ML Strategies Update

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Financial Services Legislative and Regulatory Update

Leading the Past Week

The week began with the theater of official Washington appearing to get along during President Obama's inauguration. A charade continued during the week as the House passed, and the Senate agreed to also pass legislation to temporarily extend the debt ceiling (and the ensure that fiscal policy will dominate for the first six months of the year). The week ended with the attendees at this years World Economic Forum (a/k/a Davos) departing the confab with the pessimistic words of UBS Chairman Axel Webber warning to avoid compliancy if, as he suspects, the economic volatility of 2012 repeats in 2013.

The theme of Davos this year was "Resilient Dynamism", which could also equally attributable to those holding out for a tax reform overhaul this year. Despite whispers that such efforts were premature, this past week only further served to reaffirm that there is a legitimate interest, on both sides of the aisle, in pushing for tax reform, either as part of the larger fiscal debate or as a stand-alone measure.

The other major story of this past week was that Senators Reid and McConnell reached an agreement on filibuster reform. While only time will tell if this deal brings substantive change to the legislative process in the Senate, it is clear that if the old adage is true that a good deal leaves both sides unhappy, then Reid and McConnell may have struck a good one.

Legislative Branch

Senate

Leading Democratic Senator Hints at Tax Reform Through Reconciliation Process

With the Senate agreeing to the House's "No Budget No Pay" resolution for dealing with the debt ceiling, Senator Charles Schumer (D-NY) indicated he would be open to reconciliation as a means of proceeding with comprehensive tax reform. According to a Schumer aide, reconciliation would begin with the Senate approving a budget resolution to set up the reconciliation process, eliminating the threat of a filibuster and providing instructions for Congress to address the tax code to generate a set amount of revenue. The House would then also need to pass a budget resolution which the two Chambers would take to conference committee, where Democrats could insist new revenue be found to prevent the sequester. Schumer has not yet actively begun promoting this plan, but has indicated it is on the table. At this time it isn't clear whether Schumer's fellow Democrats have not embraced the plan, as Chairman of the Finance Committee Max Baucus (D-MT) said he is simply committed to "the process that works best" and Senate Budget Chairman Patty Murray (D-WA) did not comment on the potential use of reconciliation.

Lautenberg to Chair Financial Services Appropriations Subcommittee
Last week, Senator Frank Lautenberg (D-NJ) announced he will be chairing the Senate Appropriations Subcommittee on Financial Services and General Government Subcommittee. The Subcommittee has jurisdiction over the SEC and the CFTC, which, in recent years, have struggled to get adequate resources from Congress. Current Chairman of the Subcommittee, Senator Dick Durbin (D-IL), will taking over the Subcommittee on Defense in the 113th Congress, which had been long led by Senator Inouye of Hawaii.

House of Representatives
House Passes Debt Ceiling Extension
On January 23rd, the House passed, in a 285 to 144 vote, a bill which would suspend the debt ceiling until the middle of May. The legislation also requires Congress to pass a budget of forfeit their pay until the last day of the session. Though it is worth noting that on closer review it doesn't actually require the Congress to pass a budget resolution, just that each body must pass their own version of a budget. Majority Leader Harry Reid (D-NV) called the passage of a "clean debt ceiling bill" a victory for Democrats and the President, saying the Senate will pass the House passed legislation without change, which is scheduled to take place early this week.

Ways and Means Chairman Releases Draft to Reform Tax Treatment of Financial Instruments
On January 24th, House Ways and Means Committee Chairman Dave Camp (R-MI) released a discussion draft of legislation to overhaul the tax treatment of financial products as part of the Committee's efforts to pursue comprehensive tax reform. The discussion draft generally seeks to unify treatment of financial derivatives by requiring all derivatives to be marked to market at the end of each tax year in order to ensure that changes in value result in a taxable gain or loss. In addition, the draft legislation would simplify business hedging tax rules, eliminate a "phantom" tax from debt restructuring, harmonize the tax treatment of bonds traded at a discount or premium on the secondary market, and prevent the harvesting of tax losses on securities.

Financial Services Committee Holds First Meeting
On January 23rd, the House Financial Services Committee met for its first full-committee hearing of the 113th Congress. Though effectively a *pro forma* meeting, as the purpose was to approve Committee rules and designate subcommittee membership, it may be a harbinger of things to come as evident by this *post hoc* statement.. Prior to the meeting, Chairman Jeb Hensarling announced the Republican subcommittee assignments. And as noted previously, Ranking Member Maxine Waters announced the Democratic subcommittee members on January 15th. Late last week Hensarling also announced several key staff assignments, including Uttam Dhillon as Chief Oversight Counsel; Kevin Edgar as Senior Counsel for the Capital Markets and Government Sponsored Enterprises Subcommittee; Clinton Jones as Senior Counsel for the Housing and Insurance Subcommittee; and Ed Skala as Policy Director.

Executive Branch
CFPB

CFPB Extends Effective Date of Remittance Rule
On January 22nd, in what can only be seen as a victory for the banking industry, the CFPB announced it would temporarily delay the effective date of its remittance rule to protect consumers who send money electronically to foreign countries. The rule with the changes was supposed to go into effect on February 7, 2013. Back in December the Bureau had proposed additional changes to the remittance rule which included a provision to address what would happen if a consumer provides an incorrect account number for a transfer, how remittance providers must disclose certain third-party fees, and reversing a provision that would have help banks liable for remittance errors, even if the fault lay with the customer. The CFPB has not yet determined when the new effective date will be and according to the Bureau's blog a new date will be announced later in 2013. Comments on the rule and the proposed changes may still be submitted through January 30th.

President Obama to Re-Nominate Richard Cordray to Director of CFPB
On January 24th, President Obama announced his intention to re-nominate CFPB Director Richard Cordray. Despite several initial statements of support for Cordray, including from architect of the Bureau Senator Elizabeth Warren (D-MA), top Senate Republicans have come out against the nomination. Senate Banking Committee Ranking Member Mike Crapo (R-ID) said he would oppose Cordray's nomination and, echoing Senator Richard Shelby (R-AL) any nominee to the CFPB unless there were changes made to agency's leadership structure and budgetary process. Both Shelby and Crapo were among the 44 Republicans who signed a letter in May 2011 pledging to block any nominee to the Bureau until changes are made to the agency.

Further complicating Cordray's nomination the next day the U.S. Court of Appeals for the D.C. Circuit rules that President Obama's three recess appointments to the National Labor Relations Board were unconstitutional. While it is unclear how the ruling will affect Cordray, the NLRB appointments were made at the same time as Cordray's. While the Administration hasn't signaled whether they would appeal the decision, The broad ruling, which held that Senate was not in recess when the appointments were made and that the "appointments were invalid from their inception[,]" could have significant ramifications beyond both the NRLB and Director Cordray's legitimacy. Already on Sunday, Republican's began to float whether any of the CFPB rules implemented under Cordary's tenure were valid.

SEC
Mary Jo White Nominated to Serve as Next SEC Chairman
On January 24th, President Obama announced he will nominate Mary Jo White to be the next chairman of the SEC. White, a former federal prosecutor, is being met with bipartisan support for her experience in law enforcement of Wall Street and financial markets. White served as the U.S. Attorney for the Southern District of New York under President Bill Clinton before becoming a defense lawyer, representing corporations and executives. SIFMA praised the nomination, saying White's "knowledge of the securities markets, and prior commitment to public service and investor protection, make her a solid choice to serve as chairman of the SEC."

With strong industry backing, White is expected to sail through confirmation, however it is worth noting that Senator David Vitter (R-LA), who had threatened to put holds on the then nominations of SEC Commissioners Aguilar and Gallagher, indicating that he intends to question White on how she will pursue fraud and if she will pursue the SEC's commitment to provide Securities Investor Protection Corp (SIPC) coverage for the victims of the Stanford Ponzi scheme, though he stopped short of threatening a hold. Additionally, almost immediately after the announcement leaked, Representative Patrick McHenry (R-NC) came out with a statement requesting the SEC forge ahead with the implementation of the JOBS Act, hoping that White will "reverse the trend of delayed rulemaking" he has seen under Chairman Schapiro.

CFTC

Commissioner Sommers Resigns from CFTC

On January 24th, Republican Commissioner Jill Sommers announced she is resigning from the agency. In a statement, Sommers praised her fellow commissioners and her staff and said: "While many challenges remain in finalizing the implementation of the Dodd-Frank Act, I have every confidence that the American public will be well-served by their continuing efforts." Sommers began serving at the CFTC in August 2007, to a term that expired April 2009 after which she was nominated to serve a five-year second term. Sommers was overseeing the MF Global investigation at the time of her resignation.

Treasury

Systemic Risk Council Urges FSOC to Favor Floating NAV for Money Market Reforms

On January 18th, the Systemic Risk Council sent a letter to the FSOC, in support of the FSOC's efforts to reform the money market mutual fund industry and to urge the Council to move forward with a proposal to transition from a fixed $1 Net Asset Value to a floating NAV. The Systemic Risk Council, headed by former FDIC Chairman Sheila Bair (and which interestingly still lists former Senator Chuck Hagel as a member) applauded the FSOC for using its "full range of authorities" to address the "systemic risks posed by money market funds" until the SEC, which has been stalled on the issue, takes action.

FSOC to Meet Next Week

On January 31st, the FSOC will meet in a closed session. Acting Treasury Secretary Neal Wolin will chair the proceedings. There is no indication about what is on the agenda for the meeting; however, meetings are generally intended to bring Council members together to discuss and analyze emerging market developments and financial regulatory issues.

Upcoming Hearings

On Thursday, January 31st at 10am, in 430 Dirksen, the Senate Health, Education, Labor and Pensions Committee will hold a hearing titled "Pension Savings: Are Workers Saving Enough for Retirement?"

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