

# THORN RUN PARTNERS

GOVERNMENT RELATIONS

**From:** Thorn Run Partners  
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## OUR TAKE

Once again Democrats were smirking as Republicans appeared to wage civil war, this time over the decision to renew the charter for the Export-Import Bank. All [Art Vandelay](#) jokes aside, the debate over the Ex-Im bank once again has shown the schism in the Republican party, and how there are really three parties in Congress – Republican, Democratic, and Tea Party. While it looks like both sides may be able to claim victory in this instance by kicking the can down the road for a few years, it is worth noting that we continue to witness similar battles and results on other issues. As a result, more and more items are being added to the lame duck agenda, and it is shaping up to be a very busy November and December in our nation’s Capital – the only question is will there be enough runway to get all things done.

## LOOKING AHEAD

### NEAR TERM

- House and Senate in Recess.
- Friday is the 4<sup>th</sup> of July and if you’re in Massachusetts, [Needham, MA has some great Fireworks on the 3rd, and a host of other events to celebrate our Nation's birth!!](#)

### FURTHER OUT

- Senate Appropriations Committee continues to mark up bills, with Financial Services, Interior, Labor – Health and Human Services, and Energy Water potentially on the docket in July. So far only the Defense bill has been formally scheduled, with a vote to occur on July 17<sup>th</sup>.
- The House Financial Services Committee may mark up Congressman Luetkemeyer’s bill to end Operation Choke point as early as the first week back from the recess.
- Rumors continue to circulate that the Senate will take up TRIA before it leaves for the August recess.

## **THE PAST WEEK**

### **LEGISLATIVE BRANCH**

#### **HOUSE**

##### *House Passes CFTC Reauthorization*

On Tuesday, by a vote of 265-144, the House passed H.R. 4413, legislation to reauthorize the Commodities Futures Trading Commission. The bill, which was strongly opposed by Financial Services Ranking Member Maxine Waters (D-CA) but supported by the top Democrat on the Agriculture Committee, Colin Peterson (D-MN) included some changes sought by industry, including a clarification that non-financial end-users do not need to pay margin on swap trades and that inter-affiliate swaps also would not be subject to clearing requirements. Additionally, during the course of the debate, the bill was amended to exempt SEC registered investment companies from also having to register with the CFTC. The bill also made substantive changes to CFTC procedures with a provision that would require the agency too issue cost-benefit analysis of its proposed rulemakings, impose a comment period for the public to weigh in on proposed guidelines, and requires staff share with the commissioners any no-action letters or exemptive orders. Finally, the bill also requires that the CFTC and the SEC issue identical rules for the cross-border application of the swap rules required by Dodd Frank. After passage, Senate Agriculture Committee Chairwoman Debbie Stabenow [criticized](#) the lack of funding and the administrative burdens imposed on the CFTC by the bill.

##### *Financial Services Committee Initiates Ex-Im Reauthorization Process*

On Wednesday, the Financial Services Committee held a 7.5 hour hearing about whether to reauthorize the Export-Import (Ex-Im) bank. With Chairman Hensarling very publicly opposed to the institution, the hearing turned into the slugfest that was expected. One potential bright point for supporters of the bank came when Representative John Campbell (R-CA) suggested that there might be a [“third option”](#) between killing or renewing the bank. Campbell’s discussion draft would reauthorize the bank for 3 years while lowering the exposure cap by \$45 billion dollars and also prohibits loans to state-owned enterprises of government with assets of \$100 billion or more. In urging the Chairman to move something forward, Ranking Members Waters noted that the combination of the [41 Republicans who called on Speaker Boehner to move forward on a multi-year reauthorization](#) plus all of the Democrats provided an ample majority supporting the Ex-Im. However, with new [Majority Leader McCarthy indicating his opposition to the bank](#), and [Speaker Boehner deferring to Chairman Hensarling](#), supporters of the bank have a steep road ahead, as support for the Bank has become a proxy battle for a leadership race five months away.

##### *House Appropriations Committee Approves Financial Services Measure*

On Wednesday, by a vote of 28-21 the Appropriations Committee approved its FY15 Financial Services and General Government Spending bill. The measure, which includes funding for the SEC, IRS, FCC and other agencies, totaled \$21.3 billion dollars an amount that is \$566 million less than last year’s funding and \$2.3 billion less than the Administration had requested. During the debate, Representative Kevin Yoder (R-KS) offered an amendment that was approved by a voice vote to add language that would amend Dodd Frank to allow banks to “push-out” certain swap activities. See story below about difference with Senate bill.

### Financial Services Committee Holds SEC Oversight Hearing

On Thursday morning, the Capital Markets and Government Sponsored Enterprises Subcommittee held a hearing [entitled, “Oversight of the SEC’s Division of Trading and Markets.”](#) where Stephen Luparello, Director of that Division was the sole witness. During the hearing members applauded the SEC’s recent announcement of a pilot program for widen tick sizes for small-cap stocks, noting that the intention of the House passing H.R. 3448 by a vote of 412-4 was a sign for the Commission to Act. (For more on SEC’s program see below). Other topics discussed at the hearing including a discussion of dark pools and their relative benefit to retail investors, and how the SEC is prepared to act quickly on an anti-disruptive trading rule and enhanced disclosures on routing of institutional orders. Additionally, Luparello reiterated SEC Chair White’s assertion that despite the allegations made in “Flashboys” the US markets are not rigged.

### Luetkemeyer Files Bill to End Operation Choke Point on Legitimate Businesses

On Friday, Congressman Blaine Luetkemeyer [filed a bill](#) that, among other things would create a safe-harbor for financial institutions, including banks and credit unions, to promote nondiscriminatory access to financial products and services provided the merchant is licensed, registered as a money services business, or if the financial institutions have obtained a legal opinion demonstrating the legality of the merchant’s business. Luetkemeyer’s bill would also modify the DOJ’s subpoena authority by amending the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).

## **SENATE**

### Senate Finance Delays Consideration of Highway Trust Fund Funding Bill

On Thursday the Senate Finance Committee announced it was delaying consideration of an effort to fund a six month patch for the soon to be depleted Highway Trust Fund, but that it was hopeful to vote on a bill when the Senate returns from the July 4<sup>th</sup> recess. Senate Finance Chair Wyden proposed to pay for the bill in two ways. First, through a change in mortgage-interest deduction documentation that is expected to bring in \$2.2 billion over 10 years by requiring banks to report more information to the IRS about mortgages, including the unpaid balance and the address of the property. Second, is a provision that would force people who inherit IRAs and other retirement plans to take required taxable distributions over five years, a change from current law where these payments are linked to their life expectancy. It is unclear whether Wyden can get a bill with these two funding mechanisms through his committee and the Senate and also then through the House. The trust fund is expected to run out of money in September, potentially jeopardizing upwards of 700,000 jobs nationwide.

### Senate Appropriations Subcommittee approves Financial Services Spending Bill

Last week the Senate’s Financial Services and General Government (FSGG) subcommittee approved its version of the FY15 spending bill, totaling at \$22.673 billion, which was \$607 million more than the 2014 enacted level of \$22.066 billion and \$1.1 billion less than the President’s request. This sum is significantly more than what the House Appropriations Committee has approved (see above) and it is also worth noting that the Senate bill is substantially more generous towards the CFTC and the SEC than their House counterparts. In this bill the CFTC’s funding level is set at \$280 million and the SEC’s is set at \$1.7 billion, setting up a potentially big fight whenever the two measures are reconciled.

## **SELECT HIGHLIGHTS FROM THE ADMINISTRATION**

### **TREASURY**

#### *Lew Defends FSOC Before Congress*

In back to back hearings before the House and Senate Banking Committees last week, Treasury Secretary Jacob Lew defended the Financial Stability Oversight Council (FSOC) amid criticism that the Council does not work transparently enough and is too eager to regulate non-bank companies. In both bodies, Secretary Lew faced Republican-led questioning on how he could make the FSOC process of labelling systemically important financial institutions (SIFIs) more transparent. Republicans in both chambers have warned that institutions subject to a SIFI designation should have the opportunity to consider changes to avoid such a designation, and they have been especially focused on the FSOC's intentions regarding asset management companies noting that a SIFI designation could harm the performance of managed funds, and that the SEC—not the FSOC—has the appropriate expertise to regulate asset managers. In response Secretary Lew said that there is no lack of transparency in the FSOCs designations, adding that “it’s a question of whether there’s one set of criteria that would be appropriate for [different kinds of firms].” Lew added that FSOC has made no decision to designate asset managers as SIFIs, but said that it’s “really important to ask the question... the answer could be that there’s no need to designate.”

Secretary Lew also faced questions over whether certain financial firms may still be deemed ‘too big to fail.’ Lew said that market indicators show price advantages for the financial system’s largest banks is going way down, saying that “in terms of the market advantage, it is certainly shrinking if not gone.” But he added that “our work isn’t done,” noting that financial regulators must “stay vigilant and keep asking questions.” Sen. Elizabeth Warren (D-MA) seemed displeased with Secretary Lew’s response, and pressed him as to whether regulators would consider breaking up large banks as one way to manage risk. However, Lew warned against correlating size with risk. He said that smaller institutions could create more risk than larger banks, indicating a more holistic approach to financial regulation. Later, responding to criticisms directed at the lack of transparency in the FSOC’s closed meetings, Lew explained that the Council occasionally has to operate out of the public eye as the designation process relies on sensitive company and industry data that would not be shared without an expectation of confidentiality.

#### *Treasury to Work with HUD to Foster Multi-family Housing*

On Thursday, Treasury Secretary Lew [announced](#) it would partner with HUD and utilize Treasury funds to spur the development of affordable multi-family rental housing. Lew also announced that the HAMP program would be extended for at least another year. This means that homeowners have until December 31, 2016 to apply for a mortgage modification under HAMP.

### **FEDERAL RESERVE BOARD**

#### *Tarullo Implies Stress Test to Become Year-Round Analysis*

On Thursday, at a symposium in Boston, Fed Governor Daniel Tarullo, gave a speech that indicated changes will be coming in the way that the Fed stress tests banks and that the review would evolve into more of a year-round process. Tarullo said he expects the agency will devote more attention to developing the macro prudential elements of the stress tests with a focus on the risks to the financial system of significant common exposures among firms potentially coming in a few months. Tarullo

also suggested that another way to enhance the tests would be to consider whether individual banks are vulnerable to serious stress engage in a fire-sale that might lead to increase stresses amongst other banks.

#### *Fed Extends Capital Plan Deadline for Several Banks*

On Tuesday, the Fed announced that it was delaying the capital plan resubmissions for several banks, including Citi and RBS Citizens until January 5, 2015. The banks were originally required to have their plans ready this week. The delay may be helpful as the Banks work to improve their plans, but they will be prohibited from increasing their dividends until next January.

### **SECURITIES AND EXCHANGE COMMISSION (SEC)**

#### *Commission Approves Swap Rules*

On Wednesday, the SEC voted 5-0 to impose new constraints on some types of U.S. banks' overseas swaps trades. Under the new rules, Dodd Frank will apply when an overseas affiliate's trades are legally guaranteed by the U.S. based parent company. The decision comes after the CFTC recently imposed similar obligations and as banks have been removing those guarantees as a result. Critics of the SEC's decision were upset the Commission didn't go further by broadening the definition of "guaranteed trade" to include those with an implicit backing. Contemporaneously to announcing the decision, the SEC put up a [Fact Sheet](#) to help companies understand the rule.

#### *Commission Announces Tick Size Pilot Program*

On Tuesday [the SEC announced that it was ordering](#) the US Stock Exchanges and FINRA to work together to create a pilot tick size program. It is worth noting that the SEC's instructions will create a program slightly different than what the House envisioned when it passed legislation earlier this year. The SEC's program is more complex, putting eligible companies into different areas—some will continue to be quoted and trade at a penny, others at a nickel. Another group will be quoted in nickel increments but could still be traded at penny increments. The SEC's program also only apply to companies with \$5 billion or less in market capitalization and an average daily trading volume of one million shares and a share price of at least \$2.

### **OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC)**

#### *OCC Warns Lenders about Increasing Risk on their Books*

On Thursday, the OCC issued its semiannual ["Risk Perspective"](#) which included warnings to banks that it appears that risk was building among certain asset classes, including indirect auto and leveraged lending. Although the OCC noted that there was overall improvement in the second half of 2013 (the period covered in the report), it felt it was necessary to warn banks as the continuing low-rate environment could be setting the industry up for future vulnerability with banks chasing yield by extending asset maturities.

### **Department of Justice (DOJ)**

#### *Holder Doubles Down on Operation Choke Point*

On Monday, as part of his [weekly address](#), Attorney General Eric Holder pledged to move forward with investigations under the Department's controversial "Operation Choke Point." Holder noted that DOJ has "a range of investigations" going on at the moment and expects to resolve some "in the months ahead." While Holder also noted that "we will not target businesses operating within the

bounds of the law, and we have no interest in pursuing or discouraging lawful conduct” his statement is unlikely to curtail Republican efforts to draw attention or defund the policy.

## **NEXT WEEK'S SCHEDULE**

*The House and Senate are in Recess next Week*