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Breakfast Briefing Panelists Discuss the Good and Bad in Dodd-Frank

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NEW YORK—A panel of experts convened by the NYSSCPA for a Sept. 23 breakfast briefing in New York City agreed that the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act has definite pros and cons, with a number of its provisions directly impacting the work of CPAs.

Moderated by *New York Times* financial reporter David M. Herszenhorn, the event brought together speakers **Hugh W. Guyler,** an industry professional practice director at Deloitte and a member of his firm's Financial Reform Law Group; Ernest T. Patrikis, an attorney in bank and insurance regulatory practice at the firm White & Case LLP, who worked in senior positions at the New York Federal Reserve for 30 years; **Maury Cartine,** a former chair of the Society's Taxation of Financial Instruments and Transactions Committee who also sits on the Estate Planning Committee; and Robert C. Hockett, a professor of financial law and economics at Cornell University.

The briefing drew 214 attendees—with 99 of those attending via a live webcast—who listened as the four panelists weighed in on the Dodd-Frank Act, which has been called "the most comprehensive financial reform since the Great Depression."

Herszenhorn agreed with this assessment.

"Virtually every dollar invested in the American financial system is touched by

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New York Times reporter David M. Herszenhorn, at left, discusses the recently signed Dodd-Frank Wall Street Reform and Consumer Protection Act with Hugh W. Guyler, industry professional practice director at Deloitte, and Ernest T. Patrikis, an attorney specializing in banking and insurance regulation, at a breakfast briefing on Sept. 23.

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NEW YORK—The IRS released final regulations on Sept. 28 that require all paid tax return preparers—including CPAs—who prepare all or substantially all of a tax return to register with the IRS to obtain a Preparer Tax Identification Number (PTIN).

The registration system is now available on the IRS website.

All tax return preparers who already have a PTIN, including CPAs, attorneys and enrolled agents, are required to reregister their PTIN with the IRS before preparing any federal tax returns in 2011, according to the agency. Applicants must pay a $64.25 fee to obtain or reregister a PTIN, which will be valid for one year.

The registration fee will be used to pay for two things, according to the IRS: technology, compliance and outreach efforts associated with the new program; and operation of the IRS's online registration system, as well as customer support for that system.

Society members said they support the IRS's initiative to track unscrupulous or unregulated tax preparers, but CPAs do not fall within either of those categories.

"Most CPAs that I know of already have a PTIN, so really, I've yet to be able to come to the conclusion that this reregistration process for a PTIN is anything more than a revenue generator," said NYSSCPA Secretary/Treasurer **Joseph M. Falbo Jr.** "Honestly, I don't know what value or protection will be provided to the general public when I send in my [form] asking the IRS to retain a previously issued PTIN along with my $64.25."

Even smaller firms like Falbo's Buffalo office, which employs approximately 100 preparers, will be facing fees of up to $6,500 "for something they already have," he said.

Falbo said he understands the IRS's intent to develop standards for those tax preparers who may not be following the law or who are simply falling below the IRS's radar, "but I think the brush that defined 'paid preparer' was far too broad in this circumstance."

The requirement is part of a broader IRS initiative, which also includes a proposal to require paid tax preparers to be tested and earn continuing professional education (CPE), to "ensure that all tax preparers are competent and qualified." CPAs, attorneys and enrolled agents would be exempt from these proposed requirements, according to a proposed amendment to Treasury Circular 230 regulations.

The IRS stated in a press release on Sept. 28 that it is also considering extending this exemption to those who engage in return preparation under the supervision of someone else—such as employees who prepare all or substantially all of the return and work in certain professional firms under the supervision of a CPA, attorney or enrolled agent who signs the return.

The NYSSCPA advocated on behalf of its members, New York CPAs and the profession prior to the IRS's final regulation release. On Aug. 26, the Society sent 13 letters to members of Congress who represented five Society chapter regions, regarding the IRS's proposed PTIN regulations. These letters were cosigned by NYSSCPA President **Margaret A. Wood** and the respective chapter presidents.

The letters requested that the federal lawmakers contact the IRS and ask the service to exempt CPA firms from the requirement to register persons working in CPA firms who do not sign a tax return; and delay implementation of the IRS preparer examination, particularly with regard to nonsigners, until the PTIN registration process is fully implemented and it can be determined if further action is necessary to bring tax preparation to an acceptable standard.

The letter stated that the Society supports tracking and curtailing incompetent preparers by the PTIN approach, but urged the members of Congress to convey to the IRS that the need to do so needs to be balanced with the appropriate level of regulation.

President Wood also sent a thank-you

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this bill," he said. "This law touches Main Street, Wall Street and virtually everywhere else in America."

Increased Oversight of Hedge Funds

Signed into law on July 21, the bill created two new regulatory agencies—the Consumer Financial Protection Bureau and the Financial Stability Oversight Council (FSOC)—and changed how finance is overseen by the government. These changes included new regulation of over-the-counter derivatives, new rules for bankruptcies and liquidations, and new requirements and limitations on executive compensation.

The Dodd-Frank act will also usher in new regulations and oversight for hedge funds—something that Cartine said the government was looking to do for quite some time.

It's been "a very long trail to the finish line," he said.

The new regulations on hedge funds will become effective in 2011, one year after the enactment of the Dodd-Frank act, according to the legislation.

Under the new law, investment advisors working at hedge funds will need to maintain and file reports with the Securities and Exchange Commission (SEC) and make these records available to the FSOC. These records will need to include information on—

- the amount of assets under management and the use of leverage, including off–balance sheet risk;
- counterparty credit risk exposure;
- trading and investment positions;
- valuation policies and practices;
- the types of assets held;
- side arrangements or side letters (separate agreements used to clarify or modify an already existing sales arrangement);
- trading practices; and
- other information that is necessary or appropriate for the protection of investors and the assessment of systemic risk.

The last point is very much in the spirit of what the entire Dodd-Frank act is looking to address, Cartine noted. "This is what it's all about," he said. "Systemic risk."

Cartine said that the Securities Act of 1934 arose as a direct reaction to the problems within the securities market that ultimately sparked the Great Depression. In the case of the recent financial crisis, he said the catalyst was systemic risk.

Cartine noted that firms that solely advise venture capital funds are exempted from the new hedge fund regulations, as are advisors to family offices. This, he said, could lead to abuse under the new regulatory regime.

"I've seen many family offices that are disguised hedge funds," Cartine said.

Executive Compensation

The new financial reform law brings with it technical accounting implications, particularly with regard to the new rule on executive compensation. That rule says that bonuses given to executives based on information later revealed to be inaccurate or not in compliance with accounting standards must be clawed back, according to Guyler.

Previously, this was governed by Financial Accounting Statement (FAS) 123(R), which concerns share-based payment, he said. It involved looking at the compensation agreement, seeing whether the requirements were met for a clearly defined and understood arrangement between a company and an executive and, if they were, then the compensation would be spread over the requisite service period using fair value accounting methods.

The clawback provision, Guyler said, could affect a company's accounting in that money it thought it had spent on executive compensation is immediately reclaimed in the case of a clawback.

Guyler said that there is still objectively verifiable information that can be used in order to calculate compensation with this provision in mind. The clawback feature, he said, is a contingent feature that would be recognized at the time the contingency arises.

He did add, however, that some companies, in response to Dodd-Frank's passage, may revisit and revise their existing compensation plans and advised the breakfast briefing audience that these plans need to be looked at closely to see whether any technical issues may arise.

Banking and the Volcker Rule

Patrikis spoke primarily about how banks would be affected by the new regulations, particularly through the Volcker Rule, named for former Federal Reserve Chair Paul Volcker.

The Volcker Rule disallows banks from using more than 3 percent of their core capital to engage in proprietary trading. Patrikis, who said he knows and has worked with Volcker personally, also said he's not fond of this part of the law.

Patrikis said that even before Dodd-Frank was enacted, banks were already restrained by a very limited investment portfolio, able to only trade in U.S. government securities, federal agency securities, municipal securities, and Canadian government and provincial securities and loans.

The real game changer, he said, is for bank holding companies, because if a bank holding company "had a subsidiary that was doing proprietary trading in equities, that's [now] going to have to stop."

He added that the implementation of this rule will have a deleterious effect on investment within the United States, as these restrictions could prompt companies to look to less heavily regulated venues in other countries.

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