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# November 2023 Outlook

November 6, 2023

<p><b>OVERVIEW</b></p>	<p>It's business as usual in Washington D.C. after a tumultuous October in the nation's capital. With the Speaker vacancy now in the rear-view mirror, Congress has until November 17<sup>th</sup> to address a number of must-pass items, such as the FY24 appropriations package, the NDAA, the farm bill, flood insurance reauthorization, and FAA reauthorization. Given the limited legislative window, Congress will either pass a continuing resolution (CR) to fund these priorities or face a government shutdown. All the while, Congress will likely respond to the crisis in Israel and Gaza in the form of a supplemental aid package as the turmoil in the region shows no signs of easing. Although, at this time, it is unclear what a finished supplemental package would look like or if it could be paired with funding for other geopolitical priorities, like Ukraine or Taiwan.</p> <p>Aside from must-pass looming priorities, a regular cadence of hearings will resume after a short hiatus in the House of Representatives, with the prudential regulators and CFPB Director Chopra expected to testify this month in front of the House Financial Services and Senate Banking Committees. We also expect Biden Administration regulators to continue pursuing their agendas. Below, RFA provides our notable legislative, regulatory, and administrative activity for the November work period.</p>
<p><b>CONGRESSIONAL ACTIVITY</b></p>	<p>Aside from a Thanksgiving break, both the Senate and House are in session for most of this month, and we expect ample congressional activity as lawmakers race to avert a government shutdown on November 17<sup>th</sup>. The Senate will start off the week by resuming the consideration of the nomination of Monica Bertagnoli to be Director of the National Institutes of Health, as well as the consideration of a number of district court nominees. In the House, several bills were included on the suspension calendar this week, including the Financial Services and General Government (FSGG) appropriations bill, which will be marked up by the Rules Committee today. Additionally, the House will take up the Transportation-HUD appropriation bill today. Aside from robust House Financial Services, Senate Banking, House Ways and Means, and Senate Finance Committee agendas, we expect November to feature a myriad of congressional hearings on various policy topics. In the House, the Small Business Committee will have a hearing to examine the effects of the Department of Energy's regulations on small businesses and a number of committees will hold hearings on the current violence in Israel and Gaza. In the Senate, the Homeland Security and Governmental Affairs Committee will hold a hearing on the philosophy of AI. Chair Peters (D-MI) has taken a particular interest toward AI issues and has pledged to hold a hearing on the topic every work period, and we expect this trend to continue into the new year and as AI policy continues to gain momentum. More on AI below. Additionally, the Budget Committee will hold a hearing to examine fairness and fiscal responsibility, the Judiciary Subcommittee on Privacy, Technology, and the Law will hold a hearing to examine social media and the teen mental health crisis, and the Foreign Relations Committee will hold a hearing to examine U.S. national security interests in Ukraine. Other notable Congressional activity includes:</p> <ul style="list-style-type: none"> <li>• <b>Artificial Intelligence:</b> Congressional Democrats praised President Biden's recent Executive Order on AI, as was expected. While Senate Majority Leader Schumer (D-NY) called the EO a significant step forward, he underscored that further congressional action is needed on AI. The Majority Leader's bipartisan AI insight forums have</li> </ul>

continued in earnest this fall. On November 1<sup>st</sup>, Leader Schumer hosted leaders from labor unions, financial institutions, and think tanks to discuss the impact of AI on the workforce. The following day, he hosted a fourth forum focused on AI's potential impact on the financial services and health industries. Next week, we expect another forum in the Senate, marking the fifth in a series of nine, that will be focused on AI's impact on elections. In terms of legislation, Sens. Thune (R-SD) and Klobuchar (D-MN) are expected to release their bill on AI in the coming weeks. While not much is known about the bill, Sen. Thune mentioned that it would likely have a light touch approach to regulation. In the House, E&C Chair McMorris Rodgers (R-WA) announced that the committee will hold a series of hearings to explore AI's role in different sectors. Additionally, the Health, Education, Labor, and Pension Subcommittee on Primary Health and Retirement Security will hold a hearing to examine policy considerations for AI in health care this week.

- **CCCA:** We expect Sens. Durbin (D-IL) and Marshall (R-KS) to continue advocating for the Credit Card Competition Act (CCCA) to be included in the various appropriations bills as the appropriations process goes forward, but they are also exploring other avenues for potential inclusion. The Senators recently wrote a letter to the CFPB and the Department of Transportation on unfair and deceptive practices in airline frequent flyer and loyalty programs to lay the groundwork for the CCCA to be in play for potential inclusion in the Senate FAA bill. Although, we think this is a tall order considering the lack of germaneness. The two Senators also sent a letter to Senate Banking Committee (SBC) Chair Brown (D-OH) and Ranking Member Scott (R-SC) requesting they hold a hearing on CCCA. That said, there currently appears to be no appetite on the Committee to move the bill through regular order. The move to request a hearing likely is a way to deflect arguments that the bill did not attempt to go through the regular hearing and markup process.
- **SAFE:** The pathway for the SAFE Banking Act to become law may have become more complicated because of newly anointed Speaker Johnson (R-LA). The four-term congressman has voted against the SAFE Banking Act twice when the legislation came to the House floor for a vote, and it is unclear if he would support adding the legislation to any must-pass vehicle. Sen. Daines (R-MT), the lead Senate cosponsor of the legislation, has said the focus of the sponsors of the bill is to get them aligned in both the House and Senate. Additionally, while Senate Majority Leader Schumer had made assurances that the bill would receive a floor vote, it is unclear if this is still the case given the number of other looming legislative priorities and the lack of appetite to bring a banking type bill to the Senate floor.

### **Speaker Johnson**

Mike Johnson is a relatively unknown quantity in Washington D.C. and around the country. The conservative member of Congress was able to win the Speakership without losing a single Republican vote, a difficult feat. Moderates coalesced around Johnson because of his agreeable nature, while Freedom Caucus members supported his candidacy because of his political stances. Johnson serves on the Judiciary and Armed Services Committees, where most of his relationships lie. He also has good working relationships with Majority Leader Scalise (R-LA) and Majority Whip Emmer (R-MN).

Politically, Johnson is a social conservative with a faith-based Christian bent. He has received ample backlash for his previous remarks on gay rights and abortion. Little is known about his positions on financial services issues, although, he likely falls in line ideologically with most fiscal conservatives. We expect Speaker Johnson to rely heavily on Committee Chairs for policy, especially if he doesn't have prior knowledge or experience on a policy issue. Democrats have widely criticized the Speaker for his role in efforts to overturn the 2020 Presidential election.

Johnson led the amicus brief that was signed by over 100 House Republicans in support of the Texas lawsuit which sought to invalidate the 2020 election in the four swing states Biden carried: Wisconsin, Michigan, Pennsylvania, and Georgia. We don't know much about how Johnson plans to lead, but his first test will be negotiating an Israeli-aid package as the region is ravaged by war.

### **Israel Supplemental**

The House voted on a \$14.3 billion Israel supplemental package last week, and while the legislation won the support of 12 House Democrats, it is likely dead-on arrival in the Senate considering the legislation seeks to clawback IRS funding implemented through the Inflation Reduction Act, the President's signature piece of legislation. Conversely, the Administration has advocated for a supplemental package that combines funding for Israel with funding for Ukraine, Taiwan, and securing the US-Mexico border. Last week, the White House sent Secretary of State Blinken and Defense Secretary Austin to testify before the Senate Appropriations Committee to advocate for the package. While some Senate Republicans appear to be on board with this type of supplemental aid, it appears to be a non-starter with House Speaker Johnson, who has underscored his preference for separate funding streams for the different geopolitical issues. Appropriations Chair Murray (D-WA) and Ranking Member Collins (R-ME) have also detailed that they are drafting a bill that includes funding for both Israel and Ukraine. At this juncture, it is unclear what a final supplemental package will look like, but we expect negotiations to likely pick up this week on the matter.

### **FY24 Appropriations**

With the continuing resolution (CR) agreed to last month to avert a government shutdown expiring on November 17<sup>th</sup>, Speaker Johnson has kicked-off his speakership with an aggressive push to make progress on advancing several spending measures as the looming deadline approaches and has stated his interest in having all 12 appropriations bills passed by the week of November 13<sup>th</sup>. During the speakership turmoil, the House was unable to pass any spending bills, but since Speaker Johnson filled the vacancy, the House GOP has passed several spending measures along party lines. However, several key spending bills, including legislation to fund the Dept. of Agriculture and FDA, are stuck amid internal disputes between the moderates and more conservative members, who want to cut spending even further. Adding further troubles, the House bills to fund the Dept. of the Interior, Environment and related agencies and another that would fund the Dept. of Transportation, Housing, and Urban Development and related agencies would make significant cuts and would undercut the spending levels set in the debt limit deal reached in May. The White House has expressed its strong opposition to the two funding bills. If either bill were to make it to President Biden's desk, the Administration has said the President will veto them. The House still has outstanding spending bills to pass, and the Senate will continue voting on amendments to the appropriations minibuss but given the looming deadline and vast differences in House and Senate approaches, a short-term funding measure will likely be needed to keep the government funded beyond the November 17<sup>th</sup> deadline. Several of the conservative members in the House have said they are open to another short-term funding patch, but on the condition that conservative priorities are attached. Speaker Johnson has floated a temporary spending measure that would last through January 15, 2024, or April 15, 2024, depending on whichever has the most GOP support, but a year-long CR is deeply opposed by most Republican members and is unlikely. Speaker Johnson's allies have indicated that he wants to avoid any Senate attempt to push a year-end, across the board federal spending bill and wants to fund the government through January 15<sup>th</sup>, which would give Congress two additional months to work on a feasible deal on spending for the remainder of the fiscal year. We continue to believe another CR is the most likely outcome and will be negotiated in the weeks and days leading up to the deadline.

### **FY24 NDAA**

In addition to government funding, the House and Senate are continuing to negotiate the annual defense authorization bill, which Speaker Johnson wants on the floor by early December.

However, there are significant differences between the Senate and House-passed defense bills that still need to be worked out and members of both chambers are hoping to use the must-pass legislation as a rider to attach their provisions that were not included in the original versions of the bill passed by the two chambers. We expect the NDAA negotiations to conclude in late November with a final vote on the bill to come in the first week of December. Separately, we are monitoring several provisions that lawmakers are trying to include in the NDAA. For example, in the cryptocurrency space, Sen. Warren (D-MA) is pushing for stronger anti-money laundering regulation for cryptocurrencies. Sen. Warren and other Senate Democrats have also expressed their opposition to the potential inclusion of the House Financial Services Committee passed digital asset legislation that would create a regulatory framework for the industry. Earlier this year, Sen. Warren, Sen. Gillibrand (D-NY), and Sen. Lummis (R-WY) successfully included an amendment into the Senate-passed NDAA that would require the Treasury Department to establish examination standards for digital assets and require a study on anonymous cryptocurrency transactions. This clash could lead to a compromise, or it could result in a stalemate, delaying any meaningful cryptocurrency regulation. Another notable item that RFA is monitoring closely is Sen. Cornyn (R-TX) and Sen. Casey’s (D-PA) *Outbound Investment Transparency Act*, which was included as an amendment in the Senate-passed NDAA by an overwhelming vote of 91-6. We continue to believe that the Cornyn/Casey amendment will likely be included in the final version of the bill.

**Nominations**

Last month, the Senate Banking Committee held a nomination hearing to consider the nominations and renominations for positions at the NCUA, the Export-Import Bank, the FDIC, the Board of Directors of the Securities Investor Protection Corporation, and the SEC. The most notable renomination from the batch was **Commissioner Mark Uyeda**, who was renominated by President Biden to serve a full term at the SEC. The Banking committee could vote on these nominees as early as this month, which would then send the nominations to the full Senate floor for consideration. Additionally, **CFTC Commissioner Mersinger** was also renominated by President Biden earlier this year to serve a full term on the Commission. Although, it is unclear when the Senate Agriculture Committee will hold a nomination hearing for the Commissioner. Additionally, we expect the pending FTC nominees, Rebecca Slaughter, Melissa Holyoak, and Andrew Ferguson, who moved out of the Commerce Committee last month, to receive a vote on the full Senate floor as early as this month.

**SENATE BANKING & HOUSE FINANCIAL SERVICES COMMITTEE**

**Senate Banking Committee**

This month, the Senate Banking Committee is scheduled to hold a hearing on November 14<sup>th</sup> with the **prudential regulators**. We expect a number of issues to come up during the hearing, such as discussion of the Community Reinvestment Act (CRA) rulemaking, the implementation of Basel III standards, and the Fed’s proposed changes to Regulation II. The last time the prudential regulators testified on Capitol Hill was during the collapse of Silicon Valley Bank, so we also expect regulators to get questions about the overall health of the banking sector. **CFPB Director Chopra** is also slated to testify on November 29<sup>th</sup>. We expect Senators to focus their questioning on some of the Bureau’s latest rulemakings, such as the 1033 open banking rulemaking and the upcoming credit card late fee rulemaking, among other things. Chair Brown (D-OH) has also invited eight of the largest bank CEOs to testify in front of the Committee on December 6<sup>th</sup>.

**House Financial Services Committee**

The House Financial Services Committee will return to normal business over the next several weeks after Chairman McHenry’s (R-NC) stint as Speaker pro tempore. The Financial Institutions and Monetary Policy subcommittee will have a hearing this week focused on international governance organizations, and we expect Basel III will receive most of the attention. They will also have several key regulatory oversight hearings this month like the SBC, with the **prudential regulators** set to appear on November 15<sup>th</sup>, and **CFPB Director Chopra** on November 29<sup>th</sup>. We expect similar topics to emerge in both House and Senate hearings. Also of

	<p>note, HFSC intends to host their first markup in several months on Nov 14<sup>th</sup>, which will likely include several national security bills and fintech bills. It is still unclear which bills will be included in the markup.</p>
<p><b>SENATE FINANCE AND HOUSE WAYS AND MEANS COMMITTEE</b></p>	<p><b>Senate Finance Committee</b> Chair Wyden (D-OR) recently announced a hearing for this week entitled, “Examining How the Tax Code Affects High-Income Individuals and Tax Planning Strategies”. This hearing is likely to cover issues like carried interest, unrealized capital gains, and touch on potential retirement provisions. It is unclear if there are more hearings on the horizon at the Committee, but bipartisan work is ongoing with the Taiwan tax bill and legislation in the healthcare space.</p> <p><b>Ways and Means Committee</b> Chair Smith (R-MO) announced a hearing on ESG and retirement savings for tomorrow entitled, “A Hearing on Ensuring that ‘Woke’ Doesn’t Leave Americans Broke: Protecting Seniors and Savers from ESG Activism.” Following other committees this Congress, the Ways &amp; Means Committee wants to highlight their concerns with retirement plans that are too focused on “green energy” rather than maximizing returns for retirees. We also expect there will likely be hearings in the healthcare and trade space this month, but final details have not been ironed out.</p> <p><b>End of Year Tax Bill</b> Conversations this past week resumed about an end of year tax bill that would include expired and expiring tax provisions, but the likelihood of this type of legislation remains low, given government funding is an all-consuming conversation. Additionally, even if Republicans can coalesce around legislation in the House, differences between Republicans and Democrats in the Senate on tax issues are vast, so legislation will likely be dead on arrival in the Senate.</p>
<p><b>ADMIN AND REGULATORY</b></p>	<p><b>Biden Administration</b> In a significant move towards tackling the rising ransomware threat, President Biden <a href="#">recently hosted</a> a meeting with 50 members of the International Counter Ransomware Initiative. During the meeting, participants emphasized the importance of international cooperation and countering illicit finance to address the issue effectively. This was on the heels of the Administration's landmark signing of an <a href="#">executive order</a> on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.</p> <p>The Biden Administration will continue to focus on foreign policy this month, particularly in Ukraine, the Middle East, and China. As part of these efforts, <b>Treasury Secretary Janet Yellen</b> is scheduled to meet with China's economic chief, Vice Premier He Lifeng, in San Francisco on Thursday and Friday. This meeting is a precursor to an anticipated meeting between President Biden and Chinese President Xi Jinping on the sidelines of the Asia-Pacific Economic Cooperation summit. Secretary of State Antony Blinken also continues to hold talks with Israeli officials stepping up the Biden administration's push for humanitarian pauses in hostilities in Gaza.</p> <p>Domestically, The Biden Administration is preparing lawmakers and immigration policy advocates for potential concessions on asylum laws to secure the President's request for national security funding. Notably, the Administration has also initiated strategic steps to continue its efforts toward forgiving student loans, as evidenced by its recent "Plan B" <a href="#">announcement</a>.</p> <p><b>Prudential Regulators</b> The prudential regulators advanced several policy proposals in October, such as Basel III endgame, the CRA rulemaking, climate-related financial risk principles, and changes to Regulation II. Looking ahead, we expect the prudential regulators –led by the FRB and Vice Chair for Supervision Barr –to increasingly focus on liquidity measures and other policy responses to the failure of Silicon Valley Bank earlier this year. Most likely priorities include a</p>



revisitation of the application of the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR) to banking organizations with between \$100 billion and \$250 billion in assets.

### **Securities and Exchange Commission**

The SEC is focused on finalizing a number of rules before the end of the year. Most immediately, we expect the SEC to prioritize finalizing its three rules related to the Treasury market: (1) a rule mandating central clearing for certain Treasury securities; (2) a rule to sweep in certain hedge funds as government securities dealers; and (3) a rule to increase regulation of certain Treasury market platforms. We expect the SEC to finalize the first two rules either before or immediately after the Federal Reserve Bank of New York's U.S. Treasury Market Conference on November 16th, with the third rule potentially coming a little later.

In addition, the SEC could finalize its rule establishing cybersecurity risk management standards for investment advisers and broker-dealers before the end of the year, as well as the rule on Special Purpose Acquisition Companies (SPACs). Finally, we believe that the SEC could still finalize the climate disclosure rule before the end of the year.

### **Consumer Financial Protection Bureau**

**CFPB Director Chopra** will appear before Congress the week after Thanksgiving for his semiannual testimony and will likely have a slew of rulemaking and deadlines to address in his appearance. It's possible that prior to those appearances, we will see the long-awaited credit card late fees rule as well as Bureau actions related to insufficient funds and overdraft, which have been described as coming "soon." Also on the docket will be the pending comment period (closes December 29, 2023) for the Personal Financial Data Rights proposal that would implement Section 1033 of the Dodd-Frank Act. Fifteen trade associations sent a joint letter requesting an extension of the comment period, so we expect the question of an extension to be addressed during Chopra's testimony as well. In an update from previous reporting, we now expect the Bureau to propose the larger participant rule for consumer payment markets as well before the end of the year. This rulemaking first appeared on the Spring Rulemaking Agenda with an anticipated release date of July 2023. While the scope of the markets the Bureau intends to define is not known, based on recent Bureau actions likely candidates are consumer-facing P2P platforms and digital wallets. As a reminder, the Bureau's jurisdiction is for consumer financial products and services, and as such does not typically apply to B2B services.

### **Commodity Futures Trading Commission**

**CFTC Chair Behnam** is scheduled to speak at the Ninth Annual U.S. Treasury Market Conference hosted by the Federal Reserve Bank of New York on November 16<sup>th</sup>, where he will likely talk about concerns with treasury basis trading. Other speakers at the event include **Federal Reserve Vice Chair Barr** and **Treasury Under Secretary for Domestic Finance Liang**. The CFTC also was scheduled to have an open meeting last week to consider a proposed rule on investment of customer funds by Futures Commission Merchants and Derivatives Clearing Organizations (DCOs), but the meeting was canceled and they are handling the proposals through the CFTC's seriatim process. We also expect the CFTC's Voluntary Carbon Markets proposal to be published by the end of the year, likely giving DCO's clarity in that emerging market. In terms of digital assets, we expect the CFTC to begin reengaging with Congress on the matter. As you may recall, the Commission was active on crypto issues but has been relatively quiet since the collapse of FTX.

### **Treasury/FSOC**

On Friday, the Financial Stability Oversight Council voted to finalize two guidance documents. The first establishes an analytical framework for evaluating financial stability. The second revises the 2019 FSOC guidance thereby placing nonbank entity designation on par with activity regulation as a tool in FSOC's toolkit. FSOC made some changes to the analytical framework guidance based on public comment, including placing a greater emphasis on dialogue with an entity's primary regulator. FSOC made very few changes to the entity designation guidance. Up

	<p>next, we anticipate FSOC will conduct its final meeting of the year in December and vote to issue its annual report. This particular annual report may offer insight into how they might prioritize areas of concern through the lens of its newly finalized guidance.</p> <p><b>Department of Labor</b> DOL released their long-awaited fiduciary rule last week which would update the definition of an investment advice fiduciary under ERISA. According to the White House, the rule would close loopholes so that recommendations to purchase investment products must be done in the saver's best interest, cover advice to roll assets out of an employer-sponsor plan, and cover advice to plan sponsors about which investment to make available as options in 401(k)s and other employer-sponsored plans. The comment period on this proposal ends in 60 days.</p>
<p><b>POLITICAL</b></p>	<p><b>GOP Primary</b> The field of Republican Presidential candidates narrowed late last month as former Vice President Mike Pence dropped out of the race. While a former Vice President and Governor would generally make a strong contender for a Presidential bid, Pence's campaign never picked up steam, likely due to his low favorability ratings within the Republican Party. We don't expect any candidate to get a noticeable bump from Pence withdrawing from the race. Pence was polling at 4% prior to dropping out. The third GOP Presidential Debate will take place this month on Wednesday in Miami. As of now, six candidates have qualified for the debate according to the New York Times tracker: Former President Donald Trump, Florida Governor Ron DeSantis, former South Carolina Governor Nikki Haley, entrepreneur Vivek Ramaswamy, former New Jersey Governor Chris Christie, and South Carolina Senator Tim Scott. Former President Trump plans to skip this debate, as was expected. As of now, he holds a commanding lead in all national polls, as well as polls in Iowa, New Hampshire, Nevada, and South Carolina. At this juncture, and assuming there are no unexpected surprises, we expect the former President to handily win the nomination, setting up a likely rematch between him and President Joe Biden in 2024.</p> <p><b>Democratic Primary</b> Rep. Dean Phillips, a third-term moderate congressman from Minnesota, officially announced his 2024 Presidential campaign late last month. Phillips, who has little name recognition outside of his district, is a long shot for the nomination but still represents President Biden's most notable opponent within the party. The Congressman's campaign seems to be more focused on President Biden's electability and age rather than on policy concerns.</p>