Porterfield, Fettig & Sears LLC

GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

2016 Election Recap
&
115th Congressional and Regulatory Outlook

[CONFIDENTIAL]

Memorandum

To: CLIENT DISTRIBUTION
From: Porterfield, Fettig & Sears, LLC
Re: Summary of Election Results and the Financial Services Outlook for the 115th Congress
Date: November 9, 2016

Donald J. Trump (R) shocked the world and defeated Hillary Clinton (D) with an electoral college vote of at least 290-228 to become the 45th President of the U.S.[1] Secretary Clinton is likely to win the popular vote. Voters turned out en masse to vote against the establishment in favor of ending the status quo. This "populist right" movement does not subscribe to traditional Republican ideology, but it helped keep Republican majorities in the House (238-193) and Senate (52-47).[2] For the first time since 2001, an election provided Republicans with control of the White House and both chambers of Congress.

These election results will slow down, if not stop, a range of regulatory efforts across all sectors. The "populist right" movement believes in free enterprise, but is not blindly pro-business which they believe is rife with crony capitalism. Tax "loopholes" and special interest "benefits" are suspect. While Trump will support a pro-growth agenda of lower taxes, less regulation, energy independence and infrastructure spending, he will also frustrate Republicans with "fair trade" policies, immigration policy, and nationalism.

Election Results Overview

- **Topline Takeaway:** Republicans are the beneficiaries of a "populist right" movement and control the White House, House and Senate. Unified government also means Republicans have the burden of leading and producing change. Expect a Congress and administration that materially change the trend line of the last eight years of increasing regulations.

- **First One Hundred Days:** We expect President-Elect Trump to take a relatively conciliatory approach to Congress and work to find areas of agreement. Vice President-Elect Pence will take a key role coordinating legislative efforts of the first 100 days. President-Elect Trump is likely to sign hundreds of executive orders on day one, undoing many of President Obama's controversial actions. Expect efforts to draft a budget reconciliation bill making desired changes in Obamacare, CFPB, and other issues. A more bipartisan deal might involve corporate tax repatriation and infrastructure spending.

- **Republicans Maintain House and Senate Majorities**: Senate Republicans remain in control and will work with Trump to move a largely pro-growth agenda. With several moderate Democratic Senators up for re-election in two years, we believe he will get some Democratic support – which he will need given the filibuster rule.

- **Key Challenges and Changes:** Supreme Court confirmation, Cabinet nominees, debt limit, budget reconciliation, new Federal Reserve Chair and CFPB Director no later than 2018; Acting SEC Chairman, January, 2017 – Michael S. Piwowar.

[1] The final electoral college vote is likely to be 305-233.

[2] Four House races are still pending and Senator Kelly Ayotte (R-NH) appears to have lost by 716 votes, but a recount is expected.

Lame Duck Session

Congress returns for the lame duck session of the 114th Congress on Monday November 14th for leadership elections and new member orientation.

Lame Duck Session Schedule
Nov. 14-18 – In session, leadership elections, new member orientation
Nov. 21-25 – Thanksgiving recess
Nov. 28-Dec 9 – In session
Dec. 9 – Target adjournment

The House and Senate are expected to be out of session the week of November 21 for the Thanksgiving holiday, and both chambers have a target adjournment of Friday, December 9. While the current continuing resolution expires on December 9, it is not uncommon for negotiations to take longer than expected and the schedule could extend into that weekend and into the week of December 12-16.

Legislation expected to be considered during the lame duck session includes:

- Omnibus Appropriations bill (or multiple "minibus" appropriations bills) to fund the Federal Government (current CR expires December 9), including potential regulatory relief riders. Alternatively, Congress could pass another CR extending into next year.
- National Defense Authorization Act
- Water Resources Development Act (WRDA), including Flint water infrastructure funding
- Nominations in the Senate, including CFTC and SEC Commissioners

Legislation possibly considered during the lame duck session includes:

- 21st Century Cures
- Tax extenders
- Energy Bill conference report including possible California wildfire funding
- Mine workers' pension reform
- Iran Sanctions

115th Congress

Senate Leadership

Senate Republicans maintain control after losing what looks like two seats[3]. We expect the GOP leadership team to remain the same as the 114th Congress: Republican Leader: Mitch McConnell (R-KY); Minority Whip: John Cornyn (R-TX); and Conference Chair: John Thune (R-SD).

The Minority will be electing a new Democratic Leader for the first time since 2004, as Senator Harry Reid (D-NV) is retiring. Senator Schumer will be elected Minority Leader. No additional Democratic Senators have announced their intention to challenge the remaining existing leadership team, which would suggest Senator Dick Durbin (D-IL) remains Assistant Democratic Leader, and Senator Patty Murray (D-WA) is in line to become the third ranking Democratic Senator. Senator Murray has not yet indicated if she might challenge Senator Durbin, but early indications suggest she will not.

Senate Committee on Banking, Housing & Urban Affairs

Committee Ratio, Analysis and Implications

Senator Michael Crapo (R-ID) will be the next Chairman of the Senate Banking Committee given the self-imposed term limits of the Republican Caucus. Sen. Crapo has never served as chairman, but served as ranking member of the committee for two years in the 113th Congress. Sen. Crapo joined the committee in 1999, serving a total of 18 years. Sen. Crapo is a very smart, principled, experienced legislator known for his kind demeanor and strong desire to achieve tangible results by reaching across the aisle. He may be best known for his bipartisan efforts to reach a budget deal with his involvement in the Gang of Six.

Senator Crapo's initial focus will likely include an early emphasis on nominations, with multiple openings currently pending at the Federal Reserve, as well as the Treasury Department[4], SEC, HUD and dozens of other positions in the Banking Committee's jurisdiction. Those current vacancies, plus the vacancies that will occur once the new administration is in place, will generate many hearings on nominations, as well as markups to move those nominees to the full Senate as quickly as possible.

Senator Richard Shelby (R-AL) will remain on the committee as the most senior member, having served on the committee for 30 years. Senator Shelby is the sixth most senior member of the entire U.S. Senate, and serves as a senior, active member of the Senate Appropriations Committee[5]. The relationship between Sens. Shelby and Crapo will be a proactive and productive one with respect to moving financial services legislation as Sen. Shelby wants to build on his 30 years of work overseeing the financial services industry. Senator Thom Tillis (R-NC) is a contender to replace Sen. Kirk on the committee. On the Democratic side, Senators Gary Peters (D-MI), Tammy Baldwin (D-WI) and Tammy Duckworth (D-IL) are possible SBC candidates.

There has not been a 52:48 Majority-Minority ratio of total Senate Caucus Members in the last 40 years. That

[3] Senator Kirk (R-IL) lost and Senator Kelly Ayotte (R-NH) appears to have lost by 716 votes, but recount is expected.

[4] Treasury Secretary goes through Finance Committee.

[5] Senator Thad Cochran (R-MS) has two more years to serve as Chair of the Senate Appropriations Committee.

said, there is historical precedent for 51:49 and 53:47. In the former, there is typically a one seat vote margin on the Senate Banking Committee, and a two seat vote margin in the latter. We expect Leader McConnell to push for the status quo of 22 members of the Committee with a majority-minority seat margin of two. If so, Democrats would not gain any actual seats, but only have to replace the vacancy of Minority Leader Schumer who will roll off. With Sens. David Vitter (R-LA) and Mark Kirk (R-IL) no longer on the committee, the Republicans will actually have to fill two vacancies.

Senator Sherrod Brown (D-OH) will continue to serve as ranking member of the committee. Sen. Brown has served on the Committee for nine years, and served as the Ranking Democrat on the Committee in 2015-16.

Senate Democrats have long relied on the seniority system to assign chairmanships and we see no reason for that process to change. But as has been the case the past two years, those Democratic Senators more senior than Senator Brown on the Committee have to continue to take other gavels.

Senate Majority Agenda

We expect Chairman Crapo's Banking Committee agenda to be similar to that of Senator Shelby's in the 114th Congress and pick up where Shelby left off. This would include the totality of Senator Shelby's regulatory relief bill, as well as amending the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) to mandate comprehensive regulatory review of Dodd-Frank and the prohibition of bank regulators implementing Operation Chokepoint (restricting bank services for gun sector businesses). The primary difference is that Chairman Crapo would have an administration that would generally support his view of, and approach to, regulation.

In addition, we expect Chairman Crapo to spend a little more time on securities related issues given his historic interest and activity on the securities subcommittee. Lastly, we expect Crapo to continue oversight hearings of the FSOC and CFPB with a focus on process, transparency, governance and accountability.

Sen Crapo worked closely with former Chairman Tim Johnson in the 113th Congress on passing bi-partisan comprehensive GSE reform legislation in the Committee. In the 115th Congress he is more likely to provide oversight of FHFA and the GSEs, as well as encourage more private sector participation in the housing finance system to reduce taxpayer exposure with incremental housing finance reform.

Additional issues expected to be addressed next year by the Committee include reauthorization of the National Flood Insurance Program which expires Sept 30, 2017, as well as oversight of a possible FinTech charter by the OCC and financial technology and mobile payments issues more broadly.

Subcommittees[6]

<u>Securities, Insurance and Investment</u>

If Senator Shelby chooses to take a subcommittee chair, we expect him to take the Securities, Insurance and Investment gavel, as it includes securities, insurance, government securities, Fannie Mae and Freddie Mac, financial exchanges, derivatives, accounting standards among others. We expect Senator Mark Warner (D-VA) to be the Ranking Member.

[6] These are expectations given current subcommittee jurisdictions. Sens. Reed and Tester are not expected to serve as ranking members as they both have ranking members with other committees/subcommittees, which is the limit under Democratic Caucus rules. The same applies for Sen. Shelby and the Republican caucus rules. Any and all hearings and briefings of the subcommittees will be closely coordinated with Chairman Brown.

Financial Institutions and Consumer Protection
Senator Toomey (R-PA) is expected to continue to chair this subcommittee where he has been actively engaged on a host of banking and consumer credit issues. Senator Jeff Merkley (D-OR) is expected to continue to be the ranking member.

Housing, Transportation and Community Development
Senator Tim Scott (R-SC) is expected to continue to chair this subcommittee and maintain a thoughtful and active role. Senator Robert Menendez (D-NJ) is expected to remain ranking member.

National Security and International Trade
Given former Chairman Mark Kirk (R-IL) lost his re-election bid, we expect Senator Ben Sasse (R-NE) to take the chair. He is bright and active and will work well with Chairman Crapo. We expect Senator Heidi Heitkamp (D-ND) to remain the ranking member.

Economic Policy
Senator Heller is expected to continue to chair this subcommittee in the 115th Congress. He is a very active and engaging member who understands business and economics. The current ranking member, Senator Elizabeth Warren (D-MA) is expected to remain in that position.

Republican House Leadership

We expect the Republican Leadership to likely remain unchanged: Speaker of the House of Representatives: Paul Ryan (R-WI); Majority Leader: Kevin McCarthy (R-CA); Majority Whip: Steve Scalise (R-LA); and Conference Chair: Cathy McMorris Rodgers (R-WA).

That being said, Ryan faced criticism from Trump and will have to navigate the political contours of his caucus and continue to negotiate with the Freedom Caucus to ensure he retains the necessary 218 votes to remain Speaker. Part of that negotiation could entail adding a new leadership position to give the Freedom Caucus a seat at the leadership table.

With Trump as President, Ryan may be able to advance Republican policy proposals including "A Better Way" legislative agenda. This broad effort comprises six different areas of focus – poverty, national security, the economy, the Constitution, health care and tax reform. Other items Ryan may advance in the House include comprehensive tax reform and repealing parts of the Affordable Care Act. Ryan could use the budget reconciliation process to advance such reforms, which can only be used once per year.

Speaker Ryan and President-Elect Trump did occasionally feud on the campaign trail. Ryan spoke out against some of Trump's controversial statements, but he ultimately voted for Trump, campaigned with him in Wisconsin and wrote an op-ed encouraging Republicans to back the nominee. Ryan and Trump are determined to unify the government. One key player that can help smooth over any previous bad blood is RNC Chairman Reince Priebus, who hails from Wisconsin and is a long-time friend of Ryan. Priebus received a special thank-you in Trump's acceptance speech. Additionally, Vice President-Elect Mike Pence is close to Ryan. We expect Trump and Ryan to unify on efforts and Priebus and Pence will help be the liaisons.

Democratic House Leadership

The Democratic House leadership will remain largely unchanged. Minority Leader Nancy Pelosi (D-CA) will continue to lead House Democrats along with Whip Steny Hoyer (D-MD) and Assistant Democratic Leader Jim Clyburn (D-SC).

The only leadership changes expected for House Democrats are the Democratic Caucus Chair and Vice Chair positions. Caucus Chair Xavier Beccera (D-CA) and Vice Chair Joe Crowley (D-NY) are both term limited. We expect Crowley to move up to take over as Democratic Caucus chairman. Beccera may become the ranking member of the Budget Committee.

Reps. Barbara Lee (D-CA) and Linda Sanchez (D-CA) have announced their intention to replace Crowley in the race for vice chair, setting the stage for a contested election between a member of the Congressional Black Caucus and a member of the Congressional Hispanic Caucus and dividing the California delegation from which both congresswomen hail.

House Financial Services Committee

Committee Ratio, Analysis and Implications

While it remains to be seen if there will be any adjustment to the committee ratio of 34 Republicans to 26 Democrats on the House Financial Services Committee (HFSC), given the minimal Democratic gains, the committee ratios will likely hue closely to the current setup.

Regardless of the addition (or subtraction) of seats on the committee, the losses of Reps. Scott Garrett (R-NJ) and Frank Guinta (R-NH) and retirements from both parties (six Republicans and three Democrats are either retiring or seeking hire office) will create openings.

Representatives Randy Neugebauer (R-TX), Michael Fitzpatrick (R-PA), Lynn Westmoreland (R-GA), Robert Hurt (R-VA) and Stephen Fincher (R-TN) are all retiring. Rep. Marlin Stutzman (R-IN) vacated his seat to pursue his losing bid for the Republican nomination in the Indiana Senate race. On the other side of the aisle, Rep. Ruben Hinojosa (D-TX) announced his retirement and Reps. John Carney (D-DE) and Patrick Murphy (D-FL) vacated their seats to seek higher office.

There will be a number of new faces on the committee next year. Also, some Members may seek an alternate committee assignment. The retirement of long-serving Congressional Black Caucus Member Charlie Rangel (D-NY) creates a vacancy on the powerful Ways and Means Committee. The Congressional Black Caucus would like to fill this vacancy with one of their own members. HFSC members Terri Sewell (D-AL) and Gwen Moore (D-WI) have expressed interest in switching committees, creating a game of musical chairs, which may allow for a new Democratic Member to join the Financial Services Committee.

Potential new GOP Members include Barry Loudermilk (R-GA), Lee Zeldin (R-NY), Dave Trott (R-MI), Ryan Costello (R-PA), Brian Fitzpatrick (R-PA) and John Katko (R-NY). The retirement of Rep. Westmoreland, creates a geographic opening for Loudermilk to be the new Georgia Republican voice on financial services issues. He and his staff have campaigned hard for this position and we believe he will be successful in this effort. Zeldin and Katko are both from New York, making it likely that one (but not both) will be added. Zeldin and Katko are from swing districts and a promotion to HFSC would help either politically. Trott represents the suburbs of Detroit and sponsored a bill to rewrite the bankruptcy code for banks. Costello is a rising star in the party and will argue that Fitzpatrick's retirement means that Southeast Pennsylvania needs to retain a voice on the committee.

On the Democratic side, incoming Rep. Lisa Blunt Rochester (D-DE) will likely push to continue the tradition of having a Delaware seat on HSFC. Incoming Rep. Josh Gottheimer (D-NJ) may also be under consideration.

With the exception of 11 seats (nine retirements and two losses), the Committee membership will very much resemble that of the 114th Congress. Chairman Hensarling and Ranking Member Maxine Waters (D-CA) are expected to maintain their respective leadership positions on the committee. Republican subcommittee chairs will shift, while Democratic subcommittee ranking members are expected to remain unchanged.

<u>House Majority Agenda in 2017</u>

Rep. Hensarling will serve his final term as chairman of HFSC and will be focused on rewriting parts of Dodd-Frank, rebalancing what Hensarling views as regulatory overreach, reauthorizing the National Flood Insurance Program (current program expires September 30, 2017), continuing to push for housing finance reform and ongoing robust oversight of the Federal Reserve, CFPB, SEC, FHA, FSOC and FHFA.

Despite his opposition to Dodd-Frank, Hensarling has, at times, negotiated successfully and had 15 bipartisan bills signed into law as part of the highway bill. We expect to see continued oversight hearings and consideration of legislation to amend Dodd-Frank along with targeted bipartisan approach.

In the 114th Congress, there were some financial services issues that Hensarling opposed, but an overwhelming majority of the House supported, such as the reauthorization of TRIA and the Ex-Im Bank. Supporters of these programs were forced to work around Hensarling and negotiate directly with House and Senate Leadership. On other reauthorization efforts, such as flood insurance, Hensarling has worked in a more constructive manner to advance bills through his committee and the House floor.

Reforming the GSEs via the PATH Act was a priority for Chairman Hensarling in his first term running the committee but he did not focus on the PATH Act this Congress. Behind the scenes, he worked with moderate Democrats on the committee on proposals surrounding a common securitization program and various risk sharing pilot programs, but to no avail. Chairman Hensarling may continue negotiating on smaller, more tempered GSE reform bills in the next Congress. If he decides to revert back to a partisan PATH Act approach, there would likely be insufficient bipartisan support in the Senate.

Chairman Hensarling's Dodd-Frank repeal and replace bill, the CHOICE Act, was a major focus of the Committee's activity in 2016, culminating in a partisan markup. Hensarling has committed to advancing the legislation and we expect it to be a priority in the next Congress.

There could be an early review and consideration of bills by the HFSC that are less controversial and were approved by the HFSC last Congress. The committee has had the greatest success moving smaller, bipartisan, more narrowly tailored bills through the House.

Subcommittees

Capital Markets and GSEs Subcommittee
The subcommittee is currently chaired by Rep. Garrett. With his loss, and with more senior Members retiring or already holding chairmanships elsewhere, Reps. Sean Duffy (R-WI) and Bill Huizenga (R-MI) will likely compete for the gavel. There is an outside chance Rep. McHenry would pursue the subcommittee gavel, as he has long expressed an interest in securities issues; however, we expect he will decide his leadership post (Deputy Whip) will prove to be too large a time commitment to take on a subcommittee as demanding as Capital Markets. Rep. Carolyn Maloney (D-NY) is expected to remain ranking member.

Financial Institutions and Consumer Credit Subcommittee
The current subcommittee Chair is Randy Neugebauer (R-TX), who is retiring. Rep. Blaine Luetkemeyer (R-MO) is expected to assume this gavel. Rep. Lacy Clay (D-MO) is expected to remain ranking member.

Housing and Insurance Subcommittee
The subcommittee is currently chaired by Rep. Luetkemeyer, who is expected to pursue Financial Institutions. Reps Duffy and Huizenga could be possible successors. Rep. Emanuel Cleaver (D-MO) is expected to remain ranking member.

Oversight & Investigations Subcommittee
Rep. Duffy is the current O&I subcommittee chair. Reps. Steve Pearce (R-NM), Mick Mulvaney (R-SC) or Ann Wagner (R-MO) could possibly take over this post if Duffy is elevated to another subcommittee leadership position. Rep. Al Green (D-TX) is expected to remain ranking member.

Monetary Policy Subcommittee
Rep. Huizenga is the current subcommittee Chair. Rep. Mulvaney or a more junior member could assume leadership of this subcommittee. Rep. Moore is expected to remain ranking member.

Key Federal Financial Officials

We expect President-Elect Trump to nominate loyalists for cabinet posts and those who have remained close to him throughout his campaign. Additionally, because of Trump's lack of government experience, we expect Vice President-Elect Mike Pence to be heavily involved and to play a major role in this administration.

Top cabinet post mentions include Trump's closest confidants such as Rudy Giuliani, Newt Gingrich, and retired Lt. Gen Michael Flynn. RNC Chairman Reince Priebus has been mentioned as a potential White House chief of staff.

Federal Reserve Board of Governors

Janet Yellen's term as Chair expires on Feb. 3, 2018, while her 14 year term as a Board Member expires January 31, 2024. President-Elect Trump will likely replace Yellen at the expiration of her term and we do not expect her to resign as an orderly transfer of power to the next Fed chairman is essential for the markets, and if Yellen stepped down, such a move would associate the position with politics.

Currently there are two vacancies on the Federal Reserve Board of Governors. Current nominees in waiting include Allan Landon and Kathryn Dominguez. We expect Trump to nominate two new Fed governors early in his presidency. Fed Governor Daniel Tarullo could move on under a Trump administration. Trump will also have to appoint a vice chairman of supervision which is the only key Dodd Frank position that remains vacant.

Secretary of U.S. Department of Treasury

Odds on favorite is Steve Mnuchin, former Goldman Sachs executive who now serves as Trump's national finance. Mnuchin is the co-CEO and co-founder of Dune Capital Management, a hedge fund based in New York. Chairman Trump's Secretary of Treasury will play a critical role during the next administration as the Secretary also serves as the Chair of the FSOC, responsible for designating nonfinancial institutions as systemically significant. The FSOC has only been chaired by a Democrat since its inception.

Another potential candidate for Treasury Secretary who may also be considered for the Council of Economic Advisors and the National Economic Council include David Malpass, founder and president of Encima Global LLC who served as Deputy Assistant Treasury Secretary under President Ronald Reagan, Deputy Assistant Secretary of State under President George H. W. Bush, and Chief Economist at Bear Stearns.

Other economic policy advisors that may have a role in Trump administration include Lawrence Kudlow and Stephen Moore.

CFPB

Director Richard Cordray's term does not expire until July 2018. But the election results and a recent appellate court decision complicate the issue. (See pg. 12 for a more complete discussion on this issue).

SEC

Trump has not said much about what role he expects the SEC to play or what type of Chairman he is likely to nominate. Mary Jo White is the Chair of the SEC and has been since April 2013. It is rumored that she wants to leave the agency, but doesn't want to leave the commission with only two sitting commissioners. Should the Senate confirm the two pending SEC commissioner nominees – Ms. Lisa Fairfax (Democrat) and Ms. Hester Peirce (Republican) – in the lame duck session, Mary Jo White is likely to leave. Until a new SEC chair is nominated and confirmed by the Senate which we expect to take a while, the Acting Chair will be Republican commissioner Michael S. Piwowar.

HUD

It is unclear if Trump will support a more moderate or conservative candidate for HUD Secretary. Perhaps Trump will pick one of Castro's outspoken critics, such as Rep. Paul Gosar (R-Ariz.) or pick an insider such as Westchester County executive Rob Astorino.

Commerce

Trump is expected to look to the business community for this job including to his trusted advisers including investor Wilbur Ross and Dan DiMicco, the former CEO of steelmaker Nucor Corp. Other potential candidates include former Texas Gov. Rick Perry, former Arkansas Gov. Mike Huckabee and New Jersey Gov. Chris Christie. Another name rumored is Republican National Committee finance chair Lew Eisenberg.

Legislative and Regulatory Priorities of 115th Congress: Financial Services Topline Takeaways

CFPB: If the recent court decision stands, Director Cordray serves at the pleasure of the president, meaning President-Elect Trump could dismiss him. The CFPB has until November 25 to decide whether to appeal. As long as Cordray remains at the helm, the CFPB data collection rulemaking will likely continue, particularly surrounding credit reporting and student loan servicing. A Trump administration with Republican control of both chambers means, at a minimum, those rulemakings will only be pursued until Trump nominates Cordray's replacement, either when his term expires in July 2018 or earlier if the court ruling is upheld. These election results also make it much more likely that the CFPB leadership structure is reworked. House Republicans will continue a steady stream of oversight and investigative hearings into CFPB's efforts, specifically around indirect auto finance, mortgage servicing, overdraft fees, housing finance, legal settlements by large financial institutions, and other consumer finance issues.

Nonbank Financial Company SIFI Designations: Unless the concerns outlined in the analysis that follows are addressed in an end-of-the-year omnibus, we expect there to be continued focus on the FSOC's lack of transparency and additional scrutiny on its designation process in the 115th Congress. The Trump administration will appoint the members of FSOC as their current terms expire and they will likely be more open to de-designating current SIFIs and less likely to designate any new companies as SIFIs.

SIFI Designations for Bank Holding Companies with $50 Billion in Consolidated Assets: We expect Congress to continue to build upon the momentum of Rep. Luetkemeyer's legislation in the House and Title II of Chairman Shelby's regulatory relief package in the Senate in the 115th Congress. Republican control of the White House and both chambers of Congress increases the likelihood of both efforts becoming law.

Flood Insurance: The National Flood Insurance Program, which provides flood coverage to more than five million policyholders and has a $23 billion debt, expires September 30, 2017. Congress must decide whether to extend or fully reform the program.

Insurance Capital Rule: In 2017, the Federal Reserve will move toward finalizing their rulemaking on insurance capital standards.

International Insurance: Congress will continue to monitor international insurance regulation and encourage Congressional involvement in any international insurance regulation and/or covered agreements that develop.

Equity Market Structure: The issues that we anticipate being a part of the broad market structure debate include high-frequency trading, market data, dark pools, trade-at rule, access fees, co-location, fragmentation, order type, market maker obligations and a focus on preventing future Securities Information Processor (SIP) outages.

JOBS Act Implementation: Despite delays, the SEC finalized the JOBS Act required rulemakings in 2015, including the rules governing crowdfunding and Reg A+.

JOBS Act Expansion: In addition to the finalizing of JOBS Act rulemakings, the HFSC had sustained interest in the 114th Congress building upon the successes of the JOBS Act with numerous pieces of legislation introduced to expand capital formation initiatives. We expect continued bipartisan and bicameral interest on these issues in the 115th Congress.

Mutual Fund Regulation: The SEC voted to adopt three final rules aimed at reducing liquidity risk and enhancing reporting standards for mutual funds and other registered investment companies. The SEC is likely to continue its review of mutual fund fees and we anticipate further review by the Commission of costs related management fees, custodial fees, transaction fees and commissions, and the impact of these costs on investment value over time.

Housing Finance: Comprehensive housing finance reform will continue to receive ongoing attention from the committees of jurisdiction and outside thought leaders. Simultaneously, we expect more incremental approaches will be pursued.

Fiduciary Duty Rule: It is unclear if the Department of Labor's finalized fiduciary duty rule will go into effect in April 2017 as planned or if President-Elect Trump will delay or withdraw the rule. The election will similarly impact the SEC's expected proposed fiduciary duty rule. The SEC had planned to watch as DOL's rule unfolded to see if conflicts developed. The SEC rule was expected to be proposed in April 2017 but President-Elect Trump's nominee to replace Chair White makes this highly unlikely to occur.

Orderly Liquidation Authority/ Bankruptcy: Efforts to pass legislation seeking to amend Chapter 11 of the bankruptcy code to address failing financial institutions may continue in the lame duck with a move to include such policy in a year end omnibus. If such attempts are not successful in the lame duck, we expect to see continued efforts in the 115th Congress.

Mixing of Banking and Commerce: The Federal Reserve Board, FDIC and the OCC issued recommendations to significantly curtail the mixing of banking and commerce in a report dated September 8, 2016 pursuant to Section 620 of Dodd-Frank. Given the populist tone that permeated the campaign, we feel these issues will receive further oversight and attention in the next Congress. In some cases, we expect the regulators can and will act independently of congressional action.

Export-Import Bank: The bank's five-person board currently lacks a quorum because the Senate has yet to move on the pending nominee. This issue could be resolved in the lame duck session. President-Elect Trump's past statements against the bank further complicate the issue.

Corporate Governance: In 2017, Congress will continue looking at the influence of proxy advisory firms, and regulators will focus on finalizing rules around incentive-based compensation models.

Data Breach and Security: There is a chance data breach legislation will be enacted in the next Congress. However, conflicts must be resolved between the financial and retail sectors. Also, a number of important issues must be negotiated including compliance impact on small businesses, consumer privacy, data security standards and requirements, federal preemption, types of personal information covered (i.e. expanding to medical records, biometrics, geolocation), timing of notification, and the roles of various federal agencies like the FTC and FCC, as well as state Attorneys General, in enforcing the law.

Cybersecurity Law Implementation: The Cybersecurity Information Sharing Act (CISA) was folded into the consolidated spending bill and signed into law by President Obama on December 18, 2015. The law allows for voluntary exchange of cyber threat and defense information between the private sector and the government along with liability and other protections. Final implementation guidelines were released on June 15, 2016. Implementation, oversight and efforts to streamline the regulations governing CISA will continue in the next session of Congress. President-Elect Trump's stated positions on creating a public-private team and a task force to address cyber crime are likely to impact congressional efforts.

New Cyber Rules Proposed for Financial Sector: Regulators continue to roll out new proposals to bolster cybersecurity in the sectors under their jurisdiction. As with other sectors, it is likely the regulatory efforts could be slowed or softened under the Trump administration.

Autonomous Vehicles and Cyber Protection: Policymakers and the public continue to debate tradeoffs between the benefits of autonomous vehicles (including traffic efficiency, environmental protection, improved mobility, and increased safety) vs. the risks, especially to customer safety. The issues of data privacy and cybersecurity are prominent in the legislative and regulatory aspects of this debate. This is a set of issues that does not divide members of Congress by typical partisan line.

FinTech – Congress: FinTech continues its rapid deployment across the financial services marketplace, and indeed the entire economy. With the expansion of broadband and mobility networks, more and more businesses are merging traditional ways to execute financial transactions with evolving technology. All the activity in this space is bringing increased interest and scrutiny from Congress, which will only accelerate in 2017.

FinTech – The Regulators: Multiple agencies have a role in regulating FinTech and it is often difficult for stakeholders to keep up with how they enforce current law, what new rulemakings are in store, and how agencies work together in this space. 2017 promises to be a busy year on the FinTech regulatory front, however the nature and timing of proposed regulations will be influenced by incoming Trump administration officials.

Legislative and Regulatory Priorities of 115th Congress: Financial Services

CFPB

If the recent court decision stands, Director Cordray serves at the pleasure of the president, meaning President-Elect Trump could dismiss Cordray. The CFPB has until November 25 to decide whether to appeal. As long as Cordray remains at the helm, the CFPB data collection rulemaking will likely continue, particularly surrounding credit reporting and student loan servicing. But a Trump administration with Republican control of both chambers means, at a minimum, those rulemakings will only be pursued until Trump nominates Cordray's replacement, either when his term expires in July 2018 or earlier if the court ruling is upheld. These election results also make it much more likely that the CFPB leadership structure is reworked. House Republicans will continue a steady stream of oversight and investigative hearings into CFPB's efforts, specifically around indirect auto finance, mortgage servicing, overdraft fees, housing finance, legal settlements by large financial institutions, and other consumer finance issues.

- **Indirect Auto Lending:** On November 24, 2015 the committee released a detailed report targeting the CFPB's actions related to indirect auto lending. Bipartisan legislation (H.R. 1737) was passed by the committee, and then the full House, to revoke CFPB's guidance related to indirect auto lending and lay out parameters for any newly issued guidance on this subject. The bill passed the House 332-96, but has yet to move in the Senate. We expect there will be a push to move this legislation in the next Congress, pending a leadership change at CFPB which would allow for an administrative fix.
- **CFPB Organizational Structure:** For years, the Republicans have expressed concern regarding the structure of the CFPB. Republicans have advocated for a bipartisan commission to head up the agency, as opposed to a single director. Legislation was passed by the committee (H.R. 1266) to change the structure of the agency to a 5-person bipartisan committee, however Democrats remain unconvinced that the CFPB needs to change its leadership structure. In October 2016, a federal appeals court ruled that the CFPB's structure is unconstitutional. The bureau has said it will challenge the ruling. The likelihood that the CFPB organizational structure changes is much more likely given the election results.
- **Other CFPB Issues:** The agency will continue looking into student loans and may also examine cross-selling practices at certain financial institutions in wake of the Wells Fargo news.

Nonbank Financial Company SIFI Designations

Unless the concerns outlined in the analysis that follows are addressed in an end-of-the-year omnibus, we expect there to be continued focus on the FSOC's lack of transparency and additional scrutiny on its designation process in the 115th Congress. The Trump administration will appoint the members of FSOC as their current terms expire and they will likely be more open to de-designating current SIFIs and less likely to designate any new companies as SIFIs.

- FSOC has designated four nonbank financial companies as SIFIs including AIG, GE Capital, Prudential and MetLife. GE decided to sell off most of its financial services related lines of business and successfully appealed to FSOC to be de-designated. MetLife challenged its SIFI designation in federal court and won at least a temporary reprieve: the District Court set aside FSOC's SIFI designation, finding that the Council failed to follow its own procedures. Treasury has appealed the decision. However, SIFI designations are a rolling process so any nonbank financial company could be placed into phase one of the process at any time.

- FSOC has received a great deal of criticism this Congress regarding the appropriateness of the process by which nonbank financial companies are designated. In particular, the FSOC's lack of transparency in its designation process and the failure of FSOC to provide meaningful information on the determinants leading to designation have been some of the strongest criticisms.
- In the House, H.R. 1550 ("Ross-Delaney") was the most bipartisan of FSOC related bills, garnering 31 Democratic cosponsors and the support of a majority of the Democrats on HFSC. The bill would increase transparency and communication between FSOC and potentially designated nonbanks and would allow the companies and their primary regulator to attempt to mitigate systemic risks FSOC identifies before designating a nonbank as a SIFI. Title III of Chairman Shelby's regulatory relief bill had similar provisions to amend the FSOC designation process for nonbanks. Reps. Ross and Delaney will reintroduce their bill in the next Congress.
- House Republicans have also introduced a series of FSOC and OFR related bills including legislation bills that would tie FSOC's funding to the appropriations process and increase the reporting requirements for both agencies. We expect similar legislative efforts in the 115th Congress.
- We also expect HFSC to closely follow the designation process at the Financial Stability Board (FSB) out of concern that the international body may designate asset managers as globally significant.

SIFI Designations for Bank Holding Companies with $50 Billion in Consolidated Assets

We expect Congress to continue to build upon the momentum of Rep. Luetkemeyer's legislation in the House and Title II of Chairman Shelby's regulatory relief package in the Senate in the 115th Congress. Republican control of the White House and both chambers of Congress increase the likelihood of both efforts becoming law.

- Regulators, policymakers and mid-to-large size banks have expressed the need to amend the prudential standards provisions for bank holding companies with less than $50 billion in Section 165 of Dodd Frank. Proponents for such change say that the threshold subjects less risky institutions to burdensome and unnecessary regulations without regard to significant business model differences among the bank holding companies – essentially, the threshold takes a one-size-fits all approach.
- Noting the need to exempt smaller firms from stricter oversight, Federal Reserve Governor Tarullo announced in a September 2016 speech that the Fed is proposing that banks with less than $250B in assets that do not have significant international or nonbank activity would no longer be included in the annual Comprehensive Capital Analysis and Review (CCAR) qualitative review because they have already met supervisory expectations. This builds upon Tarullo's past comments expressing support for changing the statutory $50B threshold.
- Sen. Brown has expressed concern stating that three of his local banks being impacted are all bigger than $50 billion and they "operate under a traditional banking model" and would not threaten the financial system if they failed. Although many policymakers and regulators agree there should be a change on how such banks are designated because the threshold is arbitrary and inefficient, there is not agreement on how best to make such policy change. Some suggested changes include increasing the asset threshold or making designation an activities-based approach.
- Rep. Luetkemeyer has introduced legislation that would eliminate the numeric threshold altogether, instead directing regulators to look at the different business activities of an institution in determining whether or not an institution is systemically important. The Luetkemeyer legislation successfully advanced through the HFSC this Congress, garnering the support of nine committee Democrats in addition to all of the committee's Republicans. Overall, the bill has 135 cosponsors including 20 Democrats. The bill was unable to come to the House floor because the CBO scored the bill as increasing the deficit by $85 million.

- Chairman Shelby addressed the issue in Title II of his regulatory relief package, changing the threshold from $50B to $500B. Since there is such momentum and bipartisan support, we expect continued focus on this issue.

Flood Insurance

The National Flood Insurance Program, which provides flood coverage to more than five million policyholders and has a $23 billion debt, expires September 30, 2017. Congress must decide whether to extend or fully reform the program.

- In exchange for an extension of the program, advocates for reform in Congress will likely require structural changes to better protect taxpayers, while also ensuring those at risk can continue to have claims paid. Structural reforms are expected to include more private insurer engagement, better mapping and risk analysis, transparency in rates, rates that reflect real risk, and additional mitigation assistance. Rep. Luetkemeyer who chairs the Housing and Insurance Subcommittee has been leading the charge on flood insurance reform and will likely stay engaged in the 115th Congress regardless of whether he assumes a new subcommittee leadership position.
- Reps. Ross and Murphy introduced H.R. 2901 the Flood Insurance Market Parity and Modernization Act in the 114th Congress, a bill that unanimously passed the House in 2016 (419-0). This bill encourages private insurers to offer private flood coverage for purchase. Similar legislation has been introduced by Sens. Heller and Jon Tester (D-MT). These bills may play a role in flood reform policy in the 115th Congress.

Insurance Capital Rule

In 2017, the Federal Reserve will move toward finalizing their rulemaking on insurance capital standards.

- In 2016, the Federal Reserve issued an Advanced Notice of Proposed Rulemaking (ANPR) that would set minimum capital requirements for supervised insurance institutions (SLHCs and SIFIs) and a proposed rule for enhanced prudential standards for insurance SIFIs (e.g. liquidity requirements, stress testing, etc.). The Federal Reserve continues to meet with the industry on the rules and the ANPR is likely the first of several steps before a final rule is promulgated.
- Many in the industry were encouraged by the ANPR as the Federal Reserve appeared to recognize the unique structure of insurance companies. The ANPR takes two approaches, the building block approach for SLHCs and the consolidated approach for SIFIs. Both recognize the distinct differences between insurance companies and banks, and would use insurance-focused risk weights and formulas that reflect the nature of insurance.

International Insurance

Congress will continue to monitor international insurance regulation and encourage Congressional involvement in any international insurance regulation and/or covered agreements that develop. Given President-Elect Trump's nationalistic platform, it is unlikely that he would defer to an international body.

- Members of Congress are expected to continue their oversight over Federal regulator involvement in the insurance space to ensure that domestically domiciled institutions are not disadvantaged by international regulation and regulatory consistency is maintained for U.S. insurers.
- Since 2013, the International Association of Insurance Supervisors (IAIS), at the direction of the Financial Stability Board (FSB), has been developing group capital standards applicable to global

systemically important insurers (G-SIIs). Prompted by industry concerns that international standards being developed fail to account for the U.S. approach to financial solvency regulation, Congress has been developing policy to ensure that U.S. regulators do not make decisions on international issues without the input of Congress.

- In response to these concerns, S. 1086, the International Insurance Capital Standards Accountability Act, sponsored by Sens. Heller and Tester, and H.R. 2141, the International Insurance Standards Transparency and Policyholder Protection Act, sponsored by Rep. Sean Duffy (R-WI) were introduced. These bills encourage and provide for more accountability and transparency to the international insurance process. Both bipartisan bills have not moved in their respective chambers.
- Another bill introduced by Rep. Luetkemeyer, H.R. 5143, the Transparent Insurance Standards Act of 2016, takes aim at the IAIS's standards-setting process. The bill would require the Treasury Department and Federal Reserve to work to ensure policyholder protection, increased transparency and recognition of the state-based model of insurance regulation. This bill was approved out of the HFSC in 2016 and we expect to see it again in the 115th Congress.
- The Treasury Department and the Federal Reserve have tried to put at ease industry concerns regarding the international insurance regulation process. FIO Director Michael McRaith, a member of IAIS, said industry concerns are misplaced, and a representative of the Federal Reserve said fears are misplaced when the industry and Members of Congress claim that the IAIS could establish rules with which U.S. insurers would be forced to comply.
- Rep. Denny Heck (D-WA) has also focused on this issue and we expect him to introduce legislation in the next Congress that would highlight the need for inclusion of state insurance commissioners in discussions of insurance in international forums and the protection of the state-based regulatory system in any agreements reached in those forums.

Shadow Banking

Regulators are beginning to put forward recommendations in this area including internationally with the Financial Stability Board's (FSB) recommendations to issue margining requirements for securities financing transactions.

- The Fed plans to propose a rule next year on minimum collateral requirements, in line with the FSB's recommendations. Tarullo emphasized that it is essential to disaggregate all the activities that might be characterized as shadow banking in order to regulate those that pose risks to the financial system while not unduly burdening credit extension to households and businesses.
- Gathering data appears to be a critical component for detecting where they may be shadow banking. Vice Chairman of the Fed Board Stanley Fischer said in 2015 that conditions can change quickly and when it comes to financial stability, what you do not know really can hurt you--and there remains a good bit regulators do not know. As such, some efforts have been taken by regulators to gather data and we expect to see this effort continue next Congress.
- The FSB has finalized standards for collection of data on securities financing transactions. The legal identifier initiative is working to allow regulators and private counterparties to trace activities by institution. The OFR, the SEC and the Fed are working with industry to collect data on bilateral repos and securities lending deals so risks can be properly identified. Last month, the SEC released liquidity risk rules aimed at giving regulators more data about the holdings of mutual funds and exchange-traded funds.

Equity Market Structure

The issues that we anticipate being a part of the broad market structure debate include high-frequency trading, market data, dark pools, trade-at rule, access fees, co-location, fragmentation, order type, market maker obligations and a focus on preventing future Securities Information Processor (SIP) outages.

- In September 2016, SEC Chair Mary Jo White outlined the Commission's work in the equity market structure arena. She discussed the Commission's adherence to a deliberate, data-driven process to assess and implement fundamental changes to equity market structure. We expect the Commission, working in conjunction with the Equity Market Structure Advisory Committee, to continue moving slowly with any changes to market structure. In the 115th Congress, we expect the Senate Banking Committee and House Financial Services Committee to apply continued pressure to make progress in its review. This is due primarily to the complex nature of such issues and the inability to make one-off changes without overarching consequences.
- In October 2016 the SEC launched its tick size pilot program, testing whether a move from one-cent to five-cent increments will help increase liquidity for some small public companies. This marked the first time tick sizes have been widened since decimalization in 2001. The program is set to run for two years, with a preliminary report on the results due in April 2018. Congressional interest prompted this tick size pilot, through a required study in the JOBS Act and maintained interest in the issue after the tick size study was completed. As such, we expect continued interest from Congress for the duration of the study.
- We expect the Equity Market Structure Advisory Committee to be reauthorized. It is currently set to expire at the end of 2016.
- The Commission also proposed the consolidated audit trail (CAT) in April 2016 which would allow regulators to track every bid and offer submitted to stock and options exchanges to prevent market manipulation. The proposal has garnered significant interest from both industry stakeholders and Capitol Hill. We expect that attention to continue in the 115th Congress.
- Chair White has raised concerns that alternative-trading systems (ATS) or "dark pools" are exempt from SEC registration and oversight requirements if they only trade government securities. White has asked the SEC staff to update agency rules to eliminate this exemption and we expect this to be a focus in the next Congress, especially if, as noted above, there are further market disruptions.
- The SEC has also started updating its registration rules for "principal trading firms" that include high-frequency traders in the U.S. Treasuries markets. White raised concerns that these dealers are not registered with the SEC. Counselor to the Treasury Secretary Antonio Weiss also said he supported registering all principal trading firms that buy and sell U.S. Treasuries. We expect the SEC to continue to pursue this registration rule change.

JOBS Act Implementation

Despite delays, the SEC finalized the JOBS Act required rulemakings in 2015, including the rules governing crowdfunding and Reg A+.

- The SEC adopted rules for Reg A+ to facilitate smaller companies' access to capital, providing for two tiers of offerings: Tier 1, for offerings of securities of up to $20 million in a 12-month period, with not more than $6 million in offers by selling security-holders that are affiliates of the issuer; and Tier 2, for offerings of securities of up to $50 million in a 12-month period, with not more than $15 million in offers by selling security-holders that are affiliates of the issuer.
- The SEC also finalized rules to permit crowdfunding to help raise investment dollars through the internet. Rep. McHenry has introduced legislation to amend the JOBS Act to raise the dollar amount

limits and allow single purpose vehicles to participate in the sale and offer of crowdfunding securities. We expect him to pursue this legislation again in the 115th Congress.

JOBS Act Expansion

In addition to the finalizing of JOBS Act rulemakings, the HFSC had sustained interest in the 114th Congress building upon the successes of the JOBS Act with numerous pieces of legislation introduced to expand capital formation initiatives. We expect continued bipartisan and bicameral interest on these issues in the 115th Congress.

- Rep. Kyrsten Sinema (D-AZ) introduced the Fostering Innovation Act to expand upon a JOBS Act provision. The bill allowed companies with average annual revenue of less than $50 million to be granted an additional five year exemption from SOX 404(b). The bill passed the House with bipartisan support. Rep. Hurt worked to provide smaller public companies a temporary exemption from XBRL compliance (until XBRL is made more affordable and user-friendly). The bill passed the House with bipartisan support. Rep. Carney introduced The Small Business Advocate Act to establish an Office of the Advocate for Small Business Capital Formation within the SEC to assist small businesses and small business investors. The bill had bipartisan support and passed the House. Sen. Heitkamp has introduced the Senate companion.
- These issues could be in play with a lame duck budget deal, especially the SEC Small Business Advocate Act. If not, we expect these issues to continue to receive congressional attention in the 115th Congress.

Mutual Fund Regulation

The SEC voted to adopt three final rules aimed at reducing liquidity risk and enhancing reporting standards for mutual funds and other registered investment companies. The SEC is likely to continue its review of mutual fund fees and we anticipate further review by the Commission of costs related management fees, custodial fees, transaction fees and commissions, and the impact of these costs on investment value over time.

- The SEC's rules require that funds maintain a minimum percentage of easy-to-sell assets that could be used to meet a surge of investor withdrawals. Funds also would have to classify assets based on how long it would take to sell them and disclose some of those metrics to shareholders. The measures represent the first changes to rules governing how funds oversee less-liquid investments in more than two decades. The final rule was adjusted to reflect much of the industry's concerns. ETFs will be exempt from the new requirements. The final rule left out the e-delivery component of the original proposal (Rule 30e-3). This provision would have permitted, but not required, funds to disseminate shareholder reports electronically.
- Unexpectedly, the SECs mutual fund derivatives rule setting stricter requirements on use of futures and swaps, *may be finalized this year, particularly if Congress can pass the two pending SEC nominees in the lame duck*. SEC Chairman White originally identified finalizing the derivatives rule among her priorities for the year, but the proposal (announced in December 2015) received criticism from fund managers. DERA recently published analysis to address industry concerns.
- We may continue to see opposition to the SEC's 'floating NAV' for money-market funds which went into effect October 14th. One company in particular may continue its attempts in Congress to dismantle the implementation of the rule through legislation, even though this effort is being met with resistance both on and off the Hill.

Housing Finance

Comprehensive housing finance reform will continue to receive ongoing attention from the committees of jurisdiction and outside thought leaders. Simultaneously, we expect more incremental approaches will be pursued.

- Parrott, Ranieri, Sperling, Zandi and Zigas released a white paper on "A More Promising Road to GSE Reform" arguing for replacing the GSEs with a corporation. At the Milken Institute, Ed DeMarco and Michael Bright also issued a series of white papers including "Toward a New Secondary Mortgage Market." In addition, Laurie Goodman and the Urban Institute continue to lead the GSE reform discussion with a series of papers, including a report entitled How to Improve Fannie and Freddie's Risk Sharing Effort. We expect these thought leaders to continue to influence the discussion and policymakers.
- Chairman Hensarling did not push the PATH Act in the 114th Congress as he did in the 113th and in the Senate, the Johnson-Crapo/Corker-Warner advocates were similarly sidelined. Congressmen Delaney, Carney and Jim Himes (D-CT) reintroduced their Partnership to Strengthen Homeownership, but it did not advance through HFSC. It is unclear if the congressional advocates for GSE reform will continue to pursue their past bills as GSE reform proposals evolve.
- FHFA began a credit risk transfer program in an effort to share credit risk with the private sector. We expect continued congressional interest both in the FHFA's program and in other risk-sharing pilots in the 115th Congress.
- We also expect congressional monitoring and oversight of FHFA's proposed rule on duty to serve underserved markets. In December 2015, FHFA proposed a rule to implement "duty to serve" provisions to improve the distribution of mortgage financing for three specified underserved markets: manufactured housing, affordable housing preservation, and rural housing. Congressional oversight will only increase as FHFA moves closer to a final rule.

Fiduciary Duty Rule

It is unclear if the Department of Labor's finalized fiduciary duty rule will go into effect in April 2017 as planned or if President-Elect Trump will delay or withdraw the rule. It is even more unclear how the SEC will address the share class implementation problems of the fiduciary duty rule on intermediaries. It is even more unclear how the SEC will address the share class implementation problems of the fiduciary duty rule on intermediaries. The election will similarly impact the SEC's expected proposed fiduciary duty rule. The SEC rule was expected to be proposed in April 2017 but President-Elect Trump's nominee to replace Chair White will make this highly unlikely to occur.

- The final rule requires firms to be compliant on several broader provisions by April 2017 and fully compliant by January 1, 2018. DOL's initial rule was scrapped after strong pushback from industry stakeholders and Members of both parties in Congress. The re-proposal has addressed some of the critics' concerns but still faces opposition. House Republicans will likely continue to try to repeal the rule but will do so with dwindling Democratic support and face an uphill battle.

Orderly Liquidation Authority/ Bankruptcy

Efforts to pass legislation seeking to amend Chapter 11 of the bankruptcy code to address failing financial institutions may continue in the lame duck with a move to include such policy in a year end omnibus. If such attempts are not successful in the lame duck, we expect to see continued efforts in the 115th Congress.

- In the House, H.R. 2947, the Financial Institution Bankruptcy Act of 2016 sponsored by Rep. Trott and supported by industry, was introduced again this Congress to reform the bankruptcy code to reduce the risk of taxpayer bailouts for financial institutions. The bill passed the House by unanimously in April 2016.

- The Senate bill S. 1840, the Taxpayer Protection and Responsible Resolution Act, sponsored by Sens. Cornyn and Toomey adds a whole new bankruptcy chapter, repeals Dodd-Frank's orderly liquidation authority as opposed to the House bill, which simply adds a subchapter to Chapter 11. The Senate bill has not been considered, whereas the House bill passed the House in the 113th and 114th sessions Congress. The House bipartisan bill would be the most likely of these to advance in Congress.

Mixing of Banking and Commerce

The Federal Reserve Board, FDIC and the OCC issued recommendations to significantly curtail the mixing of banking and commerce in a report dated September 8, 2016 pursuant to Section 620 of Dodd-Frank. Given the populist tone that permeated the campaign, we feel these issues will receive further oversight and attention in the next Congress. In some cases, we expect the regulators can and will act independently of congressional action.

- Some of the activities – like activities and investments in physical commodities - had received considerable attention in congressional hearings in 2014. Specifically, the three banking agencies recommended that Congress:
    - repeal the exemption for grandfathered unitary savings and loan holding companies;
    - repeal the grandfather authority for financial holding companies (FHCs) to engage in commodities activities;
    - repeal the authority of FHCs to engage in merchant banking activities; and
    - repeal the exemption that permits corporate owners of industrial loan companies to operate outside the regulatory and supervisory framework.
- Given President-Elect Trump's public support for reinstating Glass-Steagall, there is potential for him to recreate the wall between banking activities. He would face an uphill battle though, given Republican opposition in Congress.

Export-Import Bank

The bank's five-person board currently lacks a quorum because the Senate has yet to move on the pending nominee. This issue could be resolved in the lame duck session. President-Elect Trump's past statements against the bank further complicate the issue.

- In December 2015, Congress reauthorized the Export-Import Bank through September 2019. The measure, which supports U.S. manufacturers, was included in the highway bill.
- The reauthorization measure was not supported by House and Senate GOP leadership or Chairman Hensarling or Chairman Shelby. However, it was supported by a majority of Republican Members in the House and Senate and by almost every Congressional Democrat.
- The Bank is currently unable to approve deals exceeding $10 million because the Board of Directors cannot approve these large transactions without a quorum.

Corporate Governance

In 2017, Congress will continue looking at the influence of proxy advisory firms and provide oversight over the SEC incentive compensation rules. Considering Trump's public criticism of CEO compensation, it is possible under a Trump administration that the SEC will continue to move toward finalization of incentive compensation rules.

- In 2016, six federal agencies proposed a rule pursuant to Section 956 of Dodd-Frank which would significantly impact incentive-based compensation at financial institutions. The comment period for the proposal expired July 22, 2016. The proposal has received criticism from Democrats and Republicans for different reasons. We anticipate continued advocacy efforts to change the proposal in the 115th Congress. A final rule, which may be published in 2017, could include potential changes that reflect the issues raised with the rule.
- Several Members on HFSC sent a letter to the Federal Reserve expressing concern with the broad approach taken in the rule for not adequately accounting for an associated analysis - with a specific focus on insurers and SLHCs. The letter asks the Federal Reserve to undertake an analysis of incentive-based compensation practices at insurers (similar to the Board's Horizontal Reviews of banks), consult with insurance stakeholders including state insurance supervisors, and tailor the final rule to insurance. A number of Democratic Senators have taken a different view of the proposal and have sent a letter to the regulators asking to strengthen deferral and claw-back window provisions in a final rule to address the fallout from the Wells Fargo situation.
- In 2016, Rep. Duffy and Rep. Carney introduced legislation to require proxy advisory firms to register with the SEC and disclose potential conflicts of interest. The bill passed HFSC with bipartisan support and we expect this effort to continue in the next Congress.

Data Breach and Security

There is a chance data breach legislation will be enacted in the next Congress. However, conflicts must be resolved between the financial and retail sectors. Also, a number of important issues must be negotiated including compliance impact on small businesses, consumer privacy, data security standards and requirements, federal preemption, types of personal information covered (i.e. expanding to medical records, biometrics, geolocation), timing of notification, and the roles of various federal agencies like the FTC and FCC, as well as state Attorneys General, in enforcing the law.

- During this Congress, two competing House bills gained committee approval. H.R. 1770, the Data Security and Breach Notification Act was introduced by Reps. Marsha Blackburn (R-TN) and Peter Welch (D-VT) and passed the Energy and Commerce Committee in April, 2015 (although Rep. Welch withdrew his support). H.R. 2205, the Data Security Act, was introduced by Reps. Neugebauer and Carney and passed the HFSC with a strong bipartisan vote last December. H.R. 2205 is based on the Gramm-Leach-Bliley safeguards and was supported by the financial services sector and opposed by retail and other small business interests. The opposite political dynamics were in play for H.R. 1770. In October, representatives from some financial, retail, and telecom associations circulated compromise language in the hope that it would be considered by Congress during the lame duck. This is unlikely, given calendar issues and initial reticence from Democrats.
- While no Senate bill has been marked up, Senators offered a number of data breach proposals this Congress. Among them, Sens. Tom Carper (D-DE) and Roy Blunt (R-MO) introduced S. 961, the companion to the Neugebauer-Carney measure. Several progressive Democrats led by Sen. Patrick Leahy (D-VT) introduced S. 1158, the Consumer Privacy Protection Act. An informal working group including Carper, Blunt, and Sens. Warner, Thune, and Dianne Feinstein (D-CA) will reportedly be releasing their own draft bill.

Cybersecurity Law Implementation

The Cybersecurity Information Sharing Act (CISA) was folded into the consolidated spending bill and signed into law by President Obama on December 18, 2015. The law allows for voluntary exchange of cyber threat and defense information between the private sector and the government along with liability and other protections. [Final implementation guidelines] were released on June 15, 2016. Implementation, oversight and efforts to streamline the regulations governing CISA will continue in the next session of Congress. President-Elect Trump's stated positions on creating a public-private cyber review team and a task force to address cyber crime are likely to impact congressional efforts.

- Members of congressional oversight committees and administration officials, while lauding the basic structure of CISA, have expressed concern about the relative lack of private sector participation in the new information sharing regime. The House Committee on Homeland Security held a hearing at which private sector witnesses described a general lack of trust with the government, concerns about privacy, and problems with the financial costs of participation, especially for small businesses. These concerns have been echoed by senior officials at the Department of Homeland Security and the Department of Commerce.
- Members of Congress will also continue to offer up targeted bipartisan cybersecurity proposals. For example, the House passed the bipartisan Improving Small Business Cyber Security Act (H.R. 5064) on September 23. Authored by Reps. Richard Hanna (R-NY) and Derek Kilmer (D-WA), this bill would expand the ability of SBA and DHS to offer grants to small businesses to improve their cyber capabilities. This bill could pass the Senate in the lame duck or be reintroduced and enacted early in the next Congress.

New Cyber Rules Proposed for Financial Sector

Regulators continue to roll out new proposals to bolster cybersecurity in the sectors under their jurisdiction. As with other sectors, it is likely the regulatory efforts could be slowed or softened under the Trump administration.

- On October 19, the FDIC, Federal Reserve and OCC issued an [advanced notice of proposed rulemaking] covering banks and other financial institutions. According to FDIC Chairman Gruenberg, enhanced cyber risk management and resilience standards would apply to depository institutions and holding companies with more than $50 billion in assets, along with U.S. operations of foreign banks with over $50 billion in assets. FSOC-designated nonbank and financial market infrastructure are also included. Higher standards would apply to "sector critical" institutions. Community banks would not be covered.
- Comments on this proposal are due January 17, 2017.

Autonomous Vehicles and Cyber Protection

Policymakers and the public continue to debate tradeoffs between the benefits of autonomous vehicles (including traffic efficiency, environmental protection, improved mobility, and increased safety) vs. the risks, especially to customer safety. The issues of data privacy and cybersecurity are prominent in the legislative and regulatory aspects of this debate. This is a set of issues that does not divide Members of Congress along typical party lines.

- NHTSA and the Department of Transportation issued [guidelines] on autonomous vehicles on September 20, 2016. Included in this document was a 15-point public safety assessment intended to set clear expectations for manufacturers of autonomous vehicles. Among these points are data recording and sharing; privacy considerations; and cybersecurity. The House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade is holding a related hearing on November 15, and Senate Commerce Committee may conduct an oversight hearing on the NHTSA guidance in the near future.

- While there are many members of Congress who support policies to accelerate and deployment of autonomous vehicles, there are others who are deeply concerned about hacking and data security. Notably, Sens. Ed Markey (D-MA) and Richard Blumenthal (D-CT) have introduced the Security and Privacy in Your Car (SPY CAR) Act which mandates a NHTSA rulemaking to create cyber and privacy standards and creates a "cyber dashboard" to inform consumers about how the car protects them above these standards. Leaders of the Smart Transportation Caucus, including Sens. Gary Peters (D-MI) and Cory Gardner (R-CO) along with Reps. Joe Wilson (R-SC), Debbie Dingell (D-MI), Joe Barton (R-TX) and Ted Lieu (D-CA), have introduced the SPY CAR Study Act to bring government agencies and academics together to produce a study on the best path forward for cyber and privacy standards. We expect activity on both these bills in the next Congress.

FinTech – Congress

FinTech continues its rapid deployment across the financial services marketplace, and indeed the entire economy. With the expansion of broadband and mobility networks, more and more businesses are merging traditional ways to execute financial transactions with evolving technology. All the activity in this space is bringing increased interest and scrutiny from Congress, which will only accelerate in 2017.

- Much of the complexity surrounding FinTech policy is the fact that so many agencies have a piece of the regulatory pie. FinTech companies and Members of Congress continue to try to sort out the regulatory roles of numerous agencies including Treasury, the Federal Reserve, CFPB, FDIC, OCC, SBA, SEC, NCUA, and FCC. Several Senate letters were sent this year – for example this one from Sens. Brown and Merkley posing a range of questions on third-party services providers, Blockchain, virtual currencies, robo-investing, small business financing, cash advances, education financing, crowdfunding and existing coordination among regulators. Additional letters were sent to the Government Accountability Office (GAO) about mobile payments and FinTech regulation as it applies to consumer and small business lending.
- In the House, a senior member of the HFSC, Rep. McHenry recently introduced H.R. 6118, the Financial Services Innovation Act. This bill is intended to promote innovation in the FinTech space by establishing "Financial Services Innovation Offices" within 12 different financial regulators. McHenry's goal is to allow companies to "beta test" new products with more regulatory flexibility. There is no companion bill in the Senate, but the McHenry bill may represent a starting point to help form some consensus in the next Congress around policies to streamline regulatory approval for FinTech products and services.
- As with other issues, the House Energy and Commerce Committee and the HFSC seemed to compete for jurisdiction with respect to FinTech. Both committees held oversight hearings in the 114th Congress on FinTech. The E&C Committee was first out of the box with reporting out a resolution sponsored by Reps. Adam Kinzinger (R-IL) and Tony Cardenas (D-CA) that passed the House on September 12, 2016. This measure calls for a national policy to support a robust and innovative FinTech ecosystem. We anticipate significant FinTech activity in both House committees that can claim jurisdiction.

FinTech – The Regulators

Multiple agencies have a role in regulating FinTech and it is often difficult for stakeholders to keep up with how they enforce current law, what new rulemakings are in store, and how agencies work together in this space. 2017 promises to be a busy year on the FinTech regulatory front, however the nature and timing of proposed regulations will be influenced by incoming Trump administration officials.

- The OCC is actively considering offering FinTech companies a limited purpose charter. A major Framework document was released on October 26, 2016 which lays out a comprehensive set of policy recommendations concerning FinTech. A more formal white paper on the topic of the charter will be released for public comment within a few weeks. The underlying policy objective of such a charter would be to increase financial access for unbanked and underbanked consumers. Industry supporters of a charter would welcome the ability to avoid a burdensome state by state regulatory regime. However, the likelihood that capital requirements and CRA standards would apply to a FinTech charter has raised concerns that innovation could be stifled. In a November 3 speech, Comptroller Curry signaled his opposition to the "regulatory sandbox" to FinTech innovation.
- CFPB has become more aggressive in the FinTech space. The Bureau's recent consent order with an online lending company indicated that on-line lenders will not escape the scrutiny typically aimed at traditional lenders. The agency's October 24 update of its "Project Catalyst" signaled its encouragement of FinTech products that would ease credit access for consumers with little credit history. The report also warned FinTech stakeholders about discriminatory practices. As discussed above, the precise future of the CFPB remains to be seen.
- The FTC has stepped up its engagement in FinTech with the objective of "protecting consumers in the fast-moving realm of financial technology." The Commission recently held two in a series of forums on Fintech, the first on marketplace lending and the second on crowdfunding and peer to peer payments. Similarly, the SEC will hold a public forum on FinTech on November 14.
- The Mobile Payments Industry Workgroup convened by the Federal Reserve Banks of Boston and Atlanta, continues to meet and publish papers on a variety of topics connected to mobile payments.