

## The SEC Gets Busy Early in Implementing Dodd-Frank Rulemaking Process

July 29, 2010

The U.S. Securities and Exchange Commission (SEC) will be affected more than any other federal agency or regulator by the Dodd-Frank Act. Under the new law, the SEC will be required to undertake additional rulemakings, studies and reports; therefore, the SEC will take the unusual step of seeking preliminary public comments which will allow interested parties to have an early voice in the Commission's rulemaking process.

---

The Dodd-Frank Act, signed into law by President Obama last week, affects the U.S. Securities and Exchange Commission (SEC) more than perhaps any other federal agency. Under the 2,300 page law, the SEC is required to undertake approximately 95 rulemakings and issue approximately 17 studies and reports – more than any other regulator. Though the deadlines for the respective rulemakings, studies and reports vary, most have to be completed within one year. This is a tall order for both the SEC and the numerous interested parties that will be affected by the new rules and regulations.

On Tuesday July 27, 2010, Chairman Mary Schapiro announced that the SEC will take the unusual step of seeking preliminary public comments on a number of issues related to the Dodd-Frank Act, even before the SEC proposes the new rules. The SEC typically seeks public comment at the same time it proposes rules or rule amendments; but given the magnitude and importance of the rulemaking required of the SEC under the Dodd-Frank Act, the Commission is beginning the process immediately by enabling the public to provide preliminary comments electronically on a variety of topics.

The SEC has set up a series of e-mail links on its website that cover certain of the major SEC regulatory issues under Dodd-Frank such as OTC derivatives (e.g. mandatory clearing and end-user exceptions), regulation of hedge fund and other advisers (e.g. new threshold for federal regulation and exemption for certain advisers and family offices) and credit rating agencies. The mailbox links are organized by topic and are listed starting with rules that have the shortest timeframe for implementation. Comments on the respective issues will be publicly available. They are to be submitted electronically and they will be posted (including identifying information) without change on the SEC's website. The SEC will also seek official public comment once it formally issues its proposed rules. The official comment period is commenced with publication of the proposed rules in the Federal Register.

The SEC also announced "newly-established best practices" when the SEC staff holds meetings with interested parties during this process. Under these "best practices," the SEC staff will, among other things, meet with any interested party seeking a meeting, request written meeting agendas that will become part of the public record and encourage meeting participants to submit written comments that will also be included in the public record. The SEC staff will also seek out parties with varying views and solicit views from affected parties who do not appear represented by the developing public record on a particular issue.

The SEC's new preliminary comment process allows interested parties to have an early voice in the Commission's rulemaking process. The ability to raise policy, resource, cost and other issues at this early juncture may help frame the debate, as well as the SEC's consideration and promulgation of the proposed rules. Moreover, once the Commission issues the proposed rules, additional comments may be submitted during the official comment period. Interested parties should, therefore, consider submitting preliminary comments.