

January 5, 2018

## Washington Update

### This Week in Congress

- **House** – The House is in recess until January 8.
- **Senate** – The Senate passed the **VETS act of 2017 (“S. 925”)** and confirmed **John C. Rood** to be Under Secretary of Defense for Policy.

### Next Week in Congress

- **House** – The House is expected to resume negotiations on the omnibus appropriations bill.
- **Senate** – The Senate is expected to consider the nomination of **William L. Campbell, Jr** to be United States District Judge for the Middle District of Tennessee.

## TAX

### **IRS Begins to Issue Guidance on Tax Reform Bill**

#### *Key Points:*

- *The IRS issued guidance relating to corporate repatriation, tax withholdings, and state and local property tax deductions.*
- *The IRS plans to release new rules that will define how ‘cash’ is determined for U.S. corporations with foreign assets.*
- *The Medical Device tax, Cadillac tax, employer mandate, and health insurer tax moratorium went in effect on Jan. 1<sup>st</sup>.*

The Internal Revenue Service (IRS) has issued guidance on corporate repatriation and tax withholding. The agency plans to issue new rules that will define ‘cash’ for the purpose of a new repatriation tax for U.S. corporations with foreign holdings. The IRS has already stated that intercompany loans will not be included as cash in U.S. corporations’ foreign assets. In regards to tax withholding, the IRS said that any new withholding information will be used

to work with existing W-4 forms that have already been filed.

The IRS also released a statement on state and local property tax deductions. According to the agency, early property tax payments can only be deducted on 2017 taxes if they have already been assessed. The recently signed tax bill included no language on prepayments, causing confusion nationwide.

The Medical Device tax, Cadillac tax, employer mandate, and health insurer tax moratorium all went in effect on January 1<sup>st</sup> after lawmakers failed to delay the measures.

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## Senate Finance Committee Chairman Orrin Hatch (R-UT) Announces Retirement

### Key Point:

- *Senator Mike Crapo (R-ID) is expected to become chairman of the Finance Committee should Senator Chuck Grassley (R-IA) decide against the chairmanship.*

On Christmas day, Senate Finance Chairman Orrin Hatch announced that he would not seek re-election. Senator Hatch's departure may result in a variety of changes in the committee levels. As the Senate is controlled by seniority, any decision by a Senator to switch committees can bring chaos on assignments and as such, the following expected outcomes may not be the end result.

Senator Mike Crapo (R-ID) would become the next chairman if Senator Chuck Grassley (R-IA) chooses to retain the Judiciary Committee chair. Due to Republican caucus term-limits for chairmen and ranking members, Senator Grassley has two years of eligibility remaining on the Finance Committee. Should Senator Grassley decide to take control of Senate Finance, Senator Lindsey Graham (R-SC) would become chairman of the Judiciary Committee. If Senator Crapo, as expected, takes over in the Finance Committee, Senator Patrick Toomey (R-PA) would become chairman of the Banking Committee.

*For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Nick Karellas, Henry Homans, and Ryan Schnepf contributed to this section.*

### Upcoming Dates

- **January 19, 2018:** Flood Insurance and EB-5 regional visas authorizations lapse; Title VII of FISA
- **March 5, 2018:** DACA deadline.
- **March 31, 2018:** FAA Reauthorization expires

## FINANCIAL SERVICES

### *SEC Releases Annual Reports on Credit Rating Agencies*

#### Key Point:

- *The SEC released a pair of reports that suggest credit rating agencies have showed improved compliance and continued competition.*

On December 29, the Securities and Exchange Commission (SEC) released a pair of reports on nationally recognized statistical rating organizations (NRSROs): the [Annual Report](#) on Nationally Recognized Statistical Rating Organizations, as required by the Credit Rating Agency Reform Act of 2006; and the [2017 Summary Report](#) of Commission Staff's Examinations of Each Nationally Recognized Statistical Rating Organization, as required by the Dodd-Frank Act.

An SEC [press release](#) stated that:

Credit rating agencies under Securities and Exchange Commission oversight show improved compliance, increased information technology resources, and continued competition, according to two SEC staff reports released today on nationally recognized statistical rating organizations (NRSROs).

“NRSROs are continuing to display a greater awareness of their obligations as regulated entities,” said Jessica S. Kane, Acting Director of the SEC's Office of Credit Ratings. “The staff will continue to engage with the firms and monitor potential risks to promote compliance, strengthen governance, and ensure that NRSROs provide robust disclosure for the benefit of investors.”

### ***Regulators Issue Statements and Information on Virtual Currencies and Initial Coin Offerings***

#### ***Key Points:***

- *NASAA and the SEC urged investors to use caution when considering investments in virtual currencies.*
- *The CFTC issued a backgrounder to provide information about the federal oversight of virtual currencies and other related matters.*

On January 4, the North American Securities Administrators Association (NASAA) issued a [release](#) urging investors “to be cautious about investments involving cryptocurrencies.” The press release stated, “Regulators also were unanimous in their view that more regulation is needed for cryptocurrency to provide greater investor protection.” In the release NASAA President Joseph Borg said:

Investors should go beyond the headlines and hype to understand the risks associated with investments in cryptocurrencies, as well as cryptocurrency futures contracts and other financial products where these virtual currencies are linked in some way to the underlying investment.

The recent wild price fluctuations and speculation in cryptocurrency-related investments can easily tempt unsuspecting investors to rush into an

investment they may not fully understand. Cryptocurrencies and investments tied to them are high-risk products with an unproven track record and high price volatility. Combined with a high risk of fraud, investing in cryptocurrencies is not for the faint of heart.

Securities and Exchange Commission (SEC) Chairman Jay Clayton and Commissioners Michael Piwowar and Kara Stein issued a [joint statement](#) commending NASAA for the release, noting:

NASAA’s release is a timely and thoughtful reminder to Main Street investors to exercise caution. The release recognizes that cryptocurrencies, while touted as replacements for traditional currencies, lack many important characteristics of traditional currencies, including sovereign backing and responsibility, and now are being promoted more as investment opportunities than efficient mediums for exchange.

The NASAA release also reminds investors that when they are offered and sold securities they are entitled to the benefits of state and federal securities laws, and that sellers and other market participants must follow these laws. Unfortunately, it is clear that many promoters of ICOs and others participating in the cryptocurrency-related investment markets are not following these laws. The SEC and state securities regulators are pursuing violations, but we again caution you that, if you lose money, there is a substantial risk that our efforts will not result in a recovery of your investment.

The Commodity Futures Trading Commission (CFTC) released a backgrounder on the CFTC's "[Oversight of and Approach to Virtual Currency Futures Markets](#)" to provide information about the federal oversight of virtual currencies and other related matters. CFTC Chairman J. Christopher Giancarlo also issued a [press release](#) on cryptocurrencies, noting that the issues would be discussed at the Commission's January 23 meeting of the Technology Advisory Committee (TAC) and the January 31 meeting of the Market Risk Advisory Committee (MRAC). He stated that:

In 2014, the CFTC declared virtual currencies to be a "commodity" subject to oversight under its authority under the CEA. Since then, the CFTC has taken action against unregistered Bitcoin futures exchanges, enforced the laws prohibiting wash trading and prearranged trades on a derivatives platform, issued proposed guidance on what is a derivative market and what is a spot market in the virtual currency context, issued warnings about valuations and volatility in spot virtual currency markets and addressed a virtual currency Ponzi scheme. The CFTC has also produced consumer information about virtual currencies, including a dedicated Bitcoin webpage, a virtual currency primer and several podcasts.

...The CFTC seeks to promote responsible innovation and development that is consistent with its statutory mission to enhance derivative trading markets and to prohibit fraud and manipulation in connection with commodities in interstate commerce.

The responsible regulatory response to virtual currencies is consumer

education, asserting CFTC authority, surveilling trading in derivative and spot markets, prosecuting fraud, abuse, manipulation and false solicitation and active coordination with fellow regulators. The CFTC has been following this course of action and will continue to do so.

## **UPCOMING EVENTS**

### **January 9**

***CFIUS:*** The House Financial Services Committee's Subcommittee on Monetary Policy and Trade will hold a hearing entitled "Evaluating CFIUS: Challenges Posed by a Changing Global Economy." Witnesses will include: Admiral Dennis Blair, Co-Chair, The Commission on the Theft of American Intellectual Property, and former Director, National Intelligence, National Security Council; Rod Hunter, Partner, Baker & McKenzie; The Honorable W. Theodore Kassinger, Partner, O'Melveny & Myers, former Deputy Secretary, U.S. Department of Commerce; Dr. Scott Kennedy, Director, Project on Chinese Business & Political Economy, Center for Strategic & International Studies; Dr. Derek Scissors, Resident Scholar, American Enterprise Institute.

***Regulatory Reform:*** The House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled "Legislative Proposals for a More Efficient Federal Financial Regulatory Regime: Part III." The hearing will examine the following bills: [HR 1264](#), the "Community Financial Institution Exemption Act", which would exempt insured depository institutions and credit unions with less than \$50 billion in assets from rules and regulations issued by the Consumer Financial Protection Bureau (CFPB); [HR 2683](#), the "Protecting Veterans Credit Act of 2017", which would amend the Fair Credit Reporting Act to exclude

from consumer report information of veterans' medical debt in certain situations; [HR 4648](#), the "Home Mortgage Reporting Relief Act of 2017", which would delay the effective date of certain mortgage disclosure regulations; [HR 4725](#), the "Community Bank Reporting Relief Act", which would allow for a reduced short form reporting requirement for certain small banks; and [draft legislation](#) that would amend the Truth in Lending Act to modify the exclusion for seller financiers from the definition of mortgage originator.

**Money Laundering:** The Senate Banking Committee will hold a hearing entitled "Combating Money Laundering and Other Forms of Illicit Finance: Opportunities to Reform and Strengthen BSA Enforcement." The witnesses will include: Greg Baer, President, The Clearing House Association; Dennis Lormel, President and CEO, DML Associates; and Heather Lowe, Legal Counsel and Director of Government Affairs, Global Financial Integrity.

#### **January 10**

**Federal Reserve Reform:** The House Financial Services Committee's Subcommittee on Monetary Policy and Trade will hold a hearing entitled "A Further Examination of Federal Reserve Reform Proposals."

**Sanctions:** The House Foreign Affairs Committee will hold a hearing entitled "Sanctions and Financial Pressure: Major National Security Tools."

#### **January 11**

**Fixed Income Market Structure Advisory Committee:** The Securities and Exchange Commission (SEC) will hold the first meeting of its Fixed Income Market Structure Advisory Committee (FIMSAC). The agenda for the meeting includes various administrative items

and a discussion of liquidity in the bond markets.

#### **January 23**

**Technology Advisory Committee:** The Committee Futures Trading Commission (CFTC) will hold a meeting of its Technology Advisory Committee (TAC). The agenda for the meeting includes: (1) the scope, plan, and approach for the Committee's efforts in 2018; (2) exploring issues involving financial technology in CFTC regulated markets, potentially including blockchain/DLT, data standardization and analytics, algorithmic trading, virtual currencies, cybersecurity, and RegTech; and (3) identifying work streams and/or subcommittee groups that can help generate actionable recommendations to the Commission on select issues.

#### **January 31**

**Market Risk Advisory Committee:** The Committee Futures Trading Commission (CFTC) will hold a meeting of its Market Risk Advisory Committee (MRAC). The Committee will consider the process of self-certification of new products and operational rules by Designated Contract Markets (DCMs) under the Commodity Exchange Act (CEA) and CFTC regulations.

#### **February 20**

**Covered Agreement:** The National Association of Insurance Commissioners (NAIC) will hold a public hearing to address the reinsurance collateral provisions of Article 3 of the Covered Agreement.

*For more information about financial services issues you may [email](#) or call Joel Oswald at 202-659-8201. Alex Barcham and Rebecca Konst contributed to the articles.*

## ENERGY AND ENVIRONMENT

### **Interior Department Proposal Would Expand Areas Open to Offshore Oil and Gas Development**

#### *Key Points:*

- *On Thursday, the Department of Interior issued the new proposed plan for offshore oil and gas exploration and production.*
- *The plan, once finalized, would determine what areas of the Outer Continental Shelf are open to oil and gas leases.*
- *The Department will hold public meetings and open a public comment period on the draft proposal.*

On January 4, Secretary of Interior Ryan Zinke announced the release of the “[2019-2024 National Outer Continental Shelf Draft Proposed Program](#)”. As described in a [press release](#), the draft program would “make over 90 percent of the total OCS acreage and more than 98 percent of undiscovered, technically recoverable oil and gas resources in federal offshore areas available to consider for future exploration and development.” The Department will convene public meetings on the draft beginning on January 16, 2018, and will also solicit public comments.

The draft includes the following proposed offshore oil and gas lease sales:

- Twelve sales in the Gulf of Mexico;
- Nineteen sales in the Alaska Region;
- Seven sales in the Pacific Region; and
- Nine sales in the Atlantic Region.

In making the announcement, Zinke declared that “developing our energy resources on the Outer Continental Shelf in a safe and well-regulated way is important to our economy and energy security, and it provides billions of dollars to fund the conservation of our coastlines, public lands and parks.” Zinke also

emphasized that release of the draft plan “lays out the options that are on the table and starts a lengthy and robust public comment period”.

The proposal to reverse the Obama Administration’s moves to prohibit development in the majority of offshore acreage drew reaction from coastal state elected officials. Senator Marco Rubio (R-FL) issued a [statement](#) that called on “Secretary Zinke to recognize the Florida Congressional delegation’s bipartisan efforts to maintain and extend the moratorium in the Eastern Gulf of Mexico, and remove this area for future planning purposes.” Senate Energy and Natural Resources Committee Ranking Member Maria Cantwell (D-WA) issued a [statement](#) criticizing the action: “The Trump Administration’s proposal to allow drilling off the coast in the Pacific region, despite the vocal opposition of local communities and every west coast Senator, represents an outrageous attack on our coastal economies, culture, and environment.

Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK) issued a [statement](#) in support of the proposal: “This is more good news as we seek to create jobs, keep energy affordable, and strengthen our long-term security.”

### **Upcoming Hearings and Events**

#### **January 9**

***Department of Energy:*** The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) titled “DOE Modernization: Advancing DOE’s Mission for National, Economic, and Energy Security of the United States.”

***Proposed National Monuments:*** The House Natural Resources Committee’s Federal Lands Subcommittee will hold a hearing on the

“Shash Jaa National Monument and Indian Creek National Monument Act” ([H.R. 4532](#))

### **January 10**

**Markup of Pending Legislation:** The House Natural Resources Committee will hold a [markup](#) to consider pending legislation.

**Water Infrastructure:** The Senate Environment and Public Works Committee will hold a [hearing](#) titled “America’s Water Infrastructure Needs and Challenges.”

### **January 16**

**Grid Reliability Rule:** The Bipartisan Policy Center will hold an [event](#) titled “Conversation with FERC Commissioners Chatterjee and LaFleur: The Grid Resiliency Pricing Rule”.

*For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Updates on energy and environment issues are also available on [twitter](#).*

## **HEALTH**

### **FDA Announces New Steps to Facilitate Generic Drug Approvals**

#### *Key Points:*

- *The Food and Drug Administration released new draft guidance aimed at streamlining and improving aspects of the submission and review of Abbreviated New Drug Applications (ANDA).*
- *It also issued a new Manual of Policies and Procedures which outlines the ANDA assessment practices and formalizes the review process.*

On January 3, the Food and Drug Administration (FDA) announced it was taking additional steps to implement its Drug Competition Action Plan. The plan is focused on reducing gaming by branded companies;

resolving scientific and regulatory obstacles that can make it difficult to win approval for generics; and improving the efficiency and predictability of the FDA review process.

The FDA released two new documents intended to streamline and improve the submission and review of Abbreviated New Drug Applications (ANDA). The first document is a draft guidance for industry entitled “Good ANDA Submission Practices.” The guidance highlights common deficiencies seen in generic drug applications that may lead to delay in their approval. In a press released, FDA Commissioner Scott Gottlieb noted generic approvals are often delayed because they must go through multiple review cycles. It currently takes an average of four review cycles for an ANDA to reach approval, and these multiple cycles are costly and inefficient. The draft guidance can be read [here](#).

In addition, the FDA also released a Manual of Policies and Procedures (MAPP) – “Good ANDA Assessment Practices” as a companion to the guidance outlining ANDA assessment practices for FDA staff. It formalizes a more streamlined process including introducing new templates. The MAPP also requires reviewers to provide more details to generic applicants to explain deficiencies in an application. Gottlieb explained “the goal is to make sure that generic drug makers are made fully aware of the problems that are delaying the approval of their application and understand how to fix them.” The MAPP can be read [here](#).

Gottlieb noted “in the coming year, we’ll be taking additional steps to improve our own practices and to help guide industry.” He emphasized initiatives to accelerate the entry of complex generics such as metered dose inhalers and costly injectable drugs which are sometimes hard to copy. The FDA will also continue to take steps to make it more difficult

for brand companies to delay generic entry. He pointed to three guidances in the first quarter of 2018 to address this: potential abuses of the citizen petition process; companies that restrict access to testing samples; and abuses of single, shared system risk evaluation and mitigation strategies (REMS) negotiation process.

## Upcoming Hearings and Meetings

### January 9

**Opioids:** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “The Opioid Crisis: An Examination of How We Got Here and How We Move Forward.”

**HHS Secretary:** The Senate Finance Committee will hold a hearing on the nomination of Alex Azar II, to be Secretary of the Department of Health and Human Services.

*For more information about healthcare issues you may [email](#) or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201.*

## TRADE

### **Administration, Industries Expecting Reports and Remedies from 201, 232, and 301 Investigations**

#### *Key Points:*

- President Trump is expected to take action on both the solar and residential washer Section 201 investigations within the next month.
- The Sec. 232 reports will be released this month: the steel report is due by January 14 and the aluminum report is due by January 21, barring any unforeseen delays.
- Sources close to the Sec. 301 investigation are predicting it will lead

to tariffs covering retaliatory action in the trillion-dollar range, likely to be announced before the State of the Union on January 30.

There are a number of important trade investigations that will be completed in early this year, possibly including the steel and aluminum Section 232 reports scheduled to be delivered to President Trump. He will also likely announce remedies for the residential washer and solar 201 investigations, as well as for the Section 301 investigation into China’s intellectual property and technology transfer policies.

President Trump’s decision on solar remedies is due by January 26 while his decision on residential washers is due by February 4. It has been reported that he will probably accept what U.S. Trade Representative (USTR) recommends, even if it’s different from the International Trade Commission (ITC).

It has been reported that Trump will announce remedies for the steel Sec. 232 investigation, while it remains unclear if the aluminum investigation will be completed by the January 21 deadline. Any steel remedies will likely exclude allies because of Department of Defense objections to the original report and recommended remedies.

The remedies connected with the Sec. 301 investigation into China’s trade and business practices could reach into the trillion-dollar range, with USTR arriving at such a large number by calculating the cumulative damage from intellectual property and technology transfers over the past ten years. However, the imposition of remedies could be complicated by rising tensions with North Korea and the Trump Administration’s desire to use trade as a foreign policy tool.



## CFIUS Blocks Chinese Company's Acquisition of MoneyGram

*Key Point:*

- Ant Financial Services Group's acquisition of MoneyGram was cancelled after they were unable to ease the Committee on Foreign Investment in the United States' (CFIUS) concerns with the deal.

On Thursday, Ant Financial Services Group and MoneyGram announced they were abandoning their deal because, "it became clear that CFIUS [would] not approve this merger." Analysts have said the failure of the Alibaba Group affiliate's acquisition was not unexpected given China's questionable consumer data protection practices. Other experts pointed to the lack of reciprocity and that an American company would not be able to make the same deal in reverse as a possible contributing reason for why the deal was blocked.

It should be noted that CFIUS has not publically provided its rationale for blocking the deal, though some have suggested it may be concerned about allowing a Chinese company to control private data or giving China access to data on U.S. financial transactions.

*For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Riyad Carey and Ryan Schnepf contributed to this section.*

*This Week in Congress was written by Ryan Schnepf.*