

**“SPECIAL ASSESSMENT” ON CERTAIN “FINANCIAL COMPANIES THAT
MANAGE HEDGE FUNDS” TO BE PART OF NEW FINANCIAL REFORM LAW****Final Vote on Major Financial Regulation Overhaul Planned for Week of June 28, 2010**

The conference committee in the U.S. Congress that is charged with reconciling the differences between the House and Senate versions of financial reform legislation has agreed to establish a “Financial Crisis Repayment Fund” (the “Fund”). The Fund would be financed through a special assessment totaling a maximum of \$19 billion to be levied on certain large financial companies, including “financial companies that manage hedge funds” with assets under management of \$10 billion or more on a consolidated basis, adjusted for inflation. The assessment would be collected in installments, the first of which would be due no later than September 30, 2012.

The special assessment was approved by the conference committee early in the morning of Friday, June 25, 2010 in response to an additional amendment to the financial reform measure offered by House Financial Services Committee Chairman Barney Frank (D-MA). The official legislative text of the “Restoring American Financial Stability Act” (H.R. 4173/S. 3217)—which, once enacted, will be known as the “Dodd-Frank Act”—has not yet been released, and the amendment could be subject to additional minor or technical changes before its final version is incorporated into the official text. Based on the text of Frank’s “offer” to the conference committee, the amendment contains the following provisions:

- The Federal Deposit Insurance Corporation (the “FDIC”) would administer the Fund and impose the special assessments in consultation with the new Financial Stability Oversight Council (the “Council”) established by the legislation.
- The FDIC would be required to define “hedge fund” in consultation with the Securities and Exchange Commission.
- The FDIC would implement the specific terms of the assessment through regulations developed following enactment of the Dodd-Frank Act, although the text of the amendment does not contain a specific deadline for such regulations.
- The assessment would also be levied on other types of financial companies (e.g., banks) having assets of \$50 billion or more on a consolidated basis.
- The assessment for an individual financial company would be based on a “risk matrix,” to be determined by the FDIC and the Council, that is expected to take into account such factors as the extent and nature of the company’s leverage, off-balance sheet exposures, transactions and relationships with other financial companies. Additional risk factors that should also be considered include the extent to which assets are “simply managed and not owned” by the financial company and the extent

to which the ownership of assets under management is “diffuse”; the nature of the company’s activities; the degree to which it is already federally regulated; the amount and nature of the company’s financial assets and liabilities; and such other factors as the FDIC, in its discretion after consultation with the Council, deems appropriate.

- The assessment would be levied in a series of installments that would be due by each September 30 of the years 2012 through 2015.

The maximum amount of the assessment would be set at \$19 billion or the amount determined by the Office of Management and Budget, according to a formula set forth in the amendment, as sufficient to offset the cost of implementing the legislation, whichever is less.

Our understanding is that Chairmen Christopher Dodd (D-CT) and Frank intend to bring the legislation to the floors of the House and Senate for a final vote during the week of June 28, 2010.

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If you have any questions regarding this memorandum, please contact Russell L. Smith (202-303-1116, rsmith@willkie.com), Barbara Anne Block (202-303-1178, bblock@willkie.com), or the attorney with whom you regularly work.

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