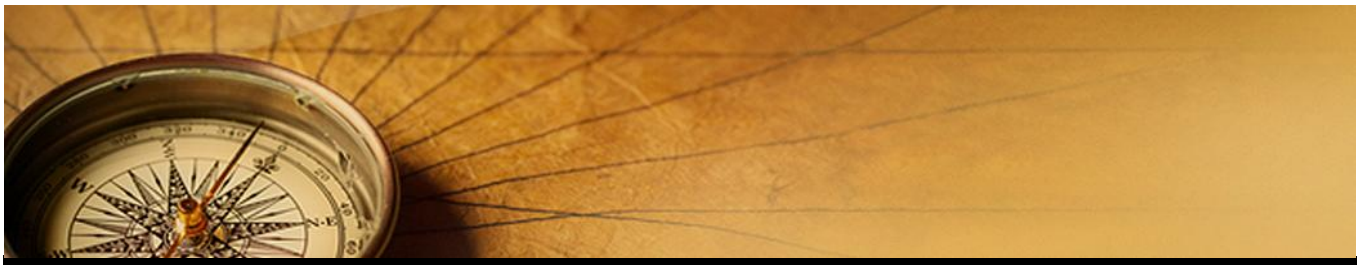

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FINANCIAL SERVICES LEGISLATIVE AND REGULATORY UPDATE

July 2, 2012

Leading the Past Week

Although the biggest story had to be the Supreme Court's decision to uphold the Affordable Care Act, the markets may have found even better news in the announcement of a Eurozone agreement, which, among other things, included the introduction of a new system of European banking supervision. As a result of this deal, the European Central Bank takes on new powers, in what can only be seen as a first step towards a continent wide banking union. Thankfully, CNN and other news sources actually decided to read the provisions of the EU summit agreement before reporting. In other news, despite the perception of being a "do nothing" Congress, our legislative branch continued to be very active as it worked to wrap up business before the July 4th recess, including agreeing to a transportation bill—which included student loans, a reauthorization of the National Flood Insurance Program and major reforms to the pension system. In addition, committees in both bodies held numerous hearings of interest to the financial services industry, including implementation of the JOBS Act, ending the Fed and addressing frivolous lawsuits related to ATM fee disclosure.

Legislative Branch

Bucking "Do-nothing" label Congress Passes Surface Transportation Authorization bill – Uses Pension Stabilization Provisions to Offset Costs

On Friday, Congress passed a major bill, the Surface Transportation reauthorization by wide margins. After passing in the House by a vote of 373-52, with all the dissenting votes coming from the Republican Party, the Senate then passed the measure by an overwhelming 74 to 19 vote. Contained within the legislation was a provision that would reprieve companies with large pension deficits from having to raise the value of their pension fund liabilities. The provision reduces the amount of money that companies must pay into their defined benefit pension plans which would increase their taxable income. The proposal also: adjusts the variable premium for inflation beginning in 2013; sets a maximum variable premium of $400 beginning in 2013;

increases the variable premium by $4 in 2014 and by an additional $5 in 2015; increases the fixed rate premium by $6 in 2013 and by an additional $7 in 2014; and increases the multiemployer premiums by $2 beginning in 2013. These reforms are anticipated to save $10.575 billion over ten years through higher corporate tax payments and the decrease in tax-deductible pension payments. Also included in the transportation bill was a five year extension of the National Flood Insurance Program (NFIP) and a provision preventing federal student loan interest rates from doubling to 6.8 percent on July 1st.

Senate

Revised Cybersecurity Legislation Released in the Senate

On June 27th, Senate Republicans announced a new version of the SECURE IT Act, their alternative to Senator Lieberman's cyber security bill, with intentions to push the revised version through the expedited Rule 14 process. Speaking on the floor in support of the measure, Senate Commerce Ranking Member Kay Bailey Hutchison (R-TX) said the bill is a balanced approach to cybersecurity and "centered on consensus items." Supporters of the competing legislation, the Cybersecurity Act, argue that the SECURE IT Act fails to provide adequate authority for the Department of Homeland Security and that critical infrastructure and networks, including financial institutions, will remain vulnerable with appropriate government standards. Interestingly, earlier in the week McAfee and Guardian Analytics released a report finding that more than 60 financial firms have been targeted by hackers seeking to skim large amounts off of high balance accounts. Every month since the New Year has seen Leader Reid indicate his intention to bring a cyber security bill to the Senate floor for debate. However, it looks like both sides are coming to the conclusion that the best way to deal with complicated issue is to let the bill come up and then allow the legislative process work its will. Whether that will take place during the next work period, regardless of positive reports indicating so, remains to be seen.

Senators Request Insight on SIFMA Political Intelligence Dealings

In what appears to be a response to a February memo in which SIFMA attacked Senator Chuck Grassley's (R-IA) political intelligence amendment to the STOCK Act, Senators Grassley and Mark Udall (D-CO) have asked SIFMA to provide them with how SIFMA's members interact with political intelligence firms. Grassley's amendment, which was ultimately not included in the legislation, would have required political intelligence agents to meet registration requirements similar to those for lobbyists. Grassley has said he intends to "revisit" his proposal in the future and in the meantime, they are "inviting the financial services industry to explain its position on registration." The letter requested information to help "understand the size and scope of political intelligence gathering," including the names of political intelligence firms that have been contracted with since 2007 and the total amount of money spent on such firms.

Joint Capital Gains Hearing Postponed

On June 26th, the Senate Finance Committee and the House Ways and Means Committee announced the joint hearing to consider capital gains tax policy was postponed until further notice. Although no reason was offered, it is worth noting that the hearing was planned for June 28th—the same day the Supreme Court released its ruling upholding the health care overhaul.

House of Representatives

House Oversight Subcommittee Reviews Implementation of JOBS Act

Last week, the House Oversight Subcommittee on TARP and Financial Services held two hearings to examine the ongoing implementation of the JOBS Act. Subcommittee Chairman Patrick McHenry (R-NC) said that the purpose of the hearings was to examine the "unsound provisions of the JOBS Act that make the SEC's implementation critical." McHenry specifically wanted to address the crowdfunding provision which he fears has been made "ambiguous and inconsistent" due to changes in the Senate. Witnesses at the June 26th hearing agreed with Representative McHenry that the way the crowdfunding provisions were written may deter small businesses from taking advantage of the exemption. Witness C. Steven Bradford, law professor at the University of Nebraska, told lawmakers that the most concerning provision are the disclosure requirements that cause the exemption to be too costly for small businesses. Witnesses agreed that no matter what the SEC does in the implementation process "litigation is still predictable."

The SEC is currently drafting provisions of the JOBS Act, including crowdfunding exemptions, rules to lift the ban on general solicitation and advertising of certain offerings and a new exemption to Regulation A. July 4th is the first JOBS Act deadline; however, at the June 28th hearing, SEC Chairman Schapiro told lawmakers the Commission expects to miss some of the deadlines. "As I stated to Congress prior to the passage of the Act," said Schapiro, "time limits imposed by the JOBS Act are not achievable." Schapiro stressed to lawmakers that the 90 day deadline was not a "realistic timeframe" for the SEC to draft the new rule—which must be accompanies by an economic analysis, review by the Commission and an opportunity for public input. Despite the fact the SEC will miss deadlines; Schapiro said they are making "significant progress" on implementation. Finally, Schapiro said the agency will be providing a timeline for the general solicitation ban and expects the crowdfunding provisions to be implemented by the December 31st deadline.

Lawmakers Express Concern Over Housing Recovery, Consider Appraiser Reform Options

During a House Financial Services Insurance, Housing and Community Opportunity Subcommittee hearing on residential real estate market policies, lawmakers expressed concern that regulatory issues and appraisal sector practices may be hampering the recovery. Representative Gary Miller (R-CA) outlined a number of problems with the appraisal industry, including out-of-area appraisals by appraisers unfamiliar with local markets. Testifying before the Subcommittee, Sara Stephens, President of the Appraisal Institute, told lawmakers that she objects to a "rules based" approach to regulation, favoring a "principles based" approach to appraisal regulation.

While other witnesses expressed concerns with fraud in the appraisal process such as 'flipping scams' and 'flopping' schemes, Stephens said the appraisal process is largely based on the judgment of the appraiser. Another witness, David Berenbaum, Chief Program Officer for National Community Reinvestment Coalition, urged active enforcement of FIRREA's Title 11 and other Dodd-Frank appraisal reforms to reach a more robust and uniform appraisal process. Appraisal Management Companies ("AMCs") were also brought up in the hearing with

Berenbaum expressing support for AMCs while Karen Mann, president of Mann & Associates Appraisers, who spoke on behalf of the American Society of Appraisers, said AMCs can be problematic as appraisers prefer not to work for AMCs due to low fees.

Financial Services Subcommittee Hears Testimony on Ending Fed, Deposit Insurance

On June 28th, the House Financial Services Committee's Domestic Monetary Policy and Technology Subcommittee held a hearing to examine fractional reserve banking and the role of the Fed. While no Democratic subcommittee members attended the hearing, witnesses described that the explicit and implicit guarantees provide subsidized opportunities for fractional reserve banking—in which financial firms lend most deposits while holding only a share in reserve. Subcommittee Chairman, Ron Paul (R-TX), an avowed critic of the Fed, voiced complaints over the expansion of the money supply due to fractional reserve banking, and the associated increase of moral hazard. One witness, Joseph Salerno, a professor at Pace University, told the subcommittee that although all banks operate with fractional banking, the practice leads to insolvency, inflation and artificially lower interest rates which in turn destroy wealth and create asset bubbles. Salerno posited that returning to the gold standard would solve problems associated with fractional banking. Other witnesses at the hearing advocated eliminating the Fed and discontinuing deposit insurance in order to end fractional banking. Representative Blaine Luetkemeyer (R-MO) agreed with witnesses that deposit insurance should be ended—expressing skepticism with a Eurozone proposal to provide a similar backstop to stabilize economic troubles in Europe.

House Members Request SEC Vote on Conflict Minerals Rules

On June 22nd, fifty-eight House Members wrote to SEC Chairman Mary Schapiro requesting the SEC schedule a vote to finalize the Commission's conflict minerals and resource extraction proposals. Section 1502 directs the SEC to impose stronger disclosure requirements on issuers that use certain conflict minerals from the Democratic Republic of Congo (DRC) and neighboring countries. Section 1504 directs the SEC to require resource extraction issuers to annually disclose payments made to governments to "further the commercial development" of oil, natural gas or minerals. The letter was led by Representatives Ed Markey (D-MA), Jim McDermott (D-WA) and Barney Frank (D-MA). Representative Frank Wolf (R-VA), co-chair of the Human Rights Commission, was the only Republican to sign onto the request. The letter requests that if the rulemakings cannot be finalized before July 1st, that Schapiro provide a reason for the "extended delay" accompanied by a "definitive date for a vote."

The SEC issued proposals on Sections 1502 and 1504 in December 2010 but finalization of the rules has been hampered by heavy industry opposition. Business groups have already pledged to challenge the rules in court should they be finalized and the American Petroleum Institute has requested the SEC re-propose the rulemaking following a "thorough and transparent economic impact analysis." Meanwhile, Oxfam America Inc. has sued the SEC over the resource extraction proposal, pointing to "unlawful failure" to finalize the rule.

House Financial Services Subcommittee Examines Mobile Payments Regulatory Regime

As digital wallets and mobile payment methods become ever more popular the Financial Institutions and Consumer Credit Subcommittee met on June 29th to discuss the current regulatory regime and whether consumers are adequately protected. Witnesses included James Freis, Director of the Treasury Department's Financial Crimes Enforcement Network (FinCen) and Stephanie Martin, Associate General Counsel for the Federal Reserve System's Board of Governors. Freis discussed FinCEN's plans to extend anti-money laundering rules to the virtual economy and other current FinCEN regulations that already apply to mobile payments. Members were particularly concerned that, as mobile payments system has huge potential for consumers, industry and financial institutions, regulators need to be careful to anticipate the fast paced innovations and change in the mobile technology field when regulating.

House Financial Services Committee Approves Repeal of ATM Fee Sign Requirement

On June 27th, the House Financial Services Committee approved H.R. 4367 by voice vote with strong support from both parties. The bill would amend the Electronic Fund Transfer Act to remove a requirement that banks and credit unions post on the exterior of ATM machines a warning that customers could be charged fees if they do not hold an account at that bank. A warning on the ATM screen would still be required. The bill seeks to address instances of people removing placards from ATMs and then suing the financial institution for failing to display the warning. Currently, the law allows consumers to file class action lawsuits to obtain the lesser of $500,000 or 1 percent of the operators' net worth. Ranking Member Barney Frank (D-MA) said the House would be considering the proposal on suspension but was unoptimistic that the legislation would proceed "through the Senate logjam." Despite Frank's pessimism, similar legislation (S. 3204) has been introduced in the Senate.

Bill to Audit Federal Reserve Moves Forward

On June 27th, the House Oversight and Government Reform Committee approved the Representative Ron Paul's (R-TX) Federal Reserve Transparency Act (H.R. 459), a bill that would direct the GAO to audit the Fed's board of governors and 12 reserve banks within one year of enactment. The bill, which was approved in a bipartisan voice vote, would also require a detailed report to be submitted to Congress within 90 days of the audit. House Majority Leader Eric Cantor (R-VA) has scheduled a July vote on the legislation. Fed audit language was written into the Dodd-Frank Act; however, that provision only required the Fed to disclose institutions that had received assistance from credit facilities and other Fed liquidity programs created in the wake of the financial crisis. Senator Rand Paul (R-KY) has introduced companion legislation (S. 202) in the Senate but with significantly less support.

Executive Branch

CFTC

CFTC Approves Cross-Border Swaps Guidance

On June 29th, the CFTC unanimously approved for public comment proposed interpretive guidance regarding the cross-border application of the swaps provisions of Title VII of the Dodd-Frank Act. The guidance determines which overseas units of U.S. banks will be required to comply with swaps rules in the 2010 financial reforms. The guidance also calls for substituted compliance in cases where overseas jurisdictions have similar rules to the U.S. Speaking on the

guidance CFTC Chairman Gary Gensler said it will help address the problem of "risk that builds up offshore inevitably comes crashing back onto U.S. shores" during a crisis.

Lawmakers Ask for Rule on Extraterritoriality
It has now come to light that Chairmen of two House Financial Services Subcommittees requested that the CFTC issue a formal rulemaking, rather than simply offer guidance, on the cross border application of swaps regulations. Representative Scott Garrett (R-NJ), Chairman of the Financial Services Capital Markets Subcommittee, and Representative Randy Neugebauer (R-TX), Chairman of the Oversight and Investigations Subcommittee, wrote that they have "serious concerns" with informal guidance and asked the CFTC to initiate a formal rulemaking which would create concrete obligations for covered parties and also include a cost-benefit analysis.

CFTC Re-Proposes Rules to Prohibit Aggregation of Block Trades
On June 25th the CFTC re-proposed a rule on block trading requirements that would prohibit traders from aggregating orders in order to qualify for block trading status. The rulemaking makes changes provisions originally proposed in a December 2010 rule on real time reporting of swaps data. The original rulemaking defines a block trade and criteria for determining appropriate minimum block sizes. The CFTC first made changes to the block trading portion of the original rulemaking in a March rulemaking that established the minimum block size for large notional trades. The June re-proposal addresses an aggregation provision "inadvertently omitted" from the March changes.

The re-proposal prohibits the aggregation of orders for different trading accounts in order to qualify for the minimum block size or cap size requirements—except in the case of orders aggregated by certain commodity trading advisors (CTAs), investment advisors and foreign persons. This exemption will apply to only those that have over $25 million in total assets under management. Parties to a block trade must also individually qualify as "eligible contract participants" unless exempt and qualified parties transacting block trades on behalf of customers must have written instructions and consent. The comment period will be open through July 27th.

Barclays Agrees to Settle Allegations in LIBOR Investigation
On June 27th, Barclays Bank reached an agreement with the CFTC and Department of Justice to pay $360 million in settlements against charges that it manipulated its submissions for the London InterBank Offered Rate (LIBOR) and the Euro InterBank Offered Rate (EURIBOR). Barclays admitted misconduct in a non-prosecution agreement with DOJ. Announcing the settlement DOJ said Barclays was the first to cooperate in a wider investigation of financial institutions and individuals. Barclays will pay $160 million to DOJ and $200 million to the CFTC. The UK's Financial Services Authority also fined the bank $92.5 million.

CFPB
CFPB Releases Report on Reverse Mortgages
On June 28th, the CFPB released a report to Congress on reverse mortgages as required by the Dodd-Frank Act. Among other things, the report found that, while the use of reverse

mortgages remains low, the people taking out loans are younger than ever. Additionally, the report also warns that the uses of reverse mortgages will likely increase as the Baby Boomer population becomes eligible. Many consumer advocates argue that reverse mortgages are complex and difficult for older Americans to understand, a position that the CFPB report appears to concur with. In addition, the CFPB also expressed concerns with deceptive marketing of these products. As a follow on to the Report, the Bureau submitted a Notice and Request for Information to gather input on reverse mortgages and collect feedback on what is important to consumers when considering a reverse mortgage. The CFPB's Office of Older Americans has also released a consumer guide for those considering reverse mortgages.

CFPB Finalizes Rule to Solidify Attorney-Client Protections

As part of an effort to close a loophole in the Dodd-Frank Act, the CFPB published a final rule June 28th that would clarify the submission of information to the Bureau during the course of supervision or regulation would not be a waiver of attorney-client privilege or other legal protections. The rule also clarifies that the CFPB sharing information with state agencies or state attorneys general would not result in a waiver. The protections outlined in the rule would ensure third parties could not petition courts for access to banks' privileged information for use in civil cases. While industry views the regulation as a step in the right direction, there remain strong calls for a legislative fix. In March, the House passed by unanimous consent H.R. 4014 which would amend section 18(x) of the Federal Deposit Insurance Act to specify that bank information given to the CFPB would not waive attorney-client privilege. However, passage of such a provision in the Senate has stalled as two unknown Senators objected on grounds that other areas of Dodd-Frank should be open for amendments as well.

Federal Reserve

Fed, Treasury Lower TALF Guarantee

On June 28th, the Fed announced that it agreed with the Treasury to reduce from $4.3 billion to $1.4 billion the credit protection Treasury is providing for the Term Asset-Backed Securities Loan Facility (TALF). The Fed and the Treasury said they believed it appropriate the lower the guarantee as it is unlikely Troubled Asset Relief Funds (TARP) will be necessary to support TALF. The program closed June 30, 2010 with $43 billion in loans with initial maturities of three to five years outstanding. Most of these loans have matured or been repaid and, as of June 20th, outstanding TALF loans totaled $5.3 billion. Meanwhile, in another sign that the Financial Industry is recovering, the Treasury also announced last week that it would net approximately $204 million in stock sales from seven banks supported during the financial crisis. The Treasury said it has recovered $264 billion in proceeds from investments in TARP—a $19 million return after the original $245 billion. Treasury is expected to announce additional stock auctions in coming weeks.

FDIC

ICBA keeps up drumbeat for TAG

In a June 25th letter to Senate leadership, 15 banks urged Congress to extend the Transaction Account Guarantee (TAG) program as soon as possible. The TAG program insures large, noninterest bearing accounts, such as those used by small businesses, local governments,

hospitals and nonprofits, above the $250,000 FDIC limit and currently covers about $1.3 trillion in deposits. Meant as a backstop against runs during the financial crisis and recovery, the program is set to sunset at the end of 2012. The letter warns that a lapse in TAG would shift "deposits out of community banks in favor of the largest banks," furthering the problem of concentration and 'too big to fail.' The letter is not the first calling for an extension of TAG, in June the ICBA's Minority Bank Council sent another letter to Senate leadership requesting a five year extension. It is unclear whether Congress will extend TAG, and whether the FDIC has any other programs to serve as a backstop should the sunset of TAG result in a liquidity crisis for community banks in the event that depositors flee to the perceived safety of "too big to fail" money center banks.

International

Basel Committee Proposes New Principles for G-SIB Risk Reporting and Data Aggregation

On June 26th, the Basel Committee on Banking Supervision released a new proposal intended to improve the risk data aggregation capabilities and risk reporting practices of 'too big to fail' banks. The principles are targeted at the 29 large entities identified by the Financial Stability Board (FSB) as global systemically important banks (G-SIBs), including eight banks headquartered in the U.S., which will be subject to additional capital standards beyond Basel III capital accords. The proposal establishes principles to enhance reporting of key information that banks use to identify, monitor and manage risk in addition to improving management of information across institutions, reducing the chance and severity of losses from risk management weaknesses and improving the speed at which information is available. G-SIBs would be required to implement the principles by the beginning of 2016 at the latest with national authorities to begin assessing implementation starting in 2013. While the principles are aimed at G-SIBs, the Basel Committee said the principles could be applied to a wider swath of banks, should national authorities chose to do so.

UPCOMING HEARINGS

The House and Senate will be in Recess the week of July 2nd

On Tuesday, July 10th at 10am, in 2128 Rayburn, the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises will hold a hearing on the impact the Dodd-Frank Act is having on job creators, credit and financial institution customers.

On Wednesday, July 11th at 10am, in 2128 Rayburn, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit will examine the Dodd-Frank Act's effect on mortgage lending.

On Wednesday, July 18th at 10am, in 2128 Rayburn, the House Financial Services Committee will receive the semiannual "Monetary Policy Report to the Congress" from Federal Reserve Chairman Ben Bernanke.

On Thursday, July 19th at 10am, in 2128 Rayburn, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit will examine the Dodd-Frank Act's impact on consumers with a hearing on the Consumer Financial Protection Bureau.

On Thursday, July 19th at 2pm, in 2128 Rayburn, the House Financial Services Subcommittee on Oversight and Investigations will review how Dodd-Frank Act regulations are affecting jobs and the economy.