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FINANCIAL SERVICES LEGISLATIVE AND REGULATORY UPDATE

July 30, 2012

Leading the Past Week

With many of the world's eyes turning to London this weekend for the start of the 2012 Summer Olympics, lawmakers in the House and Senate were concerned with something very different coming out of London: the LIBOR scandal. Lawmakers in both the House and Senate grilled Treasury Secretary Timothy Geithner for his role as President of the New York Fed and whether he acted appropriately in identifying and acting on irregularities and suspected fraud in the benchmarking system. Geithner was not the only Administration official to come before Congress last week as CFTC Chairman Gary Gensler faced tough questions from House Agriculture Members on the Peregrine and MF Global customer fund scandals. CFPB Director Cordary was also on the Capitol Hill defending the Bureau's regulatory actions and cost-benefit analyses while CFPB Student Loan Ombudsman Rohit Chopra went before the Senate to call for more help for those facing massive student loan debts. On the floor, in the House of Representatives Ron Paul's legislation to audit the Fed was finally passed after years of efforts on a broad bipartisan vote, while in the Senate Republican effort to extend the Bush-era tax cuts failed in an up or down vote, while a Democratic proposal narrowly advanced but is not anticipated to be passed by the House.

This coming week is the last before the August recess and the conventions take members out of town through the first week of September. The House is anticipated to, among other things, vote on a proposal to extend the Bush-era tax cuts while the Senate will finally take up a cyber security measure. Both are seen as positioning maneuvers for a lame duck that is quickly being loaded up with many stalled legislative initiatives, but which seems likely to avoid a spending fight as a six month continuing resolution ("CR") continues to gain popularity.

Legislative Branch

Senate

Bipartisan Bill to Beef Up SEC Securities Violations Penalties Introduced

On July 23rd, Senators Jack Reed (D-RI) and Chuck Grassley (R-IA) introduced [S. 3416](#), the Stronger Enforcement of Civil Penalties Act, which would strengthen penalties the SEC can seek for tier three violations. Tier three violations are the most serious securities law violations. The bill would raise the current penalty cap from \$150,000 per violation for individuals to \$1 million and from \$750,000 per violation for entities to \$10 million. The bill would also enable the SEC to triple monetary penalties sought in administrative and civil actions—currently the SEC calculated fines equal to a defendant’s “gross amount of pecuniary gain” in only federal court actions. The bill is in part a response to SEC request as Chairman Mary Schapiro [wrote](#) to the Senate Banking Committee in November 2011, explaining that securities law currently limits the amount the SEC can recover from ill-gotten gains. Representative Barney Frank (D-MA) is working on legislation to augment SEC penalties for repeat offenders and a Frank staffer said the bill could be tweaked to include increased penalty amounts as well.

Senate Passes Sequestration Transparency Act; Votes Down Plan to Extend Bush Tax Cuts

On July 25th the Senate approved the House passed [H.R. 6872](#), the Sequestration Transparency Act, which would require the Obama Administration to describe how federal agencies would implement the \$109 billion in sequestration budget cuts scheduled to take place on January 2nd. The Senate passed the bill by unanimous consent following a July 18th House vote of 414 to 2. The same day, the Senate rejected a Republican proposal, the Tax Hike Prevention Act ([S. 3413](#)), that would extend Bush-era tax cuts. Senators Susan Collins (R-ME) and Scott Brown (R-MA) joined the Democrats in a 45 to 54 vote. President Obama signed the Sequestration Transparency Act towards the end of the past week.

Senator Brown (OH) Introduces Bill Requiring Outsourcing Disclosures

On July 17th, Senator Sherrod Brown (D-OH) introduced the Outsourcing Accountability Act ([S. 3392](#)) which would amend the 1934 Securities Exchange Act to require issuers to disclose annually to the SEC and to their shareholders the total number of employees hired overseas and in the U.S. Emerging growth companies—as defined by the Jumpstart Our Business Startups (JOBS) Act—are companies that can access a streamlined IPO process and relaxed reporting obligations.

Senate Banking Subcommittee Examines Private Student Loan Market

On July 24th, the Senate Banking Subcommittee on Financial Institutions and Consumer Protection met to hear testimony on the private student loan market. Testifying before the panel, Rohit Chopra, Student Loan Ombudsman for the CFPB, [told](#) lawmakers that borrowers struggling with private student loans would benefit from more refinancing options. Chopra, cautioning that the growing student loan debt could “act as a drag on the economic recovery,” said policy makers must give student loan debt the same attention it has paid to the mortgage market. There are several bills before the Senate dealing with student loans. Senator Dick Durbin (D-IL) has introduced two measures—one reversing the bankruptcy discharge law ([S.](#)

1102) and the other, with Senator Tom Harkin (D-IA), requiring colleges to counsel students to take out the maximum in federal loans before pursuing private options (S. 2280). Durbin, speaking before the National Association of Student Financial Aid Administrators was unoptimistic about the success of either proposal.

Gaming Legislation Comes Up in Indian Housing Hearing

During a July 24th Senate Banking hearing to examine housing partnerships on Native lands, the topic of gaming legislation played a large role. Senators Al Franken (D-MN) and Tom Udall (D-NM) stressed that gaming legislation should feature the input of Native American tribes. Senator Franken said legislation must recognize “the special place that tribes hold in the gaming industry,” while Senator Udall added that Congress must engage tribes—especially in relation to internet gaming. The issue surfaced as rumors continue to float that Senator Reid and Senator Kyle have reached a deal to re-legalize on-line poker, although according to reports, Senator Dean Heller (R-NV) has been tasked with finding additional Republican support for the measure.

Shelby Outlines Vision for Banking Committee Should Republicans Take Majority in November

In a [speech](#) before the Chamber of Commerce Ranking Member of the Senate Banking Committee Richard Shelby (R-AL) outlined his agenda for the Committee were he to become Chairman following the November elections. Foremost among his plans would be to seek changes to the Dodd-Frank Act, impose additional tests on federal regulators and lay the groundwork for overhaul of the housing finance system. To meet these goals, Shelby said he would push legislation which would repeal portions of the Dodd-Frank financial reforms which are unnecessary, unrelated to the financial crisis, and which impose costs on the economy. Specifically, Shelby said he would target derivatives regulations affecting end-users. In addition to repealing certain provisions, he would seek to fix “flawed” provisions such as the structure of the CFPB—which Republican lawmakers have long sought to overhaul. Beyond addressing financial reforms, Shelby said he would pursue an overhaul of Fannie Mae and Freddie Mac.

House of Representatives

House Agriculture Grills Gensler on Peregrine

On July 25th, the House Agriculture Committee held a hearing titled “Oversight of the Swaps and Futures Markets: Recent Events and Impending Regulatory Reforms.” CFTC Chairman Gary Gensler, facing tough questions on the collapse of Peregrine Financial Group, told lawmakers that the agency identified lapses in financial controls in at least three reviews of Peregrine since 2000. Gensler told lawmakers the futures regulatory system “clearly failed,” calling for a review of self-regulatory organizations (SROs), including the National Futures Association (NFA)—Peregrine’s primary overseer. The CFTC relied on NFA and other SROs to conduct the bulk of oversight of futures market participants. The CFTC reached a settlement with Peregrine in 2000 to resolve capital rule violation but reviews in 2007 and 2008 found no fraudulent activity.

In the panel following Gensler, Terrence Duffy, Executive Chairman of the CME Group, told lawmakers that CME Group’s proposal to house all customer funds at clearinghouses or similar

depositories “will be controversial” and perhaps disruptive but will resolve the problem of futures investors losing money by futures brokerages such as MF Global and Peregrine. Under CME Group’s proposal, all customer money could be housed in brokerages and the earned interest would be returned to futures brokerages. Duffy also told lawmakers that the US bankruptcy code should be altered to allow for timely transfer of customer money away from failed brokerages and back into the hands of customers.

Cordray Responds to Criticism Emphasizing Importance of Regulatory Burden Reduction, Costs Analysis

On July 24th, CFPB Director Richard Cordray appeared before the House Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs. Republican lawmakers, who have marked the one year anniversary of the CFPB with hearings on the Bureau, criticized the CFPB by saying it will burden financial institutions with regulation and restrict consumer access to credit. Representative Patrick McHenry (R-NC), Chairman of the Subcommittee, told Cordray that the delicate financial system cannot withstand “aggressive, shortsighted rulemaking by the CFPB.” Cordray responded to criticism from lawmakers on numerous fronts. Getting somewhat snarky in response to Representative Pat Meehan’s (R-PA) concerns of streamlining RESPA/TILA forms, Cordray said it is unfair to complain that the Bureau “doesn’t engage in sufficient, extensive cost-benefit analysis and then complain that we devote a lot of pages in our proposal to the same cost-benefit analysis you told us that you want.” McHenry also blasted the Bureau’s proposed remittance rule for failing to reflect a thoughtful cost-benefit analysis, saying this will cause banks and credit unions to stop providing international money transfers. In response, Cordray said the Bureau has proposed an exemption to the remittance rule for transfer providers that facilitate fewer than 25 remittances per year. Cordray also responded to concerns about the CFPB’s qualified mortgage (QM) rule, saying community banks are concerned about the QM definition but that the QM definition cannot be overly narrow.

Fed Audit Bill Passes House on Suspension

On July 25th, the House approved Representative Ron Paul’s (R-TX) Reserve Transparency Act (H.R. 459) in a bipartisan vote of 327 to 98. The bill, considered under a suspension of the rules, easily garnered the two-thirds majority necessary for passage with all Republicans voting for it and a split amongst House Democrats with 89 in favor and 97 against. The bill would require the GAO to conduct an audit of the Fed Board of Governors and the twelve reserve banks. Paul’s legislation is unlikely to advance in the Senate, and despite concerns that passage could destabilize the recovery by implying political interference at the Fed, Representative Barney Frank (D-MA) said the proposal has little chance of becoming law, but it was a crowning achievement for Congressman Paul, who is retiring at the end of the year.

House Financial Services Subcommittee Ponders Merits of Nonbank National Consumer Credit Corporations

On July 24th, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit met to examine credit access concerns and federal regulations—specifically in regards to [H.R. 6139](#), a bill that seeks to give underserved small businesses and consumers improved access to credit by permitting nonbank lenders to operate under federal standards rather than state laws. The bill would allow the OCC to charter qualified nondepository creditors

as National Consumer Credit Corporations (NCCCs) and exempt the industry from certain CFPB oversight practices. However, testifying before the panel, the OCC cited major safety concerns and possible unintended consequences of the proposal, sponsored by Representative Blaine Luetkemeyer (R-MO). Grovetta Gardineer, Deputy Comptroller for Compliance Policy, testified that: “H.R. 6139 raises serious consumer protection, compliance, and safety and soundness concerns by creating a national charter for companies concentrating on products most prone to abuse and that are most often targeted to minority populations, low-income neighborhoods, and communities with high concentrations of our military service members.”

Witnesses appearing in a second panel also expressed concerns. John Munn, testifying on behalf of the Conference of State Bank Supervisors, told lawmakers that the bill could undermine the balance of state and federal financial regulation. Nevertheless, other witnesses, including Mary Jackson of Cash America International and John Berlau of the Competitive Enterprise Institute, expressed support for Luetkemeyer’s measure, arguing it will facilitate the availability of innovative products and create options for nonbank lenders to make loans to consumers across state lines. It was not surprising then to see that on July 19th the Online Lender Alliance issued a [press release](#) in support of the bill for its potential to streamline “conflicting state regulatory schemes” and “establish one clear set of rules for lenders to follow.”

Waters Introduces Investment Adviser User Fee Bill

On July 25th, Representative Maxine Waters (D-CA) introduced the Investment Adviser Examination Improvement Act of 2012 (H.R. 6204) which would enable the SEC to impose user fees on investment advisers so as to increase the number and frequency of examinations. In a [press release](#) Waters said Representatives Barney Frank (D-MA) and Michael Capuano (D-MA) are cosponsors of the legislation. Executive Director of the Investment Adviser Association David Tittsworth praised the bill by saying it is the “smartest, fastest, and most cost-effective solution to ensure greater frequency of investment adviser examinations.”

Lawmakers Launch Probe into Data Broker Industry Privacy Concerns

On July 25th, a bipartisan group of House lawmakers launched an investigation into privacy concerns around the data broker industry. Representatives Ed Markey (D-MA) and Joe Barton (R-TX), co-chairmen of the bipartisan House Privacy Caucus, sent letters to nine major data brokerage companies inquiring how they collect, assemble and sell consumer information to third parties. Other signatories on the letters include Representatives Henry Waxman (D-CA), Steve Chabot (R-OH), G.K. Butterfield (D-NC), Austin Scott (R-GA), Bobby Rush (D-IL), and Jan Schakowsky (D-IL). In separate letters to [Acxiom](#), [Epsilon](#), [Equifax](#), [Experian](#), [Harte-Hanks](#), [Intelius](#), [Fair Isaac](#), [Merkle](#), and [Meredith Corp](#), lawmakers expressed their concern that the data brokers have used “large scale aggregation of the personal information of hundreds of millions of American citizens” to develop “dossiers on almost every U.S. consumer.” Lawmakers also noted that privacy advocates and the FTC have expressed growing concerns on the need for increased transparency in the data broker industry.

Executive Branch

Treasury Department

Geithner Delivers Annual Report to Congress on FSOC, Lawmakers Zero In on LIBOR

On July 25th, Treasury Secretary Geithner testified before the House Financial Services Committee in the annual report of the Financial Stability Oversight Council (FSOC). Much of the hearing was taken up, not by the activities of the FSOC, but by Geithner's role in the LIBOR banking manipulation scandal. Geithner told the Committee that as the financial crisis hit, there was a lot of concern in the market over the LIBOR benchmark and the New York branch of the Federal Reserve "thought these concerns were justified." Not only did the New York Fed brief the broader US regulatory community, they also raised the matter with British regulators and Geithner sent a detailed memorandum to the governor of the bank of England. Nevertheless, Geithner was faulted for not bringing LIBOR to the attention of Congress—Representative Scott Garrett (R-NJ) charging that Geithner should have mentioned his concerns with LIBOR one of the "countless" times he appeared before Congress. Outside of the LIBOR scandal, Geithner touched on how the US financial system has progressed from near collapse to a more resilient system with more capital and liquidity. Still, Geithner also cautioned that Europe remains an ongoing risk to the US economy and global economic growth.

Appearing the next day before the Senate Banking Committee, the focus of lawmakers was also largely on the LIBOR scandal. The tenor of the hearing was slightly less hostile as Chairman Tim Johnson (D-SD) stressed that LIBOR should not be blamed on the agencies that police the market but rather be cause for continued focus on the "effort to hold companies and individuals who committed fraud accountable. Reiterating remarks made before the House, Geithner responded to accusations from Ranking Member Richard Shelby that he, as President of the New York Fed, "tempered his response to what can be characterized as a significant problem within the banking industry." Similarly, Senator Patrick Toomey (R-PA) said Geithner should have utilized his "bully pulpit" to draw more attention to LIBOR concerns. In addition to LIBOR, Geithner addressed money market funds, saying the SEC needs to go further and push harder to change money market fund rules. In response to Senator Bob Corker's (R-TN) concerns that money market funds are still susceptible to runs and the lack of action from the SEC, Geithner said if the SEC does not act, he believes the FSOC has the authority to.

CFPB

Corker Withdraws Objections to CFPB Privacy Protection Technical Correction to Dodd-Frank

Last week, Senator Bob Corker (R-TN) lifted his hold on [S. 3394](#), a provision which would extend attorney-client protections to financial information provided to the CFPB during the course of an examination. The technical correction, which is supported by the agency and by the banking community, was held up by Republican Senators who wanted to be able to offer changes to the entirety of the Dodd-Frank law. Corker, despite dropping his objections, made clear he is disappointed "there will be no real discussion of any changes to Dodd-Frank before the election." The CFPB adopted a [rule](#) in June that seeks to codify protections for privileged information; however, members of the banking community are still calling for legislative action. James Ballentine of the American Bankers Association said the ABA understands the concerns with the larger Dodd-Frank legislation, but said "there are individual situations—privilege being one of them—which have a need to be corrected immediately...absent the debate around Dodd-Frank." Now that Corker has lifted his hold, all attention will focus on Senator DeMint,

who is the last remaining holdout against the proposal, which has now been tied to a popular measure to eliminate lawsuit liabilities for banks that don't have fee disclosure notices by their ATMs.

CFTC

CFTC Holds "Emergency" Meeting of Technology Advisory Committee

On July 26th, the CFTC's Technology Advisory Committee (TAC) held a [public meeting](#) to identify and explore technological issues and possible solutions relating to the ability of the CFTC, self-regulatory organizations and futures commission merchant (FCM) customers to verify the location and status of funds held in customer segregated accounts. The "emergency meeting" was called to address CFTC responses to weaknesses demonstrated by MF Global and Peregrine segregated customer fund losses. At the meeting, Commissioner Scott D. O'Malia, the chairman of the TAC, stated, "the CFTC and front-line regulators cannot rely on solutions triggered only after the whereabouts of customer funds are in question. We need to develop technological solutions that enable real-time detection and automated alerts of unauthorized transfers of customer funds."

FDIC

ABA and ICBA Team Up to Push for TAG Extension

Citing the "uncertain path of the economy and continued concerns of bank and credit union depositors about the safety of their deposits," the ABA and ICBA sent a July 27th joint [letter](#) to Congressional leadership urging a temporary extension of the Transaction Account Guarantee (TAG) program. 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 trade organizations are pushing for an extension lasting a minimum of two years so as to eliminate uncertainty and "bolster confidence of small business and municipal deposits."

Miscellaneous

Sandy Weill Shocks Industry Disavowing Banking Conglomerates in Favor of Smaller, Safer Banks

Last week, in a surprising turn of events, Sandy Weill—the founder of Citigroup Inc who is credited with the emergence of large US banking conglomerates—said in a CNBC interview that he believes the largest banks should be broken up. "What we should probably do is go and split up investment banking from banking," said Weill, who also suggested banks should do something so as not risk taxpayer dollars and curb the perception of "Too Big to Fail." Weill's call echoes that of some regulators, investors, analysts and lawmakers that large banks should be chopped up. Thomas Hoenig, a member of the FDIC Board, saw Weill's call as part of a "growing recognition among a wide range of market analysts, financial market participants and policy makers that the repeal of Glass-Steagall was a mistake." Among those who have also recognized the need to break up large banks is Representative Brad Miller (D-NC) who has introduced legislation to cap the size of the biggest banks ([H.R. 5714](#)). Others in the industry do not share Weill's newfound perspective as Jamie Dimon, CEO of JPMorgan Chase, said there is "huge strength in this company that the units get from each other" and ABA President and

CEO Frank Keating said that Weill was misguided in his analysis. Perhaps the best sentiment came from former Senator Chris Dodd, who captured the skepticism that many felt by Weill's comments, saying it was akin to "Paul Bunyan becoming an ecologist."

UPCOMING HEARINGS

On Tuesday, July 31st at 10am, in 538 Dirksen, the Senate Banking, Housing and Urban Affairs Committee will hold a hearing titled "Holding the CFPB Accountable: Review of Semi-annual Report to Congress."

On Wednesday, August 1st at 9am, in 328A Russell, the Senate Agriculture, Nutrition and Forestry Committee will hold a hearing on MF Global Holdings Ltd., a financial derivatives broker that filed for bankruptcy in 2011, focusing on accountability in the futures markets.

On Wednesday, August 1st at 10am, in 2128 Rayburn, the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises will mark up pending legislation.

On Wednesday, August 1st at 10am, in 538 Dirksen, the Senate Banking, Housing and Urban Affairs Subcommittee on Housing, Transportation, and Community Development will hold a hearing titled "Streamlining and Strengthening the Department of Housing and Urban Development's Rental Housing Assistance Programs."

On Wednesday, August 1st at 10:30am, in 215 Dirksen, the Senate Finance Committee will hold a hearing titled "Tax Reform: Examining the Taxation of Business Entities."

On Wednesday, August 1st at 1pm, in 2360 Rayburn, the House Small Business Committee will hold a hearing titled "Know Before You Regulate: The Impact of CFPB Regulations on Small Business."

On Thursday, August 2nd at 9am, in 538 Dirksen, the Senate Banking, Housing and Urban Affairs Subcommittee on Securities, Insurance, and Investment will hold a hearing titled "The Tri-Party Repo Market: Remaining Challenges."

On Thursday, August 2nd at 10am, in 2128 Rayburn, the House Financial Services Subcommittee on Domestic Monetary Policy and Technology will hold a hearing titled "Sound Money: Parallel Currencies and the Roadmap to Monetary Freedom."