The Dodd-Frank Wall Street Reform and consumer protection Act. November 2010.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (owes its name to representative Barney Frank and senator Chris Dodd), which was signed into law by president Barack Obama on July 21, 2010, accomplishes the deepest financial reform ever covering almost every aspect of the financial services industry as a response to the worst financial crisis the great depression, with the aim of restoring the investor´s confidence in the integrity of the financial system. The highlights of the new securities legislation –excluding the mortgage market and exclusively banks, thrift and insurance regulation- are the following:

1) Stronger investor protection: accountability, consistency and transparency.

The Dodd- Frank Act creates the Consumer Financial Protection Agency with the sole responsibility of consumer protection (instead of seven federal agencies with partial responsibilities). This Agency will have independent rule writing power, authority to examine and enforce with broad jurisdiction in every type of products and persons –including, for the first time, non-bank financial companies-, and authority and flexibility to respond quickly when bad business practices take place misleading customers. The new law requires clear, plain language disclosures that will give the investors the concise information they need to make financial decisions that are best for them, and demands for an effort to standardize simple products to prevent unfair treatment and abuse.

The new legislation creates other instruments to encourage investors protection: a program within the SEC to encourage people to report securities violations (whistleblowers), creating rewards of up to 30% of funds recovered for information provided; the Investment Advisory Committee, to advise the SEC on its regulatory priorities and practices; the Office of Investor Advocate in the SEC, to identify areas where investors have significant problems dealing with the SEC and provide them assistance; and an ombudsman to handle investor complaints. The law also creates a nationwide toll-free hotline and website for consumer complaints relating to financial products and services.

2) Systemic risks: robust supervision and regulation of financial firms.

The Dodd-Frank Act creates the Financial Stability Oversight Council with important responsibilities: identify and respond to emerging risks throughout the financial system, advise the Federal Reserve on the identification of firms whose failure could pose a threat to financial stability (due to their combination of size, leverage and interconnectedness), and facilitate information sharing and coordination. The regulation will obliged all firms that pose the most risk to the financial system to be subject to stronger capital requirements and other prudential standards that would be even higher in case of interconnected firms. Financial reform will require advisers to hedge funds (and other private pools of capital) to register with the SEC for the first time; they will have to provide information about their trades and portfolios necessary to assess systemic risk. The new law also creates an Office of Financial Research within the Treasury to be staffed with a highly sophisticated staff of experts to support the Council´s work by collecting financial data and conducting economic analysis.

3) Comprehensive supervision of financial markets: securitization, derivatives and credit rating agencies.

The new law pretends that the financial markets are strong enough to withstand both system-wide stress and the failure of one or more large institutions.

Securitization markets. Companies that sell asset-backed securities (like mortgage-backed) will be required: to retain a percentage of the credit risk (unless the underlying loans meet standards that reduce riskiness) and to disclose more information about the underlying assets and to analyze its qualities. The SEC will continue its efforts to increase the standardization and the level of the reporting by issuers.

Derivatives markets. The SEC and CFTC will have the authority to regulate all OTC derivatives, harmonize futures

regulation, strengthen oversight of activities, determine which contracts should be cleared in a Central Clearing and Exchange Trading, pre-approve contracts before clearing houses can clear them, require data collection, disclosure through clearing houses or swap repositories the data (to improve market transparency and provide regulators important tools for monitoring and responding to risks) and, finally, punish bad behaviours. A code of conduct will be established for all registered swap dealers and major swap participants.

Credit rating Agencies. The reforms creates an Office of Credit Ratings at the SEC with the power to fine agencies. The SEC is required to: first, examine the Nationally Recognized Statistical Ratings Organizations (NRSRO) at least once a year and make key findings public; second, strengthen its measures to try to avoid conflicts of interest,(for example, by informing the SEC when certain employees of the NRSRO go to work for an entity that the NRSRO has rated in the previous twelve months or by creating a new mechanism to prevent issuers of asset backed-securities from picking the agency they think will give them the highest rating); and third, enhance the integrity of the rating process (for example, the SEC will require NRSRO to disclose their methodologies, use of third parties due diligences and ratings track record). Investors could exercise private rights of action against rating agencies for a knowing or reckless failure to conduct a reasonable investigation of the facts or to obtain analysis from an independent source. The SEC deregister an agency for providing bad ratings over time.

4) Other tools to prevent financial crisis: end of too-big-to-fail and corporate governance.

End of too-big-to-fail: if a big financial firm is failing, regulators will order to shut down and liquidate in a safe, orderly way it without taxpayer bailout and without putting the risk on rest of the financial system; to prevent this situation, tough new capital and leverage requirements will be imposed. The named Volcker Rule (restrictions on proprietary trading and hedge fund and private equity investments that are not at the best of its clients) will be also applicable to nonbank financial institutions.

Corporate governance: executive compensation and greater accountability. The new legislation provides shareholders with a say on pay and corporate affairs with a non-binding vote on executive compensation and golden parachutes. In public companies, if the compensation was based on inaccurate financial statements that don’t comply with accounting standards, the companies will set policies to take back executive compensation. The SEC will grant shareholders proxy access to nominate directors. The standards for listing on an exchange will require that compensation committees include only independent directors and have authority to hire compensation consultants in order to strengthen their independence from the executives they are rewarding or punishing.

5) Raise international regulatory standards and improve international cooperation

The law intends to strengthen the international framework, improve the oversight of global financial markets, enhance supervision of international financial firms, reform crisis prevention and management authorities and procedures, strengthen the role of the FSB, strengthen prudential regulation rules, introduce better compensation practices, promoter stronger standards in prudential rules, tax, information exchange areas, accounting, and oversight of credit rating agencies.

If you want to read the whole Act, you can fin it at: http://financialservices.house.gov