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Washington Update

This Week in Congress

House – The House passed H.R. 1221 the **Congenital Heart Futures Reauthorization Act of 2017**; H.R. 6615, the **Traumatic Brain Injury Program Reauthorization Act**; S. 2076, the **BOLD Infrastructure for Alzheimer's Act**; S. 2278, **State Offices of Rural Health Reauthorization Act**; H.R. 7327, the **SECURE Technology Act**; H.R. 7279, the **Water Infrastructure Improvement Act**; H.R. 7328, the **Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2018**; HR. 2765, the **RBIC Advisers Relief Act**; S. 2200, the **National Integrated Drought Information System Reauthorization Act**; H.R. 767, the **Stop, Observe, Ask, and Respond to Health and Wellness Act**; and S. 2276, **GAO-IG Act**.

Senate – The Senate passed S.3238, **Emergency Alert Systems**; S.2511, **CENOTE**; S.576, the **First Step Act** ; H.R.7213, **Countering Weapons of Mass Destruction Act**; S.2200, **National Integrated Drought Information System Reauthorization Act**; S.3085 to establish a **Federal Acquisition Security Council**; S.3367, the **Department of Transportation Reports Harmonization Act**; H.R.6615, the **Traumatic Brain Injury Program Reauthorization**; H.R.6400, **United States Ports of Entry Threat and Operational Review Act**; H.R.1162: **No Hero Left Untreated Act**; H.R.6347 the **Real Estate Appraisal Harmonization Act**; and H.R.6348, the **Small Business Access to Capital and Efficiency Act**. Further business can be found here.

Next Week in Congress

House – The House is scheduled to recess for the holidays.

Senate – The Senate is scheduled to recess for the holidays.

TAX

Update on Year-End Tax Legislation

Key Points:

- *Senate Republicans have indicated that they have run out of time to pursue any year-end tax legislation and that the only way something could be passed would be through a package of noncontroversial changes to how the IRS operates*
- *House Ways and Means Chairman Kevin Brady (R-TX) adds two tax extenders to*

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H.R. 88 which was passed by the House on Thursday

Republicans on Wednesday indicated that they do not expect any progress in regard to year-end tax provisions. Senate Majority Whip John Cornyn (R-TX) stated, "My guess is we're done….I wish we could do it, but I think we've run out of time." Incoming Senate Finance Committee Chairman Chuck Grassley (R-IA) explained that Republicans were hesitant on including any tax legislation in the must-pass funding measure because it would have added to the complexity. He added that the only way Congress might still move tax-related changes would be through a package of noncontroversial changes to how the Internal Revenue Service (IRS) operates.

While the Senate has not considered any tax legislation this week, the House decided to consider and pass H.R. 88. Ways and Means Chairman Kevin Brady (R-TX) added two tax extenders into his bill, the Retirement, Savings, and Other Tax Relief Act of 2018. The bill was first introduced on December 17, and now includes tax incentives for railroads and biofuels, retirement savings proposals, disaster tax relief, and several technical corrections to the Tax Cuts and Jobs Act (TCJA). Specifically, the latest version of the bill would eliminate a one-year retroactive extension of over 20 extenders, replacing it with provisions that would delay several Affordable Care Act (ACA) taxes; extend section 20 college savings plans to "unborn children"; repeal the indoor tanning tax; and weaken the Johnson Amendment's restriction on nonprofit politicking. House Republicans also decided to remove the number of IRS changes from the bill and introduce them as H.R. 7227 (115) instead. While H.R. 88 will not be considered by the Senate, there is a chance that it will take on the IRS reform bill as members now have to return to Washington.

Joint Committee on Taxation Issues New Blue Book

Key Point:

- *Joint Committee on Taxation releases Blue Book for the Tax Cuts and Jobs Act.*

The Joint Committee on Taxation (JCT) issued JCS-1-18: "General Explanation of Public Law 115-97" this past week. The Blue Book helps explain the Tax Cuts and Jobs Act (TCJA) and includes useful legislative history and helps clarify intent or operation of provisions with examples.

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

FINANCIAL SERVICES

SEC Votes on Several Initiatives Including Bad Actor Bar, Risk Mitigation, Regulation A Exemption, Fund of Funds Arrangements, Disclosure of Hedging Practices, and a Transaction Fee Pilot

Key Points:

- *The SEC voted at an open meeting to approve the PCAOB budget and accounting support fee; applications by security-based swap dealers or major security-based swap participants for statutorily disqualified associated persons, risk mitigation techniques for uncleared security-based swaps, and amendments to allow fund of funds arrangements.*
- *Outside the open meeting the SEC voted on final rules: to allow reporting companies to rely on the Regulation A exemption from registration for their securities offerings; and to establish a Transaction Fee Pilot.*
- *On Tuesday, the SEC adopted final rules to require disclosure in proxy statements policies*

and procedures allowing certain hedging transactions.

The Securities and Exchange Commission (SEC) took action on a number of rules this week. At a December 19, open meeting the Securities and Exchange Commission (SEC) voted: unanimously to approve the "Public Company Accounting Oversight Board 2019 Budget and Accounting Support Fee"; 3 to 2 to approve final rules on the "Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or be Involved in Effecting Security-Based Swaps (Rule of Practice 194);" unanimously to approve proposed rules regarding "Risk Mitigation Techniques for Uncleared Security-Based Swaps"; and unanimously to approve proposed rules and amendments to "Allow Fund of Funds Arrangements." Chairman Jay Clayton stated that the passage of Rule of Practice 194 is a step forward in the SEC's implementation of Title VII and furthers harmonization efforts with the CFTC. Commissioners Kara Stein and Robert Jackson dissented in Rule of Practice 194 vote, with Commissioner Stein stating that harmonization with the CFTC is important but suggesting that the rule abrogates the SEC's authority and creates a "loophole she cannot sign on to."

While not on the schedule nor discussed in the open meeting, the SEC voted Wednesday following the open meeting to "adopt final rules to allow reporting companies to rely on the Regulation A exemption from registration for their securities offerings." Mandated by the Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174), which was enacted earlier this year, the final rules "amend Securities Act Rule 251 to permit companies subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act to use Regulation A." The rules "also revise Securities Act Rule 257 to provide that companies that meet the reporting requirements of the Exchange Act will be deemed to have met the reporting requirements of Regulation A."

On Wednesday, the SEC also adopted a final rule to establish a Transaction Fee Pilot program in NMS stocks, including ETPs. The pilot applies to exchanges only (both to maker-taker and taker-maker exchange models) and would have two test groups (of 730 securities each) with one control group. The first test group would impose a $0.001 fee cap with no cap on rebates. Test Group 2 would have 730 securities plus appended Canadian interlisted stock, and would impose a $0.003 fee cap. Test Group 2 would not allow rebates and linked pricing except for specified market maker activity.

On Tuesday, the SEC voted to approve final rules to "require companies to disclose in proxy or information statements for the election of directors any practices or policies regarding the ability of employees or directors to engage in certain hedging transactions with respect to company equity securities." This issue was originally intended to be considered during Wednesday's meeting but was instead considered separately.

FSOC Open Meeting to Approve 2018 Annual Report

Key Point:

- *The FSOC voted to approve the 2018 annual report which included eleven key areas of risk and recommendations.*
- *The FSOC also held a closed meeting to discuss interpretive guidance on nonbank financial company designations, an update from the working group on digital assets and distributed ledger technology, and FASB*

implementation of the current expected credit losses financial reporting standard.

On December 19, the Financial Stability Oversight Council (FSOC or the Council) held an open meeting and voted to approve its 2018 Annual Report.

The Council also held a closed executive session. A readout of the executive session noted that discussion focused on: potential amendments to its interpretive guidance on nonbank financial company designations, including an activities-based approach, noting that the Council is "working to develop a proposal for public comment"; an update from the digital assets and distributed ledger technology working group; the implementation of the Financial Accounting Standards Board (FASB) financial reporting standard for current expected credit losses.

Treasury Secretary Steven Mnuchin discussed the 2018 Annual Report. He said the FSOC annual report is a process of analysis and collaboration between member agencies. He explained that the 2018 Annual Report details the risks to the U.S. financial system for Congress and the public, and makes recommendations about future work for member agencies. Bimal Patel (Deputy Assistant Secretary of the Treasury) noted the Council is required to report annually by statute on threats to U.S. financial stability. Patel said the report acknowledges the strong economic growth of the past two years while stressing the need to remain vigilant. He noted the report indicates that risks remain moderate but identifies growing threats. He added that financial stability risks outside the U.S. have increased, particularly risk that could result from a disorderly retreat of the United Kingdom (UK) from the European Union (EU) in March of 2019. The 11 key areas of risk and recommendations detailed in the report include: cybersecurity; central counterparty clearing houses (CCPs); reference rates; capital liquidity and capital positions; wholesale funding markets; financial innovation; data quality collection and sharing; managing vulnerability among prolonged credit expansion; housing finance reform; changes in financial market structure; and asset management products and activities.

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.

TRADE

U.S., China Continue Trade Talks, More Expected Early January

Key Point:

- *The countries held informal lower level talks this week in anticipation of higher level, in-person negotiations in January.*

Treasury Secretary Steven Mnuchin told reporters on Tuesday that the U.S. is "in the process of confirming the logistics of several meetings and we're determined to make sure that we use the time wisely, to try to resolve this." Both sides are looking to "document an agreement" before the tariffs on $200 billion of Chinese goods increase from 10 to 25 percent, which is scheduled to occur March 1. Secretary Mnuchin also attempted to walk back President Trump's statement that he may intervene in the Huawei CFO's legal case for trade purposes. Secretary Mnuchin suggested, "China understands that these are separate tracks." However, Secretary Mnuchin acknowledged that he and President Trump have not engaged in "any direct conversations" regarding the Huawei CFO and her potential extradition to the U.S.

Lawmakers Push for 232 Tariff Reform, Removal

Key Points:

- *The Senate Finance Committee Chairman and Ranking Member wrote a letter calling on the Commerce Department to improve the Section 232 tariff product exclusion process.*
- *Bipartisan members of the House Ways & Means Committee urged the Trump Administration to lift 232 tariffs "as soon as possible."*

Senate Finance Committee Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) co-wrote a letter to the Commerce Department (DOC) in which they requested Commerce make more changes to improve the Section 232 product exclusion process. They observed companies reporting "lengthy delays in the processing of exclusion requests; contradictory, incomplete, or ambiguous guidance when DOC denies requests on technical grounds; and slow and unresponsive replies to their inquiries to the DOC." They also noted Commerce has not abided by its review period limit of 106 days: "[E]xclusion requests that were filed and posted as long ago as early April remain pending, a period more than double the 106 days targeted by DOC. Our assessments suggest that, of more than 29,700 posted requests awaiting decisions as of December 10, more than 11,700 have been pending for more than 106 days, and more than 4,900 requests have been pending for more than 150 days." They requested that Commerce Secretary Wilbur Ross reply with a "prompt response" that details what Commerce will do to resolve the problems.

A bipartisan group of Ways & Means Committee members, including trade subcommittee Chairman Dave Reichert (R-WA) along with Reps. Jackie Walorski (R-IN), Ron Kind (D-WI), Adrian Smith (R-NE), David Schweikert (R-AZ), Carlos Curbelo (R-FL), Darin LaHood (R-IL) and Brad Wenstrup (R-OH), called on the Trump Administration to remove 232 tariffs on steel and aluminum "as soon as possible." They also noted that "despite the fact that President Trump recently signed the U.S.-Mexico-Canada Agreement (USMCA), the tariffs -- and retaliation from Mexico and Canada -- remain in place." The letter suggests the Committee wants to address the tariffs before it considers approving the USMCA.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Riyad Carey contributed to this section.

This Week in Congress was written by Ryan Schnepp.