ML Strategies Update

Jason Rosenstock
JRosenstock@MLStrategies.com

Abby Matousek
Amatousek@MLStrategies.com

Follow us on Twitter: @MLSFinRegUpdate and @MLStrategies

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, DC 20004 USA
202 296 3622
202 434 7400 fax
www.mlstrategies.com

JUNE 24, 2013

Financial Services Legislative and Regulatory Update

Leading the Past Week

Despite some concerns about the slowing growth in China, some observers were relieved that last week's market sell-off was, for the most part based on the relatively good news that accompanied Federal Reserve Board Chairman Ben Bernanke's comments that if the economy were to continue to improve the Fed would consider drawing down its highly accommodative monetary policy in the next year . Other factors being considered responsible for the sell-off included whether President Obama 'fired' Bernanke in an interview with Charlie Rose. However, we think the "real" reason behind the sell-off was that the release of Treasury Secretary Jack Lew's revised signature roiled the market because it was hard to believe anything that illegible could have the full faith and credit of the United States.

All kidding aside, there are some serious hearings this week, none potentially more so than the Senate Banking Hearing on Thursday to consider multiple nominations, including FHFA Director and two SEC Commissioners. Over in the House, Chairman Hensarling continues to question whether Dodd-Frank eliminated too big to fail with yet another hearing attacking the so-called TBTF banks.

Legislative Branch

Senate

Senate Banking Examines Reverse Mortgages, Senate May take up House Bill

On June 18th, the Senate Banking Subcommittee on Housing, Transportation, and Community Development met to conduct a hearing titled "Long Term Sustainability for Reverse Mortgages: Home Equity Conversion Mortgage's (HECM) Impact on the Mutual Mortgage Insurance Fund (MMIF)." Witnesses at the hearing included: National Reverse Mortgage Lenders Association President and CEO Peter Bell; Dr. Lori A. Trawinski, Senior Strategic Policy Advisor of AARP Public Policy Institute; Odette Williamson, Staff Attorney with National Consumer Law Center; and Ramsey Alwin, Senior Director of Economic Security with the National Council on Aging.

The hearing came the week after the House passed legislation authorizing the FHA to quickly make changes to the Home Equity Conversion Mortgage program so the agency does not have to follow the normal rulemaking process. While Senator Bob Menendez (D-NJ) has introduced similar legislation in the Senate, he has said that it may be easier for the Senate to pass the House version of the measure. Saying that the House version contains "some of the core elements" of his bill, Menendez said he believes it would be the easiest way to "get some of the most critical elements of it done."

Senate Special Aging Committee Examines Social Security Electronic Payments
On June 19th, the Senate Special Committee on Aging met to consider testimony from Social Security and Treasury officials on how to protect seniors from fraud and confusion as Social Security payments go paperless. While lawmakers acknowledged that the move to electronic payments has achieved the goal of saving money for the Federal government, lawmakers grilled Treasury Fiscal Assistant Secretary Richard Gregg on additional payments made to Comerica Bank. Lawmakers also grilled Gregg on the cost savings realized by the program, noting that they thought Gregg appeared to be inflating the cost savings numbers. Also testifying at the hearing were: Alexandra Lane, a victim of Social Security fraud; Rebecca Vallas, Staff Attorney and Policy Advocate, Community Legal Services of Philadelphia; Theresa Gruber, Assistant Deputy Commissioner of Operations, Social Security Administration; and Patrick O'Carroll, Inspector General, Social Security Administration.

Corker and Warner to Introduce GSE Reform Legislation
On June 20th, *Politico* reported that next week Senators Bob Corker (R-TN) and Mark Warner (D-VA) plan to introduce a bill to eliminate Fannie Mae and Freddie Mac and reform the housing finance industry. The bill would phase out Fannie and Freddie over the next five years, replacing them with the Federal Mortgage Insurance Corp (FMIC), a new agency that will guarantee some mortgage bonds from well-capitalized institutions and develop new standards to allow private companies to insure mortgage bonds. The agency would be funded by fees charged to the issuing institutions.

Senator Brown Continues Call for Stronger Standards for Independent Consultants
On June 19th, Senator Sherrod Brown (D-OH) sent a letter to the Federal Reserve and the Office of the Comptroller of the Currency ("OCC") urging the regulators to strengthen standards for independent consultants used by banks and regulators. Brown, who earlier this year chaired a hearing of the Senate Banking Subcommittee on Financial Institutions and Consumer Protection examining the role of these independent advisers, told regulators that "without written guidelines and transparent processes, it is impossible to ensure the integrity of a system that relies upon consultants paid by banks to report on their regulatory compliances." Brown requested the Fed and OCC "act immediately" to create a set of written standards similar to those used by the New York Superintendent of Financial Services.

Senate Banking Sets Hearing Date for FHFA, SEC Nominees
On June 27th, the Senate Banking Committee will meet to consider the nominations of Representative Mel Watt to be Director of the Federal Housing Finance Agency and Kara Stein and Michael Piwowar to serve on the SEC. Other administration nominees to be vetted at the hearing include, Jason Furman to be the Chairman of the Council of Economic Advisers and Richard Metsger to serve on the National Credit Union Administration Board. In making the announcement Chairman Johnson indicated that votes on the nominees will occur at a later date.

Senate Finance Releases Tax Reform Paper on Non-Income Taxes
On June 20th, the Senate Finance Committee released its tenth and final report discussing tax reform policy options, focusing on non-income taxes, including employment taxes, wealth

transfer taxes, and excise taxes. The paper considers whether these taxes help perpetuate economic disparities and whether they're more efficient than other taxes in promoting economic growth. The Committee also examines reform options such as eliminating payroll taxes for older Americans, reducing the amount of social security benefits that are taxable, enacting a consumption tax, and lowering the rate of social security taxes on wages below the camp, among others. The release came after the last closed door session of the Senate Finance Committee and shortly after Chairman Baucus and House Ways and Means Committee Chairman Dave Camp announced that they would hold a series of meetings around the country to continue to build support for comprehensive tax reform.

House of Representatives

House Financial Services Committee Approves Four Dodd-Frank Technical Corrections Bills

On June 19th, the House Financial Services Committee approved four pieces of legislation that would modify portions of the Dodd-Frank financial reforms. The bills include:

- The Burdensome Data Collection Relief Act (H.R. 1135) was approved in a 36 to 21 vote and would repeal requirements that publically traded companies disclose executive compensation to the SEC;
- The Audit Integrity and Job Protection Act (H.R. 1564) was approved 52 to zero and would prevent the Public Company Accounting Oversight Board from requiring publicly traded companies to use specific auditors or mandate rotation of auditors;
- The Small Business Capital Access and Job Preservation Act (H.R. 1105) was approved in a 37 to 18 vote and would exempt private equity fund advisers from registering with the SEC if the fund has not borrowed or has principal which exceeds twice its capital commitments.
- The Retail Investor Protection Act (H.R. 2374) was approved 44 to 13 and would prohibit the Labor Secretary from issuing a fiduciary rule until the SEC issued its fiduciary rule on broker-dealer conduct.

Not surprisingly, Chairman of the SEC Mary Jo White expressed her concerns with H.R. 1105 and H.R. 2374. White noted in a letter to the leadership of the Committee that private equity fund advisers represent a large portion of the financial market and said "our markets would not be well-served" by decreasing the SEC's authority. Similarly, White told lawmakers that the fiduciary standard bill would add additional restrictions on the SEC which would hinder the agency from finalizing rules, although her concerns may have primarily stemmed from language that was subsequently removed from the bill via an amendment offered by Patrick Murphy (D-FL).

House to Vote on CFTC Budget as part of Ag Appropriations Bill

On June 20th, House Majority Leader Eric Cantor (R-VA) announced that the House is scheduled to consider an Agriculture appropriations bill next this coming week. The bill, approved by the House Appropriations Committee two weeks ago, would set the CFTC's FY2014 budget at $194.6 million; significantly below the White House's budget request of $315 million but on par with sequester funding levels. The bill also includes provisions directing the CFTC and SEC to jointly issue cross-border derivative rules and directs the CFTC to create an implementation schedule and cost-benefit analysis for certain new regulations, including rules related to cross-border derivatives and position limits.

House Financial Services Subcommittee Scrutinizes CFPB Budget

On June 18th, the House Financial Services Committee Subcommittee on Oversight and Investigations held an oversight hearing to examine CFPB's budget. While the Bureau's Chief Financial Officer Stephen Agostini testified at the hearing, Ranking Member of the

Subcommittee Representative Al Green (D-TX) and Full Committee Ranking Member Maxine Waters (D-CA) both criticized their Republican colleagues for preventing the Director Cordray from testifying at the hearing. In lieu of Director Cordray, Agostini briefed lawmakers on the Bureau's FY2013 and FY2014 budgets which will support "ongoing operations and new investments in human capital, technology and facilities, as well as consumer research and financial education activities" and reflect "continued growth in staff and new investments in technology, data and equipment." Subcommittee Chairman Patrick McHenry (R-NC) reiterated Republican concerns with the budgetary structure of the Bureau, saying because there is a single Director and the budget is made up of transfers from the Federal Reserve's budget, it is "no surprise that the Bureau has operated with less transparency and less concern for fiscal discipline than is appropriate for a steward of taxpayer funds."

House Financial Services Subcommittee Examines CFPB Rules' Impact on Home Ownership
On June 18th, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit met to consider how the CFPB's ability-to-repay and QM rules could affect consumer access to credit. Most witnesses argued that the two rules would limit the availability of credit to credit-challenged communities and keep banks from lending to non-QM eligible borrowers. Chairman Shelly Moore Capito (R-WV) emphasized that the rules ignore relationship-based decision making, which could make lending more difficult for banks operating in rural and underbanked communities. Witnesses included: Charles Vice, from the Conference of State Bank Supervisors; James Gardill, Chairman of WesBanco on behalf of the American Bankers Association; Jerry Reed, on behalf of the Credit Union National Association; Debra Still, Chairman of the Mortgage Bankers Association; Gary Thomas, President of the National Association of Realtors; and Michael Calhoun, President of the Center for Responsible Lending.

House Democrats Urge DOL to Avoid a Narrow Definition of Fiduciary
On June 14th, 32 House Democrats wrote to the Department of Labor (DOL) with fears about the pre-proposed fiduciary rule. The letter, which cites concerns with continued access to professional financial advisers, especially in minority communities, requests that Acting Labor Secretary Seth Harris avoid issuing a "restrictive" definition of a fiduciary. The letter also urges DOL to coordinate its efforts with the SEC to "avoid uncertainty and disruptions in the marketplace." Notably, Ranking Member of the House Financial Services Committee Maxine Waters (D-CA) signed the letter.

Waters Warns Administration Over Including Financial Regulations in EU Trade Talks
On June 18th, Ranking Member of the Financial Services Committee Maxine Waters (D-CA) wrote to President Obama cautioning that it would be a "serious error" if the Administration were to include financial regulatory issues in trade talks with the EU. Waters wrote that Transatlantic Trade and Investment Partnership negotiations should not be allowed to conflict with the ongoing implementation of Dodd-Frank and international reforms.

<u>Executive Branch</u>

Federal Reserve

Fed Indication that QE Could Slow Down and End by Mid-2014 Causes Market Drop
On June 19th, the Federal Reserve announced that, though for the time being it will continue its monthly bond buying, it will begin to reduce purchases later in 2013 and end the accommodative monetary policy by mid-2014. While for now purchases will continue at $85 billion per month with interest rates remaining low, Bernanke, speaking after the Federal Open Markets Committee meeting said that "if the incoming data are broadly consistent with this forecast, the committee currently anticipates that it would be appropriate to moderate the monthly pace of purchases later this year." Bernanke's comments caused the U.S. stock market to fall dramatically

the following day, with the Dow Jones down 353.87 points, or 2.3 percent at close on top of a 200 point dip immediately following Bernanke's comments. Likewise, the Nasdaq was down 78.56 points, or 2.3 percent on June 20th and the S&P 500 index was down 40.73 points, or 2.5 percent.

While Bernanke was in the news a significant amount this week, he declined to address speculation about his future at the Federal Reserve. However, in a Charlie Rose interview broadcast early last week, President Obama noted that that Bernanke has already held the position much longer than he intended, which was widely interpreted to mean that the President intends to nominate someone else to the Fed when Bernanke's term is up in June of next year. In response to questions following the President's remarks, Bernanke told the press that he will focus on monetary policy issues and would not discuss his personal plans.

Fed, FDIC Mulling Higher Leverage Ratios for Large Banks
Last week, Bloomberg reported that the Fed and FDIC are considering increasing leverage ratio requirements for large banks from 3 percent to 6 percent of total assets. The 3 percent ratio was agreed to as part of Basel III; however, at the request of FDIC Vice Chairman Hoenig, regulators are considering doubling the requirement. Still, the Fed has expressed concerns that the proposal would not put enough importance on risk weighting. The Basel Committee has also increased minimum capital requirements to put additional emphasis on risk weighted assets, with the largest institutions needing to have equity equal to 8 percent to 9.5 percent of those assets by 2019. Though the Fed may be hesitant, Senators David Vitter (R-LA) and Sherrod Brown (D-OH) have introduced legislation that would set leverage ratios at 15 percent and Fed Governor Daniel Tarullo has repeatedly called for higher capital requirements.

SEC

SEC Will Move Away From "Neither Admit Nor Deny" Settlements
On June 17th, the SEC sent an internal memo describing a policy change in how it handles the admittance of fault in settling enforcement cases. Previously, the SEC had adhered to a 'neither admit nor deny' policy in which firms and individuals can settle charges without admitting fault, a policy which received criticism as an inadequate deterrent to wrongdoing. While the policy change marks a shift at the SEC, Chairman White said that most cases will still be made using the 'neither admit or deny' standard and decisions on how to handle fault in settlements will be made on a "case-by-case" basis, with the agency targeting "egregious intentional misconduct" and significant investor harm.

FDIC

FDIC Announces Several Senior Staff Changes
On June 17th, the FDIC announced that James Wigand, Director of the Office of Complex Financial Institutions (OCFI), plans to retire. Filling Wigand's shoes will be Arthur J. Murton, who is currently Director of the Division of Insurance and Research (DIR). As Director of DIR Murton was charged with assessing economic and financial sector risks to the banking industry, directing policy-oriented research, and developing and overseeing risk-based deposit insurance pricing. Diane Ellis, current Deputy Director for Financial Risk Management and Research in DIR will become Director of that group. The appointments will be effective July 28th, with Wigand serving as a Senior Advisor through September 30, 2013.

CFPB

Cordray Defends QM Rule, Saying Cost Differences Will Not be Great
On June 19th, CFPB Director Richard Cordray defended the Bureau's Qualified Mortgage (QM) rule, saying that he expects the difference in interest costs between QM and non-QM mortgage

loans to be no more than 10 basis points. Cordray agreed with recent analysis from Moody's Analytics suggesting that non-QM loans will only make up about $20 billion of the $1.25 trillion mortgage market. In addition, Cordray predicted that potential additional revisions to the new mortgage rules would not delay implementation, and institutions remain expected to begin complying with the rules when they come into effect in January 2014.

Chamber Letter Questions CFPB's Data Collection Authority
In a June 19th letter sent to Director Cordray, the Chamber of Commerce outlined concerns that the CFPB could be violating the Dodd-Frank law which requires the Bureau to issue an order or rule before collecting data from consumers. The letter explains that the Bureau has done neither and notes that it is also unclear whether the CFPB has put in place safeguards against collecting personally identifiable information. The CFPB has previously addressed these concerns with Ranking Member of the Banking Committee Mike Crapo (R-ID), who requested additional details on information collected during supervision. A Bureau spokesperson responded the Chamber's letter, saying "existing data-gathering activities are authorized by the Dodd-Frank Act and do not require additional rulemaking." The concern about data collection was made more relevant by the announcement of the Supreme Court's ruling in American Express vs. Italian Colors Restaurant, where the Court upheld the right for pre-dispute arbitration clauses in commercial financial services agreements, because the CFPB has proposed conducting a nationwide telephone survey of 1,000 credit card consumers in order to learn more about consumers' knowledge and perceptions of arbitration agreements, potentially a precursor to a rulemaking that would prohibit mandatory arbitration agreements.

Payday Lending Group Challenges Methodology of CFPB Study
On June 21st, the Community Financial Services Association of America, a payday lending organization, released a petition requesting the CFPB retract its study of their industry. The Bureau's study posited that payday and deposit advance loans are characterized by loose lending standards, high costs, and risky loan structures may contribute to the sustained use and indebtedness. CFSA has challenged data used by the Bureau, saying that the errors were so egregious that "that corrections alone are inadequate, and withdrawal of the white paper is the only appropriate remedy."

CFTC

Chilton Calls for Clear Standard for Cross-Border "Principal Place of Business"
In a speech on June 18th, CFTC Commissioner Bart Chilton addressed issues related to the term "principal place of business" associated with cross-border derivatives rules. In a speech earlier in the month, Chairman Gensler noted that, for cross-border trades, Dodd-Frank rules cover hedge funds and other collective investment vehicles that operate offshore but that are majority-owned by U.S. individuals or that are primarily based in this the U.S. Chilton said that the Commission needs to give a "clear interpretation" of what it means to have a "principal place of business" in the context of this rule, such as where a firm's head office is and where executives and trading managers are located., saying a P.O. Box will not "cut it as a principal place of business." In addition, Chilton reiterated his desire for cross-border rules to be phased in.

GAO

GAO Asks IRS to Issue Informal Guidance on Tax Compliance Related to Virtual Transactions
On June 17th, the GAO released a report examining tax compliance issues posed by virtual economies and currencies, such as Bitcoin. The report, originally commissioned by the Senate Finance Committee, found that virtual systems represent a real tax compliance risk because taxpayers can exchange virtual goods or currencies for real-world items in transactions that may have tax implications. However, as most taxpayers are unaware when, and to what extent, they

have tax liabilities related to virtual transactions, the GAO report recommends the IRS issue an informal guidance on the associated reporting requirements.

Upcoming Hearings

On Tuesday, June 25th at 10am in 538 Dirksen, the Senate Banking, Housing and Urban Affairs Committee will hold a hearing titled "Private Student Loans: Regulatory Perspectives."

On Wednesday, June 26th at 10am, in G-50 Dirksen, the Joint Economic Committee will hold a hearing titled "Reducing Unnecessary and Costly Red Tape through Smarter Regulations."

On Wednesday, June 26th at 10am in 2128 Rayburn, the House Financial Services Committee will hold a hearing on "Too Big to Fail" banks and their treatment from the Federal Reserve Bank.

On Wednesday, June 26th at 2pm in 2128 Rayburn, the Housing and Insurance Subcommittee of House Financial Services Committee will hold a hearing to examine the Department of Housing and Urban Development's Moving-to-Work program.

* * *

Click here to view ML Strategies professionals.
