

FINANCIAL CHOICE ACT IS EXPECTED TO MOVE TO THE HOUSE FLOOR

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On May 4, the House Financial Services Committee ("HFSC") concluded a three-day markup of H.R.10, the Financial Choice Act ("FCA"), a bill to reform the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The HFSC reported the bill favorably to the full House by a vote of 34-26. All 19 Democratic amendments were rejected on party-line votes. Republicans did not offer any amendments but focused their efforts on raising concerns about the extent to which Dodd-Frank has stifled economic growth and put taxpayer money at risk. Committee members debated a number of the more controversial provisions of the FCA, including Title VII to restructure the Consumer Financial Protection Bureau ("CFPB") and remove its unfair, deceptive, or abusive acts or practices ("UDAAP") authority; Section 841 to repeal the Department of Labor's conflict of interest-fiduciary duty rule; Section 111 to repeal the Federal Deposit Insurance Corporation's ("FDIC") Orderly Liquidation Authority; Title IX to repeal the Volcker Rule; and numerous reforms to the Securities and Exchange Commission's ("SEC") shareholder proxy voting rules.

The FCA also contains a provision that would repeal the so-called "Durbin Amendment," a Dodd-Frank provision that limits the interchange fees that banks charge merchants to process electronic debit transactions. The provision was not the subject of significant discussion during the markup, though it remains an issue on which both parties are seeking to find consensus.

WHAT HAPPENS NEXT?

The House is expected to consider the FCA before the chamber adjourns for its August District Work Period, perhaps as soon as the week of June 6. However, the outcome and exact timing of the vote will depend largely on the ability of Republicans to reach agreement on a path forward regarding the Durbin Amendment and other hotly debated provisions of the FCA. Recent reports indicate that progress is being made in that regard.

The Senate Banking Committee ("SBC") leadership is also expected to pursue financial regulatory reform in the coming months, which will likely include several bipartisan provisions that are similar to those included in the FCA. SBC Chairman Mike Crapo (R-ID) has indicated on a number of occasions that the SBC will be considering targeted legislative measures to provide regulatory relief to community banks and to facilitate capital formation. Reconciliation procedures could also be used to move discrete legislative pieces by majority vote, although it is expected that many Dodd-Frank reform provisions will likely require bipartisan support in order to garner sufficient votes to invoke cloture and block a potential filibuster.

If the House and Senate pass different financial regulatory reform bills, the provisions from both bills will likely be

considered by a House-Senate conference committee. Ultimately, the most controversial provisions are expected to be left out of the final conference report.

An important ingredient that will influence the trajectory of Dodd-Frank reform legislation going forward is input from the Department of Treasury. On February 3, 2017, President Trump issued an Executive Order on Core Principles for Regulating the U.S. Financial System, which directed Treasury to issue a report on policies to promote and support the Core Principles. Importantly, the Core Principles mirror many of the stated objectives of the HFSC leadership. That report is expected to factor heavily into legislative developments, particularly in the Senate. We expect the Treasury report to be issued on or before June 2.

NOTABLE AMENDMENTS

Below is a short description of a number of notable amendments that were offered and rejected during the HFSC markup.

CFPB Reform

Rep. Nydia Velázquez (D-NY) offered an amendment to strike Section 713 of the FCA, which would subject the CFPB to the congressional appropriations process. In expressing support for the amendment, Democrats noted the importance of insulating the agency from the political pressures. In response, Republicans defended Section 713 on the ground that the CFPB is an unaccountable agency that has actually harmed consumers.

Rep. Carolyn Maloney (D-NY) offered an amendment that would strike Section 736 of the FCA, which would remove the CFPB's UDAAP authority. Democrats emphasized the importance of the CFPB's UDAAP authority and suggested its removal will allow consumer harms to go unpunished. Republicans suggested that the CFPB has used its UDAAP authority to subvert the rulemaking process set forth under the Administrative Procedure Act. Republicans argued further ambiguity regarding the definition of UDAAP, which has created uncertainty that ultimately harms consumers.

Proxy Reforms

Rep. Maloney also offered an amendment that would strike Section 844 of the FCA, which would require shareholders to have one percent ownership for three years to submit a shareholder proposal, prohibit the SEC from requiring use of a universal proxy ballot, and amend the thresholds for resubmission of proxies. In expressing support for the amendment, Rep. Maloney indicated that Section 844 would exclude all but the largest investors from submitting proxy proposals. In response, Reps. Sean Duffy (R-WI) and French Hill (R-AK) indicated that many shareholders with relatively small ownership interests in publicly listed companies have submitted "political" shareholder proposals that result in a waste of corporate funds.

Volcker Rule

Rep. Josh Gottheimer (D-NJ) offered an amendment that would strike Title IX of the FCA, which would repeal of the Volcker Rule and require the banking regulators and the SEC to issue a report to Congress on the impact of the Volcker Rule (among other things). Rep. Gottheimer argued the Volcker Rule is necessary to protect FDIC-

insured deposits from risky investment banking trading activities. In response, Rep. Bill Huizenga (R-MI) expressed opposition to the amendment by noting that the report requirement is redundant, as the SEC is expected to publish such a study in the next 60 days.

CONCLUSION

While the FCA moving to the House floor represents progress toward long-discussed Dodd-Frank reform, it is only the beginning of a process that will likely extend into next year. The Treasury report on the Core Principles is expected to generate hearings in both chambers and will likely influence the legislative outcomes. Finally, it is also quite possible that discrete provisions contained in the FCA or the Treasury report could be enacted separately. With this in mind, interested stakeholders should take advantage of this opportunity and provide input on their policy objectives.

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