Social Media, Voice, Dodd-Frank Act Recordkeeping, and More

The growth of data volumes and new formats such as social media and voice, combined with major changes in the regulatory environment, are creating urgent data management challenges for financial services firms and other enterprises in highly regulated industries. Unfortunately, most legacy IT infrastructures were not designed to meet the demands of this new environment and many companies are struggling to adapt, not just in terms of their systems, but also with their compliance policies and procedures. IT executives at such companies are under the gun to quickly upgrade their infrastructures and processes to address new compliance challenges, such as social media, voice archiving, and Dodd-Frank voice recordkeeping mandates. For many organizations, the answer to today's most pressing data management problems can be found in the cloud. Here's why.

IT leaders in financial services and related highly regulated industries are facing a challenging new landscape that is precipitating a growing urgency to address how their organizations create, store, and manage data on an institutional and global scale. Think about how dramatically the world has changed in just the past five years. The financial crisis of 2008 ushered in an era of much greater scrutiny and regulatory oversight, embodied by legislation such as the Dodd-Frank Act in the United States, which holds financial services organizations accountable to a much higher degree of transparency in their internal communications and in their dealings with customers, partners, and regulators.

These transformative changes are forcing IT decision makers to address some of the most important questions they have ever faced, questions that may define how they manage information for many years to come, including:

» How do I address new data formats, such as social media and mobile, in terms of both supporting the massive data volumes they are generating and in setting up the right policies and procedures for information governance?

» How do I adapt and/or alter my infrastructure to address the speed, volume, and response times required to enable the big data initiatives that are becoming critical to our business?

» Now that regulators have included voice as a regulated data type, how can I ensure that my enterprise information archiving solution is capable of dealing with all of the issues involved in retaining, archiving, accessing, and reporting on recorded voice?

» As I look to the vast potential of cloud solutions to address these challenges, how do I ensure that my global deployments will meet data privacy requirements worldwide?

» How do I ensure that my data will be secure when moving to the cloud, and how do I ensure that I am working with a cloud partner that has the requisite expertise, experience, and stability to trust with my most vital information assets?

In addition to changes in the regulatory environment, this transformation in data management is being driven by a combination of technology advances and dramatic shifts in the way people deploy technology. The rise of social media and the rapid proliferation of powerful mobile devices such as smartphones and tablet computers have opened up new channels of communications among customers and employees, spurring new challenges such as the bring-your-own-device (BYOD) trend.

While these new channels can be extremely valuable in enhancing productivity and enabling business agility for financial services firms, they can also create nightmarish challenges for the IT departments that have to manage them and the compliance officers that have to account for them. Organizations must now be able to save, store, archive, protect, and access a much broader and more challenging class of information than ever before. This includes not only e-mails, texts, and files, but also social media—blog comments, tweets, instant messages, Facebook posts—and voice data of all types, including voice recordings.

Technology advances and innovations go well beyond social media. Organizations are creating more data across the board than ever. According to one study, we are now generating as much data every 10 minutes as was generated throughout the entire history of humanity through 2003.[1] Beyond this, the amount of data being created is doubling every year, and 90 percent of this data is of the unstructured type that makes up e-mails, social media, and videos.[2]

Add to this the growth of virtualiza-

1 "Big Data or Too Much Information?" Smithsonian, May 7, 2012

2 "Extracting Value from Chaos," IDC, June 2011

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tion and cloud computing, the possibilities enabled by big data analytics, and the advances in speed and performance in financial trading systems, and you end up with a technology environment that is absolutely primed for upheaval. IDC, in fact, has characterized the combination of mobile computing, cloud services, social networking, and big data analytics as the IT industry's next dominant platform, accounting for 80 percent of IT spending growth between now and 2020.[3]

Advantages in the Cloud for Enterprise Data Management

Most legacy data management infrastructures are ill equipped to handle the new challenges facing financial services firms and are groaning under the weight of trying to manage new sources of data along with existing enterprise data. They are struggling on a variety of levels—speed, application performance, management complexity, and scalability, to name a few. As data creation continues to grow exponentially, infrastructure deployments that support regulatory compliance and deliver enterprise data management efficiencies are becoming much more difficult to achieve and much more expensive to manage and scale. The sooner IT leaders act to address these challenges, the more successful they will be in meeting the compliance and data management requirements of this new era.

For many IT leaders, the logical answer to this burgeoning data management challenge is to look to a cloud services provider for the solution. Why? The right cloud solution can provide an elegant answer to many of the issues involved in reconfiguring technology infrastructures and addressing the critical components of enterprise compliance and data management. Turning enterprise data management over to a trusted cloud provider enables organizations to:

- Immediately upgrade their infrastructure without having to make a significant upfront capital investment.
- Lower total cost of ownership (TCO) with a manageable, highly predictable, and easily scalable cost structure.
- Deploy a flexible solution that is capable of quickly adapting to changing regulatory requirements.
- Eliminate the data silos that are often a roadblock to the consistent implementation of compliance processes across all regulated content.
- Redeploy valuable IT resources to address more strategic initiatives that could help to grow organizational revenues and enhance profitability.
- Protect data in a secure environment that deploys best-of-breed protection, archiving, and redundancy to ensure the integrity and confidentiality of data.

The challenge, until now, has been in identifying a cloud supplier with the robust technology infrastructure, financial services experience, reputation for ironclad security, and deep industry knowledge that gives IT leaders unquestioned confidence in the provider's ability to manage the organization's most important asset. The launch of Bloomberg's cloud, supported by an organization already deeply embedded in nearly every financial services company's most strategic operations, has changed the paradigm and given IT decision makers in regulated industries the opportunity to work with a trusted provider that is already a major partner for the most demanding enterprises in the world.

What to Look for in an Enterprise Data Management Solution

In financial services or any other regulated industry, it is imperative that IT leaders get their enterprise data under control. The risks of non-compliance are just too great, and the expenses involved in electronic discovery are skyrocketing—not even considering the specter of litigation losses that impact finances and cause serious damage to the company's brand. According to one study, e-discovery costs can range up to $30,000 for each gigabyte, which can run up to a staggering fee if lawyers can't find what they are looking for.[4] Regulators—including the SEC, FINRA, the CFTC, the FCA/PRA in the United Kingdom and the U.S. Justice Dept.—are also coming down hard on firms for failing to maintain proper control of their data, in particular recordkeeping of unstructured data, with companies that have failed to produce the proper records seeing fines and legal settlements into the billions of dollars.

The strictures imposed by Dodd-Frank legislation are adding to the sense of urgency for financial services firms. Enterprises now have to be able to reconstruct a complete derivatives trade for the CFTC in just 72 hours—including all pre- and post-trade communications. This means all communications, including e-mail, voice, instant messaging, and other forms now have to be digitized, tagged, and stored to achieve compliance. And those digital recordings—along with the various tweets, IMs, texts, and other communications spread throughout the organization (even those created on employees' cell phones)—must not only be collected, digitized, tagged, and stored, they must also be backed up and made easily accessible in response to a regulatory or legal request, often at a moment's notice. And at some point in the lifecycle, each piece of data must be archived and, eventually, destroyed in a legally defensible manner at a proscribed point in time.

One of the key factors for IT professionals in considering enterprise data management solutions is to make sure that the technology is in place to allow the organization to apply best practices enterprise-wide to all data—including social media and recorded voice. Today's data management solutions must ensure that all enterprise data is prop-

3 "IDC Predicts 2012 Will Be The Year of Mobile and Cloud Wars as IT Vendors Vie For Leadership While the Industry Redefines Itself," IDC, Dec. 1, 2011

4 "E-discovery costs: Pay now or pay later," Inside Counsel, May 23, 2012

erly tagged, stored in a cost-efficient manner, subject to consistent policy management and enforcement, and destroyed when required. Solutions must also enable organizations to access data with the speed and performance necessary to remain compliant with regulatory mandates and avoid potentially massive expenses and litigation losses related to e-discovery.

Focusing on management of data across the global enterprise is particularly critical as a foundation for big data analytics. All of the unstructured data being created throughout the enterprise and by consumers on social media can be used to enhance business services and add significant value to the customer experience. But one of the challenges in managing all of that unstructured content globally is abiding by all of the prevailing regional regulations across all corporate communications and content, including e-mail, social media, IM files, and documents. To enable big data analytics, IT executives need to deploy a solution such as Bloomberg Local Vault, which is capable of supporting various regional and national regulations governing data transmission and storage, as well as large-scale analytics.

Another important factor is managing the costs associated with this potential undertaking. As noted, the amount of data being produced in financial services firms is growing at an astounding rate, with no let-up in sight. Without the proper system in place to manage this data, the potential costs can quickly spiral out of control. In addition, because of stricter compliance and e-discovery requirements for producing information, many of the legacy archiving solutions in place—particularly any using tape formats—are woefully inadequate and must be replaced or upgraded. Turning to a cloud-based service can reap dramatic benefits in TCO: According to IDC, a mid-size financial services firm can gain up to 45 percent in savings over a three-year period when using a cloud-based archiving solution as opposed to an on-premises solution.[5]

5 "Building the Case for Moving Compliance, eDiscovery and Archives to the Cloud," IDC, June 2011

Application performance is another important consideration driving the need for new ways to address enterprise-wide data management. Within most legacy IT environments, disparate systems and applications have proliferated, meaning that data is being created in different formats, on different media, in a wide range of physical locations. This rapid proliferation of data is not only making it more difficult to apply and enforce consistent policies among all these disparate systems, it is also often impacting the performance of legacy infrastructures, slowing down performance of mission-critical applications. By moving the responsibility of data management to the cloud and consolidating it in one place for the entire enterprise, IT has the opportunity to refocus legacy IT resources in a way that not only makes economic sense, but can also deliver immediate performance improvements—without requiring a concurrent investment in massive hardware and software upgrades.

Assessing the Impact of Bloomberg in the Market

Moving enterprise data management to a cloud services provider is as important a decision as an IT leader can make. The significant benefits of making that move must be accompanied by assurances of integrity and performance, scalability, agility, deep industry knowledge, and ironclad security. As noted by IDC, "When moving critical functions such as compliance and e-discovery to a cloud provider, financial services firms must place paramount importance on choosing a service provider who has vertically integrated knowledge, legal and compliance competencies, security domain expertise, and a strong focus on customer service. Moreover, the reputation of the service provider must be evaluated and their service capabilities and specialized domain expertise examined."[6]

As such, Bloomberg has garnered significant attention as a provider of cloud-based enterprise data management services, offering a solution that has been adopted by more than 600 enterprises globally. Bloomberg initially entered the market in 2010 with Bloomberg Vault, to leverage the company's domain expertise in electronic messaging, which encompasses more than 220 million daily messages and 65 billion archived messages. The cloud-based service now comprises a complete end-to-end solution for enterprise data management, archiving, compliance, policy management, and e-discovery. Several key factors differentiate Bloomberg Vault from any other cloud-based service on the market, specifically:

6 Ibid, footnote No. 5

- Comprehensive, all-inclusive solution: Bloomberg Vault provides an end-to-end solution that consolidates compliance processes, legal search, and retention management into a single system, which eliminates the problem of managing different platforms across the enterprise. Because it is cloud-based, it mitigates the need for upfront capital expenditures and is easy to scale for growing data storage and management requirements. A single administrative console enables consistent enforcement of retention policies and legal holds across all message types. All content is uniformly indexed and retrieved by Bloomberg Vault, simplifying the rapid accessibility of data—even archived data—for compliance and e-discovery requests.
- Meets global data privacy demands with Local Vault: The global infrastructure required to support a cloud-based service of this type is massive and requires a sizable investment in infrastructure and specialized expertise for any company entering the market. Bloomberg has the experience of building and managing the world's largest private network across more than 120 international data center sites, and Bloomberg Vault's services are delivered on this network. All Bloomberg customers are guaranteed real-time business continuity and data recovery capability. Bloomberg Vault's WORM-enabled compliant infrastructure is designed to keep archived data in a high-availability state by replicating it across geographically dispersed

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data centers. With Bloomberg Local Vault, organizations can enable data archiving policies to be configured at the employee level to abide by prevailing regional regulations across all corporate communications and content. With its network of secure, globally linked local data centers, Bloomberg Local Vault allows for in-region or in-country archiving, along with in-country secure data transfer, data storage, and instant search and analytics.

» Core competencies in providing uninterrupted uptime and strict data security: Financial services firms already rely upon Bloomberg to deliver uninterrupted uptime and ironclad security for their most critical and sophisticated trading applications. The same expertise and technologies that have been applied to the delivery of services through the ubiquitous Bloomberg terminals have been applied to the Bloomberg Vault cloud-based solution for enterprise data management. The Bloomberg network can scale up to more than 2,000 messages sent per second, and all access is via biometric multifactor security. Bloomberg Vault conducts an annual SSAE-16 SOC security audit by Ernst & Young to demonstrate best-in-class security processes to clients.

» Support for all of your key initiatives, including Dodd-Frank compliance: You can manage all of your data from a single location while still supporting all of the key initiatives that are driving today's businesses, such as social media and BYOD. Biometrically authenticated, authorized users can manage an organization's entire compliance workflow, from updating user accounts to customizing retention policies using a broad range of devices, including mobile devices such as tablets. Bloomberg Vault also provides a single platform to manage all of the data archiving and management challenges engendered by Dodd-Frank legislation, including voice archiving and social media, which would otherwise severely test the limits—and limitations—of existing legacy solutions.

» Expert knowledge of financial services and related highly regulated markets: One of the big challenges for financial services firms is the constantly evolving landscape within the regulatory and e-discovery environments. Dodd-Frank, for example, was passed in the summer of 2010, yet many of the specific compliance proscriptions are still being defined. One of the biggest advantages of working with Bloomberg is that its entire business rests on its deep financial services expertise and its ability to react quickly to every change in the regulatory environment, however slight. As an example, enterprises using Bloomberg Vault can request SEC, FINRA, and CFTC 'attestation letters' to demonstrate recordkeeping compliance.

» Existing, deep-rooted relationships within the financial services industry: Bloomberg's technology is already deeply embedded within virtually every financial services firm. These companies already trust Bloomberg with their most important mission-critical applications. Extending that same trust to enterprise-wide data management is really just a short step. With any other cloud supplier, it would be a giant leap.

Conclusion

When it comes to the management of enterprise information, financial services companies and firms in other highly regulated industries are facing a perfect storm of challenges. Just as the rules for compliance and e-discovery are tightening and requiring more oversight, the underlying and supporting technology is undergoing a sea change, with the computing world shifting to a new paradigm. Companies that are trying to go it alone by rebuilding or adjusting their infrastructures are in for a long, hard, expensive, and at times painful transition.

Fortunately, the changes that are taking place in enterprise technology are opening up a clearer and more direct path for regulated enterprises to deploy cloud-based solutions. The cloud makes the transition much simpler and cost-effective, and provides a long-term solution that is much easier to manage and scale. The inherent benefits of the cloud are the reason it is one of the driving forces behind this next computing paradigm. With the right cloud solution in place, enterprises can address all of the key questions they are facing in transforming their information management technologies and policies, including how to:

» Manage information governance for new data formats such as social media, mobile, and voice.

» Deploy an enterprise information archiving solution capable of managing retention, archiving, access, analytics, and reporting.

» Ensure that global deployments meet data privacy requirements where your company does business.

» Adapt infrastructure to address the speed, volume, and response times required to enable big data initiatives.

» Ensure that data will be secure when moving to the cloud and that they are working with a cloud partner that has the necessary domain expertise, experience, and stability.

The challenge in deploying cloud-based solutions for your enterprise data is typically one of trust: Data is an organization's most important asset, and turning management of that data to a cloud supplier requires absolute confidence in that vendor's technology solution, underlying infrastructure, expertise, security, and credibility in delivering bulletproof mission-critical solutions within highly regulated industries. Finding a vendor that has earned that trust has been a roadblock to more expansive use of the cloud to address today's data management challenges in regulated verticals. With the participation of Bloomberg in the market, that roadblock is eliminated and the path to a secure, trusted cloud is now clear and ready to be taken. ■

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VAULT

The Costs of Dodd-Frank Act Compliance

Everyone, including community bankers, is starting to feel the effects of Dodd-Frank Act costs

By Karen Kroll

As companies begin to add up the cost of compliance with the Dodd-Frank Act, some are feeling the effects of what might be called slow-motion sticker shock.

As the rules required by the legislation have slowly rolled out, the financial effect is becoming clearer and by nearly all estimates the mounting costs far surpass most early assessments of the expense of Dodd-Frank, especially for companies in the financial services industry.

"Bankers are just realizing how significant the new credit card rules, the new rules on mortgages, and the actions of the Consumer Financial Protection Bureau will have on their business," says Lynne Barr, partner in the financial institutions group and chair of the banking and consumer financial services practices with the law firm Goodwin Procter. "It's pretty staggering."

Barr adds that while she isn't trying to minimize the damage wrought by the recession, nor the abuses that led up to it, "what Congress tends to do is to over-react." The result may be that some of the intended remedies cause their own harm.

A 2012 report by Standard & Poor's estimates that Dodd-Frank could reduce pretax earnings of the eight largest U.S. banks by $22 to $34 billion annually, up from a 2010 estimate of $19.5 to $26 billion. The largest chunks of the increase come from a new way of calculating the banks' contribution to the Federal Deposit Insurance Corp.'s Deposit Insurance Fund, as well as a stricter interpretation of the Volcker Rule's limits on proprietary investments and trading than was initially envisioned, the S&P report notes.

Standard & Poor's estimated that the rule alone could collectively cost the 10 largest U.S. banks as much as $10 billion annually.

Dodd-Frank's effect is beginning to be felt by community bankers as well, says Chris Cole, senior vice president and senior regulatory counsel with the Independent Community Bankers of America. As recently as a year ago, many community bankers would have said the costs of Dodd-Frank weren't too bad, Cole notes.

That changed when the CFPB issued rules relating to mortgage loans last year. "They've brought the cost of compliance way up for community banks," Cole says. For instance, mortgage lenders now must verify eight underwriting factors when issuing qualified mortgages; these loans offer lenders some protection from lawsuits, should borrowers later run into problems meeting their obligations.

That's not to say that Cole sees no value in Dodd-Frank. "You now have the government looking more seriously at how the big banks are managed."

Not Just Financials

While many of the provisions in Dodd-Frank are aimed at financial institutions, some cut across other industries. That's the case with several sections of Title VII of the Act, "Wall Street Transparency and Accountability," which imposes new oversight and regulations on over-the-counter derivative transactions. Most manufacturers use derivatives to hedge transactions involving commodities, interest rates, or foreign currencies—not to speculate. They still may be affected by, for example, by a proposed requirement that derivatives users post margins on their transactions.

A 2012 letter from the Coalition for Derivatives End-Users to the FDIC, the Federal Reserve, and other regulators states that placing a margin requirement of 3 percent on the S&P 500 companies could reduce capital spending by between $5.1 and $6.7 billion. "Companies need to have the money sitting aside," for the margin requirement, says Carolyn Lee, senior director of tax policy with the National Association of Manufacturers.

> "The benefits at this stage are very speculative. We're not in an economic environment where the benefits have become apparent."
>
> William Mayer, Partner, Goodwin Procter

NAM is working with legislators to remove end-users from the proposed requirements. The Coalition's letter to regulators points out that "the text, structure, legislative history, and purpose of the Dodd-Frank Act all evidence that Congress did not intend for end-users to be subject to margin requirements." However, some regulators disagree about the intent of the statutes, Lee notes.

Overall, the private sector will spend more than 24 million hours each year complying with the first 224 (out of 400) rules established by Dodd-Frank, according to the Dodd-Frank Burden Tracker, a creation of the House Committee on Financial Services. That compares to an initial estimate of about 20 million hours.

Ultimately, Dodd-Frank's effect likely will extend beyond the expense side of businesses' ledgers and hit their top lines, as well. That's because the regulations may influence the decisions executives make about the businesses

they'll pursue.

These less visible costs, typically resulting from changes in companies' behavior can be more significant than the costs of, say, legal fees or IT investments that companies incur in order to comply with the new rules. "The directly visible stuff is just the tip of the iceberg," says Jim Angel, associate professor at Georgetown University specializing in the structure and regulation of financial markets. More significantly, companies may avoid certain product lines because they don't want to run afoul of a new rule. Overall economic costs rise "if you have less competition in certain areas and if firms don't compete where they have a competitive advantage," Angel says.

These repercussions may mean the law ultimately fails to achieve its goals of protecting consumers and fostering a safer financial system. Cole notes that if the number of banks making mortgages declines, consumers may pay more for their loans or have a harder time finding them.

Costs vs. Benefits

Additionally, some requirements appear likely to impose significant costs for questionable benefits. One is the pay-ratio rule contained in Section 953 of Dodd-Frank. The provision requires listed companies to calculate the pay of its chief executive officer as a ratio to that of its median employee. "This is something that will again pose a huge cost burden," says Lee of NAM. Along with the task of assembling the data—enormous in itself—companies need to comply with data privacy laws that can vary from country to country.

Even those within the SEC have questions about the cost of the rule compared to its benefits. "The pay ratio computation that the proposed rules would require is sure to cost a lot and teach very little," said SEC Commissioner Daniel Gallagher in a statement. "There are *no*—count them, *zero*—benefits that our staff have been able to discern."

Similarly, the conflict minerals rules of the law also likely will boost costs for little benefit, Angel says. "Clearly, there are horrific human rights abuses taking place in the Congo." However, making all public companies, including those with no business activity in the Congo, audit their supply chains—again a costly undertaking—is among the rules that are "totally useless," Angel says.

Indeed several legal challenges to Dodd-Frank Act provisions are based on the idea that the regulatory agencies writing the rules didn't perform the required work to calculate the cost of compliance versus the benefits to the financial system.

At the same time, it's important to note that some expenses often attributed to Dodd-Frank probably would

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DODD-FRANK'S EFFECT ON BANK EARNINGS

The following chart from S&P shows the estimated effect the Dodd-Frank Act will have on aggregate large bank earnings.

(Bil. $)

Rule	Prior estimate	New estimate (loose interpretation of the Volcker Rule)	New estimate (strict interpretation of the Volcker Rule)	Already in earnings?
Durbin Amendment (limits on interchange fees)	4.5-5.0	5.4	5.4	Yes
Derivatives (regulating the over-the-counter swaps market)	5.5-6.0	4.5-5.0	4.5-5.0	No
Deposit insurance (a new risk-based calculation method for assessments)	3.5-4.0	9.0-11.0	9.0-11.0	Yes
Volcker Rule (limiting proprietary investments and trading)	3.5-4.0	2.0-3.0	8.0-10.0	No
Costs (higher regulatory and compliance expenses)	2.5-3.0	2.0-2.5	2.0-2.5	No
Total	**19.5-26.0**	**22.9-26.9**	**28.9-33.9**	

Source: Standard & Poor's.

Years on, Dodd-Frank Act Still a Work in Progress

By Joe Mont

While much of the Dodd-Frank Act is complete, efforts to repeal the Act are still underway. Some are working to amend individual rules

This is a crucial year for the Dodd-Frank Act. More than 70 percent of its required rulemaking is either proposed or finalized, on track to take effect in the weeks and months ahead. For the first time, enough pieces of the regulatory reform puzzle are snapped into place to make an early assessment of if it is living up to its promises, or at least if it has the potential to.

Will it succeed in its goal to ensure stable financial markets by closing loopholes and creating new oversight? Is it flexible enough to keep markets safe for years to come and vaccinate an easily wounded economy protected from greed and excessive risk taking?

What will its ultimate legacy be? That depends both on how well it works in the days ahead and whether critics who want to kill or modify what they still can will help improve the law or sabotage it.

Dodd-Frank's architects ambitiously positioned the package as another face on the Mount Rushmore of financial reforms, alongside the New Deal, Securities Act of 1933, and Sarbanes-Oxley Act. Meanwhile, critics saw little but red tape and job killing. Thousands of industry lobbyists hunkered down in their Washington D.C. beachheads, intent on casting away specific rules or, at least, shaping them into something less onerous.

In Congress, getting the necessary votes was no easy task. "It was a very stressful period," says former Congressman Barney Frank, a namesake of the Act along with former Senator Christopher Dodd. "Part of the problem was that the Republicans were clearly not going to give us any votes. Every night, the last thing I would think about before going to sleep was the number 36. I spent a year-and-a-half trying to get 36 votes on everything."

After the Dodd-Frank Act was enacted in the summer of 2010, it was immediately greeted by Congressional plans to undo it. While blanket promises of full repeal never gained much traction—although a Romney Administration might have changed that—attacks still persist from all corners.

With so much of the required rulemaking complete, efforts to kill the Act are now next to impossible, say legal experts. There is still plenty of room, however, to stall individual rules and amend existing ones. Efforts to do so are not just a Republican mission—some have bi-partisan backing.

Congressman Jim Himes, who represents the financial services-laden state of Connecticut, is in a unique and controversial, position. As a Democrat who voted, with no regrets, in favor of the Dodd-Frank Act, he also leads the charge to amend key portions. That has put him in the unenviable position of drawing fire from both parties.

"It's been excruciating," he says. "Unfortunately, there is still so much residual rage at the financial services sector, and our politics are still so polarized, that it is all but impossible to have the conversations you want to have in the face of a new regulatory regime. What are we learning? What's going wrong? What can we adjust? Instead, this is essentially a morality play where you are pegged as either in the camp of believing Dodd-Frank is being systematically diluted and was not strong enough in the first place, or you are into the camp that wants it repealed."

As it was in the beginning, so it is now, with lobbyists adding to the legislative logjam. "The industry has pushed hard in some areas that I suspect are unwise and more related to their interests than to a well functioning industry," Himes says. "On the flip side, there are certainly parts of Dodd-Frank that are very awkward."

What's next on Washington's fix it-list? Front-row, center is the Volcker rule, a prohibition on proprietary trading by federally insured banks added onto the Dodd-Frank game late in the process.

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>
> Jim Himes, Congressman, Democratic Party

"The Volcker rule is very important and very problematic," Himes says. "It is very difficult to dispute that banks should not be placing proprietary bets, but the actual rules to implement that simple proposition are very challenging. I don't think the Volcker rule is a bad idea. I think it is essential. But it is proving very difficult to apply it to the actual operations of the market."

Success in Legal Challenges

Where legislative redress has failed, trade associations and politically motivated think tanks—includ-

ing the American Bankers Association, U.S. Chamber of Commerce, National Association of Manufacturers, American Petroleum institute, and Competitive Enterprise Institute—have, and will, turn to the courts.

Legal challenges have been met with some success. A 2011 court decision threw out Securities and Exchange Commission rules associated with Dodd-Frank's proxy access rule, which would have required companies to give investors a right to place director nominees on proxy materials, making contested elections more likely. The conflict minerals rule, also pushed along to the SEC, is currently in legal limbo, with an appeals court decision expected in the coming weeks that could hinge on whether forcing companies to disclose their use of minerals mined in the war-torn Congo on their own Websites violates their First Amendment protections. A requirement for oil, gas, and mining companies to disclose any payments made to governments for extraction rights was already rejected by courts on that same logic and is being redrafted by the SEC.

In one industry victory that never made it to the courtroom, the American Bankers Association dropped a planned lawsuit once regulators relented and decided to provide a Volcker rule exemption to certain debt securities commonly owned by community banks.

"Legal challenges have certainly knocked out provisions of Dodd-Frank," says Tom Quaadman, vice president of the U.S. Chamber's Center for Capital Markets Competitiveness. Many of those challenges have zeroed in on what critics say is often an incomplete cost-benefit analyses of rulemaking. This sent a signal to regulators that "shoddy cost benefit analyses are not going to wash," he says.

"The challenges have been successful to the extent that they are a warning to regulators that they can't cut as many corners as they might otherwise be inclined to," says Hester Peirce, a senior research fellow at the conservative Mercatus Center at George Mason University. "Even if you don't see direct success with a particular lawsuit, there are good incentives provided just by the fact that they are out there."

Litigation has slowed the pace of Dodd-Frank rulemaking far more than similar threats affected other major reform initiatives, says David Zaring of the University of Pennsylvania's Wharton School. "With the Sarbanes-Oxley Act, agencies also had a lot of rulemaking to do, but most of those rules survived judicial review and were implemented much more quickly," he says. "It was a different world than the one we are seeing with Dodd-Frank and the prospective litigation that is coming."

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RELATED STORY

Costs to Companies Dominate Legal Challenges

Below CW's Joe Mont explains some of the legal challenges to the Dodd-Frank Act.

In July, Judge John Bates of the Federal District Court of the District of Columbia nullified Securities and Exchange Commission rulemaking that, in accordance with the Dodd-Frank Act, would require oil, gas, and mining companies to disclose payments made to governments for extraction rights.

Typical of legal challenges to Dodd-Frank Rulemaking, the lawsuit, filed by the U.S. Chamber of Commerce and American Petroleum Institute, took a multi-pronged approach, and one that focused on the lack of what they considered an adequate cost-benefit analysis.

Among their arguments:

"By the Commission's own reckoning, the rule will cost U.S. public companies at least $1 billion in initial compliance costs and $200 to $400 million in ongoing compliance costs, and could add billions of dollars of additional costs through the loss of trade secrets and business opportunities."

"While the Commission did not quantify how many 'billions of dollars' more its rule might cost U.S. businesses, it acknowledged that American companies may be forced to 'sell their assets in the host countries at fire sale prices,' or else keep existing assets idle and 'not use them in other projects.'"

"In calculating the competitive costs associated with the potential for lost business in countries that prohibit the required disclosures, the Commission did not even bother to determine how many countries had laws on the books prohibiting disclosure. Rather, it merely stated that commenters' concerns regarding lost business 'appear warranted,' and that host country laws "could add billions of dollars of costs to affected issuers."

"SEC Commissioner Gallagher dissented from adoption of the rule, criticizing the Commission for failing to adequately tailor the Rule to avoid significant adverse effects on competition and capital formation. 'We are not at liberty,' he explained, 'to ignore selectively the longstanding congressional mandate to consider the impact our rulemaking is likely to have on competition.'"

—Joe Mont

Source: American Petroleum Case.

The Dodd-Frank Act: Where Are We Now?

Continued from Page 5

run 10 years and cover 10,000 barrels, and the type of oil could be different, Ervin explains. So while it might illuminate some issues, the data "will not be sufficient to preclude all disasters from happening," Ervin predicts.

Other large parts of the Dodd-Frank Act, including a provision that created the Consumer Financial Protection Bureau, are still a work in progress. The CFPB, for example, has gotten in regulatory crosshairs for coming on too strong in some cases. On a mission to fight discrimination in auto financing, for example, CFPB director Richard Cordray has already had to answer questions from Congress about the fairness of the agency's methodology. Only loosely related to the strength of the financial system, but a key facet of the Dodd-Frank nonetheless is the idea that corporate governance needs strengthening. The aspect that took hold the fastest and most furiously is shareholder advisory votes on compensation, known as say-on-pay.

As McClendon's fate suggests, the votes have prompted companies to take some dramatic actions. While few companies have failed the non-binding votes, there is significant pressure to get high marks. "Dodd Frank has changed the game; directors spend more time on executive pay than they did five years ago by a significant margin," says David Wise, a vice president with compensation consulting firm Hay Group. "That has led to greater emphasis on performance-vested equity programs, less use of executive perquisites, and a slowing in the rise of cash compensation."

The problem is that's not always a good thing. Experts say that formulaically tying pay to performance doesn't take important differences into account, such as the phase of a company's growth, and whether or not it's in turnaround mode. "Good pay programs are designed in context of what a business is going through, but the impact of say-on-pay is to blur the context," says Wise.

Still to Come

Yet to come in the executive compensation arena are some new rules that will make clawbacks, and bans on hedging company stock even more stringent than the Sarbanes-Oxley Act did. Closer on the horizon is the requirement for firms to calculate and publish the ratio of CEO pay to the median employee pay. Though it won't take effect until 2015 at the earliest, based on the current timetable, criticism of the politically fueled statute is already flying. "What's the right number? We have no idea," says David Larcker, a professor at the Stanford Graduate School of Business who studies executive compensation.

"Many folks are calling it the shame rule," says Jean McLoughlin, a partner with Davis Polk, who says it would not be surprising to see eye-popping ratios such as 1 to 1000. How CEO pay is calculated is complex on its own. How should the rule, for example, address elements that pay out over time? And calculating median employee pay is even more complex, now that the SEC ruled it should include overseas employees as well as U.S.-based ones.

Critics of Dodd-Frank certainly abound. Yet ten years ago, there was similar outrage over the burdens Sarbanes-Oxley created and how impotent it was to prevent another fraud. Now, with nary an Enron-esque incident to report in the ensuing decade and much of the compliance work automated, few are complaining. Could Dodd-Frank see a similar legacy? Perhaps. "Overall, I'd give it B," says Skeel. "It's just one of these Bs where different sections of the test would have pretty significantly different grades." ■

How Dodd-Frank Pressures Corp. Governance

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law—primarily in Delaware, which says it is home to more than 50 percent of public companies—had already been pushing this, he adds. And, Delaware's regulations tend to "create parameters around which boards can function," Elson says. Federal involvement, in contrast, "creates fear and a bureaucratic way of looking at things." But, trying to accomplish change one company at a time—often the option left absent regulation—can be arduous.

Borrus of the CII points to the issue of mandatory majority voting for directors in uncontested elections, which wasn't addressed in Dodd-Frank. While more than three-quarters of companies in the S&P 500 use majority voting, the percentage is far lower among smaller companies. Most use plurality voting. As a result, even directors who fail to gain a majority of the votes cast can keep their board seats. The CII has tried, as yet without success, to convince the Delaware bar to make majority voting the default standard under Delaware corporation law. It now is pressing NASDAQ and NYSE to require listed companies to use majority voting.

"Pushing for change on a company-by-company basis takes long, hard work," Borrus says, adding that a majority-voting requirement is in place in most developed markets. "You don't want regulators to legislate every twist and turn of corporate governance. But basic shareholder rights should be universal for all public companies," she adds. ■

The Costs of Dodd-Frank Act Compliance

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have happened anyway in the aftermath of the financial crisis. For instance, while Dodd-Frank imposes higher capital standards for financial institutions, "banks likely increased their capital levels, to some extent, in response to market forces after the crisis," a 2013 report, "Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act" by the Government Accounting Office points out.

And some tension between economic growth and safety is inevitable. "There's an inherent trade-off," notes John Fisher, lead analyst with the GAO. While boosting safety buffers within the financial system—through higher bank capital requirements, for instance—may lower growth, it also reduces the risk of a financial crisis. That's important, as estimates of the cost of the recent financial crisis range from several trillion dollars to more than $10 trillion, the GAO report notes.

In addition, some of the funds companies are spending on the Dodd-Frank Act have more to do with lobbying regulators as the rules are promulgated than with actually complying with them. A Sunlight Foundation analysis from earlier this year showed that representatives from financial institutions show up in the regulators' meetings logs for at least 2,118 meetings during the first three years of Dodd-Frank's implementation—an average of almost 14 each week.

Perhaps the most critical question about the costs imposed by Dodd-Frank is whether they are likely to help avert another crisis. The verdict on this also remains to be seen. William Mayer, partner in and co-chair of the financial services group with Goodwin Procter, points out that many of the regulations have yet to be fully implemented and the country hasn't yet faced another significant economic downturn. "The benefits at this stage are very speculative. We're not in an economic environment where the benefits have become apparent." ■

Years on, Dodd-Frank Act Still a Work in Progress

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The Legacy Question

While defending the statute, and pleased by its success thus far, Frank does have some lingering concerns and regrets—although very few of them. One is that, despite his intent, risk retention requirements may not be imposed upon all mortgages. Another is that auto dealers were not included under the purview of the CFPB. At least the banks that finance auto loans are, he says.

Frank also regrets that the Act failed to merge the SEC and CFTC. "If you were starting from scratch, you wouldn't have a separate SEC and CFTC. It doesn't make sense," he says. "It is all so deeply rooted politically. The farmers would have just been in a revolt if they were lumped in with the city slickers on Wall Street. The cultural divide between the agricultural and financial communities made it impossible. I hope they do it separately some day, but it wasn't possible in the context of an already controversial bill."

Frank doesn't hesitate, however, when asked what the legacy of the legislation will be. He is confident it will prevent economic calamities for the foreseeable future. "We are much less prone to the irresponsible risk taking we saw before," he says. "On the other side, this has not in any way interfered with the functioning of the economy. Some banks may not be making as much profit, but the banks serve the economy, not the other way around. The stock market has done extremely well since the bill passed, so obviously it didn't have any negative effect there."

Several studies bear out his assertion that banks are healthier, with greater liquidity and better quality assets on hand to buffer shocks than before the crisis. Dodd-Frank pushed Big Banks to rethink their risk strategies. When they don't, they can face multibillion-dollar government fines.

The key to the Act's success, Frank says, is that lawmakers anticipated that new problems would arise, so they fully empowered regulators to deal with them. The centerpiece of that flexible, forward-thinking approach was the creation of the Financial Stability Oversight Council, comprised of representatives of all the financial regulatory agencies and handed a broad mandate.

"We learned from the financial crisis what happened when agencies didn't work together," Frank says. "The bill institutionalized the need for them to work together. If something falls between the cracks of the current jurisdictions, they can now deal with it."

Just as there is talk of a JOBS Act 2.0, a Dodd-Frank sequel may also be on the horizon. "There should be one eventually" Himes says.

First, however, the heated political climate must cool. "The White House has made the argument that while the rules are being written it is premature to start thinking about amendments," he says. "There is merit to that argument, but it is an academic one. It is nearly impossible to do a package of fixes because it is very hard for people of opposing views to find common ground." ■

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