

December 7, 2017

Financial Services Regulatory Reform Legislation

Senate Panel Approves Bipartisan Regulatory Reform Bill

SUMMARY

On December 5, the Senate Banking Committee approved, on a vote of 16 to 7, the “Economic Growth, Regulatory Relief, and Consumer Protection Act” (the “Senate Bill”). The legislation, as amended to a limited extent during the Committee markup, is very similar to the as-introduced version of the bill that we summarized in our [Client Memorandum](#) of November 20, 2017.¹ The Senate Bill would revise various post-crisis regulatory requirements, including a number of amendments to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), and provide other targeted regulatory relief to certain financial institutions and new consumer protections, such as credit report fraud alerts and free annual security freezes from credit reporting agencies.

Most significantly, the Senate Bill would increase, from \$50 billion to \$250 billion, the Dodd-Frank asset threshold for automatic “SIFI” regulation of bank holding companies (“BHCs”), exempt from the Volcker Rule insured depository institutions with less than \$10 billion in consolidated assets and lower levels of trading assets and liabilities, and require certain modifications to the banking agencies’ Liquidity Coverage Ratio requirements. The Committee adopted some notable modifications to the as-introduced text of the Senate Bill, including:

- new “transparency” requirements with respect to U.S. participation in the development of certain international insurance-related standards;
- certain modifications to the banking agencies’ Supplementary Leverage Ratio (“SLR”) requirements;
- modified amendments to the Dodd-Frank company-run stress testing requirements and Volcker Rule exemption for small financial institutions; and
- a provision designed to facilitate online banking.

BACKGROUND

A. SENATE BANKING COMMITTEE MARK-UP

The Senate Bill is largely similar to the version introduced on November 16, 2017, by Committee Chairman Mike Crapo (R-ID) and cosponsored by a bipartisan group of Senators.² Subsequent to the introduction of the bill, two additional Democrats, Sens. Tom Carper (D-DE) and Chris Coons (D-DE), expressed their support for the legislation.³

Although numerous amendments were offered during the markup, only one, a “Managers’ Amendment” offered by Chairman Crapo, was adopted.⁴ In addition to making a number of technical corrections, the Managers’ Amendment included several substantive modifications of the introduced bill, including those described below.

1. International Insurance Regulation

The Managers’ Amendment added a new Section 212, which would require the Secretary of the Treasury, the Federal Reserve, and the Federal Insurance Office (“FIO”) to “support increasing transparency at any global insurance or international standard-setting regulatory or supervisory forum in which they participate,” such as meetings of the International Association of Insurance Supervisors (“IAIS”) and the Financial Stability Board. Among other requirements, the Treasury Secretary and Federal Reserve Chairman would be required to submit a report to and testify before Congress within 180 days after the date of enactment of the Senate Bill regarding their efforts to increase transparency at meetings of the IAIS and to testify annually over the next five years on the status of discussions at international insurance standard-setting fora.

Section 212 would also require the Treasury, Federal Reserve and FIO to “achieve consensus” with state insurance regulators through the National Association of Insurance Commissioners (“NAIC”) before “tak[ing] a position or reasonably intend[ing] to take a position” with respect to international insurance proposals negotiated at such global forums. It is not clear precisely how that consensus would be obtained. Further, before supporting or adopting any “key elements in any international insurance proposal or international insurance standard,” the Treasury Secretary, Federal Reserve Chairman and FIO Director, in consultation with the NAIC, would be required to conduct a study, subject to notice and comment, on the effects of such proposal or standard on U.S. markets and consumers.

In addition, Section 212 would establish a new “Insurance Policy Advisory Committee on International Capital Standards and Other Insurance Issues” at the Federal Reserve, comprised of up to 21 members representing a “diverse set of expert perspectives from various sectors of the United States insurance industry.” It is not clear what the purpose or authority of this committee would be.⁵

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2. Adjustments to the Supplementary Leverage Ratio

The Senate Bill would require the Federal banking agencies to amend their rules implementing the SLR, which is scheduled to become effective on January 1, 2018,⁶ to specify that funds of a “custodial bank” that are deposited with a central bank, such as the Federal Reserve or European Central Bank, will not be taken into account when calculating the measure of total leverage exposure, *i.e.*, the SLR denominator. The Senate Bill, as originally introduced, defined “custodial bank” to mean any depository institution or depository institution holding company for which the level of assets under custody is not less than 30 times its total consolidated assets. The Managers’ Amendment, however, modified the definition of “custodial bank” to be “any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution subsidiary of such a holding company.” This revised definition is identical to that contained in an analogous House bill, the “Pension, Endowment, and Mutual Fund Access to Banking Act,” which was approved by the House Financial Services Committee in October 2017.⁷

3. Company-Run Stress Tests

The Senate Bill would exempt all BHCs, banks, savings and loan holding companies, and savings associations with less than \$250 billion in total consolidated assets from the Dodd-Frank requirement to conduct company-run stress tests.⁸ Institutions with \$250 billion or more in total consolidated assets would still be required to conduct these company-run stress tests, but would be permitted to do so on a “periodic” basis, rather than the currently required “semiannual” basis for BHCs and “annual” basis for other institutions. The Managers’ Amendment modified these requirements to reduce the currently required three scenarios (baseline, adverse, and severely adverse) to two scenarios (baseline and severely adverse), aligning the company-run stress test requirements with the supervisory stress test requirements provided in the Senate Bill.

4. Volcker Rule Exemption for Smaller Institutions

The Senate Bill, as originally introduced, would exempt an insured depository institution from Section 13 of the Bank Holding Company Act, *i.e.*, the Volcker Rule, if the institution has (1) less than \$10 billion in total consolidated assets and (2) total trading assets and trading liabilities representing less than 5% of its total consolidated assets. The Senate Bill, as amended, would carve out any insured depository institution from this exemption that is controlled by a company that itself exceeds these \$10 billion and 5% thresholds.

5. Online Banking

The Managers’ Amendment includes a new Section 214 that would authorize a financial institution to scan and electronically store certain personal information from an individual’s driver’s license or “personal identification card” when the individual initiates a request online to open an account or obtain a financial product or service. Except as required to comply with Federal bank secrecy laws, the financial institution

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could use such scans and information only to verify the individual's identity and authenticity of the license/ID card and to comply with certain record-retention requirements. The Managers' Amendment explicitly notes that these provisions would preempt and supersede any conflicting State law, but only to the extent of such conflict. These provisions are similar to those contained in the "MOBILE Act of 2017," a bill introduced in the House earlier this year.⁹

6. Credit Reporting Agencies

The Managers' Amendment includes a new Section 503 that would require the Government Accountability Office to conduct a review of the "current legal and regulatory structure for consumer reporting agencies and an analysis of any gaps in that structure." In addition, the Managers' Amendment modifies the obligations under Section 301 for credit reporting agencies, when identity theft is suspected, to provide consumers with fraud alerts and security freezes on credit at no cost to consumers.

NEXT STEPS

Once this legislation moves to the Senate floor (which could occur early next year), it will need to maintain the bipartisan support it enjoyed in Committee if, as expected, its passage will require a supermajority of at least 60 votes, due to the Senate's "filibuster" rule. If the legislation is adopted in the Senate, it remains to be seen whether and how it would be reconciled with its House-passed counterpart, the "Financial CHOICE Act of 2017," which is substantially different in scope and substance, and ultimately approved by both chambers of Congress.¹⁰

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ENDNOTES

- ¹ See our Client Memorandum, *Financial Services Regulatory Reform Legislation: Senators Introduce Bipartisan Regulatory Reform Bill*, dated November 20, 2017, available at <https://sullcrom.com/financial-services-regulatory-reform-legislation-senators-introduce-bipartisan-regulatory-reform-bill>.
- ² S. 2155, 115th Cong. (2017) (as introduced), available at <https://www.congress.gov/115/bills/s2155/BILLS-115s2155is.pdf>. Following Chairman Crapo's release of the Senate Bill and prior to its formal introduction, two additional cosponsors were added: Sen. Jim Risch (R-ID) and Sen. Michael Bennet (D-CO). See U.S. Senate Committee on Banking, Housing, & Urban Affairs, *Senators Announce Agreement on Economic Growth Legislation* (Nov. 13, 2017), available at <https://www.banking.senate.gov/public/index.cfm/republican-press-releases?ID=1271F394-4DCD-4917-A8DF-D194A058B68F>.
- ³ Press Release, *Sens. Carper, Coons Join Bipartisan Bill to Boost Banking Consumer Protections, Help Local Banks and Credit Unions* (Dec. 5, 2017), available at <https://www.coons.senate.gov/newsroom/press-releases/sens-carper-coons-join-bipartisan-bill-to-boost-banking-consumer-protections-help-local-banks-and-credit-unions>.
- ⁴ The text of the Managers' Amendment is available here: https://www.banking.senate.gov/public/_cache/files/e5875d62-3543-4efd-b527-f876be165e68/DEAD886D639BBB4CF3CA341929580EED.crapo-manager-s-amdt-2.pdf.
- ⁵ Nothing in the Senate Bill would require the Federal Reserve to establish a similar forum for consideration of international bank capital standards.
- ⁶ For more information on the SLR, see our Client Memorandum, *Bank Capital Rules: Federal Reserve Approves Final Rules Addressing Basel III Implementation and, for All Banks, Substantial Revisions to Basel I-Based Rules*, dated July 3, 2013, available at https://www.sullcrom.com/Bank_Capital_Rules_Basel_III_7_3_13/, and our Client Memorandum, *Bank Capital: Supplementary Leverage Ratio; Federal Banking Agencies Issue Final Rules Revising the Supplementary Leverage Ratio's Exposure Measure Denominator*, dated September 16, 2014, available at <https://www.sullcrom.com/bank-capital-supplementary-leverage-ratio-federal-banking-agencies-issue-final-rules>.
- ⁷ For a copy of the House bill, H.R. 2121, and amendments thereto, see <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402416>.
- ⁸ See 12 C.F.R. §§ 46.5, 252.14, 252.54, 252.55 and 325.204.
- ⁹ H.R. 1457, 115th Cong. (2017) (as introduced), available at <https://www.congress.gov/115/bills/hr1457/BILLS-115hr1457ih.pdf>.
- ¹⁰ For further information on the Financial CHOICE Act of 2017, see our Client Memorandum, *Financial CHOICE Act "2.0": House Financial Services Committee Chairman Releases Revised Financial Regulatory Reform Proposal*, dated April 21, 2017, available at <https://www.sullcrom.com/financial-choice-act-2-0-house-financial-services-committee-chairman-releases-revised-financial-regulatory-reform-proposal>, and our Client Memorandum, *Financial CHOICE Act of 2017: House Passes Financial Regulatory Reform Legislation*, dated June 9, 2017, available at <https://www.sullcrom.com/financial-choice-act-of-2017-house-passes-financial-regulatory-reform-legislation>.

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