

August 13, 2018



## August, Die She Must

With the House in the middle of a prolonged five-week break from DC, the Senate returns to Washington this week after effectively killing this year's traditional August recess (and apologies to Simon & Garfunkel for taking liberties with their lyrics). While some are already lamenting that such a truncated summer recess will be the norm going forward, the Senate looks to be fairly busy. On tap this week is consideration of a third "minibus," and while no FY2019 spending bills have yet to make it to the President's desk, the process continues in hopes that some will be signed by the end of September. With hearings on Supreme Court nominee Brett Kavanaugh planned for early next month, after a brief delay, several financial services nominees are scheduled to be considered by the Senate Banking Committee (SBC) this month. Along with moving these nominees, in the coming weeks SBC, in coordination with the Foreign Relations Committee, is scheduled to hold several hearings on Russia sanctions. And with Washington still digesting and interpreting the results of last week's special election in Ohio, nine more states have elections this month heading into the last legs of primary season in early September. We highlight these and other issues below as we preview what we believe will be the focus in Washington for this hopefully rare August work period, subject as always to external or unexpected events that could disrupt the schedule.

### Nominations

Last month, SBC held hearings for six nominees across several agencies including CFPB, Ex-Im, OFR, Ginnie Mae, and the SEC. Other than the questioning of Kathy Kraninger, the CFPB Director nominee, the hearings were pretty muted. The Committee usually moves to vote on nominees quickly, and had planned to vote on all of them before a quick beginning of August break. However, the Senate finished its business early that week and Committee votes were postponed. Our expectation is SBC will reschedule the votes for either this week or next. Once discharged from Committee, the nominees will face a slow confirmation process given the backlog of nominees in other areas and the Senate's focus on confirming judicial nominees. Further, the Senate's attention will be focused on the Supreme Court nomination hearings and confirmation process, which will kick off the first week of September.

Many continue to monitor the replacement for SEC Commissioner Kara Stein. The timing of the nominee is important because SEC nominees typically move through the Senate as pairs (one Republican/one Democrat). As a result, Elad Roisman is unlikely to move until a Democrat is nominated and is considered by SBC. Last week, news reports indicated that former SEC staffer Allison Lee may be the front runner and soon to be announced Democratic nominee. Previously, Lee was a counsel to Commissioner Stein and handled the enforcement portfolio. She is unfamiliar to many in D.C. and would be a lower profile selection. Judging by some of her public comments and postings on social media, she appears to lean toward the progressive side of the Democratic party.

On the CFTC front, we expect to see commissioner nominees Dawn Stump and Dan Berkovitz get paired together and move through the Senate – hopefully sometime in the next month.

## **Appropriations**

The Senate will continue to process annual funding bills this month and plans to begin consideration of the Labor HHS/Defense minibuss this week. Upon conclusion of that package, the Senate will have approved nine of the twelve bills. We understand that the House and Senate will attempt to conference all bills that have passed at least one chamber before government funding expires on September 30<sup>th</sup> (procedurally if a bill has passed one full chamber and one full committee it is eligible for conference). This plan seems extremely ambitious to us. We believe that the most likely scenario is completion of the first minibuss, which included Energy and Water, Legislative Branch and Militarily Construction and Veterans Affairs by the 30th, and a Continuing Resolution for the remaining bills. We think the shutdown threat is relatively low for September 30<sup>th</sup> but is more real at the end of the year when contentious riders such as Border Wall funding will dominate the debate.

## **Iran and Russia Sanctions**

### ***Iran***

Sanctions policy was thrust back into the spotlight when the first set of nuclear-related sanctions were reimposed on Iran (snap back) following President Trump's withdrawal from the Joint Comprehensive Plan of Action (JCPOA) earlier this year. According to the White House statement on the issue, the renewed sanctions took effect last week on August 7<sup>th</sup> and included those related to Iran's automotive sector and its trade in gold and precious metals, as well as sanctions related to the Iranian rial. The remaining nuclear-related sanctions will resume November 5<sup>th</sup> – one day before the midterm elections.

Politically, Trump seems to be looking to capitalize on the positive reviews from his summit with North Korean Leader Kim Jong Un, stating he would be happy to meet with Iranian President Rouhani without preconditions. Such a meeting would be a political high-wire act with plenty of twists and turns as Trump would need to make an agreement that gives comfort to European allies who still see the JCPOA as the best option, Republicans in Congress who generally view the JCPOA as a bad agreement but that undoing it presents huge risk, and Middle East allies wary of any security concessions by Trump in a potential deal. Likewise, Rouhani has said he would accept such a meeting, and would be looking for economic concessions for an economy crippled by years of sanctions.

### ***Russia***

Throughout the summer, congressional interest in additional Russia sanctions legislation has waned and there are significant hurdles for any such bill to become law before the November elections. Senate action remains the leading indicator on Russia sanctions legislation. SBC Chair Mike Crapo (R-ID) and Foreign Relations Committee Chair Bob Corker (R-TN) have announced a [series of deliberative hearings](#). These hearings are a political response to the Helsinki Summit rather than a serious effort to move legislation. The hearings, the timing of which could slip into next month, will slow the pace of legislation, and Republican leadership hopes that they will be enough for congressional Republicans to distinguish themselves from President Trump.

Further complicating the passage of additional legislation is that Republicans remain divided on the Russia sanctions issue, and it is not currently a clear election matter. Chair Crapo does not believe additional legislation is necessary and he recently said, "It's important, I think, that we remind ourselves that we just did a major Russia sanctions bill," adding that last year's legislation specifically cited "election interference." Crapo and his staff believe that the Trump administration has all the authority it needs through existing laws - International Emergency Powers Act and Countering America's

Adversaries Through Sanctions Act. Other Republicans believe Congress should not limit the president's discretion or that additional sanctions will eventually have negative impacts on American companies. Even bi-partisan efforts to legislate remain controversial. Sens. Marco Rubio (R-FL) and Chris Van Hollen (D-MD) are working on the DETER Act; however, its broad and highly disruptive impact will prevent it from moving forward. Moreover, the DETER Act is reportedly also opposed by EU countries.

At this time the probability of enactment of new Russia sanctions legislation is limited unless it becomes a voter issue or if it appears Russia is meddling in the 2018 midterms. Further developments in these areas may compel Congress to act – to inoculate themselves from the President's engagement with Putin. If there is not an appetite for additional sanctions, including ones criticized as potentially disruptive, there could still be appetite for making existing sanctions mandatory rather than discretionary.

### **Treasury Fintech Report and OCC Special Purpose Charter**

RFA continues to monitor the reaction from a busy end of July in the fintech space. We understand that SBC may hold a fintech hearing this month, which will allow members to probe some of the issues from the Treasury report and consider the OCC Special Purpose Charter. As witnesses are set and the scope of the hearing is finalized, we will be sure to provide timely updates.

#### ***Treasury Report***

On July 31<sup>st</sup>, Treasury released its fourth and final policy report in response to the Executive Order on Core Principles for Regulating the United States Financial System. The report examined and made recommendations related to traditional non-bank financial companies and addressed issues related to innovation in the financial sector. Notable recommendations include:

- Regulators should establish a unified solution, or “regulatory sandbox” to permit meaningful experimentation for innovative products, services and processes.
- Congress should enact a single, federal data security standard and breach notification standard for consumer financial data.
- Improve regulatory frameworks and operating models to promote innovation:
  - Encourages states to harmonize regulatory requirements;
  - Promotes the offering of a Special Purpose Charter by the OCC (discussed below);
  - Addresses regulatory pain points in bank and fintech partnerships.
- Recommendations to improve how data aggregators interact with banks.
- Recommendations addressing marketplace lending, including supporting the codification of the doctrines of “valid when made” and “true lender.”

#### ***OCC Special Purpose Charter***

On the same day as the Treasury report release, the OCC announced its long awaited and updated framework for a Special Purpose National Charter (“Charter”). Further, it announced it would begin accepting applications for the Charter. Building on work started under former Comptroller Curry and implementing (very quickly) Treasury's recommendation on the topic, the updated framework emphasizes the following:

- Every application will be evaluated on its unique facts and circumstances.
- Fintech companies that apply, qualify for, and receive special purpose national bank charters will be supervised like similarly situated national banks, to include capital, liquidity, and financial inclusion commitments as appropriate.

- The expectations for promoting financial inclusion will depend on the company's business model and the types of planned products, services, and activities.
- New fintech companies that become special purpose national banks will be subject to heightened supervision initially, similar to other de novo banks.

Some Democrats and consumer advocates were quick to criticize the announcement and emphasized their concern that this charter would allow firms to bypass state usury laws and be subject to weak Community Reinvestment Act requirements. State regulators continue to question the OCC's legal authority to grant such a charter. Further, some bank trades continue to urge the OCC to ensure a level playing field between banks and any successful applicant. RFA continues to monitor and evaluate the types of financial companies that might be candidates for a charter. Notably, the OCC likely will need to run a company through the full application phase before others begin to take steps towards a charter. This will allow all the regulatory pain points to be addressed before widespread adoption.

## **Other**

### ***Tax Cut 2.0***

We believe that House Republicans would like to spend most of September focusing on their Tax Reform 2.0 proposal. Ways and Means Chair Kevin Brady (R-TX) has indicated that the proposal will have three main objectives – protecting middle income and small business provisions, family/retirement savings, and business innovation. Ways and Means also has told Members that this is a potential vehicle for technical corrections following passage of the Tax Cuts and Jobs Act. We believe that this will largely be a messaging exercise heading into the midterm elections with little chance of Senate consideration.

### ***Farm Bill***

There continues to be a large gap between the House and Senate on legislation to reauthorize programs under the Department of Agriculture, otherwise known as the Farm Bill. However, both chambers are moving towards a conference with conferees named in an effort to reach an agreement to reauthorize programs before the September 30<sup>th</sup> expiration date. The main issue continues to be changes to the Supplemental Nutrition Assistance Program (SNAP) – the House version would place work requirements on recipients while the Senate bill does not contain such requirements. This led the House bill to move forward only on a party-line vote (no Dems supported) while the Senate bill passed on a strong bipartisan vote of 86-11. While there are other differences between the two bills, the SNAP issue promises to dominate much of the discussion – it's highly unlikely the House provisions could get 60 votes in the Senate, but House Republicans have the support of President Trump in their effort to include work requirements (and Speaker Ryan has held firm in his support for the SNAP provisions). With limited time on the legislative calendar in September and this core issue in the middle, the dreaded short-term extension – to ensure it doesn't lapse and to take us through the election – is seemingly more and more likely for the Farm Bill.

### ***Postal Reform***

Postal reform remains on the Trump administration's policy to-do list – an April 2018 executive order created a task force charged with drafting a report of recommendations by August 10<sup>th</sup> to modernize and financially stabilize the U.S. Postal Service (USPS). The task force reportedly delivered a finalized report to the White House last week and is expected to brief President Trump on the recommendations upon his return to DC later this month. The report is expected to contain both administrative and legislative recommendations that would mitigate any cost shifting to taxpayers, including

specific evaluation of the decline of mail volume, the growing role and pricing for package delivery, the agency's impact in rural areas, and the general state of its business model, workforce, and operations.

The review was spurred at least in part by President Trump's criticism of Amazon's contracts with the USPS, which he has deemed unfair, and administration proposals to privatize the USPS. However, there is general consensus that any significant reform will require legislation in order to be realized – several bills currently exist to reestablish a sustainable business model for the USPS and improve its financial stability. The Senate Homeland Security and Governmental Affairs Committees are set to hold a hearing this September on the task force's findings.

### ***Deferred Action for Childhood Arrivals (DACA)***

Immigration policy has been a lightning rod for controversy since the beginning of the Trump Administration. A central part of that controversy has been what to do with the DACA program implemented under former President Obama. President Trump has already rescinded the expansion of DACA that allowed illegal immigrants who have been in the US for many years (before 2010) to take advantage of the program. Numerous court battles are underway on the program, including a high profile case where seven states have challenged whether the program is constitutional. President Trump's Justice Department declined to defend the case (since it is an Executive Branch program they do not want to exist). The Judge, Andrew Hanen, is expected to rule in favor of the states and order DACA be ended. If Hansen rules in this way, his ruling would be in conflict with other court rulings (see [NAACP v. Trump and Princeton v. Trump](#)) likely requiring the Supreme Court to take up the issue.

### **Political**

Republicans look to have squeaked out a victory last week in the special election in Ohio's 12<sup>th</sup> congressional district, and while much continues to be written about this race, onward to the next battles as primaries are scheduled in twelve states over the next five weeks. Tomorrow, voters in Minnesota will face the unusual prospect of choosing candidates for two Senate seats – Sen. Klobuchar (D) is running for re-election while Sen. Tina Smith (D) is running to serve the final two years of Sen. Al Franken's term after being appointed to the seat. Minnesota's governor's mansion is also open this year, with Republicans choosing between former Governor Tim Pawlenty and a former state representative and county commissioner, Jeff Johnson, while the Democratic candidates include Rep. Tim Walz, AG Lori Swanson and state representative Erin Murphy. Also on Tuesday, voters in Wisconsin's 1<sup>st</sup> congressional district will select candidates for retiring Speaker Paul Ryan's seat, so we will see if Democratic candidate Randy "Iron Stache" Bryce will make it to the ballot in November. Other races to watch in Wisconsin include the Republican primary to choose a challenger to Sen. Tammy Baldwin (D), and the Democratic gubernatorial primary to choose an opponent for Gov. Scott Walker.

Later this month on August 28<sup>th</sup>, voters in Arizona will choose candidates for the retiring seat of Sen. Jeff Flake, with Rep. Kyrsten Sinema the current favorite for Democrats and Republicans choosing between Rep. Martha McSally, former state representative Kelli Ward and former Maricopa County sheriff Joe Arpaio. Voters in Florida also will go the polls the last Tuesday in August, with Gov. Rick Scott expected to get the Republican nod to run against Sen. Bill Nelson (D). There are also several competitive House seats in Florida, including the race to succeed retiring Rep. Ileana Ros-Lehtinen and a primary challenge to Rep. Stephanie Murphy (D) by a progressive supported by Alexandria Ocasio-Cortez, the Democrat who defeated Rep. Joe Crowley in New York earlier this summer.