THE DODD-FRANK REFORM ENDGAME

Date: 12 January 2018

U.S. Public Policy and Law Alert

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Early 2018 will likely see the most significant progress on reforming the Dodd-Frank Act ("DFA") since its passage in 2010 thanks to four key efforts: the Financial CHOICE Act and activity in the House Financial Services Committee, an appropriations effort, President Trump's executive actions, and bipartisan legislation in the Senate.

THE REFORM EFFORTS

Last June, the Financial CHOICE Act (H.R. 10) passed the House of Representatives by a party line vote of 233–186. This moved the bill to the Senate, where it would have required 60 votes for passage. At that time, the Senate had 52 Republicans and would have needed bipartisan agreement. Thus, the partisan divide over the Financial CHOICE Act made it difficult to move the bill through the Senate. In recent months, the House Financial Services Committee has marked up no less than 60 DFA-related bills to continue adding momentum for change. For additional background on H.R. 10, please see the K&L Gates Alert entitled "Dodd-Frank Reform; What Comes Next?"

In September 2017, as part of an omnibus appropriations package, the House passed the Fiscal 2018 Financial Services and General Government Appropriations Act (H.R. 3820). This legislation contained many provisions from H.R. 10, including repeal of the Volcker Rule, inclusion of various regulators in the appropriations process, and substantial restraints on the Consumer Financial Protection Bureau.

Beyond Congress, President Trump's Executive Order 13772 on Core Principles for Regulating the U.S. Financial System directed the U.S. Department of the Treasury ("Treasury") to issue recommendations for legislative and administrative reforms. Thus far, there have been three reports addressing banks and credit unions, the capital markets, and asset management and insurance. Progress continues on the fourth and final Treasury report, which will focus on nonbank financial institutions, financial technology, and financial innovations. Treasury staff continues to meet with stakeholders as it develops the final piece of the administration's regulatory blueprint. For additional information about the Treasury reports, please see the K&L Gates Alert entitled "Treasury Reports Continue to Inform Dodd-Frank Reform Efforts."

The most recent effort comes from the Senate. Under the theme "Fostering Economic Growth," Senate Banking Committee Chairman Mike Crapo (R-ID) spent the majority of 2017 negotiating with Ranking Member Sherrod Brown (D-OH) over a broad variety of reforms to the DFA. These talks failed to reach a final consensus in October. Senator Crapo continued to negotiate with Democrats on the Senate Banking Committee, which led to the bipartisan Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155). Co-sponsored by 11 Republicans, 11 Democrats, and one Independent, the legislation embodies a package of DFA reform proposals that have garnered bipartisan support. While Senator Brown, Senator Elizabeth Warren, and several other influential Senators oppose S. 2155, the Senate Banking Committee has favorably reported it for Senate floor action. If all Senate Republicans and the Democratic cosponsors vote in the affirmative, then S. 2155 will have enough bipartisan support to garner the necessary 60 votes for passage in the full Senate. This would be all the more significant given that H.R. 10 received no Democratic votes in the House. For additional information about S. 2155, please see the K&L Gates Alert entitled "Dodd-Frank Reform Efforts Intensify."

SEARCHING FOR REFORM CONSENSUS

While not as "ambitious" as the Financial CHOICE Act, S. 2155 serves as an important benchmark for the reforms that can likely be approved by the Senate, as well as what the core of a House-Senate Conference Committee agreement would contain. For example, in order to achieve bipartisan support, S. 2155 does not make a broad attempt to bring various financial regulators into the appropriations process or to repeal the Volcker Rule wholesale. Instead, most of the shared provisions can be traced to Title V of H.R. 10, "Regulatory Relief for Main Street and Community Financial Institutions." This comparative review begins to reveal the framework for the reform proposals likely to become part of the final law. Consideration of H.R. 3280 and the Treasury reports add to that framework.

EXPECTATIONS GOING FORWARD

In advance of the Senate Banking Committee markup, Chairman Crapo requested that supporters of the bill hold amendments in order to preserve and pass the bipartisan consensus version. In the end, although 37 amendments were proposed, only the Manager's Amendment was adopted. Looking ahead, some of the constructive, bipartisan concepts contemplated as potential amendments could be addressed as additional changes to the reported bill, both before and during consideration by the full Senate. Such amendments will be carefully calculated to preserve the Democratic support necessary for Senate passage.

Senate Majority Leader Mitch McConnell has indicated his desire to advance S. 2155 through the Senate early this year. The next step would be a House-Senate conference committee to reconcile the differences between S. 2155 and H.R. 10, where provisions that enjoy bipartisan support are likely to gain traction. For that reason, House Financial Services Committee Chairman Jeb Hensarling (R-TX) has been moving individual provisions of H.R. 10 through the House in order to emphasize the extent of bipartisan agreement on those provisions. Such provisions could be incorporated into a final bill, as bipartisanship is necessary to get the reforms across the finish line in the Senate. As these reform efforts proceed, interested stakeholders should monitor developments closely and consider opportunities to influence policy outcomes. The K&L Gates global financial services policy team is available to assist as these reforms come into sharper focus.

FOR ADDITIONAL BACKGROUND ON THE ISSUES DISCUSSED IN THIS ALERT:

- On H.R. 10, please see the K&L Gates Alert entitled "Dodd-Frank Reform; What Comes Next?"
- On S. 2155, please see the K&L Gates Alert entitled "Dodd-Frank Reform Efforts Intensify."
- On the Treasury reports, please see the K&L Gates Alert entitled "Treasury Reports Continue to Inform Dodd-Frank Reform Efforts."

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