May 7, 2018

Maydays

With the House and Senate currently planned to be in session for just 55 total days before the August recess (and the House is *scheduled* to be in only 40 of those days), Congress comes back this week for another three-week work period before recessing the last week of the month for Memorial Day. On the Hill, among other items, we expect to see the appropriations process ramp up as well as potentially seeing financial services regulatory reform cross the finish line to the President's desk. May also marks the real start of the primary season, with eleven states holding elections throughout the month. These and other topics are highlighted below as we preview what we believe to be the focus in Congress this month, subject as always to external or unexpected events that could disrupt the expected schedule.

Appropriations

We expect significant progress to be made on the FY19 appropriations process during the upcoming work period. Both the House and Senate Committees are attempting to move through the process at a breakneck pace. House Approps has all twelve of the full committee markups tentatively scheduled between May 8th and June 20th, though they don't yet know which bill will be marked up on which day. The Senate is moving at a slightly slower pace but is also tentatively planning to markup several bills over the next few weeks. Once the bills are reported out of Committee, the picture becomes less clear – we have heard some talk of a large omnibus package before the August recess and some discussion of moving individual bills through the House and Senate. We could see potentially moving some of the less contentious bills such as Military Construction and VA, Legislative Branch, Energy and Water and Defense through both Chambers, but anything more than that seems unlikely. We are also skeptical that Congress will be able to move a comprehensive omnibus before the August recess, but the picture should become clearer in the coming weeks.

We also expect significant attention to be paid to the rescission request the White House is planning to send to the House early this week. While the size of the request keeps shrinking and will reportedly not cut programs agreed to in the recent omnibus, we still view this is a messaging opportunity for some Republicans to show they are still fiscally conservative after recent spending increases. There seems to be little appetite from top Appropriators and Leader McConnell (R-KY) to move forward with this plan.

Financial Services Regulatory Reform – S.2155

The most likely avenue for S. 2155 being signed into law remains the House taking up the Senate-passed legislation and sending it to the President's desk. Recently, House Financial Services Chair Hensarling (R-TX) began to relent some on his demand that additional measures be added to the package when he said he was "open to other pathways" should his provisions not get added. House Speaker Ryan (R-WI) too has moved up his timetable for the bill – he recently said legislation overhauling the Dodd-Frank Act would be on the President's desk in the next month.

As a reminder, Hensarling proposed a "bipartisan bucket" of approximately 30 different bills to be added to S.2155 and, until recently, said that the House would not take up the legislation until such measures were considered. Hensarling offered these bills ahead of Senate passage of S. 2155, but the fragile compromise of support with Democrats prevented these measures from being added before it passed the upper chamber. Senate Democrat supporters of the bills have remained stalwart opponents to adding provisions to S. 2155, and it seems their resolve may soon pay off.

CFIUS Reform

Congress could move closer to finalizing CFIUS reform legislation during the May work period. Though the Senate Banking Committee and the House Financial Services Committee originally expressed intentions to markup their respective drafts of the Foreign Investment Risk Review Modernization Act (FIRRMA) in April, that timeline proved to be overly ambitious. Senate Banking planned to send a final draft of its bill over to the Treasury Department for review last Friday, and barring any holds from Treasury, hold a markup of the legislation this Thursday, May 10th.

The Financial Services Committee had tentatively scheduled a similar timeline with a mark-up in the next week, but outstanding concerns over some of Rep. Pittenger's (R-NC) proposals to expand CFIUS jurisdiction to joint ventures in which intellectual property is transferred abroad and strengthen oversight of certain non-controlling investments in U.S. firms appears to have delayed action on this bill until June.

Bank Secrecy Act/Anti-Money Laundering

We still believe that BSA/AML reform is an area of focus for both the House Financial Services Committee and Senate Banking Committee for the remainder of the year, but other legislative priorities have slowed progress on the issue. Senate Banking is still in the initial information gathering phase, and the same team that is working on CFIUS is working on AML, so we don't expect much progress until CFIUS is completed. The House Committee is further along in the process and has been working on a discussion draft for several months. We understand that some in the small business community have concerns about the beneficial ownership provisions in that draft that seem to be on their way to being cleared up, but at this point it is unlikely that such legislation will be marked up in May.

HFSC and SBC Markups

Outside of S. 2155, CFIUS reform, and NFIP reauthorization (noted below) there are relatively few banking priorities outstanding in either chamber. Recently, House Financial Services Committee Chairman Hensarling requested that the Senate Banking Committee begin consideration of some of the 20-odd financial services bills passed by the House this Congress. Senate Banking has tentatively committed to holding a capital markets-focused markup in late May. Committee Democrats originally pushed for this markup during the drafting of S. 2155, but it is uncertain if any of the House-passed financial services bills will be included, and Democrats are likely to offer several corporate governance and consumer protection measures. Additionally, a Financial Services Committee mark-up originally schedule for this week appears to have been postponed until June.

Congressional Review Act

In March 2017, Sen. Toomey (R-PA) sent a letter to the Government Accountability Office (GAO) asking it to decide if the Consumer Financial Protection Bureau's (CFPB) bulletin "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act" (Bulletin) was a rule for the purposes of the Congressional Review Act (CRA). In December 2017, the GAO determined the Bulletin was in fact a rule for purposes of the CRA. According to the GAO, the Bulletin fell within the CRA because "the CFPB Bulletin at issue here is a statement of general applicability, since it applies to all indirect auto lenders; it has future effect; and it is designed to prescribe the Bureau's policy in enforcing fair lending laws." Using this letter, Sens. Toomey, Moran (R-KS) and several of their Republican colleagues introduced S. J. Res. 57 to provide for Congressional disapproval of the Bulletin under the CRA on March 22, 2018. The measure passed the Senate by a vote of 51-47 on April 18th. The House is expected to vote on the measure this week and send it to the President's desk. Should the measure be enacted into law, it is possible wide swaths of agency statements or guidance could be challenged under the CRA going forward and may mean agencies are more careful about helping industries interpret laws outside of formal rulemaking.

Iran Nuclear Deal

Debate over whether President Trump will withdraw the US from the 2015 Iran nuclear deal (the Joint Comprehensive Plan of Action or JCPOA) entered new territory last week when Israeli Prime Minister Benjamin Netanyahu presented information that he claimed showed evidence of past Iranian nuclear arms efforts. While the evidence shown was prior to the agreement, Netanyahu continued his pressure against the deal ahead of a crucial date for Trump and the US. The President has until this Saturday, May 12th, to decide whether to reimpose sanctions against Iran that were lifted under the JCPOA. Trump has called the JCPOA the "worst deal ever" but so far has not taken direct action to withdraw and has received entreaties from other national leaders such as German Chancellor Angela Merkel and French President Emmanuel Macron for the US not to withdraw from the deal.

With all eyes on Saturday, there are several options Trump could pursue including staying the course and waiving sanctions (which seems more and more unlikely), reimposing sanctions unilaterally, or announcing something in the middle. Staff on Capitol Hill believe that the Administration will remain in the JCPOA in some fashion, but this is difficult to predict given new Administration staff, such as new National Security Advisor Bolton. The perception on the Hill is that the State Department is leading the negotiation efforts, with three main areas highlighted to strengthen the deal – inspections, ballistic missile sanctions and "sunsets" or the breakout time Iran could have to build a bomb after the JCPOA concludes. Additionally, Congress currently can reimpose sanctions but hasn't indicated any desire to do so; draft legislation to set trigger points for Iran that would automatically impose sanctions has not been formally introduced. These next five days are pivotal in this debate and could put one nuclear agreement in peril as the US hopefully moves towards resolving another nuclear concern in North Korea.

Volcker Rule Simplification

After months of speculation and anticipation, financial regulators finally appear positioned to begin the process of revising the Volcker Rule. The Treasury Department targeted the rule for a series of changes in its July 2017 report reviewing the core principles of the U.S. financial regulatory system. While Congress has been quicker to propose and pass legislation addressing Treasury's Volcker rule recommendations, the five financial regulators jointly tasked with Volcker oversight have been more deliberative in their approach. Federal Reserve Chair Powell, Federal Reserve Vice Chair for Supervision

Quarles, Comptroller of the Currency Otting, SEC Chair Clayton, and CFTC Chair Giancarlo have each publicly voiced support for revisiting and streamlining the rule since taking their respective positions. Once FDIC Chair nominee Jelena McWilliams is in place, she is also expected to help further ease the interagency tailoring process.

Recent comments by Otting indicate that a full interagency rule proposal to streamline Volcker could be released this Spring. The proposed rule is likely to include provisions aimed at improving regulatory coordination, simplifying the definition of proprietary trading, increasing market-making flexibility, relieving covered funds restrictions and reducing compliance burdens. Congress remains set to pass its own Volcker Rule relief, included within S. 2155, ahead of the August recess. Once S. 2155 is signed into law, banking entities with $10 billion or less in assets will be exempt from the Volcker Rule.

Gun Control and Financial Firms

The vocal and persistent efforts of students after the Parkland shooting have generated a lot of press and activism, but it continues to be unlikely that Congress will move to enact any gun control legislation this year (although the omnibus spending bill did contain language to improve background checks and research on gun violence). The Florida shooting and the public outcry also spurred corporate action, including decisions by retailers to enact gun safety measures and action by some financial firms to change lending practices to certain firearms manufacturers and clients who don't have some gun control policies. While these actions have been applauded by Democrats, some of whom have encouraged other financial firms to follow suit (last week, twelve Senate Democrats sent letters to eleven financial firms pressuring them to follow the lead of Citibank and Bank of America who've announced such changes in lending practices), they have caught the ire of some Republicans who view this corporate action as a serious infringement on the Second Amendment. Senate Banking Committee Chairman Crapo (R-ID) has been speaking directly with financial firms on this issue and recently wrote to both Citi and BoA criticizing their moves to deny services for lawful businesses they disfavor. There also have been some Republican calls to cancel government contracts with financial firms who have waded into the gun control debate. While there could be hearings on the steps taken by these financial firms, all of this attention likely will only serve to amplify this issue on both sides leading up to the upcoming midterm elections.

Financial Innovation

The Treasury Department continues to work on their report discussing technological innovation in the financial system and nonbank institutions who offer bank-like services. This is the fourth and final report resulting from an Executive Order on "Core Principles for Regulating the United States Financial System." Treasury is currently drafting the report and finishing stakeholder meetings. From there the report must be circulated for inter-agency review – a process we expect to take about a month. Current timing expectations are for the report to be released in June. According to recent remarks from Craig Phillips, Counselor to the Treasury Secretary, the report will look at "regulatory asymmetries" that exist between emerging financial technology companies and their traditional counterparts. Phillips also said the report will speak to rationalizing the federal vs state regulatory landscape many of these institutions face. Under former Comptroller Curry, the OCC floated a potential optional federal charter for financial technology companies as a way to alleviate some of these concerns. Expectations have begun building that Otting will address the proposal around the time the Treasury Department releases its financial innovation report (June).

Flood Insurance

With NFIP authorization extended only until July 31st, there are now 86 days until the program expires but no indication that Congress is moving forward to an overhaul. While we don't expect to see any movement this month, there could be more pressure for reform the closer we get to the end of July. However, there's just as much likelihood that reform remains stalled and all we'll see in July is yet another can kick down the road, especially with Democrats feeling confident about the November elections.

Nominations

While we thought we would see Jelena McWilliams come to the Senate Floor to be confirmed as FDIC Chair during last month's work period, the Senate instead focused on ensuring that Mike Pompeo moved quickly through the process to become Secretary of State. McWilliams could still receive consideration this month, but with the backlog of nominees and consideration of high-profile positions such as Gina Haspel to head up the CIA, that could continue to slip. In an effort to resolve the nominee logjam, Senate Republicans are trying to move forward on a proposal to limit debate on certain candidates. Such a resolution passed the Rules Committee in late April on a party-line vote, so it faces tougher prospects to get Democratic support for 60 votes on the Floor. Republicans could always go nuclear on the rule change, but even that move is not guaranteed given the slim majority and absence of Sen. McCain (R-AZ). In other financial services positions, Randy Quarles continues to await confirmation for a full term as a Fed governor, and we expect to see the Senate Agriculture Committee hold a confirmation hearing soon on Dan Berkowitz to become a CFTC Commissioner, which would set the stage for him to be paired with Dawn Stump to be confirmed before the end of the summer.

Political

As noted above, there are only 40 legislative days in the House before the August recess, but even that number likely overstates the amount of time the lower chamber will be in town, as we expect days to continue to be given back throughout the summer for Members to be able to be in their districts to campaign. And while some Members are preparing for November, there are several interesting primaries taking place this month for House and Senate seats as well as for governor's mansions across the country. Of note is a Republican primary in West Virginia to determine who will take on Sen. Manchin, a bitter battle between two Republican House Members and a self-funded businessman to run against Sen. Donnelly in Indiana, the Republican primary in Ohio to determine who will run against Sen. Brown, the Democratic gubernatorial fight in Ohio between former congressman Dennis Kucinich and former state attorney general and CFPB Director Richard Cordray, and a primary challenge to Rep. Pittenger (R) in North Carolina. And that's just tomorrow. Later this month, we'll see Pennsylvania Republicans go to the polls to choose their candidate to run against Sen. Casey (Rep. Barletta is the current front runner in that primary), but all of these elections are just teasers to the 18 primaries on tap across the country in June.