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Washington Update

This Week in Congress

- **House** – The House is in recess until September 5.
- **Senate** – The Senate is in recess until September 5.

Next Week in Congress

- **House** – The House is in recess until September 5.
- **Senate** –The Senate is in recess until September 5.

TAX

Ways and Means Chairman Brady Marks 1986 Anniversary with Speech at Reagan Ranch

Key Points:

- *Ways and Means Chairman Kevin Brady (R-TX) suggested that tax reform may not be revenue-neutral and tax revenues may decrease in the early years.*
- *If Republican use reconciliation to pass tax reform that is permanent, the plan cannot increase the deficit outside of a 10-year window. It can, however, increase the deficit inside the window and then project neutral revenue impacts later.*

On Wednesday, Ways and Means Chairman Kevin Brady (R-TX) delivered a speech at President Ronald Reagan's Ranch in Santa Barbara, California on tax reform. The date marked the 31st anniversary of the Tax Reform Act of 1986, which is viewed as the last comprehensive overhaul of the tax code.

Brady focused his remarks on how tax reform would reduce taxes for all Americans and create real economic growth through reduced rates on businesses to match the United States' international competitors. He also used the speech to signal a possible openness to tax reform that initially loses revenue in the early years. Brady said there is support to reduce taxes even if it means a short-term increase in the national deficit. He claimed that the lower rates would boost the economy and create jobs early on, leading to increased revenues in the later years.

In order to pass permanent tax reform legislation using budget reconciliation, the plan could not cause an increase in the deficit beyond the 10-year budget window. However, revenues are generally allowed to decrease within the first ten years if the instructions in the budget allow for that.

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White House Plans To Release More Tax Reform Details in September

Key Point:

- *White House officials expected to release a document outlining areas of agreement on tax reform*

Reports indicate that the White House plans to release a brief document in early-to-mid-September providing further details on a framework for tax reform. The document is anticipated to be three-to-five pages and won't include legislative text. It is expected to lay out areas of agreement between the "Big Six" group which includes the Trump administration, the Senate, and the House of Representatives.

A September release would fit the timeline previously suggested by White House legislative director Marc Short.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Nick Karellas and Ryan Schnepp contributed to this section.

FINANCIAL SERVICES

SEC Releases Results of Cybersecurity Examination Program

Key Point:

- *The SEC staff report noted an overall improvement in cybersecurity awareness and preparedness, but also highlighted areas for improvement.*

On August 7, the Securities and Exchange Commission's (SEC) Office of Compliance Inspections and Examinations (OCIE) released a report summarizing observations from its Cybersecurity 2 Initiative. As part of the Initiative OCIE "examined 75 firms, including broker-dealers, investment advisers, and investment companies registered with the SEC to assess industry practices and legal and compliance issues associated with cybersecurity preparedness." The Initiative focused on the following areas: (1) governance and risk assessment; (2) access rights and controls; (3) data loss prevention; (4) vendor management; (5) training; and (6) incident response. The report stated, "[i]n general, the staff observed increased cybersecurity preparedness since our 2014 Cybersecurity 1 Initiative," but also observed areas where compliance and oversight could be improved.

The report stated:

> Among the 75 firms examined, the staff noted an overall improvement in firms' awareness of cyber-related risks and the implementation of certain cybersecurity practices since the Cybersecurity 1 Initiative. Most notably, all broker-dealers, all funds, and nearly all advisers examined maintained cybersecurity-related written policies and procedures addressing the protection of customer/shareholder records and information. This contrasts with the staff's observations in the Cybersecurity 1 Initiative, in which comparatively fewer broker-dealers and advisers had

Upcoming Dates
September 5: **Congress returns**
September 29: **Treasury indicated this date is when Treasury will exhaust extraordinary measures for the U.S. debt limit**
September 30: **FY 2017 ends and FAA, CHIP, NFIP, and Perkins Loan authorizations expire**
December 31, 2017: **Title VII of FISA expires**

adopted this type of written policies and procedures.

The report highlighted that while "all broker-dealers and funds, and nearly all advisers maintained written policies and procedures addressing cyber-related protection of customer/shareholder records and information, a majority of the firms' information protection policies and procedures appeared to have issues." These issues included policies and procedures that were not reasonably tailored and failure to adhere to or enforce policies and procedures.

SEC Publishes Report on Primary Security Issuance and Market Liquidity

Key Points:

- *SEC's DERA found that primary market security issuance was not lower following passage of the Dodd-Frank Act.*
- *DERA found no causal link between the Volcker Rule and U.S. Treasury market liquidity conditions.*

On August 8, the SEC Division of Economic and Risk Analysis (DERA) published a report describing trends in primary securities issuance and secondary market liquidity. The report was requested by Congress as part of the FY2016 appropriations process and examines the issuance of debt, equity, and asset-backed securities as well as activity in U.S. Treasuries, corporate bonds, single-name credit default swaps, and bond funds. The report also looks at trends for unregistered offerings such as those under Regulation D and Regulation Crowdfunding.

Related to primary issuance, DERA noted that since enactment of the Dodd-Frank Act (DFA) in 2010 through the end of 2016 the total capital formation was approximately $20.2 trillion, of which $8.8 trillion was raised through registered offerings, and $11.38 trillion was raised through unregistered offerings. DERA suggested that the total primary market security issuance was not lower following the DFA and may have increased around the implementation of the JOBS Act. The report noted an increase in the number of small IPOS in recent years with more than 75 percent of IPOs in 2016 being classified as Emerging Growth Companies (EGCs). In addition, DERA noted that following the amendments to Regulation A in Title IV of the JOBS Act, there was a large increase in Regulation A offerings over the initial 18 months following the effectiveness of the amendments, with 97 qualified offerings seeking to raise some $1.8 billion.

In terms of market liquidity, DERA found no empirical evidence consistent with the hypothesis that liquidity has deteriorated after regulatory reforms. DERA also found no support for a causal link between the Volcker Rule and U.S. Treasury market liquidity conditions. DERA noted that although estimated transaction costs have decreased, corporate bond trading activity in recent years has also become somewhat more concentrated in less complex bonds and bonds with larger issue size. The report states that the evidence on dealer activity in times of stress is mixed and varies with the type of stress. In addition, DERA noted that trading in corporate bonds on alternative trading systems (ATSs) may partly account for the lower estimated average transaction costs for small trades.

FDIC Issues Guidance on Treatment of Centrally-Cleared Derivatives

Key Points:

- *The FDIC issued guidance to provide clarity on the regulatory capital treatment of certain* *centrally-cleared, settled-to-market derivative contracts.*

- *FDIC Vice Chairman Thomas Hoenig criticized the guidance, suggesting that it may have unintended consequences.*

On August 14, the Federal Deposit Insurance Corporation (FDIC) issued a [Financial Institution Letter] providing supervisory guidance on regulatory capital treatment of certain centrally-cleared derivative contracts under the capital rule. The letter included the following summary:

> The FDIC is issuing the attached letter that provides supervisory guidance on the regulatory capital treatment of certain centrally-cleared, settled-to-market derivative contracts. Certain central counterparties have revised their rulebooks such that variation margin is considered a settlement payment and not collateral. If an FDIC-supervised institution determines the transfer of variation margin on a centrally-cleared, settled-to-market contract settles any outstanding exposure on the contract and resets the fair value of the contract to zero, the contract's remaining maturity is the time until the next exchange of variation margin. This guidance may affect a derivative contract's calculation of potential future exposure, which uses a conversion factor based, in part, on the contract's remaining maturity.

FDIC Vice Chairman Thomas Hoenig issued a [statement] criticizing the guidance, suggesting that it "may have its own negative and unintended consequences."

He went on to state:

> The guidance effectively lowers the amount of capital required for certain derivatives contracts although the underlying economics of the transactions do not change. Under the Agencies' interpretation of footnote 2 of section 34 of the regulatory capital rule[1] the counterparties ostensibly settle on a daily basis, in effect lowering the potential future exposure of the derivative. However, the contract itself has not matured and therefore the potential future exposure and risks of settlement remain. Consequently, the capital available to absorb these risks will be artificially lowered and the residual burden shifted to the public.

Federal Insurance Office's Federal Advisory Committee on Insurance Holds Meeting on Insurance, Big Data, and Cyber Insurance

Key Points:

- *FIO Deputy Director Steven Seitz announced that the next Treasury report will focus on focus on asset management and insurance.*
- *Seitz stated the EU-U.S. insurance project through 2018 will focus on cyber risk, advanced analytics, and group supervision.*

On August 17, the Federal Insurance Office's (FIO) Federal Advisory Committee on Insurance (FACI) held an [open meeting] to receive an update on the insurance marketplace, and to discuss advanced analytics and big data in the insurance industry as well as cyber insurance coverage. FACI Chairman Daniel Glaser announced that FACI would hold its next meeting on November 21, 2017.

Insurance Information Institute Senior Vice President and Chief Economist Steve Weisbart explained the insurance industry is focused on issues such as autonomous cars, peer-to-peer insurance, cybersecurity, and workers compensation. He stated property and casualty (P&C) yields have been falling for over a decade, reflecting the long downtrend in prevailing interest rates. Insurance Information Institute Chief Actuary James Lynch suggested that the nature of catastrophes has been changing over the last decade, with natural catastrophes totaling $1.785 billion last year, up from $103 billion in 2015. He stated the U.S. does a good job of homeowner and auto insurance but there are large gaps in terms of flood and hail with only about 10 percent of the population having flood insurance. LIMRA Chief Executive Officer Bob Kerzner, said fewer people are buying life insurance policies, and he stated that annuity sales are "very much slumping," noting that index annuities are what are growing fastest because they have upside potential but also some guarantees. He noted that variable annuities have declined 42 percent since 2006.

George Washington University Associate Professor Kirsten Martin, discussed how "big data" is created and is used, noting consumers do not understand that their data is being collected by data brokers. She stated consumers get "upset" when they are told that their data is being gathered, aggregated, and sold to insurance companies to be used in pricing. Accenture Managing Director Jim Bramblet stated artificial intelligence AI is being used to sell insurance to consumers in programs, and some consideration will be needed about how to regulate it in the marketplace.

Ryan Gibney, Lockton Companies Vice President, said companies are taking an enterprise risk management approach to cyber risk, which includes: (1) identification of assets; (2) quantifying and understanding the exposure of those assets; (3) creating an incident response plan; and (4) insurance. He said the risk to physical assets, such as pipelines and manufacturing, is increasing and the industry is recognizing this. AIG Global Head of Cyber Risk Insurance Tracie Grella, stated AIG expects cyberattacks to continue to grow because of the current political outlook and regulatory environment. She stated buyers of cyber insurance are changing and policies are expanding to include property damage. John Coletti, XL Catlin Chief Underwriting Officer, Cyber and Technology, said cyber insurance has far less actuarially sound data to rely upon than other lines of business, noting that it has only existed for about 10 years. He said the implications of nation-state cyberattacks on the cyber insurance market are deep and far reaching.

FIO Deputy Director Steven Seitz, noted on February 3, the President issued an Executive Order on core principles for regulation of the financial system, and that Treasury has issued one report in response to the order. He noted that a future report will focus on asset management and insurance. Seitz said the EU-U.S. insurance project was established in 2012 and is ongoing. He said through 2018 the project will focus on cyber risk, advanced analytics, and group supervision. Finally, Seitz noted that the U.S. has announced its intent to sign the covered agreement on group supervision, reinsurance, and exchange of information. He said FIO will continue to engage with the NAIC and other stakeholders moving forward.

UPCOMING EVENTS

September 13

Small and Emerging Company Advisory Committee: The Securities and Exchange Commission (SEC) will hold a meeting of its Advisory Committee on Small and Emerging Companies. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

September 13-15

STA Annual Conference: The Security Traders Association (STA) will hold its 84th Annual Market Structure Conference. The scheduled speakers include SEC Commissioner Michael Piwowar, Representative Bill Huizenga (R-MI), and FINRA President and CEO Robert Cook. The panels scheduled for the conference include: (1) Capital Formation: The New Playbook; (2) eBrokers: No Sleeping Giants; (3) Regulatory & Competitive Challenges Shaping Buy- and Sell-Side Trading Desks; (4) Listed Options: Caught in the Crossfire; (5) Recommendations of the SEC Equity Market Structure Advisory Committee; (6) MiFID II: European Regulation Comes to the U.S.; and (7) Consolidated Audit Trail: The Industry Prepares.

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 this section.

ENERGY & ENVIRONMENT

Court Further Postpones Clean Power Plan Litigation

Key Points:

- *A federal appeals court issued an order extending by two months the delay in litigation over the suspended Clean Power Plan.*
- *The Clean Power Plan was the Obama Administration's most significant regulatory action targeting greenhouse gas emissions.*
- *The Supreme Court blocked implementation of the rule in February, 2016, and the regulations have since been subject to federal litigation.*

On August 8, the U.S. Court of Appeals for the D.C. Circuit further extended the delay in litigation over the Clean Power Plan by issuing an order that the "consolidated cases remain in abeyance for 60 days from the date of this order."

Implementation of the Obama Administration rule to limit greenhouse gas (GHG) emissions from existing power generation facilities has been suspended since the U.S. Supreme Court issued a stay on enforcement on February 9, 2016. The D.C. Circuit took up litigation on the merits of the rule, hearing oral arguments on September 27, 2016.

In its August 8th order, the D.C. Circuit noted the impact of the Supreme Court's stay, but also highlighted the legal landscape that drove the Clean Power Plan rulemaking process: "[a]s this court has held the case in abeyance, the Supreme Court's stay now operates to postpone application of the Clean Power Plan indefinitely while the agency reconsiders and perhaps repeals the Rule. That in and of itself might not be a problem but for the fact that, in 2009, EPA promulgated an endangerment finding, which we have sustained…[t]hat finding triggered an affirmative statutory obligation to regulate greenhouse gases."

EPA published the final rule establishing the Clean Power Plan on October 23, 2015. States would play the central role in implementing the rule, however the program would be enforced by the EPA, which could step in to establish a

Federal Implementation Plan (FIP) for any state that failed to meet the requirements of the regulations. The Clean Power Plan directed states to take actions to reduce GHG emissions from existing power plants by 32 percent below 2005 levels by 2030.

Since taking office the Trump Administration has been working toward repealing, or restructuring, the Clean Power Plan. On March 28, 2017, the President signed an Executive Order titled "Promoting Energy Independence and Economic Growth" (E.O. 13783), which directed the EPA to "review the [Clean Power Plan]…and, if appropriate…publish for notice and comment proposed rules suspending, revising, or rescinding" the final rule. On April 4, 2017, the EPA published a notice announcing that "it is reviewing the Clean Power Plan…including the accompanying Legal Memorandum, and, if appropriate, will as soon as practicable and consistent with law, initiate proceedings to suspend, revise or rescind this rule."

FERC Commissioners Sworn In

Key Point:

- *The two newly-confirmed members of Federal Energy Regulatory Commission were sworn in last week, restoring the energy regulatory agency's quorum, thus allowing it to act.*

Following their Senate confirmation on August 3, Federal Energy Regulatory Commission (FERC) commissioners Neil Chatterjee and Robert Powelson were sworn in and took office on August 8, and August 10, respectively. This restored FERC's quorum, and allows the Commission to act on policy matters and pending applications, including certificates for interstate natural gas pipelines. FERC will hold its first open meeting with the restored quorum on September 20. The Commission can also act on pending items in the interim through issuance of notational orders.

Prior to departing for the August recess, the Senate approved Chatterjee and Powelson's nominations by unanimous consent. Chatterjee served as energy policy advisor to Senate Majority Leader Mitch McConnell (R-KY), and Powelson was a Pennsylvania Public Utility Commission commissioner. President Trump submitted the two nominations on May 10, and the Senate Energy and Natural Resources Committee approved them on June 6. FERC has operated without a quorum since February 3, 2017, when former Chairman Norman Bay resigned leaving the Commission with only two commissioners. On August 2, the President submitted nominations for the two remaining vacancies: Jones Day energy attorney Kevin McIntyre, and Senate Energy and Natural Resources Committee counsel Richard Glick. The Senate Energy and Natural Resources Committee will hold a hearing on the McIntyre and Glick nominations on September 7.

Upcoming Hearings and Events

August 23

Fisheries: The Senate Commerce Committee will hold a hearing titled "Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight of Fisheries Management Successes and Challenges".

September 6-8

Pipeline Safety: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene meetings of its Liquid Pipeline Advisory Committee (LPAC) and Gas Pipeline Advisory Committee (GPAC). On September 6, the "GPAC and LPAC will meet in a joint session to discuss a variety of topics to keep committee members up-to-date on the pipeline safety program and policy issues." On

September 7-8, the GPAC will meet to discuss the proposed rule titled 'Safety of Gas Transmission and Gathering Pipelines,' which was published in the Federal Register on April 8, 2016; (81 FR 20722), and the associated regulatory analysis. Based on discussions at the previous GPAC meetings, the list of topics that may be discussed at this meeting could include:" (1) "Material Documentation"; (2) "Integrity Verification Process"; and (3) "Strengthened Assessment Requirements."

September 7
Nominations: The Senate Energy and Natural Resources Committee will hold a hearing on pending nominations: Joseph Balash to be Assistant Secretary of the Interior for Land and Minerals Management, and Richard Glick and Kevin McIntyre to be Members of the Federal Energy Regulatory Commission.

September 20
FERC Open Meeting: The Federal Energy Regulatory Commission (FERC) will hold its first open meeting since the restoration of its quorum.

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

CBO Releases Report on the Effect of Terminating CSR Payments; Administration to Make August Payments

Key Points:

- *The Congressional Budget Office (CBO) estimates terminating cost-sharing reduction (CSR) payments would increase the federal deficit by $194 billion and premiums for silver plans would increase about 20 percent in 2018.*
- *The Trump Administration will make August CSR payments.*

The CBO released a report estimating the effect of ending CSR payments to insurers on August 15. According to the report, originally requested by House Democrats, if CSR payments to insurers were terminated, premiums for silver plans would increase about 20 percent in 2018 and 25 percent by 2020. Additionally, the federal deficit would increase by $194 billion from 2017 through 2026.

In a related development, on August 16, the Trump Administration announced it will make CSR payments to insurers for August. In the past, President Trump has threatened to end such payments. Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) commended President Trump's decision to make the August payments. He noted "Congress now should pass balanced, bipartisan, limited legislation in September that will fund cost-sharing payments for 2018 as well as make section 1332 of the Affordable Care Act work better to give states more flexibility in approving insurance policies." Beginning in September, the Senate HELP Committee will hold a series of hearings aimed at stabilizing the individual insurance market.

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201.

This Week in Congress was written by Ryan Schnepp.