

## DETAILS EMERGE ABOUT THE FINANCIAL CHOICE ACT

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### Public Policy and Law Alert

By: Daniel F. C. Crowley, William A. Kirk, Karishma Shah Page, Mark A. Roszak, Eric Love, Bruce J. Heiman

On June 15, 2016, House Financial Services Committee Chairman Jeb Hensarling (R-TX) released a more detailed summary of the Financial CHOICE Act ("FCA"), a proposal to revisit the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). The detailed summary builds upon an executive summary that was released on June 7, 2016. (See *The Financial CHOICE Act; Dodd-Frank Reform (Not Repeal)*.) Legislative text is expected to be released by the end of June.

The FCA is not just another Dodd-Frank revision proposal. The FCA is the culmination of several years of committee activity, including hearings and legislative proposals to address the unintended consequences of Dodd-Frank. The detailed summary provides greater specificity about provisions that will be included in the FCA, including many previously House-passed and House Financial Services Committee-passed bills. Although it is unlikely that the proposal will advance as a stand-alone bill this year, it will set an important marker for discussions in the next Congress about future revisions to Dodd-Frank. In addition, some FCA provisions could be enacted in year-end omnibus legislation. Below are some of the FCA's notable provisions.

### REFORMING THE CFPB

The detailed summary offers more information about proposed Consumer Financial Protection Bureau ("CFPB") reforms, a key area of focus in the FCA. The FCA will include provisions designed to increase CFPB transparency and accountability. The FCA will contain provisions that would make the CFPB an independent agency outside of the Federal Reserve to be led by a five-member commission, as opposed to a single director. Under the FCA, the CFPB would also be funded through the Congressional appropriations process. Among the other reforms are provisions to address CFPB enforcement actions, which the agency has increasingly used as an alternative or precursor to rulemaking. The FCA will also include H.R. 5413, the "CFPB Data Accountability Act," which would require the CFPB to verify a consumer complaint before it is posted on the CFPB's website.

### CREATING AN OFF-RAMP FOR BASEL III REQUIREMENTS

The detailed summary contains specifics about the capital requirements for the "off-ramp" from Basel III requirements. Under the FCA, a banking organization would be eligible for certain relief from current regulatory requirements and be deemed well-capitalized if: (1) the banking organization maintains a leverage ratio of at least 10 percent, and (2) the insured depository institution has a composite CAMELS rating of a "1" or a "2" at the time the banking organization makes the election. Importantly, the detailed summary defines how the leverage ratio would be calculated for purposes of a banking organization's qualifying capital election. The FCA would also

exempt such banking organizations from final rules implemented under Section 165 of Dodd-Frank, including: the G-SIB surcharge, total loss absorbing capacity, liquidity coverage ratio, net stable funding ratio, and living wills.

## **REGULATORY RELIEF TO COMMUNITY BANKS/CREDIT UNIONS**

The FCA will contain provisions that would provide relief from some reporting requirements for certain well-capitalized banks. Certain well-managed and well-capitalized credit unions would be eligible for an extended examination schedule. The FCA will also include provisions that would reform the examination process for financial institutions and would require federal financial regulatory agencies to tailor regulations to the risk profile and business models of financial institutions.

The FCA will include several reforms to the National Credit Union Administration ("NCUA"), including requiring the NCUA's Board of Directors to provide a public report about the NCUA's "overhead transfer rate" and to provide a rationale for any proposed use of funds from the National Credit Union Share Insurance Fund. The FCA will also include provisions that would establish a Credit Union Advisory Council to consult with the Board about how federal laws and regulations affect credit unions.

The FCA will also include H.R. 1660, the "Federal Savings Association Charter Flexibility Act of 2015," a House Financial Services Committee-passed bill that would allow federal savings associations to elect to operate as a national bank and be supervised by the Office of the Comptroller of the Currency.

The FCA will include a number of bills that seek to provide regulatory relief to community financial institutions, including H.R. 766, the "Financial Institution Customer Protection Act of 2016," which would end "Operation Choke Point," a controversial Department of Justice initiative to limit access to payment processing systems by merchants engaged in activities deemed to increase the risk of fraud and money laundering.

Of particular note, the FCA would repeal Dodd-Frank's so-called "Durbin amendment," which capped debit interchange fees.

## **MORTGAGE REFORM AND ANTI-PREDATORY LENDING**

The detailed summary includes several House bills that seek to relieve regulatory burdens on the mortgage industry, including revisions to the Truth in Lending Act ("TILA") and the "Qualified Mortgage" ("QM") rule. In particular, the FCA will include H.R. 1210, the "Portfolio Lending and Mortgage Access Act," which would create a legal safe harbor from the QM rule for mortgage loans that are kept on a depository institution lender's balance sheet. The FCA will also contain H.R. 685, the "Mortgage Choice Act," which would revise the method by which points and fees are calculated for purposes of compliance with the QM rule. Further, the FCA will include H.R. 650, the "Preserving Access to Manufactured Housing Act," which would clarify the definition of "mortgage originator" for retailers of manufactured homes and change the definition of a "high cost" mortgage under the Home Ownership and Equity Protection Act.

The FCA will also include H.R. 1529, the "Community Institution Mortgage Relief Act of 2015," which would create a legal safe harbor from escrow requirements for community financial institutions that hold loans in portfolio for three years and would exempt from certain escrow requirements small firms that annually service 20,000 or fewer mortgage loans. Finally, the FCA will contain H.R. 4997, the "Home Mortgage Disclosure Adjustment Act," which

would exempt small depository institutions from certain Home Mortgage Disclosure Act reporting and recordkeeping requirements.

## **CFTC REFORM**

The detailed summary contains procedural and structural reforms to the Commodity Futures Trading Commission ("CFTC"). Importantly, the FCA will include provisions that would require the CFTC to harmonize rulemakings and guidance with the Securities and Exchange Commission ("SEC") and to implement a plan to address the international nature of swaps trading and other cross-border transactions. It also includes H.R. 2289, the "Commodity End-User Relief Act," which contains a number of other reform measures.

## **PROXY ADVISORY FIRM REGULATION**

Notably, the FCA will include H.R. 5311, the "Corporate Governance Reform and Transparency Act of 2016," which would require proxy advisory firms to register with the SEC, disclose potential conflicts of interest, and publicly release their methodologies for proxy recommendations. The FCA will also include provisions that would repeal the SEC's authority to issue rules regarding proxy access.

## **JOB CREATION AND CAPITAL FORMATION**

The detailed summary indicates that the FCA will incorporate a number of House Financial Services Committee- or House-passed bills designed to promote job creation and capital formation, including legislation to streamline and reduce regulations for public companies. The FCA will contain provisions that would repeal certain Dodd-Frank requirements for public companies to disclose their use of conflict minerals and the ratio of their median employee compensation to their chief executive officer's compensation.

The FCA will also focus reform efforts on reducing reporting requirements for small and emerging growth companies, including, but not limited to, provisions that would reduce certain disclosures for companies offering stock options to employees, extend for startups the time period for compliance with certain Sarbanes-Oxley Act requirements, revise the definition of "accredited investor," and streamline private securities offerings. In furtherance of its stated objective of revitalizing capital markets, the FCA seeks to promote a vibrant venture capital marketplace with the inclusion of provisions that would create venture exchanges and increase exemptions under the Investment Company Act of 1940 for certain venture capital funds. In addition, the FCA will contain H.R. 4855, the "Fix Crowdfunding Act," which would amend the Jumpstart Our Business Startups Act to increase the dollar limit on funds that can be raised via crowdfunding and would clarify certain requirements and exclusions for funding portals.

The FCA will include H.R. 3868, the "Small Business Credit Availability Act," a House Financial Services Committee-passed bill that would expand the kinds of investments business development companies ("BDCs") are permitted to make and would allow BDCs to maintain a higher leverage ratio.

Additionally, the FCA will contain provisions that would create the "Office for Small Business Capital Formation" and the "Small Business Capital Formation Advisory Committee" within the SEC to assist small businesses and investors and to help facilitate capital formation.

## **EXECUTIVE AGENCY ACCOUNTABILITY**

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The detailed summary states that the FCA will include provisions that would reauthorize the SEC for a period of five years with several reforms, including modifying the structure of the SEC and streamlining SEC enforcement authorities to ensure that individuals and entities receive fair treatment during SEC investigations.

## CONCLUSION

As indicated in The Financial CHOICE Act; Dodd-Frank Reform (Not Repeal), Dodd-Frank represented a substantial overhaul of the U.S. financial regulatory regime. It revisited every major federal financial services law from the National Bank Act (1864) through the Sarbanes-Oxley Act (2002) over a very short 14-month period, largely as proposed by the U.S. Treasury, and necessarily entrusting the regulators with unprecedented discretion. Since enactment, there has been bipartisan acknowledgement that revisions to Dodd-Frank are necessary, including from the landmark law's primary authors, then-Senate Banking Committee Chairman Chris Dodd (D-CT) and then-House Financial Services Committee Chairman Barney Frank (D-MA). The FCA will likely prove to be a significant effort to reform Dodd-Frank and it will therefore become a benchmark for future reforms. Further alerts will be issued as legislative details emerge.

## KEY CONTACTS



**DANIEL F. CROWLEY**  
PARTNER  
WASHINGTON DC  
+1.202.778.9447  
DAN.CROWLEY@KLGATES.COM



**BRUCE J. HEIMAN**  
PARTNER  
WASHINGTON DC  
+1.202.661.3935  
BRUCE.HEIMAN@KLGATES.COM



**WILLIAM A. KIRK**  
PARTNER  
WASHINGTON DC  
+1.202.661.3814  
WILLIAM.KIRK@KLGATES.COM



**KARISHMA S. PAGE**  
PARTNER  
WASHINGTON DC  
+1.202.778.9128  
KARISHMA.PAGE@KLGATES.COM

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