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A Long December

The House and Senate return today to begin the process of wrapping up 2019 in a nice bow and setting the stage for the second part of the 116th Congress. If only it was that easy. Before we get to 2020, there are several items that will occupy much of the time and energy of Members in December, including impeachment proceedings, funding the government past December 20th and potentially ratifying USMCA. While these large ticket items will continue to dominate Washington as they did most of November, Congress will still have a full schedule of hearings and mark-ups over the next few weeks along with year-end activity at the regulatory level. And as we are just two months away from the Iowa caucuses, the Democrats who have qualified for the sixth debate will meet on stage in California in a few weeks. We cover these and other issues below in a brief preview of what we believe will be the focus in Washington this month, subject as always to external or unexpected events that could disrupt the schedule.

Impeachment

As Congress returns from its Thanksgiving break, the impeachment proceedings are set to enter a new phase. The House Permanent Select Committee on Intelligence plans to release the formal evidence report this week, allowing Committee members to review the report on Monday and vote on it on Tuesday. Following the release of the report, the House Judiciary Committee will begin its proceedings on Wednesday with a hearing titled "The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment." Wednesday's hearing will be the first in the series of proceedings expected over the next two weeks, with testimony from constitutional scholars and legal experts on the "constitutional basis of impeachment, as well as the Framers' intent and understanding of terms like 'high crimes and misdemeanors.'"

Over the break, there was additional back and forth between House Democrats, House Republicans and the Administration over the process for the Judiciary Committee's proceedings, as laid out in the resolution adopted in September. Judiciary Ranking Member Collins (R-GA) called for Intelligence Chairman Schiff (D-CA) to be required to testify and questioned the veracity of the report if he does not do so. However, House Republicans have not indicated who else they would like to subpoena. This is notable as any Republican witness would require the consent of Judiciary Chairman Nadler (D-NY) or a vote by the full Committee. In a letter over the break, Chairman Nadler asked President Trump whether he would like to participate in the hearing, but late yesterday the White House declined in a strongly worded letter attacking the entire impeachment inquiry. Nadler also had asked if President Trump planned to mount a defense during the Committee's consideration of impeachment articles and gave the President until Friday to respond. The White House said yesterday they would respond separately to this letter by the Friday deadline.

This sets up a potential vote in the Judiciary Committee as soon as the week of December 9th and a potential vote by the full House of Representatives the week of December 16th. We continue to believe the House will vote on impeachment before adjourning for the holidays, setting up a Senate impeachment trial in the New Year.

Government Funding – Year-End Package?

Congress was able to pass another continuing resolution to fund the government through December 20th before leaving Washington for Thanksgiving. Also, before leaving town, Senate Appropriations Committee Chairman Shelby (R-AL) and House Appropriations Committee Chairwoman Lowey (D-NY) reportedly agreed to funding levels for each of the 12 spending bills, which should allow both Chambers to make progress on several of them before the next deadline. While both parties seem energized to avoid another continuing resolution, we think it is unlikely that all twelve bills will be completed before December 20th. The more likely scenario is that Congress will pass several of the bills, and a continuing resolution will be needed for some of the more contentious ones such as Homeland Security. We think that Senate Majority Leader McConnell (R-KY) feels a sense of urgency to make as much spending progress as possible in December, as the Senate will likely slow to a halt in January if they are forced to begin an impeachment trial.

Another thing to watch is the opportunity for a few individual legislative proposals to be tacked on to a year-end omnibus or minibus bill. This would allow smaller legislative items not addressed individually to be packaged with a larger spending bill and passed on a single vote in the House and Senate. The SECURE Act could fall into this bucket; however the bill has been unable to reach unanimous consent in the Senate so far this year due to concerns regarding pension funds and 529 accounts. These factors make the path forward unclear. Also in this bucket is the Terrorism Risk Insurance Act (TRIA) reauthorization, particularly considering its recent unanimous passage out of the Senate Banking Committee. Although the bill is expected to be passed into law this Congress, the program is not set to expire until Dec. 2020 so passage could slip into next year. An extension of the National Flood Insurance Program (NFIP) is most likely to be included in a spending bill as the program is set to expire with government funding on the 20th, however the length of the extension remains uncertain. Tax extenders are another issue included in the conversation but currently lack enough bipartisan support to make into a year-end package.

Expected Senate Banking Committee (SBC) Activity

The Senate Banking Committee will close the year out with a strong line-up of regulatory oversight hearings with the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), and National Credit Union Administration (NCUA) all slated to testify. This week, the Committee will hold a hearing with prudential regulators including Federal Reserve Vice Chairman of Supervision Quarles, FDIC Chair McWilliams and NCUA Chair Hood. On the Republican side, this hearing will likely focus on S. 2155 implementation progress, and additional regulatory reform efforts, including Volcker Rule covered funds, capital rule calibration, and the Community Reinvestment Act (CRA). On the Democratic side, we expect criticism of the Federal Reserve's tailoring efforts for regional and foreign banks, and the recent finalization of part of the Volcker Rule rewrite. Other issues that could see attention include the FDIC's activity related to ILCs, and repo market activity concerns.

Noticeably absent is OCC Comptroller Otting, who has a scheduling conflict and will miss a forum to have his CRA efforts front and center. Next week, SBC will finish the year focused on capital markets regulation with the testimony of SEC Chair Clayton. We expect Republicans to laude Clayton's progress on his regulatory agenda and lay the groundwork for future Committee activity on capital formation legislation. On the Democratic side, we expect continued criticism of Reg BI.

Even with a busy oversight hearing agenda, we are closely monitoring bipartisan efforts between SBC Chairman Crapo (R-ID) and Ranking Member Brown (D-OH) to complete staff work and produce a discussion draft of BSA-AML and beneficial ownership legislation (discussed below).

Upcoming Senate Floor Activity/Nominations

First on the dais for the full Senate as they return to Washington is resumed consideration of Dan Brouillette for Secretary of Energy. President Trump nominated Brouillette last month to replace Rick Perry, who resigned from the seat on December 1st, and we anticipate a swift confirmation process for Brouillette into the role. In addition, Leader McConnell filed cloture on the nominations of eight district judges and Robert Duncan as a Governor of the U.S. Postal Service.

Outside of judicial nominations, activity across the Senate will largely depend on the amount of focus put on impeachment. Legislative focus could be lost particularly if there is an impeachment vote in the House and Senate committees must begin to prepare for hearings of their own following the New Year. Prior to the Thanksgiving holiday, Leader McConnell encouraged the Senate to keep their focus on bipartisan priorities like USMCA and defense authorization (NDAA), rather than fixating on the impeachment proceedings, and members from both sides of the aisle seemed to agree, but a vote in the House could complicate these efforts.

Expected House Financial Services Committee (HFSC) Activity

Before their appearance in the Senate, the prudential regulators will appear before HFSC on Wednesday. They will be followed by testimony from Treasury Secretary Mnuchin on Thursday in his role as Chair of the Financial Stability Oversight Council (FSOC), which is also a day after he presides over the last FSOC meeting of the year (discussed below). Also Wednesday, HFSC's Housing Subcommittee is scheduled to hold a hearing that afternoon to look at the Federal Housing Administration (FHA). And on Friday, HFSC's Artificial Intelligence Task Force will hold a hearing on the impact of AI on jobs in the financial services industry. Next week, the committee is scheduled to hold a two-day mark-up with an expected focus on consumer and investor protection measures. With the House expected to be in the week of the 16th, we will see if HFSC schedules any additional year-end activities.

Upcoming House Floor Schedule

As discussed above, with impeachment hearings beginning in the House Judiciary Committee this week, as of today the full House is still expected to vote on impeachment before they adjourn for the year. Other potential House Floor items this month include the Voting Rights Act, prescription drug pricing, NDAA, foreign intelligence surveillance (FISA), as well as USMCA (discussed below) and spending measures. This week, the House is considering the Insider Trading Prohibition Act, which passed HFSC by voice vote in May but Republicans have raised concerns and are expected to oppose on the Floor, as well as a resolution to reaffirm commitment to a two-state solution to the Israeli-Palestinian conflict.

Privacy & Cyber

Four Democrats on the Senate Commerce Committee – Ranking Member Cantwell (D-WA), Schatz (D-HI), Klobuchar (D-MN) and Markey (D-MA) – announced the Consumer Online Privacy Rights Act (COPRA) last week. The legislation would: (1) grant individual consumers broad control over their data; (2) impose new obligations on data processing; and (3) expand the Federal Trade Commission's (FTC's) enforcement role over data privacy. While it is significant that members of Senate Commerce have released legislative text, only Democrats back this bill as of now. Meanwhile, Commerce Chairman Wicker (r-MS) released his own privacy proposal in a discussion draft titled the "United States Consumer Data Privacy Act" over the Thanksgiving recess. While these proposals are not reflective of the bipartisan discussions between Chairman Wicker and Ranking Member Cantwell, we expect continued discussion by the Senate Commerce Committee at Wednesday's hearing titled "Examining Legislative Proposals to Protect Consumer Data Privacy." Despite these continued efforts, our base case remains that Congress will not pass a national privacy law this session. We continue to monitor for additional proposals to be released by other committee working groups, such as in Senate Banking.

Another notable development on data privacy is a November 13th letter from HFSC AI Task Force Chairman Foster (D-IL) and Ranking Member Loudermilk (R-GA) to Treasury Secretary Mnuchin on digital identity and financial inclusion. Rep. Loudermilk was recently named the lead Republican on the AI Task Force and this bipartisan letter reflects the continuing working relationships between the parties on both HFSC task forces.

Other Items

With the end of the year quickly approaching, several legislative items anticipated to be tackled by Congress in 2019 will likely be left unfinished and rolled into 2020 or later.

Housing Finance Reform

Shortly before Thanksgiving, Federal Housing Finance Agency (FHFA) Director Calabria made public a major decision to repropose the GSE capital rule instead of moving to finalize the proposed rule released under his predecessor Mel Watt. The GSE capital rule is a significant piece of the housing finance reform puzzle as it sets capital targets for the GSEs, which would significantly dictate the timing of their release from conservatorship and their capital strength. Some thought Calabria would finalize the proposed capital rule with small changes in the interest of moving quickly on reform. This decision to repropose the rulemaking will delay reform efforts as the market will be unsure of the capital target the GSEs will need to meet.

We continue to monitor potential action in the near term on additional amendments to the Senior Preferred Stock Purchase Agreement (PSPA) that were contemplated in this September's amendment. Our expectation is the Administration will build in some reforms (e.g. product and activity restrictions) into the amendment. This will allow expedited reforms without the need to move through a rulemaking.

BSA/AML

SBC Chairman Crapo and Ranking Member Brown did not release their anti-money laundering/beneficial ownership bill before the Thanksgiving break, but we understand that they continue to make progress and could possibly release a bill by the end of the year – however we only expect a bill to be released if SBC intends to mark it up in short order. At this point it is unclear where the small business community would come down on a Crapo/Brown product, especially since they played a significant role in limiting Republican support during the House process. Given how this opposition in the House played out, it is important for Crapo and Brown to know in advance where the opposition will be on their legislation. We understand they have been communicating closely with the National Federation of Independent Businesses (NFIB) during the drafting process in hopes of staving off opposition.

CFTC Reauthorization

Reauthorization of the Commodity Futures Trading Commission (CFTC) was an item both Congress and the agency prioritized early and one that seemed on pace to reach finalization this year after passing unanimously out of the House Agriculture Committee in October. While conversations to improve the bill have been ongoing in the House, and the Senate Agriculture Committee has been working simultaneously on their own version of the bill, movement of the legislation hit a standstill in November, diminishing hope of it reaching the finish line this year. It is still likely the bipartisan legislation could come before the full House for a vote during the December work period, but we anticipate movement in the Senate to stall until Q1 of 2020.

Regulatory Agenda

The end of the year is shaping up to be a busy and productive period for the Trump Administration financial regulators. In November, the FDIC and OCC took action to address the challenges from the 2nd Circuit ruling in Madden v. Midland by issuing a proposed rule to clarify "Valid When Made" in both the National Bank Act and the Federal Deposit Insurance Act. This follows the FDIC and OCC joint amicus briefing weighing in on the same issue in a Colorado federal district court case. These are positive steps for the bank partnership models and securitization markets generally. The SEC took steps to propose a rule on funds' use of derivatives, which implements a major recommendation from Treasury's 2017 Capital Markets report.

In December, we are monitoring two major efforts. First, the FSOC will meet this Wednesday to vote on its proposed nonbank guidance. This is the culmination of FSOC's work to shift from an entity-based approach to systemic risk evaluation and designation to an activity-based approach. This finalized guidance is a major reform effort under Secretary Mnuchin's leadership of the FSOC and is a positive for large asset managers and insurers who feared a possible firm designation. Second, we are closely monitoring whether the OCC and FDIC will issue a proposed rule to reform the Community Reinvestment Act. Our understanding is the OCC and FDIC are ready to go, and at this point it appears the Federal Reserve is not a position to join them in a proposed rule. Our expectation is the OCC and FDIC are finally ready to move ahead without the Federal Reserve.

International:

USMCA

House Democrats and the Trump administration continue to make progress on a deal regarding USMCA. Our view remains that negotiations are in their final stretch and that a deal is likely to be reached by the end of Q1 2020, barring any unexpected consequences stemming from impeachment or government funding negotiations. Republicans, business groups and moderate Democrats are all pushing the House to approve the trade deal, though enforcement continues to be a sticking point for labor groups. If Democrats and the administration strike a final deal, the White House will send the ratifying legislation to Congress, giving lawmakers up to 90 days to vote on its approval. Mexico has already ratified USMCA in June, while Canada and the United States have not yet done so.

It is worth mentioning the possibility that negotiations fall apart, no deal is agreed to, and USMCA is not ratified. Though Republicans and Democrats seem committed to reaching an agreement, it is difficult to predict how other sensitive issues like the impeachment inquiry and government funding negotiations will affect progress on USMCA. President Trump has repeatedly threatened to withdraw the U.S. from NAFTA if the individual countries do not ratify USMCA as its replacement. This remains a possible outcome.

China

More than a month after President Trump announced that the U.S. and China had reached a substantial “phase one” trade deal days before a planned tariff increase, the two countries are continuing to negotiate. The U.S. is pushing China to agree to purchase $50 billion annually in American agricultural products, deliver commitments to open its financial services sector and implement certain intellectual property protections. The next round of U.S. tariffs is scheduled to hit $160 billion of mostly consumer goods on December 15th. We view the difficulty of reaching even a preliminary deal limited mostly to tariffs and agricultural purchases as a negative sign not only for an ultimate resolution to the U.S.-China trade war, but even for a more expansive “phase two” agreement that addresses thornier issues like forced technology transfer and structural State Owned Enterprise reform. We expect the trade war and accompanying business uncertainty to continue into 2020 and beyond.

Hong Kong

Both chambers of Congress almost unanimously passed two bills in November to show solidarity with the pro-democracy protestors in Hong Kong. After weeks of speculation over whether President Trump would sign the bills, he did so over the Thanksgiving holiday. The bills: (1) authorize sanctions on Chinese and Hong Kong officials responsible for human rights violations; (2) prohibit the export of certain munitions items to the Hong Kong Police Force; and (3) make conditional Hong Kong’s special status for U.S. trading based on an annual review of Hong Kong’s autonomy from Beijing. The move was immediately condemned by China, though it appears unlikely to retaliate by escalating the trade war or by halting negotiations. We note that this move by Congress follows major and bipartisan congressional rebukes of the Trump administration’s foreign policy, namely on Syria-Turkey and Saudi Arabia-Yemen.

Political

With tougher requirements to get on stage, this month's Democratic Presidential debate could see the smallest number of candidates qualify for the December 19th event in Los Angeles. As of now, only six candidates have surpassed the thresholds set by the Democratic National Committee (DNC) – Biden, Buttigieg, Harris, Klobuchar, Sanders and Warren. Other candidates such as Booker, Gabbard, Steyer and Yang have ten more days (until December 10th) to try and meet the requirements, which include polling and donor support. The donor support prerequisite has created some controversy around newly announced candidate Bloomberg, who is not accepting contributions and therefore technically cannot qualify for this month's debate under the DNC's rules. It will therefore be interesting to see whether candidates such as Bloomberg lead the DNC to reconsider its requirements for debates next year.