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Financial Regulatory Reform Legislation Moves to House Floor

On December 2, the House Financial Services Committee ("HFSC" or "Committee") passed final bills comprising the House version of the financial regulatory reform legislation. House Floor consideration is expected as early as the week of December 7. The Senate Banking Committee is also expected to begin marking up the discussion draft of the "Restoring American Financial Stability Act of 2009" (the "Dodd Draft") the week of December 7.

Systemic Risk

The HFSC completed the markup of the systemic risk bill, the "Financial Stability Improvement Act of 2009" ("FSIA"; H.R. 3996), on November 19 before the House departed for the Thanksgiving holiday. However, Chairman Barney Frank (D-MA) delayed the vote to report FSIA out of Committee until after returning from the holiday due to unrelated concerns by HFSC Members of the Congressional Black Caucus regarding their belief that the Administration has been inattentive to the impact the financial crisis has had on the African-American community.

One significant area addressed in the markup was "too big to fail." The Committee adopted an amendment offered by Paul Kanjorski (D-PA), Chairman of the Capital Markets Subcommittee, that authorizes the Financial Services Oversight Council ("FSOC") to preemptively take action against financial companies deemed to pose a systemic risk. Among other things, the FSOC would assess the institution's size, exposure, interconnectedness, and leverage in deciding whether mitigatory action is necessary. The FSOC's mitigation options include modifying existing prudential standards, terminating some firm activities, prohibiting mergers and acquisitions, and, in the most extreme cases, breaking up the company. The amendment also requires consultation with the President before taking extraordinary mitigatory actions and provides for an appeal process for the financial company.

Another area of debate during the markup was the means for funding dissolutions of systemically significant institutions. Initially, the FSIA discussion draft proposed assessing financial institutions with assets over $10 billion after the dissolution authority was used to dissolve a financial institution. During the markup, the HFSC agreed to substantial changes to the fund. First, the Committee adopted an amendment by Luis Gutierrez (D-IL) that caps the pre-resolution assessed fund at $150 billion. However, the amendment provides systemic risk regulators the ability to borrow an additional $50 billion from the Treasury if more funds are needed to unwind a failing institution, subject to final approval from Congress. Second, the Committee approved an amendment from Brad Sherman (D-CA) that would only assess fees on financial institutions with $50 billion or more in assets to pay into the systemic risk fund. However, during Committee debate, Congressman Sherman agreed to amend his proposal to stipulate that hedge funds with at least $10 billion in assets could pay into the fund if deemed systemically significant.

In the Senate, the Dodd Draft creates a resolution fund for financial companies, funded by post-resolution assessments imposed on financial companies with more than $10 billion in total assets.

Federal Insurance Office

In addition to FSIA, the HFSC favorably reported the "Federal Insurance Office Act of 2009" ("FIOA"; Manager's Amendment to H.R. 2609). FIOA would create a new Office of National Insurance at the Treasury Department, which will be responsible for aggregating state insurance data. It is likely the legislation is primarily a placeholder, deferring significant insurance industry reforms until the next Congress.

Looking Ahead

Now that the HFSC has completed its markup of the regulatory reform bills, the legislation will be readied for Floor consideration. HFSC Chairman Frank has stated that the Committee-passed bills will be modified prior to House consideration, particularly with respect to FSIA and the Over-the-Counter Derivatives Markets Act of 2009. In the case of the Consumer Financial Protection Agency Act of 2009 and the Over-the-Counter Derivatives Markets Act of 2009, there were two committees that reported versions of the legislation. The House Rules Committee will determine the process by which the versions of each bill will be considered. Additionally, the Rules Committee will merge the bills comprising the regulatory reform package into a single bill. In addition, it is likely that the Rules Committee will allow a limited number of amendments to be offered for consideration. Full House consideration is expected as early as the week of December 7.

In the Senate, the Banking Committee heard opening statements on November 19 and is expected to begin marking up legislation the week of December 7. The markup is expected to take several weeks. Because the health care debate, in which Chairman Dodd still has a hand, is likely to go up to the Christmas holiday and possibly into next year, Senate Floor consideration of the financial regulatory reform package is not expected until next year.

Please see previous K&L Gates updates, including *Senator Dodd Releases Financial Reform Proposal: The Restoring American Financial Stability Act of 2009* and *Redoubling Efforts on the Financial Reform Debate: House Approaches Floor Vote, While Senate Gets Underway*, for additional information about the reform effort. In addition, please see the K&L Gates Global Financial Market Watch Blog for detailed analysis on many of the Obama proposals and future updates.