



ML Strategies Update

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Financial Services Legislative and Regulatory Update

Leading the Past Week

Members rushed out of town at the end of last week for a two-week district-work period, but not before approving a \$982 billion continuing resolution (CR), ensuring that the government will stay open through the end of the fiscal year (September 30th). The CR, which included some modifications designed to help certain federal agencies deal with the sequester, passed the Senate by a vote of 73 to 26 on Wednesday and then was quickly approved by the House by a 318 to 109 vote. Both sides were also able to pass competing visions of their respective budgets before leaving town. The House Republicans passed its budget on near party-line vote after a little more than 4 hours of debate, while the Senate also approved its budget on a near party-line but only after dispensing with a “vote-a-rama” that lasted until about 5am on Saturday.

Despite the drama in the Senate, it is a welcome relief to see Congress functioning – especially when contrasted to developments occurring in [Cyprus](#). While the threat of Eurozone contagion once again rearing its ugly head, it seemed to have little “bite” as the stock market held its value for the week, probably in large part to the news coming out of the Fed’s Federal Open Markets Committee, which announced it will continue its highly accommodative monetary policy. Because the Fed’s QE policy cannot go on indefinitely, it is reassuring to see that both the House and Senate banking committees are seriously examining housing finance reform with hearings on current federal housing policy and potential paths forward for reforming the FHA, as well as Fannie and Freddie took place this past week.

Legislative Branch

Senate

Senate Banking Committee Advanced Cordray, White Nominations

On March 19th, the Senate Banking Committee voted on the nominations of Richard Cordray to continue to serve as Director of the CFPB and Mary Jo White to become the Chair of the SEC. For Cordray, the Committee voted along party lines, 12 to 10 to advance the nomination. Conversely, the committee overwhelmingly approved White’s nomination, voting 21 to 1 in

favor of her. Notably, Senator Sherrod Brown (D-OH) was the only member of the Committee to oppose White's nomination, citing concerns that her background as a white collar defense attorney representing large banks could cloud her ability to "fight every day for taxpayers, Main Street investors, and retirees." Senator Elizabeth Warren (D-MA), though she voted for White, also voiced concerns over White's "lack of a track record on regulatory issues." Majority Leader Harry Reid (D-NV) has announced that the Senate will vote on both nominations after the Easter holiday. However, with heavy Republican opposition based in objections to the CFPB's funding, leadership structure and the nature of Cordray's earlier recess appointment, getting his nomination through the full Senate remains a challenge.

Banking Committee Examines Bipartisan Solutions for Housing Reform

On March 19th, following the vote on Cordray and White's nominations, the Banking Committee held a hearing to consider bipartisan solutions for housing finance reform. At the hearing, Chairman Johnson (D-SD) pledged to work with Ranking Member Crapo (R-ID) throughout a series of hearings before pursuing a "consensus" bill. Crapo echoed Johnson's statement, saying though the two parties may not agree "on what should be the final product today, this should not preclude us from beginning negotiations, or even jointly identifying the problems in today's market." The Senate hearing occurred at the same time as FHFA Acting Director Edward DeMarco appeared before the House (see more on this below), however, with rumors surfacing that Representative Mel Watt (D-CA) is among those being considered to replace DeMarco as the head of the FHFA, Senator Bob Corker (R-TN) used the hearing to make it clear that Congressman Watt, like any other potential nominee to replace DeMarco is likely to face significant difficulty in having their nomination move through the Senate.

Non-Binding Amendments of Note from the Budget Resolution's "Vote-a-Rama"

During the debate on the budget resolution the Senate went into what is known as "Vote-a-Rama," a rolling series of votes that ended up going to about 5am on the next day. Although these amendments are non-binding in terms of force of law, they are generally seen as a barometer of where the Senate stands on an issue. Among the hundreds of amendments that were disposed of, the following are a few that might be of the most interest to the readership, but a full list can be found [here](#):

- By a vote of 99-0 an amendment by David Vitter (R-LA) and Sherrod Brown (D-OH) that urges Congress to deal with the perception of "too big to fail" and any subsidies that large banks receive because of that perception.
- Approved by voice vote, an amendment by Senator Merkley (D-OR) urging Congress to "facilitate" the ability to bring criminal cases against any financial institution no matter how large.
- Adopted by voice vote, a proposal from Senate Banking Committee Chairman Tim Johnson and ranking member Mike Crapo that would create a budget point of order, which would take 60 votes to override, against any attempt to use mortgage guarantee fees charged by Fannie Mae and Freddie Mac to offset the cost of new spending;
- Also approved by voice vote, was an amendment by Senator Boozman (R-AR) that sought to address the "disproportionate" regulatory burdens facing community bank, and;
- The Senate rejected, by a vote of 47-52, an amendment by Senator Shelby (R-AL) that would require financial regulators to conduct a cost-benefit analysis on all proposed rules

Levin Writes to Holder Asking for Too Big to Jail Clarifications

In a March 13th letter to Attorney General Eric Holder, Senator Carl Levin (D-MI), Chairman of the Senate Permanent Subcommittee on Investigations, joined the calls of a number of Senators in voicing his concerns about Holder's recent too big to jail comments. Levin criticized the comments, saying that they "essentially [tell] large financial institutions that they can violate US criminal laws with impunity." The letter also asked Holder to answer a series of questions about the legal basis for "too big to jail" and how the Justice Department will decide when they cannot prosecute an institution. Senators Mark Warner (D-VA) and Bob Corker (R-TN) sent a [letter](#) to Holder earlier in the week on this issue.

Senate Banking Subcommittee Examines NARAB Legislation

On March 19th, the Senate Banking Subcommittee on Securities, Insurance, and Investment held a hearing to discuss streamlining regulation of insurance markets through the creation of a National Association of Registered Agents and Brokers. Earlier in March, Senators John Tester (D-MT) and Mike Johanns (R-NE) introduced [legislation](#) to create the National Association of Registered Agents and Brokers (NARAB) to be a non-profit, independent board comprised of state insurance commissioners and insurance market representatives. Witnesses included Monica Lindeen, representing the National Association of Insurance Commissioners; Jon Jensen, President of Correll Insurance Group; Scott Trefholz, on behalf of the Council of Insurance Agents and Brokers; and Baird Webel, Specialist at the Congressional Research Service. Witnesses and lawmakers generally lauded the proposal, saying that it would drastically reduce burdensome licensing requirements and increase competition for brokers while not treading on any state laws.

House of Representatives

House Financial Services Considers Sustainable Solutions to Housing Finance Reform

On March 19th, the House Financial Services Committee heard from Acting Director of the Federal Housing Finance Agency (FHFA) Edward DeMarco in a hearing titled "Sustainable Housing Finance: An Update from the Federal Housing Finance Agency on the GSE Conservatorships." DeMarco told lawmakers that the FHFA has struggled to improve the housing market and wind down Fannie Mae and Freddie Mac due to a lack of direction from Congress and the Administration and urged lawmakers to move forward with a legislative solution to reduce the mortgage market's reliance on the taxpayer. DeMarco also updated the Committee on the FHFA's efforts to persuade borrowers to refinance their Fannie or Freddie mortgage through the Home Affordable Refinance Program (HARP). Chairman Hensarling (R-TX) pledged that the Committee would vote on legislation to "once and for all abolish Fannie and Freddie," however he did not indicate when the legislation would be introduced or when the vote would occur. Instead, his only indication of a timeline was that this would be the last time DeMarco testified in the Committee before a vote on GSE reform. During the hearing, Ranking Member Waters (D-CA) remarked on the cost to taxpayers of doing nothing, but noted concern that she has not yet seen a proposal to reform GSEs.

House Agriculture Approves a Series of Swaps Legislation

On March 20th, the House Agriculture Committee marked up seven pieces of legislation to address the treatment and regulation of swaps. The bills include: [H.R. 634](#), the Business Risk Mitigation and Price Stabilization Act of 2013; [H.R. 677](#), the Inter-Affiliate Swap Clarification Act; [H.R. 742](#), the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013; [H.R. 992](#), the Swaps Regulatory Improvement Act; [H.R. 1003](#), To improve consideration by the Commodity Futures Trading Commission of the costs and benefits of its regulations and

orders; [H.R. 1038](#), the Public Power Risk Management Act of 2013; and [H.R. 1256](#), the Swap Jurisdiction Certainty Act. Following the hearing, CFTC Chairman Gary Gensler cautioned against the legislation, saying the modifications would be a “real reversal” which could “blow a hole in the bottom of Dodd-Frank’s derivatives title.” Specifically, Gensler said the bills which change CFTC enforcement of cross-border transactions and derivatives deals between affiliates would be harmful. In addition, Colin Peterson (D-MN) the ranking member of the committee also expressed his concerns about moving these bills, especially in light of the revelations gleaned from JP Morgan report that was released last week.

H.R. 1256 is the product of bipartisan cooperation of Members on the House Financial Services and Agriculture Committees and would require the CFTC and SEC to release a joint rulemaking governing the treatment of cross-border transactions. The CFTC has already proposed cross-border guidance while the SEC is still in the rulemaking process. Lawmakers have been critical of the agencies taking different approaches to cross-border swaps provisions in the Dodd-Frank Act and the bill is expected to have bipartisan support. The Committee also approved H.R. 992, which would modify Dodd-Frank swap “push-out” requirements. Despite opposition from some Democrats, including the ranking member, the legislation moved out of Committee in a 31 to 14 vote. The bill limits Section 716 of the Dodd-Frank Act, which would require banks to push out derivatives from their federally insured divisions to different affiliates, by ensuring that the requirement would not apply to equity or commodity swaps.

Financial Services Subcommittee Examines Impact of Regulation on Community Banks

On March 20th, the House Financial Services Financial Institutions and Consumer Credit Subcommittee held a hearing on the state of community banking and regulatory treatment of small banks. The focus of the hearing was to determine how the FDIC’s rules and regulations affect community banks and included reports from the Office of Inspector General and the GAO on the FDIC’s treatment of community banks in the wake of the financial crisis.

During the hearing, Lawmakers were largely concerned with community banks’ ability to conduct commercial, construction and mortgage lending. Specifically, several Members expressed concern about how the Basel III rules would further affect community banks ability to lend. In addition, Representatives expressed concern about how regulations, and the sum costs of these regulations, affect community banks’ viability. Chairman Capito said it is crucial to ensure that the cost of understanding and complying with regulations does not outweigh the benefits. Witness from the FDIC’s Division of Risk Management Supervision, Doreen Eberly, said the FDIC has heard concerns in this area and is working to help community banks understand regulations and to give community banks additional insight into upcoming regulations.

Representative Maloney Introduces Overdraft Protection Legislation

On March 20th, Representative Carolyn Maloney (D-NY) introduced legislation to protect consumers against overdraft fees and regulate banks’ overdraft protection plans. The Overdraft Protection Act would: require banks to obtain a consumer’s affirmative opt-in to overdraft plans with clear disclosure of coverage and fees; require overdraft fees be “reasonable and proportional” to the cost of the transaction; limit the quantity of fees that can be charged to one per month and six per year; improve notice to consumers when an overdraft is incurred; and ban the manipulation of transaction posting order in a way that maximizes fees paid to banks. Currently, the legislation has 44 Democratic cosponsors.

Executive Branch

Federal Reserve

Fed to Continue Accommodative Monetary Policy

On March 20th, Chairman of the Federal Reserve Ben Bernanke [announced](#) the results of the two-day Federal Open Market Committee (FOMC) meeting. The Fed will continue its accommodative monetary policies of \$40 billion in mortgage-backed securities purchases a month and \$45 billion in long-term Treasuries a month to “support a stronger economic recovery and to help ensure that inflation, over time, is at the rate most consistent with its dual mandate.” The FOMC also reaffirmed that it will keep the federal funds rate close to zero “as long as” the unemployment rate remains above 6.5 percent. The FOMC also projected that inflation over the medium-term will likely run at or below its 2 percent target. Republicans continue to be skeptical of the Fed’s prolonged stimulus efforts, with Chairman Jeb Hensarling (R-TX) saying “for what little, if any, benefit the Fed’s current strategy creates, the risks and dangers it poses are considerable.”

CFPB

CFPB Targeting Auto Lenders for Potential Unintended Loan Discrimination

On March 21st, the CFPB released a [bulletin](#) indicating that it was looking into whether certain lenders that offer auto loans are responsible for unlawful, discriminatory pricing. Auto dealers originating the loans are exempt from oversight by the Bureau; however, the agency appears to be putting the pressure on banks and lenders who provide financing to dealers, as well as those that purchase and securitize the loans. Notably, the markups are not illegal so long as they are applied consistently and evenly by the dealer. Thus, questions exist as to how the CFPB will determine if a disparate impact has occurred because, unlike mortgage loans, auto finance does not require the collection of information on race, gender or ethnicity, thus limiting the pool of necessary data. However, based on a speech before the National Community Reinvestment Coalition, it may be that the CFPB isn’t interested in using fact, as Director Cordray said that “such discrimination may not be consciously intended, but for consumers who are disadvantaged by these policies, the result is the same.”

CFPB Finalizes Revision to Credit Card Rules

Late on Friday afternoon, the CFPB announced that it had [finalized](#) a change to a Federal Reserve credit card rule. In doing so, the CFPB modified the credit card rule so that the limitation on credit card fees applies only during the first year that the account is open. The rule was made in light of a federal court case that had blocked an earlier rule from taking effect.

Upcoming Hearings

The Senate and House will be in Recess through April 5th

On Thursday, March 28th at 2pm, in Sioux Falls, South Dakota, the Senate Banking, Housing, and Urban Affairs Committee will hold a hearing titled “Improving Transportation Options in Rural States and Tribal Areas Under MAP-21.”

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