ML Strategies Update

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Financial Services Legislative and Regulatory Update

Leading the Past Week

It was another incredibly busy week, but obviously our thoughts and prayers were with the victims of the Boston Marathon Bombing and the fertilizer plant explosion in Texas.

In our nation's capital, the week was filled with multiple House and Senate committees holding hearings on a variety of topics of interest to the industry. Many of these hearings were examinations of the President's Budget request, and Treasury Secretary Jack Lew testified at two of them. Among other points, he made was that that the U.S. regulatory reform agenda will be capital safeguards, treatment of over-the-counter derivatives, resolution authority, and finalizing the Volcker Rule and related risk management priorities. Also last week the House passed the Cyber Intelligence and Sharing Protections Act, better known as CISPA, which among other things will allow commercial entities such as banks and internet service providers to share information with the federal government that can help defend our country and its institutions from cyber-attacks.

It also looks like there will be no rest for the weary as Congress is gearing up for another busy week. In the Senate, Director Cordray will come before the Senate Banking Committee to share the CFPB's semi-annual progress report, while on the Senate floor member will debate whether or not to impose new sales tax obligations on online retailers. While in the House, a Financial Services subcommittee will examine US contributions to the International Monetary Fund (IMF).

Legislative Branch

Senate

Senate Banking Examines Independent Foreclosure Review

On April 17th, the Senate Banking Committee's Housing Subcommittee held the second part of its continuing examination of regulators and the industry role in the foreclosure review process. Witnesses included: Lawrence Evans, Director of Financial Markets and Community Investment with the GAO; Joseph A. Smith, Monitor of the National Mortgage Settlement; David Holland, Executive Vice President of Rust Consulting, Inc.; and Deborah Goldberg, Special Project Director of the National Fair Housing Alliance.

Senate Banking Explores Options for Reforming FHFA
On April 18th, the full Senate Banking Committee met to hear testimony from acting FHFA head Edward DeMarco and Steve Linick, the agency's Inspector General, on the agency's efforts to act as regulatory and conservator in the housing crisis. With one of the FHFA's most vocal critics, Senator Elizabeth Warren (D-MA), absent due to the tragedy in Boston, DeMarco actually received some praise for his efforts to address the foreclosure crisis. However, one of the only significant criticisms came from Senator Jack Reed (D-RI), who reproached DeMarco for blocking companies from lowering principals on underwater borrowers. Before the hearing, Senator Carl Levin (D-MI) wrote to the White House requesting that the Administration replace DeMarco with a new Director. Democrats have been urging the Administration to nominate a new regulator for Fannie Mae and Freddie Mac since DeMarco rejected a proposal to write down mortgage debt for struggling borrowers. Some possible nominees for the position include Representative Melvin Watt (D-NC) and Moody's Analytics Economist Mark Zandi, though neither appear likely to be able to get through the Senate.

House of Representatives
Financial Transaction Tax Legislation Faces Uphill Battle with House Republicans and White House
Despite a tepid response from the White House, Democrats in the House continue with their efforts to push for a Financial Transaction Tax (FTT). Last week, Representative Keith Ellison (D-MN), a member of the House Financial Services Committee introduced the Inclusive Prosperity Act (H.R. 1579). Ellison's legislation would tax stock sales at 0.5 percent, bond would be taxed at 0.10 percent, and derivatives and other investments would be taxed at 0.005 percent. This measure differs from previously introduced FTT proposal that would tax all transactions at 0.03 percent. While there may be support amongst some Congressional Democrats, the Administration appears to remain publicly opposed to the measure (former-Treasury Secretary Geithner openly opposed the idea and current Secretary Lew echoed White House sentiments that the tax would be "very problematic" at a House Ways and Means hearing) however, Senator Harkin, a leading proponent of this issue in the Senate has said Lew is more open to the notion. Interestingly, we are hearing that industry is concerned that the Marketplace Fairness Act, which is on the Senate floor this week, could also create a frame work for individual states to levy FTT's, making federal legislation unnecessary.

House Financial Services Subcommittee Examines Authority to Break up so-called "TBTF" Banks
On April 16th, the House Financial Services Subcommittee on Oversight and Investigations met to hear testimony from Federal regulators from the Fed and FDIC regarding the government's authority to define institutions as "too big to fail" and whether the Dodd-Frank Act resolves the issue. While the Dodd-Frank Act gives the Fed and FSOC authority to dismantle large firms that threaten the financial stability of the country, regulators told lawmakers that they have been unable to define what institutions could be considered a "grave threat" and that it is difficult to have a "uniform rule." Scott Alvarez, General Counsel at the Fed, told lawmakers that regulators are currently considering rules to require large banks to hold a minimum amount of long-term unsecured debt. James Wigand, Director of the FDIC's Office of Complex Financial Institutions, also told lawmakers that these large institutions will no longer be bailed out by tax payers, but rather put through the resolution framework for bankruptcy. With political rhetoric against large banks near back to financial-crisis levels, expect TBTF to remain a top issue for the rest of the year.

House Financial Services Subcommittee Hears from the FDIC on Title II of the JOBS Act

On April 17th, the House Financial Services Subcommittee on Oversight and Investigations met to hear testimony from SEC Commission Elisse Walter on the progress toward implementing Title II of the Jumpstart Our Business Startups (JOBS) Act. Title II of the JOBS Act—Access to Capital for Job Creators—directs the SEC to lift the ban preventing small businesses from using advertisements to find accredited investors. Walter told the Subcommittee that concerns over protections for investors caused the SEC to miss the rulemaking deadline for the provision. In response to questions from lawmakers over why the SEC did not accelerate work on the rulemaking Walter said that to do so, the Commission would have had to "expend examination and enforcement resources" that were not accounted for and that the SEC needed to analyze questions raised by investor advocates.

House Financial Service Subcommittee

On April 16th, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit held a hearing on regulatory burdens faced by the community banking industry. The hearing was part of a series of panels on the impact of regulations on small institutions. Lawmakers and witnesses both expressed concerns over the Qualified Mortgage (QM) rule and the impact Basel III capital rules will have on community banks. Lawmakers, in particular Chairman Capito, stressed a need to measure the compliance costs which community banks face in order to illustrate the burden these new regulations pose. Similarly, witnesses suggested that banks not be categorized simply by size but also by what products they offer. For example, one witness said that his bank is larger and services several regions but offers plain vanilla products, not risky complicated products that large banks offer.

Executive Branch

Federal Reserve

Fed and FDIC Release New Resolution Plan Guidance, Extend Submission Deadline

On April 15th, the Federal Reserve and FDIC requested additional details from banks on their resolution plans, giving financial institutions an additional three months to submit plans to regulators. The extension resulted from addition guidance, clarification and direction for the first 11 U.S. bank holding companies with $250 billion or more in total nonbank assets and foreign-based bank holding companies with $250 billion or more in total U.S. nonbank assets that were required to provide plans. Included in these 11 banks are JPMorgan Chase, Bank of America, and Goldman Sachs. Specifically, the updated guidance requests additional information from banks what obstacles may arise under the bankruptcy code and on "global issues, financial market utility interconnections, and funding and liquidity, as well as to provide analysis to support the strategies and assumptions contained in the firms' resolution plans." Financial institutions affected by the updated guidance will have until October 1, 2013 to submit plans while submission dates for other banking institutions remains unchanged.

Fed Proposes Regulatory Fee on Systemically Important Institutions

On April 15th, the Federal Reserve issued a proposed rule which would levy an annual assessment fee on large bank holding companies and savings and loan holding companies with $50 billion or greater in total consolidated assets and for nonbank financial companies designated systemically important by the FSOC. The Dodd-Frank Act gives the Fed authority to assess fees in order to carry out new supervisory and regulatory tasks. The proposal estimates that approximately 70 companies would be impacted by the rulemaking, which could collect assessments of up to $440 million. While these rates would remain fixed for 2013 and 2014, in subsequent years the Fed would base annual assessments on the average estimated expenses needed to carry out regulatory activities for the current and prior two years. Companies to be impacted by the assessment fee will be notified by July 15th of each year and will be given 30 days to appeal the decision to the Fed. Comments on the proposal are due June 15th.

Fed President Rosengren Stresses Need for More Capital at Broker-Dealers
In an April 17th speech on Boston Federal Reserve President Eric Rosengren said that banks that own a broker-dealer until should be required to hold more capital because of the greater risk they pose during financial crises. Rosengren said despite broker-dealers, such as Bear Stearns and Lehman Brothers, being large contributors to the financial crisis, "too little has changed to avoid a repeat of the problem" and broker-dealers still remain susceptible to runs.

FDIC
Hoenig Reiterates Calls for More Capital at Large Banks
In remarks on April 17th, FDIC Vice Chairman Thomas Hoenig sought to assuage concerns that breaking up large, "too big to fail," banks would harm small financial institutions. As such, Hoenig reiterated his call to confine the government safety net to only commercial banking activities and requiring large banks to spin off their broker-dealer and investment banking business. Hoenig called his opponents' arguments that doing this would force small and regional banks out of the market by forcing them to compete with large banks "almost nonsensical" and that if large firms had much high capital requirements, they would be on a level playing field with community banks.

Treasury
Treasury Under Secretary Says FSOC is Nearing First SIFI Designations
In remarks on April 18th, Treasury Under Secretary for Domestic Finance Mary Miller told the Hyman P. Minsky financial stability conference that the FSOC is in the "final stages" of determining the first group of non-bank financial firms to be designated as systemically important and thus subject to additional oversight by the Fed. Miller said the FSOC has been reviewing AIG, Prudential and GE Capital as potentially systemically important. In her speech, Miller also addressed the question of whether "too big to fail" firms are at an unfair funding advantage due to the belief they will be bailed out by the Federal government. Miller said "no financial institution, regardless of its size, will be bailed out by taxpayers again" and that research shows "large nonfinancial corporations enjoy a similar funding advantage over their smaller and less-diversified peers."

SEC
Chairman White To Name Fellow Prosecutor as Head of Enforcement
Last week, it was reported that SEC Chairman Mary Jo White plans to name Andrew Ceresney to be the Commission's Enforcement Director. White and Ceresney worked together when she headed the Manhattan Attorney's office and at her law firm Debevoise & Plimpton.

CFPB
CFPB Report Finds Problems with Senior Designations of Financial Advisors
On April 18th, the CFPB published a report highlighting problems with "senior designation" credentials that many financial advisers use to market their services to older Americans. The Bureau found there are more than 50 different senior designations financial advisers use to indicate that they have advanced training or expertise in the financial needs of older consumers. However, these designations can confuse consumers and there is no regulatory authority responsible for overseeing advisors who make claims under these designations. Based on these

findings, the report recommends that rigorous training standards to obtain senior designations be implemented, stricter standards of conduct for those operating under these designations be set, and that the CFPB increase supervision and enforcement of these individuals.

Upcoming Hearings

On Tuesday, April 23rd at 10am, in 538 Dirksen, the Senate Banking, Housing and Urban Affairs Committee will hold an oversight hearing on the semi-annual report to Congress of the Consumer Financial Protection Bureau.

On Wednesday, April 24th at 10am, in 2128 Rayburn, the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises will hold a hearing on the privatization of Sallie Mae.

On Wednesday, April 24th at 10:30am, in location TBD, the Joint Economic Committee will hold a hearing on long-term unemployment, focusing on consequences and solutions.

On Wednesday, April 24th at 2pm, in 2128 Rayburn, the House Financial Services Subcommittee on Monetary Policy and Trade will hold a hearing on the role of the United States in the International Monetary Fund.

On Thursday, April 25th at 10am, in 2359 Rayburn, the House Appropriations Subcommittee on Financial Services and General Government will hold a hearing on the FY 2014 Budget request for the Department of Treasury.

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