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September 16, 2013

Financial Services Legislative and Regulatory Update

Leading the Past Week

Congress returned this week from its August Recess period and hit the ground running, with the situation in Syria clouding over everything. Adding to the tension caused by this international crisis was the fact that at once again, and with only a couple of weeks before the end of the Fiscal Year, we find ourselves facing significant uncertainty about how, or whether, the Federal government will continue to operate beyond the end of the month. Adding further to this drama is the potential intertwining of the funding of the federal government with the quickly approaching due date to raise the debt limit and whether the forces that caused the Republican leadership to pull its CR this week, will instead focus on tying their issues to the need to raise the debt ceiling next month. While it is unclear exactly when the government's extraordinary measures will run out, earlier this week the Bipartisan Policy Center estimated that the Treasury Department will run out of borrowing capacity sometime between October 18th and November 5th.

Yesterday marked the five-year anniversary of the collapse of Lehman Brothers, and so it was in the shadow of that historic occasion that last week the Senate Banking Committee initiated the first, of what will likely be multiple hearings, aimed at bringing together a comprehensive housing finance system overhaul. While Chairman Tim Johnson (D-SD) has indicated his hope that the Committee will have a proposal completed by the end of the year, it was an noted by many that in the House, its version of reform, the Protecting American Taxpayers and Homeowners (PATH) Act (H.R. 2767), which has already cleared the Financial Services Committee was not included in Majority Leader Cantor's updated legislative schedule for the fall.

Yesterday also saw the, somewhat, unexpected announcement that Larry Summers had withdrawn his name for consideration for Chairman of the Federal Reserve. For more on this, please see below.

ML Strategies took a deeper look at housing reform, the debt limit, and other issues in our Post-Labor Day Fall Preview, (linked here if you haven't seen it yet). Finally, in honor of Twitter apparently using the confidential IPO feature of the JOBS Act, we would be remiss if we didn't mention you should sign up to follow us at @MLSFinRegUpdate.

Legislative Branch

Senate

Senate Banking Starts Process for Reform of Mortgage Market - Hopes to Have Proposal by the End of Year

On September 12th, the Senate Banking, Housing, and Urban Affairs Committee held the first, of what will be multiple hearings to lay the groundwork for housing finance reform. Speaking at the hearing, Chairman Tim Johnson (D-SD) said he hopes that the Committee will be able to develop a bipartisan bill to overhaul the mortgage market by the end of 2013 and plans to hold more hearings to consider the matter through the fall. Ranking Member of the Committee Mike Crapo (R-ID) pointed to the recent passage of the Protecting American Taxpayers and Homeowners Act (PATH) of 2013 and a recent speech by the President in favor of doing away with GSEs as evidence that prospects for overhaul are positive. At the moment, a proposal put forth by Senators Bob Corker (R-TN) and Mark Warner (D-VA) is seen as the Chamber's best chance at proceeding with reforms by the end of the year. S. 1217, the Housing Finance Reform and Taxpayer Protection Act of 2013, would create the Federal Mortgage Insurance Company (FMIC) that would provide catastrophic insurance for mortgage backed securities issued by private entities.

During the hearing, Mark Zandi of Moody's Analytics, told lawmakers that a new mortgage finance system would ideally accommodate as much private capital as possible, including mortgage bond guarantors, private mortgage insurance companies, and capital markets. Other witnesses, including Julia Gordon, Director of Housing Finance and Policy with the Center for American Progress, said any proposal must preserve the to-be-announced (TBA) market with a more limited government role. However, witness Jerome Liehard, CEO of Suntrust, cautioned lawmakers, expressing concerns that regional banks may be unable to compete against national banks in this revamped system and urging the Senate to ensure small- and mid-size banks have the same access to mortgage securitization. Senator Corker and other Committee members agreed with these concerns and assured Liehard that lawmakers are working to ensure that "smaller institutions have a lot of access" to the secondary mortgage market.

Senator Crapo Continues to Hammer CFPB on Data Collection

On September 9th, Ranking Member of the Senate Banking Committee Mike Crapo (R-ID) published a column on his website, reiterating his concerns over the size and scope of the CFPB's data collection activities, as well as the power the Dodd-Frank Act gives to the director. Saying that the director has "unchecked powers unlike any other federal official." Crapo also reiterated his commitment to modifying the CFPB's structure away from a single director and moving to a board, in addition to placing the Bureau under the federal appropriations process and increasing the ability of prudential regulators to influence CFPB rulemakings, as necessary improvements to the Bureau's structure. Despite the Ranking Member's strong commitment to this cause, it is unlikely, now that Cordray has been confirmed, that any changes beyond the ones agreed to in the deal to secure his confirmation (i.e., separate AG, testimony before appropriations committee etc) will be enacted in this Congress.

Senators Pressure FHA to Revise Foreclosure Prevention Qualifications

Following a letter to the FHA from Senate Banking Committee Chairman Tim Johnson (D-SD) and Senator Elizabeth Warren (D-MA), the FHA announced it will issue a letter to clarify rules for foreclosure prevention. Johnson and Warren had requested the FHA clarify Mortgage Letter 2012-22

(Revisions to FHA's Loss Mitigation Home Retention Options) in order to eliminate the requirement that borrowers must be "currently employed" in order to qualify for loan modifications. The Senators said that there is "no good justification" for those whose income comes from somewhere other than employment, such as seniors receiving Social Security benefits. In a statement, the FHA said that the agency is "well aware that there was confusion regarding the treatment of income sources for borrowers seeking loss mitigation" and will issue a new letter to allow borrowers with other sources of income to qualify.

House of Representatives

House Passes Bill to Move to Multistate Licenses for Insurance Agents and Brokers

On September 10th, the House passed the National Association of Registered Agents and Brokers Reform Act (H.R. 1155) in a vote of 397 to 6. The bill would establish a national licensing system for state-regulated insurance agents and brokers. The House has approved similar legislation in the past two Congresses and the Senate Banking Committee passed its version earlier in the year. (S. 534).The Independent Insurance Agents & Brokers of America and the Council of Insurance Agents & Brokers both praised the House for advancing the bill which would allow them to operate in multiple states with a single license.

Cordray Appears Before House Financial Services Committee

On September 12th, the House Financial Services Committee met to consider testimony from Director of the CFPB Richard Cordray in the Bureau's semi-annual report to Congress. It was the first time that Cordray had appeared before Chairman Hensarling's committee, but it didn't stop both Democratic and Republican lawmakers from asking him some tough questions. As would be expected the questions primarily focused on the new QM rule and the effect the mortgage reforms will have on small community banks. For example, Representative Capito (R-WV) and other Republicans on the Committee suggested implementation of the QM rule should be delayed for at least one year (the PATH Act would delay implementation) so that community banks can come into compliance. In response to these concerns, Director Cordray highlighted the safe harbor and portfolio lending provisions that will help community banks with under $2 billion in assets. In addition, panel Republicans were heavily focused on the Bureau's data collection efforts and drew parallels to the recent scandals with the National Security Agency (NSA) and the IRS. Mr. Cordray didn't agree with these analogies and attempted to explain that the CFPB has three separate collection categories: consumer complaints, institutional enforcement, and market monitoring.

House Financial Services Subcommittee Probes HUD Spending

On September 10th, the House Financial Services Subcommittee on Oversight and Investigations questioned the Department of Housing and Urban Development (HUD) Inspector General David Montoya on waste, fraud, and abuse at the agency. The Subcommittee examined the most recent IG report from HUD, which found more than $770 million in disputed costs and identified $739.5 million HUD funds which could have been put to better use. Chairman of the Subcommittee Patrick McHenry (R-NC) identified the agency's Community Development Block Program (CDBG), which includes disaster relief programs, as a particularly troubling source of fraud, waste, and lack of oversight. McHenry said that, although CDBG funds are intended for low- and moderate-income persons, "CDBG funds often end up being used for parks, pools, street signs, and community centers, diverting dollars from those communities with the greatest need, particularly housing."

House Financial Services Committee Examines the Fed on the Centennial of its Founding

On September 11th, the House Financial Services Subcommittee on Monetary Policy and Trade met to examine the Federal Reserve's one-hundred year history to determine what has worked in monetary policy, what has not, and how well the Federal Reserve has managed its lender of last resort function. Witnesses included: Dr. Allan H. Meltzer, Professor of Political Economy with Carnegie Mellon University; Dr. Marvin Goodfriend, Professor of Economics with Carnegie Mellon University; Alex J. Pollock, Resident Fellow with the American Enterprise Institute; Dr. Lawrence H. White, Professor at George Mason University; Dr. Joseph E. Gagnon, Senior Fellow with the Peterson Institute for International Economics; and Dr. Josh Bivens, Research and Policy Director with the Economic Policy Institute.

Issa Probes SEC on Slow Progress with Interactive Data
On September 10th, Chairman of the House Oversight and Government Reform Committee Darrell Issa (R-CA) wrote to SEC Chairman Mary Jo White requesting she explain why the agency has been so slow to implement the Interactive Data to Improve Financial Reporting Rule. The rule would require U.S. public issuers to submit financial statements in a structured data format, moving away from the current, "text only" filings. Issa charged that the SEC's progress has been "stagnant" and recent data filings contain "significant errors." Issa requested a briefing and additional documents showing how much the SEC has spent to purchase databases by September 23rd.

House Oversight Committee Questions Gensler's Use of Personal Email
On September 10th, Chairman of the CFTC Gary Gensler testified before the House Overnight and Government Reform Committee in a hearing to examine ways to prevent violations of Federal transparency law. Gensler, who was joined several former members of the Obama Administration, gave testimony on his use of a personal email account on nights and weekends. Gensler's use of his personal email has been criticized, especially as it relates to the communications surround the collapse of MF Global.

<u>Executive Branch</u>
Federal Reserve
Summers withdraws from Consideration for Next Fed Chair
Yesterday afternoon the White House released a statement indicating that President Obama had accepted Larry Summers decision to withdraw his name from consideration for Federal Reserve Board Chairman. Opposition Summers had continued to grow. Late last week, Senator Jon Tester (D-MT) publicly said he would vote against summers, a vote that would likely be joined by at least a few of his colleagues on the committee including , Senators Sherrod Brown (D-OH), Elizabeth Warren (D-MA), Jon Tester (D-MT), and Jeff Merkley (D-OR). Summers decision may not even clear the President to choose anyone other than Janet Yellen, as some key democratic constituencies have made it clear that nominating a woman, for example, even someone as qualified as Lael Brainard, to serve on the Federal Reserve Board of Governors, would not make up for passing over Janet Yellen. The President is expected to make his choice in the near future.

Fed Requesting Comments on Ways to Strengthen Payments Regime
On September 10th, the Financial Services Policy Committee of the Conference of Presidents of the Federal Reserve System released a paper warning district banks of increasing threats to the U.S. payment system from fraud. The paper notes that an "opportunity exists to improve speed and efficiency of payments and to maintain payment system safety in the face of escalating threats." As such, the Fed is seeking public comment regarding potential weaknesses in the payment system,

including on gaps, opportunities, and desired outcomes. The Fed will accept comments on payment systems through December 13, 2013, at fedpaymentsimprovement.org.

Fed Presidents Critique SEC Money Market Mutual Fund Proposal
On September 12th, the Presidents of 12 regional Federal Reserve banks wrote to the SEC to express concerns with portions of the agency's money market mutual fund proposal. The letter addresses the two opinions proposed by the SEC in June 2013 that would require prime funds for move from a fixed net asset value (NAV) to a floating NAV and that would slow redemptions through liquidity fees. While the Fed Presidents expressed strong support for floating the NAV, they advise the SEC that the redemption fee proposal "bears many similarities to the status quo" and could incent investors to redeem their shares.

Treasury
Treasury Committee Apparently Pursuing Mobile Payment Regulation
On September 9th, speaking at a Law Seminars International forum on mobile payments, Kate Kingberger, mobile payments specialist with the U.S. Treasury's Domestic Finance Office, said that Federal agencies are still working on how they will approach regulating mobile payments. The Treasury's Financial and Banking Information Infrastructure Committee (FBIIC) has been charged with maintaining security and consumer protections in addition to developing federal regulations. Though the FBIIC only began meeting six weeks ago, it is already working to identify risks to financial institutions which arise from mobile payments. Kingberger added that the FBIIC is working to address security concerns such as the input of information and whether hackers are coming from Wi-Fi or cell service. Still, achieving regulatory consensus may be difficult, as nineteen Federal agencies have jurisdiction over mobile payments, including the Treasury, FCC, FTC, and Fed.

FDIC
FDIC Proposes Foreign Branch Deposit Insurance Coverage Rule
On September 12th, the FDIC unanimously approved a final rule that would clarify deposits in foreign branches of U.S. banks are not insured by the FDIC. The rule is in response to a recent Consultation Paper by the United Kingdom's Prudential Regulation Authority (PRA) which would encourage large U.S. banks to change deposit agreements to make deposits dually payable in the U.K. and U.S. Absent the FDIC's rule, a staff memorandum warned that "such changes to the deposit agreements have the potential to increase significantly the exposure of the Deposit Insurance Fund ("DIF") by extending deposit insurance to these foreign deposits."

CFTC
CFTC Publishes Concept Document on High-Speed Trading
On September 9th, the CFTC published a concept release on risk controls and safeguards for high-speed trading activities. The release, which may be a precursor to a proposed rule, is designed to begin a discussion of rapid technological change in the market and provide an overview of the automatic trading landscape, including actors, potential risk, and potential responses by the CFTC. On September 12th, the Technology and Advisory Committee met to consider the release and some of the questions posed by the document, including if the CFTC should codify any current industry standards.

White House Proposes Legislation to Impose Fee on Derivatives
On September 13th, the White House submitted proposed legislative text to the Senate and House Agriculture Committees which would allow the CFTC to impose a fee on derivatives. The fee, which

would hit futures and futures and swaps options, would be set by the CFTC. End-users that use derivatives to hedge against risk would not be subject to the fee. Commissioner Bart Chilton, writing separately to the Committees, stressed support for the White House proposal, saying the language is "serious and significant" and it could save "hundreds of millions of dollars."

SEC

SEC Asking Exchanges to Identify Ways to Strengthen Market Infrastructure

In a statement on September 12th, Chairman Mary Jo White urged the nation's stock exchange executives to work to identify "concrete measures designed to address specific areas where the robustness and resilience of market systems can be improved." White's remarks occurred at an industry meeting between the SEC and Nasdaq, NYSE Euronext, BATS and other exchanges in addition to FINRA, DTCC, and the Options Clearing Corporation in response to the three-hour Nasdaq trading disruption in August. According to news reports, Euronext CEO Duncan Niederauer said after the meeting that the exchanges left the meeting with a clear "homework assignment" to collaborate over the next two months.

CFPB

Bureau Bulletin Cautions Employers on Growing Use of Payroll Cards

On September 12th, the CFPB issued a bulletin advising employers that they cannot require employees to receive wages through payroll cards. In addition, the bulletin reminds employers of some of the federal consumer protections that apply to payroll cards, including fee disclosure, access to account history, limited liability for unauthorized use, and error resolution rights. With some exceptions, the Bureau has the authority to enforce regulations governing payroll cards under the Electronic Fund Transfer Act (EFTA) and Regulation E. In a press release announcing the bulletin, the CFPB noted that it intends to use these enforcement powers to stop violations before they become systemic problems, maximize remediation to consumers, and deter future violations.

CFPB Finalizes Mortgage Rule Amendments

On September 13th, the Bureau finalized amendments and clarifications to the January 2013 mortgage rules, including the ability-to-repay rule. The modifications would: clarify what servicer activities are prohibited during the first 120 days of delinquency; outline procedures for obtaining follow-up information on loss-mitigation applications; allow servicers to offer short-term forbearance plans; clarify error resolution best practices; and facilitate rural and underserves lending, among other things. After facing tough questions from lawmakers on the House Financial Services Committee earlier in the week on the Bureau's mortgage rules, Director Cordray said the modifications would "ensure a smoother implementation process."

DOL

DOL Pushes Back Timeline for Fiduciary Rule

Speaking at a forum hosted by the Financial Services Institute, Assistant Secretary for Employee Benefits Phyllis Borzi said that the Department of Labor will not be releasing a revised fiduciary rule in October, as was planned. Borzi did not provide an updated timeline for the re-proposed rule but said that DOL continues to believe the rule is crucial to protect investors from conflicts of interest with advisors and brokers.

Upcoming Hearings

On Wednesday, September 18th at 10am, in 2128 Rayburn, the Capital Markets and Government Sponsored Enterprises Subcommittee of House Financial Services Committee will hold a hearing titled "Examining the SEC's Money Market Fund Rule Proposal."

On Wednesday, September 18th at 10:30am, in 538 Dirksen, the Housing, Transportation, and Community Development Subcommittee of Senate Banking, Housing and Urban Affairs Committee will hold a hearing titled "Recovering from Superstorm Sandy: Assessing the Progress, Continuing Needs, and Rebuilding Strategy."

On Wednesday, September 18th at 2:30pm, in 216 Hart, the Joint Economic Committee will hold a hearing titled "The Economic Costs of Debt-Ceiling Brinkmanship."

On Wednesday, September 18th at 2:30pm, in 538 Dirksen, the Economic Policy Subcommittee of Senate Banking, Housing and Urban Affairs Committee will hold a hearing titled "Implementation of The Biggert-Waters Flood Insurance Act of 2012: One Year After Enactment."

On Thursday, September 19th at 10am, in 2128 Rayburn, the House Financial Services Committee will hold a hearing on the reauthorization of the Terrorism Risk Insurance Act (TRIA).