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PERSPECTIVE

MONEY MATTERS

Financial agenda on deck at House

By Jeff Steiner and Sean Sullivan

While we are less than two weeks from President-elect Donald Trump's inauguration, the 115th Congress is already underway and Republicans in the U.S. House of Representatives have wasted no time introducing legislation to lay the groundwork for a potentially comprehensive financial reform agenda.

Last week, House Agriculture Committee Chairman Mike Conaway (R-Texas) introduced H.R. 238, the Commodity End-User Relief Act, which reauthorizes the Commodity Futures Trading Commission (CFTC). The legislation includes a number of derivatives-related amendments to the Commodity Exchange Act, some of which would impose restrictions on the CFTC and alleviate burdens on market participants that were imposed in 2010 under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

This iteration of the Commodity End-User Relief Act is similar to a previous version of the bill which was passed by the House in June 2015 (by a vote of 246-171). The bill is set to move to the House floor at lightning speed, with a vote scheduled for Thursday.

House Republicans have also focused on the Securities and Exchange Commission. Rep. Ann Wagner (R-Miss.) introduced H.R. 78, the SEC Regulatory Accountability Act, which would replace the current economic analysis conducted by the SEC with a new, heightened cost-benefit analysis framework. This bill is similar to a previous version that was introduced by former Rep. Scott Garrett last year (reported out of the House Financial Services Committee by a vote of 34 to 25) and would subject existing regulations to periodic review and require heightened analysis prior to issuing any new regulations. The SEC Regulatory Accountability Act, like the Commodity End-User Relief Act, will be considered by the House on Thursday.

Additionally, House Financial Services Committee Chairman Jeb Hensarling (R-Texas) is said to be revising the Financial CHOICE Act to reflect the current political environment. The Financial CHOICE Act was introduced by Hensarling last year and was reported out of the House Financial Services Committee, though it did not garner bipartisan support. A main component of last year's version of the Financial CHOICE Act was to create a Dodd-Frank "off-ramp" which would have allowed banks to avoid certain Dodd-Frank regulations by agreeing to hold additional capital to protect against potential losses. Market participants greeted last year's version of the bill with mixed reactions, citing concerns with the bill's repeal of certain Dodd-Frank provisions as well as concerns regarding the scope of the amendments. Accordingly, there will be a focus on both the contents of the revised version of the Financial CHOICE Act and the industry's reaction to it.

In contrast to action on the Hill, which has been has been blazing out of the gate, actions at the financial regulatory agencies, like the SEC and CFTC, have come to a standstill. Current SEC Chair Mary Jo White and CFTC Chairman Timothy Massad have both announced their resignations effective at the end of the Obama administration. Upon their departures from their respective agencies, each agency will be left with an acting Republican chairman and one Democratic commissioner, making any significant agency actions difficult to approve. Current SEC Commissioner Michael Piwowar, who will likely serve as acting chair of the SEC after White's resignation is effective until another chair is confirmed. Piwowar has indicated that he has no interest in moving forward with some of the more politically charged rules that were proposed under White. However, he has left the door open for some of the less controversial rules to advance during his interim tenure. It is expected that Commissioner J. Christopher Giancarlo, who will likely serve as acting chairman at the CFTC, will take a similar approach at that agency.

The SEC and CFTC will be awaiting Trump's nominations to fill the vacancies at the agencies. Trump has already nominated Wall Street lawyer Jay Clayton as his pick for chairman of the SEC and other nominations will follow. Of course, all nominees will require Senate confirmation before joining the agencies, which has the potential to take time depending on pushback in the Senate.

With respect to FinTech, Rep. Patrick McHenry (R-N.C.) introduced the Financial Services Innovation Act of 2016 in the last congressional session, which would, among other things, mandate federal regulators to foster innovation in financial services through the creation of financial services innovation offices within their agencies. This bill has not yet been reintroduced in the 115th Congress, though financial regulators have all showed a keen interest in FinTech.

Once the uncertainty is resolved with respect to leadership at the agencies, we should expect to see agency action reflecting leadership's agenda. While it is too early to speculate as to the specific aspects of these agendas, it is expected that agency actions likely will seek to pursue policies aimed at reducing burdens for main street businesses and small banks, clarifying and amending regulations issued to implement Dodd-Frank and addressing developments in the FinTech sector, which has advanced tremendously in recent years and is subject to many financial regulations.

Although the House is moving forward to introduce financial reform legislation, we will have to wait and see which path the financial services industry sees as more favorable: legislation or working through the financial regulatory agencies. While it is not clear how changes to existing financial regulation will be implemented today, we can be certain that changes of some nature are to come.

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