



ML Strategies Legislative Update

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THE ELECTION'S IMPACT ON THE FINANCIAL SERVICES SECTOR

After months of build-up and anticipation, the 2012 election is officially in the record books, but perhaps the most notable outcome was that both sides spent record sums of money—over \$6 billion dollars by some estimates—only to effectively retain the *status quo ante* and end up with the exact opposite of what the conventional wisdom forecasted only a few months before.

While both sides may be putting away their campaign signs, it seems that neither is willing to back away from the harsh campaign rhetoric as they endeavor to eke out their respective positions in advance of a lame duck during which they will need to deal with the “fiscal cliff” and potentially other wrap-up items as well.

Whether the fiscal cliff fix is finished in the lame duck or sometime in 2013, there are a host of issues percolating in the coming year, most notably comprehensive tax reform, which could substantially impact the financial services sector. The following update provides a concise summary of these, as well as offers an examination at the potential personnel changes on the key committees and within the Administration with jurisdiction over these issues.

Senate

In the Senate, Democrats had a good night, netting two additional seats and winning tough races in Massachusetts, Montana, North Dakota, Indiana and Missouri. Included among this list is of course the victory of Senate candidate Elizabeth Warren, consumer advocate, intellectual mastermind behind the creation of the Consumer Financial Protection Bureau (CFPB) and a vocal critic of many parts of the financial services industry. While, as a freshman senator, Warren’s influence may very well be less than those of her more seasoned colleagues, we fully anticipate that she intends to continue to

use her office as a podium to be an outspoken advocate for consumers and continue to criticize many large financial services institutions.

While there were no unexpected defeats of incumbents serving on the Senate Banking and Senate Finance Committees, we do anticipate some changes to the makeup of the committees. On the Democratic side the retirements of Senator Herb Kohl (D-WI) and Daniel Akaka (D-HI) free up two spots, assuming the Committee ratios remain the same. Some names that are being floated as new members of the Banking Committee include, Elizabeth Warren (D-MA), Jeanne Shaheen (D-NH), Kirsten Gillibrand (D-NY), Chris Coons (D-DE), Joe Donnelly (D-IN) and Chris Murphy (D-CT). In addition, rumor has it that Mark Warner (D-VA) and Michael Bennet (D-CO) are angling to get seats on the Senate Finance Committee, a move, that if successful, may open up additional spots. However, it is generally rare that newly-elected Senators are chosen to serve on such a prestigious committee, so for Warren, Donnelly, and Murphy, it may be a two year wait to get their appointment.

At the top of the Senate Banking Committee, we fully anticipate that Chairman Tim Johnson (D-SD) will remain as the Chairman, however, Ranking Member Richard Shelby (R-AL) is term limited out of his position, meaning Senator Mike Crapo (R-ID) will likely assume the top Republican title.

On Senate Finance, the Chairman and Ranking Member, Max Baucus (D-MT) and Orin Hatch (R-UT) respectively, are not expected to change. However, there are two vacancies for both parties, caused by the retirements of Senators Kent Conrad (D-ND), Jeff Bingaman (D-NM), Olympia Snowe (R-ME) and Jon Kyl (R-AZ). In addition to Senators Warner and Bennet, it is also rumored that these slots are being eyed by Senators Bob Casey (D-PA), Senator Jeanne Shaheen and Senator Johnny Isakson (R-GA).

House

On the House side, both top slots on the House Financial Services Committee will have new faces as the current Chairman Spencer Bachus (R-AL) is term limited and Barney Frank (D-MA) made the decision to retire. In their place, Representative Jeb Hensarling (R-TX) is expected to serve as Chairman and Representative Maxine Waters (D-CA) is expected to become Ranking Member.

Between a number of electoral losses and retirements, there could be many new faces on the Committee next year. Among those who were defeated at the ballot box, include: Representatives Nan Hayworth (R-NY), Frank Guinta (R-NH), Francisco Canseco (R-TX), Judy Biggert (R-IL), Joe Baca (D-CA), and Robert Dold (R-IL). In addition to Barney Frank's retirement, Representatives Gary Ackerman (D-NY), Joe Donnelly (D-IN), Donald Manzullo (R-IL), Brad Miller (D-NC) and Ron Paul (R-TX) did not run for reelection. Finally, it is unclear whether Brad Sherman (D-CA) would have to give up his spot on the committee were he to assume the top Democratic spot on the House Foreign Affairs Committee.

The election had less impact on the House Ways and Means Committee, with only three, and potentially four pending a run-off election in Louisiana, members either going down to defeat or choosing to run for higher office. Those three were: Pete Stark (D-CA), who lost to another Democrat thanks to the California jungle primary, and Shelley Berkley (D-NV) and Rick Berg (D-ND) both who also lost their efforts to join the Senate. Representative Boustany (R-LA) is in a run-off election that will take place in December. Depending on the ratios, there could be additional slots on the Committee with many members hoping to get on in advance of the tax reform legislation moving through Congress.

Administration

Although we only discovered the outcome of the Presidential election about a day ago, speculation over who would serve in an Obama 2.0 Administration has been brewing for weeks.

Treasury Secretary Timothy Geithner has already indicated he will not stay on in his post for a second term, though he may stay on until the fiscal cliff issues are dealt with. While a number of names have been floated as possible Treasury Secretaries, it seems that high on the list is Obama's chief of staff, Jack Lew, who served as Director of the Office of Management and Budget (OMB) under Presidents Clinton and Obama. Other names rumored to be in the mix include: Erskine Bowles, Roger Altman, Larry Fink, Sheryl Sandberg, Gene Sperling, Neal Wolin and Lael Brainard.

At the SEC, Chairman Mary Schapiro's term does not end until June 2014, but she is widely anticipated to step down well in advance of that date. Rumored names for possible replacements include Mary Miller, Treasury undersecretary for domestic finance, whose previous life in the asset management industry may be seen as favorable by some in the industry. Other possible nominations include the other Democratic members of the Commission, Luis Aguilar and Elisse Walter.

Over at the CFTC, the opposite situation is occurring, where Chairman Gensler's term has already expired, but if he had his way he would remain on throughout the second Obama term. Even though Chairman Gary Gensler's term expired in April, he can serve until the end of 2013. It is unlikely Gensler will be re-nominated as he would have a difficult, if not impossible, confirmation battle in the Senate due to bipartisan concerns with Gensler's attempts to implement Dodd-Frank derivatives rules. Given the potential challenges to re-nominating Gensler, the Obama Administration will likely be hesitant to spend political capital on the fight. As with Chairman Schapiro, it is unclear who would succeed Gensler but Democratic Commissioners Wetjen and Chilton could both be considered potential replacements.

113th Congress Outlook

For the immediate short-term, the top agenda item has to be how to deal with the fiscal

cliff, which quickly stole the post-election spotlight and could be even further complicated by a need to further extend the debt limit. In addition, there is also a panoply of initiatives that have been left for resolution in the lame duck. The best gauge of the items that may be potentially considered can be derived from a list that the staff for Majority Leader Harry Reid (D-NV) leaked right before the election and includes: the Boxer-Menendez Responsible Homeowner Refinancing Act, tax extenders, credit union lending, the extension of the Transaction Account Guarantee (TAG) Program, and resolution of the Bush-era tax cuts. The entire list has more things than what can realistically be considered in the six week legislative session and so some of them will either be punted into 2013 or left to wither on the vine. Interestingly, the issue of making internet poker and other casino games legal for American gamblers was not included in the list, despite Senator Reid's public assurances that he wants to get something done.

Looking ahead to the next two years, the re-election of President Obama further solidifies any effort to push for a wholesale repeal of the Dodd-Frank Act. However, there have been statements made by Members on both sides of the aisle about "tweaking" or correcting specific areas of the law, with the main focus appearing to be on the derivatives section. Whether these fixes come in the form of administrative remedies or legislative initiatives, it is likely that, due to the makeup of Congress, any changes to the Dodd-Frank Act will be slow moving—particularly with those elements of the law that have already been implemented or which are close to being finalized.

In addition to Dodd-Frank, we expect Congress to weigh-in on, in some capacity, the issue of how the Financial Stability Oversight Council (FSOC) pushes for systemic reforms to the money market funds. Furthermore, with Representative Hensarling taking over the helm of the House Financial Services Committee, it seems likely that he will attempt to overhaul the Federal Housing Administration and reform government-sponsored entities (GSEs), though it remains unclear if he can unify his party, much less convince enough Senate Democrats to back a viable plan.

Of course, the issue likely to consume much of the oxygen in 2013 and perhaps into the following year is comprehensive tax reform, which may be incorporated into some type of fiscal cliff solution. While both sides talk about wanting to engage on this effort, the fact that the election ultimately provided us with a *status quo* result and an anticipated continuation of partisan gridlock, may mean that these reforms, along with any attendant effort to curtail the fiscal cliff or our nation's ever increasing debt load, could also fall victim to the *status quo*.

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