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Financial Services Legislative and Regulatory Update

Leading the Past Week and Looking Ahead

With the shutdown finally over, Congress is slowly coming back to normal, as last week the Senate was in Recess, and the House adjourned early so that members could attend the funeral of Florida Congressman Bill Young. However, the fallout, and impact from the shutdown on the government, and perhaps more importantly, the economy continued, with the White House announcing that they anticipate that the shutdown will have “subtracted” from job growth. The Council of Economic Advisers (CEA) Chairman Jason Furman told reporters that 120,000 fewer jobs will be expected through October 12th due to the effects of this “self-inflicted wound.” The CEA also estimates that the shutdown will decrease fourth quarter GDP growth by 0.25 percent. As a result of the economic stumbling block presented by the shutdown, experts now expect the Fed to begin the ‘tapering’ of its \$85 billion per month asset purchases in March, later than previously forecasted. The government shutdown will also affect tax filing season, as the IRS announced that it will need to delay tax season by one to two weeks to accommodate for additional time to program and test the systems it uses to process tax returns.

Looking ahead to this coming week, the House will take up two pieces of legislation aimed at fixing parts of Dodd-Frank, while the Senate Banking Committee continues its examination of how to reform Housing Finance. However, all eyes will be on the Budget Conference, which meets on Wednesday for opening statements. Whether this conference can produce anything more than good political theater remains to be seen, but if the Conference is able to reach an agreement on a substantive measure, it just might mean that the Congress will be able to start working again. Of course, with the House expected to finish its business by Wednesday evening, and then recess till November 12th, it remains unclear what the remainder of the agenda for November will look like.

Legislative Branch

Senate

Lawmakers Ask SEC to Abandon Private Offering Disclosure Rule

On October 22nd, Senators John Thune (R-SD) and Pat Toomey (R-PA) [wrote](#) to SEC Chairman Mary Jo White requesting that the SEC abandon a proposed rule that would institute new disclosure requirements for companies that are seeking private securities offerings now allowable under the Jumpstart Our Business Startups (a/k/a “JOBS”) Act. Toomey and Thune sponsored the JOBS Act provision which lifted the ban on general solicitation for private securities offerings and are opposed to the SEC’s proposal to require new disclosures for these kinds of offerings. The lawmakers write that “the additional measures that the SEC has proposed go beyond Congress’s clear mandate in Section 201, and would impose unnecessary and burdensome requirements that will have adverse effects on small businesses and investors, and undo the progress made under Section 201.” The SEC feels the disclosures are a necessary investor protection and White recently said that the SEC must move “expeditiously” to finalize the rules.

Warren Requests Enforcement Details from Regulators

On October 23rd, Senator Elizabeth Warren (D-MA) [wrote](#) to the Federal Reserve, SEC, and Office of the Comptroller of the Currency (OCC) requesting the agencies supply her with their enforcement records from 2009 to 2012. Warren asked for the agencies to provide her information on the number of criminal charges, prison sentences, civil charges, and the total amount of money each agency has received from civil judgment or orders of restitution. Warren, who has been critical of regulators’ enforcement of Wall Street in the wake of the financial crisis, noted that there have been some recent “landmark settlements” but “a great deal of work remains to be done to hold institutions and individuals accountable.”

Senators Brown & Warren Keep Pressure On Banks Involved in Commodity Market

On October 24th, Senators Sherrod Brown (D-OH) and Elizabeth Warren (D-MA) sent a letter to the Chairman of the London Metal Exchange (LME) asking for details on LME’s progress in alleviating bottlenecks in the flow of aluminum. The Senators cite concerns that the LME warehouses are purposefully slowing the release of aluminum supplies so as to raise prices and recommended, so as to avoid further investigation, to “chart a new direction for LME practices” and “bring it in line with other global commodity practices.” The Senate Banking Committee, in particular the Subcommittee on Financial Institutions and Consumer Protection Chaired by Senator Brown, has been actively investigating the physical commodities market, and along with some regulators, including the Federal Reserve, has been critical of the involvement of financial institutions in commodities markets. Brown had called for a hearing on the issue, which was delayed by the government shutdown, but which will likely be rescheduled for the near future.

Senator Markey Requests CFPB Investigate High Medical Loan Costs

On October 22nd, Senator Ed Markey (D-MA) [wrote](#) to Consumer Financial Protection Bureau (CFPB) Director Richard Cordray requesting that the Bureau investigate, and take appropriate action based on their findings, entities that provide medical and dental credit cards, loans, and other financial products. Specifically, Markey asked the CFPB to look into whether these companies provide consumers with enough information to make educated financial decisions and asked how annual interest rates for these kinds of products differ from traditional financial tools. He also requested the Bureau respond as to whether it has investigated these products, including the risks and benefits, to describe the types of products in the sector, and to consider collecting consumer complaints in this space.

Senator Markey Presses Regulators on Arbitration

On October 25th, Senator Ed Markey (D-MA) wrote to the [SEC](#) and the Financial Industry Regulatory Authority ([FINRA](#)) urging FINRA to craft more stringent policies governing arbitration for brokers and brokerage firms. In his letter to the SEC, Markey raised concerns about unpaid arbitration awards, saying that “after an award is granted, deadbeat brokers simply close their firm doors or declare bankruptcy.” In his letter to FINRA, Markey called on the SRO to improve its processes for tracking and removing unscrupulous brokers from the industry, since according to Markey, more than 90 percent of arbitration settlements and 50 percent of arbitration awards are not listed on the regulatory body’s website.

Legislation Expected to Delay NFIP Rate Increases

On October 25th, Senator Landrieu’s (D-LA) said that a bill is expected to be introduced which would delay rate increased in the National Flood Insurance Program (NFIP) for four years. The legislation would postpone provisions enacted last year that attempt to scale back government subsidies to the NFIP. The House has already approves legislation that would put off rate increases.

House of Representatives

House Voting on Financial Services Bills This Week

The House will vote this week on two measures, [H.R. 992](#) and [H.R. 2374](#), which were stalled due to the government shutdown. H.R. 992, the Swap Regulatory Improvement Act amends the Dodd-Frank Act to limit the scope of the swaps push-out rule and H.R. 2374, the Retail Investor Protection Act, requires the SEC to identify whether expanded fiduciary standards would result in less access to financial products and services for retail investors. Both bills are expected to pass with broad Republican support, so the only question is how many Democratic members will vote for either. Further, neither bill is anticipated to move quickly in the Senate

Lawmakers Press CFTC to Examine RINs Market Manipulation

On October 22nd, lawmakers with stakes in the farming industry wrote to Commodities Futures Trading Commission (CFTC) Chairman Gary Gensler, requesting the agency investigate potential market manipulations of Renewable Identification Numbers (RINs) which may have led to price spikes in the biofuels market. Lawmakers who signed onto the letter included Representatives Collin Peterson (D-MN), Dave Loebsack (D-IA), Bruce Braley (D-IA), Cheri Bustos (D-IL), Tim Walz (D-MN), Rick Nolan (D-MN), Jan Schakowsky (D-IL), Mark Pocan (D-WI), Bill Enyart (D-IL), Tom Latham (R-IA), Kristi Noem (R-SD), Steve King (R-IA), and Aaron Schock (R-IL). Later in the week, the American Petroleum Institute Director Bob Greco said an investigation into RINs is a distraction from the real problems with the ‘blend-wall’ which the oil industry faces.

Representatives Waters and Maloney Introduce Money Laundering Legislation

On October 24th, Ranking Member of the House Financial Services Committee Maxine Waters (D-CA) introduced the [Holding Individuals Accountable and Deterring Money Laundering Act](#), which would strengthen the government’s ability to pursue individuals who violate the Bank Secrecy Act (BSA). Specifically, the bill would increase monetary and prison penalties for violations of the BSA, require new corporate governance standards, and established a FinCEN civil litigation authority, among other things. Water’s bill is part of a package which includes legislation introduced by Representative Carolyn Maloney (D-NY), the Incorporation Transparency and Law Enforcement Assistance Act. Maloney’s bill is designed to ensure the true ownership of legal corporations and deter the use of shell companies for illegal purposes.

Executive Branch

Federal Reserve

Regulators Release QM Guidance

On October 22nd, the Federal Reserve, CFPB, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and OCC released [guidance](#) to address industry questions about qualified mortgage rules and fair lending laws. The banking industry has long pressed regulators to clarify if banks that make only QM loans would be in violation of fair lending laws that prohibit discrimination, even if the discrimination is unintentional. The five regulators clarified that the QM rule should be viewed with the Equal Credit Opportunity Act which encourages creditors to act “on the basis of their legitimate business needs.” The guidance further advises that “creditors should continue to evaluate fair lending risk as they would for other types of product selections, including by carefully monitoring their policies and practices and implementing effective compliance management systems.”

Regulators Propose New Assessment Standards for Diversity

On October 23rd, the Fed, OCC, FDIC, NCUA, SEC, and CFPB issued a joint [proposal](#) to institute new means for assessing diversity at the institutions the agencies supervise. The new standards stem from a Dodd-Frank Act requirement that each agency create an Office of Minority and Women Inclusion that would be responsible for evaluating diversity policies. The assessment standards deal with four key requirements: organizational commitment to diversity and inclusion; workforce profile and employment practices; procurement and business practices and supplier diversity; and practices to promote transparency of organizational diversity and inclusion. Regulators also sought to tailor the standards to account for variables including asset size, number of employees, governance structure, income, number of members or customers, contract volume, location, and community characteristics. There is a 60 day comment period on the proposed new standards.

Fed Approves Liquidity Standards

On October 24th, the Fed unanimously proposed [new liquidity standards](#) to implement the Basel III capital agreement. The proposed liquidity coverage ratio (LCR) applies to all internationally active banking organizations, generally those with \$250 billion or more in total consolidated assets or \$10 billion or more in foreign exposure, requiring such institutions to continuously maintain enough liquid assets to cover at least 100 percent of its total net cash outflows for up to 30 days of financial distress. Smaller institutions, with more than 50 billion in total assets, would be required to hold enough capital to cover 21 days of financial distress. The Fed’s implementation timeline is much more aggressive than that proposed by Basel III. The Fed requires companies to meet an 80 percent ratio by January 2015 and 100 percent by 2017, whereas Basel phases in requirements through 2019. The comment period on the proposed standards is open for 90 days.

Fed Files Brief in Appeal of Debit Card Swipe Fee Cap

On October 21st, the Fed filed a [brief](#) with the U.S. Court of Appeals for the District of Columbia in the central bank’s appeal of a decision that found the Fed’s cap on debit card swipe fees violated Congressional intent by not going far enough. In July U.S. District Judge Richard Leon [ruled](#) the Fed’s rule was “fundamentally deficient” as Congress’ intent was to decrease the scope of debit card costs whereas the Fed “inappropriately inflating all debit card transaction fees by billions of dollars and failing to provide merchants with multiple unaffiliated networks for each debit card transaction.” The

Fed's brief argues that the Dodd-Frank Act "could reasonably be interpreted" to allow the Fed to consider incremental costs of processing debit transactions when determining fees.

Yellen Begins Preparing for Confirmation Battle

Last week, Janet Yellen, nominee to be the next Chairman of the Fed, began to schedule meetings with Senators serving on the Banking Committee. Yellen's formal nomination paperwork was also submitted to the Senate. Meetings already on the books include with Senators Elizabeth Warren (D-MA), Jon Tester (D-MT), Sherrod Brown (D-OH), Joe Manchin (D-WV), Jeff Merkley (D-OR), Richard Shelby (R-AL), and Dean Heller (R-NV). As Yellen's nomination proceeds, a confirmation hearing has not been set yet though it is expected in November; there may be a speed bump in the form of Senator Rand Paul (R-KY) who has said he is considering putting a hold on the nomination. The end goal of a possible hold would be to move forward legislation championed by former-Representative Ron Paul to authorize the Government Accountability Office to audit the Fed's monetary policies.

Regulators Write to Banks cautioning on Underwriting

The Fed and the OCC are recommending that lenders work to strengthen their underwriting standards for leveraged corporate loans. The two regulators have sent letters to some of the largest banks advising them that they avoid originating loans that could be classified by regulatory agencies as deficient so as to result in a loss. This year, forty-two percent of leveraged loans were deemed "criticized" by regulators. In March, the Fed, FDIC, and OCC released guidelines for junk-rates loans as a result of worsening underwriting standards.

Treasury

Spookiest FSOC Meeting to Date?

The Financial Stability Oversight Council (FSOC) announced it will meet in a closed session on October 31st. The meeting [notice](#) did not contain additional details on the agenda nor on whether the meeting will be costume-optional. But, just in case the nation's top financial regulators want to get in the spirit of the holiday, we propose the FSOC members consider dressing as fiscal hawks and doves, debt ceilings, and, of course, Miley Cyrus to get in the spirit of the holiday.

SEC

SEC Issues Crowdfunding Proposals

On October 23rd, the SEC unanimously voted to approve a Jumpstart Our Business Startups (JOBS) Act proposed rulemaking that would allow companies to offer and sell securities through crowdfunding. The rule will permit startups to raise up to \$1 million per year through unregistered securities offerings using a third-party broker or crowdfunding portal. FINRA will be responsible for regulating the intermediaries for crowdfunding. The proposed rule poses 295 questions to industry and will have a 90 day public comment period. As part of the comment period, Chairman Mary Jo White said staff will work to develop a "comprehensive" plan to monitor the use of the crowdfunding exemption. Similarly, Commissioner Stein said she would like feedback on how much a single investor should be able to invest. Following the vote, FINRA released its [proposal](#) for overseeing crowdfunding portals which reflects the SEC's rulemaking but also implements FINRA's own standards, including anti-money laundering provisions.

SEC Making "Final Push" On Removing Credit Ratings

Speaking on October 25th, SEC Commissioner Gallagher said that he anticipates the SEC will "start the final push" to remove all references to credit ratings from its rules by the end of the year. The Dodd-

Frank Act required agencies to remove references to and reliance on credit ratings from their rules. Gallagher, who is often critical of Dodd-Frank implementation, called the removal of credit ratings a “well-targeted, crisis-related fix should have been completed years ago, and should now be among our highest priorities.”

CFTC

Chilton Defends Futures Insurance Fund Proposal

In an October 22nd letter to Senate and House leadership of the Agriculture Committees, Commissioner Bart Chilton rationalized his proposal for an insurance fund to cover the customers of futures brokers. Chilton’s letter is in response to a request from Senator Stabenow (D-MN) for more information on consumer protections in the agriculture sector, driven by failures of MF Global and Peregrine Financial. Chilton, noting that consumer protections need to be appropriate and balanced, wrote that he is concerned the financial industry will not support an insurance fund for futures customers, fearing the expenses of such a backstop. As such, Chilton has proposed an insurance fund, either stand-alone or within the Securities Investor Protection Corporation (SIPC). Chilton also said that, given the reluctance to create an insurance fund, he is reconsidering his position that a CFTC futures consumer protection rule currently under consideration by the agency should be scaled back.

CFTC To Meet to Consider Customer Protections, Position Limits

On October 23rd, the CFTC announced that it will hold two public meeting in the next two weeks to consider new proposals. On Wednesday, [October 30th](#), the CFTC will vote to finalize a rule enhancing customer protections in the futures markets and consider a proposal to set position limits with the goal of limiting speculation in physical commodities derivatives. On Tuesday, [November 5th](#), the agency will meet to propose a new version of the position limits rule. As the agency prepared to vote on the position limits rule, the CFTC is also mounting a legal defense, as an earlier version of the proposed limits was knocked down in court.

CFTC Planning FY2014 Furloughs

Last week, Chairman Gary Gensler wrote to CFTC staff in an email that the agency is planning up to 14 days of furloughs this fiscal year. In response to reports of the furloughs, Representative Robert Aderholt, Chairman of the House Appropriations Subcommittee governing the CFTC’s budget, said that he does not see how the furloughs are “based in budgetary realities.” While Aderholt was critical of the decision to furlough workers, Better Markets President Dennis Kelleher took the opportunity to argue that the “CFTC must be fully funded now and allowed to self-fund in the future just like the SEC and all the other financial markets and banking regulators and supervisors.” Kelleher’s comments regarding self-funding of the CFTC are particularly timely, as the agency [announced](#) on October 24th that in FY2013 the agency brought in more than \$1.5 billion in civil monetary penalties.

CFPB

Bureau Provides Guidance on Remittance Rule Enforcement

On October 22nd, the CFPB [released](#) the procedures it will use to examine institutions that make remittance transfers. In addition, the Bureau announced the platform eRegulations, an online tool that is designed to make regulations easier to understand and more accessible. The remittance transfer rule procedures include how to provide the required disclosures, how to follow proper error resolution procedures, and how to offer refund and cancellation rights to consumers. In addition, examiners will review the activities of international money transfer providers for consumer risk and, when necessary, work closely with CFPB’s enforcement staff. In conjunction with the new examination procedures, the

Bureau released the web-based “[eRegulations](#)” site. Regulation E is the first regulation to be included in this new tool and the contents of Regulation E, including the final remittance rule, can be now be accessed through the portal.

Director Cordray Discusses QM Rules at ABA Annual Convention

On October 21st, CFPB Director Richard Cordray [spoke](#) at the American Bankers Association Annual Convention. Among other things, Cordray discussed that he does not expect heavy litigation to ensure from the Bureau’s qualified mortgage (QM) rules. According to Cordray, regulators understand that banks will need time to implement and acclimate to the new rules and, addressing concerns that banks have not had time to take all the necessary steps to confirm borrowers’ ability to repay, said that “oversight of the new mortgage rules in the early months will be sensitive to the progress made by institutions that have been squarely focused on making good-faith efforts to come into substantial compliance on time.”

FDIC

FDIC/People’s Bank of China Sign MOU

On October 24th, the FDIC announced a new [Memorandum of Understanding](#) (MOU) between the agency and the People’s Bank of China (PBOC) designed to extend their effective international working relationship in the areas of deposit insurance and resolution. Specifically, the MOU seeks to enhance cooperation in analyzing cross-border financial institution recovery and resolution issues, and planning for potential recovery and resolution scenarios. The MOU updates a previous agreement from August 2007. Speaking on the agreement, Chairman Martin Gruenberg welcomed the memorandum, saying “China and the U.S. have a shared interest in maintaining and expanding our interaction on economic and financial issues, particularly in the areas of deposit insurance and cross-border resolution issues.”

FHFA

White House to Increase Push for Watt

Facing pressure from housing groups, the White House is said to be preparing to more aggressively push the nomination of Representative Mel Watt (D-NC) to be Director of the Federal Housing Finance Agency (FHFA). A number of housing advocates, including the National Community Reinvestment Coalition and the National Fair Housing Alliance, have renewed strong calls for Watt’s confirmation given their long opposition to Acting-Director Edward DeMarco’s lack of support for borrower aid programs.

FHFA Holds Loan Limit Decreases

Acting Director of the FHFA DeMarco told reporters on Friday that a decision on whether to lower loan limits for Fannie Mae and Freddie Mac will be made next month. DeMarco also made clear that, even if loan limits are reduced, the changes would not take effect until the middle of 2014. The FHFA has been weighing lowering the cap on the size of mortgages that the government sponsored entities (GSEs) can guarantee from \$417,000 in most areas and up to \$625,500 in wealthier neighborhoods. Stakeholders have asked the FHFA to delay lowering limits until after a series of major mortgage reforms, such as the QM rule, go into effect in January.

Miscellaneous

On October 24th, the Bipartisan Policy Center (BPC) released a [report](#) highlighting a path forward on the Volcker Rule and the swaps push-out rule. The report makes six recommendations for a “functional, data-driven and iterative approach to implementing the Volcker Rule.” Specifically, the

proposal advises a “wait and see” approach to the Volcker Rule’s swaps push-out rule, with a delay, and potential repeal, of the swaps push-out rule. The analysis comes on the heels of reports that CFTC Chairman Gary Gensler and SEC Commissioner Kara Stein are seeking to strengthen such rules to make it more difficult for banks to classify trading on their own accounts as legitimate hedging. According to reports, agencies had reached broad agreement on a Volcker Rule proposal and, until this dispute, were close to a final proposal. OCC Chairman Thomas Curry has said the final rule will clarify “what is appropriate risk-mitigating hedging.”

Consumer Representatives Press Regulators for Payment Network Oversight

On October 24th, close to 30 consumer organizations wrote to the Fed, CFPB, OCC, FDIC, FTC, NCUA, and Justice Department requesting the regulators take “further strong action” when they uncover financial institutions with insufficient safeguards to prevent processing illegal payments. The [letter](#) urges regulators to closely monitor payment networks to ensure that high-risk merchants are not able to “extract unauthorized, abusive or illegal payments.”

Upcoming Hearings

On Tuesday, October 29th at 10am, in 538 Dirksen, the Senate Banking, Housing, and Urban Affairs Committee will meet for a hearing titled “Housing Finance Reform: Essentials of a Functioning Housing Finance System for Consumers.”

On Tuesday, October 29th at 10am, in 2128 Rayburn, the House Financial Services Committee will hold a hearing titled “Federal Housing Administration: Implications of a \$1.7 billion Taxpayer Bailout.”

On Tuesday, October 29th at 3pm, in 2128 Rayburn, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit will hold a hearing titled “Examining Legislative Proposals to Reform the Consumer Financial Protection Bureau.”

On Wednesday, October 30th at 10am, in 538 Dirksen, the Senate Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment will meet for a hearing titled “The JOBS Act at a Year and a Half: Assessing Progress and Unmet Opportunities.”

On Thursday, October 31st at 10am, in 538 Dirksen, the Senate Banking, Housing, and Urban Affairs Committee will hold a hearing titled “Housing Finance Reform: Essential Elements of a Government Guarantee for Mortgage-Backed Securities.”