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Financial Services Legislative and Regulatory Update

Leading the Past Week

For the first week since Labor Day, it felt like things were finally quieting down in our nation's Capital. Perhaps everyone was too busy watching the World Series. In the House, the lower chamber passed two Dodd-Frank related bills, neither of which whose passage was never in doubt, nor was there any strong likelihood for passage in the Senate, before adjourning for a ten day recess. In the Senate, Democrats couldn't find the vote to break the filibuster of Congressman Mel Watt, while the Banking committee continued its intense schedule on housing finance reform.

It wasn't all tumbleweeds and partisan gridlock though, as over one fifth of the Senate, in equal numbers of Democrats and Republicans sent a letter to the CFPB looking for answers to questions about the way the Bureau has been trying to regulate the auto lending industry. Also, and in keeping with last week's Halloween theme, following the two-day meeting of the Federal Open Market Committee (FOMC) the Fed announced it wasn't taking the sugar away from Wall Street anytime soon with its intention to keep the $85 billion per month bond buying scheme going strong. Also in Fed related news, Senator Rand Paul announced he would place a hold and possibly filibuster Janet Yellen's nomination in order to try to get the Senate to consider legislation long championed by his father to call for an audit of the Fed's books.

Finally, the Budget Conference met for opening statements while nearly every pundit in town tried to downplay the chances for anything beyond a modest deal coming together.

Legislative Branch

Senate

Senate Banking Meets to Examine the Essentials of a Housing Finance System

On October 29th, the Senate Banking Committee continued its examination of the issue of how to enact serious housing finance reform with a hearing dedicated to examining what essential attributes of a federal guarantee are necessary for consumers. Witnesses included: Eric Stein, Senior Vice President, Center for Responsible Lending; Rohit Gupta, President, Genworth Financial; Gary Thomas, President, National Association of Realtors; Laurence Platt, Partner, K & L Gates LLP; Alys Cohen, Staff Attorney, National Consumer Law Center; and Lautaro Diaz, Vice President, National Council of La Raza. Introducing the hearing, Chairman Tim Johnson (D-SD) outlined the need to help consumers facing tight credit conditions while protecting consumers from some of the major flaws in the housing market that were exposed by the financial crisis.

Senate Banking Examines JOBS Act Implementation
On October 30th, the Senate Banking Committee Subcommittee on Securities Insurance and Investment held a hearing to examine the SEC's progress with implementing the Jumpstart Our Business Startups ("JOBS") Act. The hearing consisted of two panels, the first with the SEC Division of Corporation Finance Director Keith Higgins, and the second with industry representatives. Higgins told lawmakers that over 200 private securities deals are expected to take advantage of the JOBS Act rules that allow hedge funds and other firms to advertise to investors, adding that small companies are most eager to take advantage of the lifting of the ban on general solicitation. During the hearing, Subcommittee Jon Tester pressed on the SEC to expedite its rulemaking with regard to the Regulation A, or the portion of the bill intended to help small businesses raise capital.

Senate Banking Committee Considers Role of Mortgage Backed Securities in Housing Finance Sector
On October 31st, the Senate Banking Committee held its second hearing on Housing Finance this past week, this time focusing on what are the essential elements of a federal guarantee for mortgage backed securities. Chairman Tim Johnson (D-SD) noted in opening remarks that an overhauled government housing guarantee is crucial to the national housing market and stressed that an overhaul will have to ensure that there will remain a variety of private capital in a system that protects taxpayers from the mortgage market becoming too expensive for qualified borrowers. Witnesses included Joseph Tracy, Executive Vice President and Senior Advisor to the President, Federal Reserve Bank of New York; Phillip Swagel, Professor of International Economic Policy, University of Maryland School of Public Policy; Michael Canter, Director of Securitized Assets, AllianceBernstein on behalf of SIFMA; and David Stevens, President and CEO, Mortgage Bankers Association.

Over 1/5 of the Senate Signs Oversight Letter to CFPB
On October 30th, a group of 22 bipartisan Senators wrote to the Consumer Financial Protection Bureau ("CFPB" or "Bureau"), raising concerns about the process by which the CFPB decided to issue a guidance document to automobile finance sources and urging greater transparency from the Bureau. Among other things, the letter, sent by 11 Democrats and 11 Republicans, requested Director Cordray to provide details about the methodology the CFPB used to make its determinations, the efforts the Bureau has made to coordinate with the Fed and the Federal Trade Commission on fair lending guidance to auto lenders, and why the Bureau chose to issue this guidance, in lieu of using the Administration Procedures Act and the opportunity for public comment, as it had in other similar situations. The letter was in response to guidance released by the Bureau in March, as well as press statements and purported enforcement actions that the CFPB had taken against auto lending sources.

Senate Fails to Break Filibuster of Watt Nomination
On October 31st, the nomination of Representative Mel Watt (D-NC) to be the Director the Federal Housing Finance Agency (FHFA) failed to gain the necessary 60 votes needed to limit debate and proceed to a confirmation vote. Senate Republicans blocked the nomination, voting 56 to 42 against

limiting debate, citing concerns about Watt's lack of experience in mortgage finance and making him the first sitting Representative filibustered in over 150 years. Last week the White House made a push to finalize Watt's nomination, meeting with housing and banking industry officials to rally support for Watt and generating strong letters of support from key industry stakeholders, such as the MBA. Despite the failure, Senate Majority Leader Reid said that the nomination will be brought up again soon. However, with conservative groups, such as Heritage Action strongly against the nomination, it is unclear if the White House and its allies can find the votes to overcome the filibuster.

Hatch Calls for Financial Services To Be Included in the TTIP
Speaking at the Senate Finance Committee hearing on the Transatlantic Trade and Investment Partnership (TTIP) agreement, Ranking Member Orrin Hatch (R-UT) said the Obama Administration should rethink its opposition to negotiating on financial services regulations as part of the free trade pact. "No sector should be excluded from our efforts to enhance regulatory convergence, including financial services," said Hatch, continuing to say that the importance of financial services, he cannot see why they would be excluded.

House of Representatives
House Passes Bill to Delay DOL's Consideration of its Fiduciary Rule
On October 29th, the House voted 254 to 166 to pass H.R. 2374, which would require the Department of Labor (DOL) to wait at least 60 days following the finalization of the SEC's fiduciary rule before issuing its own proposal. Supporters of the legislation say this type of harmonization will resolve potential market confusion for investors whereas consumer advocates have attacked the proposal as nothing more than a naked attempt to delay the DOL from issuing its revision to the fiduciary standards for broker dealers. It is unclear whether the Senate will advance a similar bill, but it would seem unlikely that anything will move in the upper chamber, even though Senator Jon Tester (D-MT) has said he is considering companion legislation. Regardless, the White House announced in advance of the House vote that it would veto the legislation. Interestingly, this past week it was reported that DOL could send a proposed fiduciary standard for broker-dealers to the OMB for clearance by the end of the year.

House Passes Swaps Push Out Bills
On October 30th, the House voted 292 to 122 to pass H.R. 992 that would narrow the scope of the swaps push out section of the Dodd-Frank Act. The swaps push out rule requires banks to spin off swaps trading from branches that have access to the Fed's discount window. The legislation would allow additional exemptions to what would be required to be pushed out from banks. The White House, though not threatening to veto the bill, issued a statement of administration policy opposing the measure.

House Financial Institutions and Consumer Credit hearing reviews proposals to reform the CFPB
On October 29th, the House Financial Institutions and Consumer Credit Subcommittee held a hearing to receive testimony from industry experts on a number of legislative proposals to reform the CFPB. As in previous years since the Bureau was stood up, the Committee is pursuing proposals which would alter the structure and funding method of the agency. Witnesses provided feedback to lawmakers on a proposal put forth by Representative Spencer Bachus (R-AL) to change the structure from a one director structure to a five member commission. Republicans on the panel also supported proposals subjecting the CFPB to the normal appropriations process to enhance Congressional oversight and to address the Bureau's collection of potentially personally identifiable financial information. Panelists

included, Robert Tissue of the Summit Financial Group, Jess Sharp of the U.S. Chamber Center for Capital Markets Competitiveness, Lynette Smith of the Washington Gas and Light Federal Credit Union, and Damon Silvers of the AFL-CIO.

House Financial Services Examines the Federal Housing Administration
On October 29th, the House Financial Services Committee grilled Assistant Secretary for Housing for the Department of Housing and Urban Development (HUD) Carol Galante on the $1.7 billion transfer of assets from the treasury to the FHA. Republican members of the Committee characterized the agency as "bailout broke" and cited the cash transfusion as further evidence for the need to overhaul the agency, and to do away with Fannie Mae and Freddie Mac as well.

Galante, as she has in previous appearances, told lawmakers that the transfer was required by law to ensure that the Mutual Mortgage Insurance Fund had enough capital at the end of fiscal year 2013 to pay for all expected future losses, and is nothing more than an accounting issue. Chairman Jeb Hensarling vehemently disagreed, and cited a recent CBO blog post that said single family guarantees made by the FHA between 1992 and 2012 have a net federal budget cost of about $15 billion, despite the FHA's estimates of $45 billion in savings. Hensarling has long been an advocate for housing reform and has introduced, and moved through his committee the Protecting American Taxpayers and Homeowners (PATH) Act of 2013 that would eliminate Fannie Mae and Freddie Mac and move to a private secondary mortgage market.

Bipartisan Group Introduced Flood Insurance Rate Increase Delay
On October 29th, a bipartisan group of 57 House Members introduced legislation to delay the rate increases to the National Flood Insurance Program (NFIP). The legislation calls for a four-year delay to the program, requires the Federal Emergency Management Agency (FEMA) to complete an affordability study and propose a framework that addresses affordability issues. In addition, the bill allows FEMA to reimburse policyholders who successfully appeal decision, eliminated the 50 percent cap on state and local contributions to levee construction, and requires FEMA to modernize its approach to analyzing flood risk. A companion measure has been introduced in the Senate by Senators Robert Menendez (D-NJ) and Johnny Isakson (R-GA) and Senator Mary Landrieu (D-LA) is said to be introducing a similar measure.

Executive Branch

Federal Reserve

Yellen Nomination Hearing Coming in November
Last week, the Senate Banking Committee indicated November 14th is a potential date for Janet Yellen's nomination hearing to be the next Fed chairman. In advance of that hearing, Ms. Yellen began meeting with Senators on the Senate Banking Committee. Throwing a potential monkey wrench in the confirmation process, Senator Rand Paul (R-KY) has said he will place a hold on Vice Chairwoman Yellen's nomination as part of an effort to force the Senate to consider legislation that would direct the GAO to audit the how the Fed conducts monetary policy. However, he has also indicated that he believes that Yellen will be confirmed since he can only keep the hold for two days.

Powell Nominated to Additional Term
According to reports, the President plans to nominate Jerome Powell to another term on the Federal Reserve Board. Powell's seat is one of four that will be coming open in the coming months and the

White House will also have to replace Governor Betsy Duke, Governor Sarah Bloom Raskin, and Chairman Bernanke's seat.

Treasury

Halloween FSOC Meeting Reviews Shutdown

On October 31st, the Financial Stability Oversight Council (FSOC) met to review the economic situation following the government shutdown and debt ceiling battle of October. A spokesperson for the Treasury said, in addition to discussing the shutdown, the meeting also included a discussion of asset management, a briefing on the current global macroeconomic situation, and an update on analyses of interest rate risk.

Semi-Annual International Exchange Reports Targets Germany, China

On October 30th, the Treasury released the Semi-Annual Report to Congress on International Economic and Exchange Rate Policies which covers international economic and foreign exchange developments in the first half of 2013. As in previous reports, the Treasury warns against currency manipulation by China. In addition, the Treasury targeted Germany, pointing to a deflationary bias for the Eurozone that has impacted rebalancing and growth. In response, the German finance ministry said that the country's current account surplus is "no cause for concern, neither for Germany, nor the Eurozone, or the global economy." In addition to highlighting China and Germany, the report notes it will closely monitor Japan's policies to support growth of domestic demand and encourage Korea to limit foreign exchange interventions.

Treasury Issues Notice Previewing Proposed FATCA Guidance

On October 29th, the Treasury and Internal Revenue Service (IRS) issued a notice on the Foreign Account Tax Compliance Act (FATCA) for foreign institutions to comply with information and tax withholding provisions. The notice, which previews proposed guidance, lays out FATCA provisions that require foreign financial institutions to report their U.S. owned accounts to the IRS. Should institutions fail to report these accounts they would be faced with a 30 percent withholding tax on certain U.S. source payments.

CFPB

Bureau Releases Guides for Financial Caregivers

On October 29th, the CFPB released four educational booklets designed to help financial caregivers navigate financial decisions. The guides will help financial caregivers, those that manage money or property for a family member, in three ways, including walking caregivers through their duties, advising them on how to avoid financial exploitation, or how to deal with becoming a victim of scams, and outlining resources for help.

Revised Remittance Rules Finalized

As the new remittance rules finalized by the Bureau took effect on October 28th, the CFPB announced a multilingual media campaign focused on educating consumers about the new protections and transparency guidelines. The campaign is working with nonprofit organizations, state agencies, churches, consulates, and others to distribute posters, brochures and other materials. In addition, the Bureau has added new questions to its "Ask CFPB" webpage and will also begin advertising the new consumer protections as more people begin to send money to friends and family for the holidays.

FDIC

FDIC Board Votes on Liquidity Coverage Ratio
On October 30th, the FDIC Board voted unanimously to approve the Liquidity Coverage Ratio released by the Fed on October 24th, which was a Basel III liquidity standard. The proposed liquidity coverage ratio or 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.

FDIC Begins 'Money Smart' Podcast
On October 30th, the FDIC launched an updated version of the *Money Smart* Podcast Network website. The updates made to the website reflect changes to consumer laws, new key principles for financial decisions, and tools to help under- and unbanked consumers. FDIC Director of the Division of Depositor and Consumer Protection Mark Pearce said reliable financial education resources are crucial and "redeveloped Money Smart Podcast Network provides another avenue to reach the growing number of owners of handheld devices with information that can help them achieve their financial goals."

CFTC

CFTC Drops Appeal of Position Limits Rule
On October 28, the Commodity Futures Trading Commission (CFTC) announced its plan to propose a new rule on November 5 to replace the position limits rule which was vacated in federal court last month. The rule originated in Dodd-Frank and was designed to limit speculation in oil and other commodities markets by capping certain derivatives. The new proposal will "comply with the district court's decision in this case," the CFTC said in the filing.

CFTC Finalized Futures Customer Protections
On October 30th, the CFTC finalized, in a 3 to one vote, new customer protections for futures customers. The final rule has an automatic five year phase in of new margin requirements, prohibits the use of customer funds to margin the positions of another customer, and highlights new disclosure requirements. An amendment proposed by Commissioner Scott O'Malia to delay the margin changes and vote again in five years on whether to impose additional cash reserves was not considered during was not included in the final proposal.

Gensler Indicates CFTC Nearing Vote on Volcker Rule
In comments last week, CFTC Chairman Gary Gensler said he is planning a public vote on the Volcker Rule in early December. The agencies charged with implementing the Volcker Rule have been said to have reached general consensus with the exception of a desire by Chairman Gensler to strengthen provisions to make it more difficult for banks to classify trading on their own accounts as legitimate hedging. Commissioner O'Malia has pressed Gensler to release the most recent draft of the rule; however, Gensler has said things remain fluid between the CFTC and the SEC, FDIC, Fed, Treasury, and Office of the Comptroller of the Currency (OCC).

SEC

SEC Intends to Target Never Examined RIAs
Speaking on November 1st, Andrew Bowden, Director of the Office of Compliance Inspections and Examinations, said the SEC will begin to examine the approximately 4,000 advisers who have never

been visited by an examiner. The SEC oversees about 11,000 advisers, of which about 40 percent have never been examined. Bowden said the goal is to examine about half of these never examined firms that have been registered for under three years. Bowden's announcement comes as Chairman Mary Jo White has also promised to focus more heavily on minor lapses as part of the agency's enforcement agenda.

OCC

OCC Recommends Risk Management Guidelines for Banks Using Third Party Vendors

On October 30th, the OCC released updated guidelines for banks on how to monitor the activities of the third party vendors with which they work. In announcing the new guidance, Comptroller Thomas Curry said that the agency has been concerned about the quality of risk management in third party relationships. Thus, the OCC recommends that banks pursue risk management commensurate with the level of risk and complexity of their relationships and develop risk management and oversight throughout the relationship.

<u>Miscellaneous</u>

Bitcoin Opens First ATM As Lawmakers Prepare to Examine Online Currency

On October 29, the first Bitcoin ATM opened in Vancouver, British Columbia. The exchange takes two days online but about two minutes with the machine. Up to $3,000 CND may be transferred in one day. According to Bitcoiniacs, they plan to open ATM's for the unofficial currency across the country by the end of the year and move international in 2014. The news came the same week that the Senate Homeland Security and Government Affairs Committee announced that it will hold a hearing on virtual currencies, such as Bitcoin in the near future.

<u>Upcoming Hearings</u>

The House is in Recess

On Tuesday, November 5th at 10am, in 538 Dirksen, the Senate Banking, Housing, and Urban Affairs Committee will meet for a hearing titled "Housing Finance Reform: Protecting Small Lender Access to the Secondary Mortgage Market."

On Thursday, November 7th at 10am, in 538 Dirksen, the Senate Banking, Housing, and Urban Affairs Committee will meet for a hearing titled "Housing Finance Reform: Essential Elements to Provide Affordable Options for Housing."