

House Democrats Seek to Merge the SEC and CFTC

On November 29, 2012, Congressman Barney Frank (D-MA), the Ranking Member of the House Financial Services Committee, and Congressman Michael Capuano (D-MA), the Ranking Member of the Subcommittee on Oversight and Investigations of the House Financial Services Committee, proposed legislation which would merge the U.S. Securities and Exchange Commission (the "SEC") and the U.S. Commodity Futures Trading Commission (the "CFTC"). "The existence of a separate SEC and CFTC is the single largest structural defect in our regulatory system," stated Representative Frank. "Now that the basic policies have been adopted to cover security and derivatives regulation we can focus on the structural issue."

The idea to merge both regulating agencies appears to have garnered bi-partisan support, as it was also suggested within a Staff Report (the "Report") prepared for Representative Randy Neugebauer (R-TX), Chairman of the Subcommittee on Oversight and Investigations, Committee on Financial Services, and released on November 15, 2012, regarding the MF Global Holdings Ltd. bankruptcy dealings. "The apparent inability of these agencies to coordinate their regulatory oversight efforts or to share vital information with one another, coupled with the reality that futures products, markets and market participants have converged, compel the Subcommittee to recommend that Congress explore whether customers and investors would be better served if the SEC and the CFTC streamline their operations or merge into a single financial regulatory agency that would have oversight of capital markets as a whole," stated the Report.

The proposed legislation will be debated by members of the House of Representatives when the new Congress reconvenes in January 2013. The press release explaining this proposed legislation may be accessed at: <http://democrats.financialservices.house.gov/press/PRArticle.aspx?NewsID=1498>

CFTC No-Action Letter Extends Compliance Date for Certain Swap Dealer Reporting

On November 19, 2012, the U.S. Commodity Futures Trading Commission's ("CFTC") Swap Dealer and Intermediary Oversight and Division of Market Oversight Division staff issued a no-action letter delaying the onset of certain swap dealer reporting obligations. The newly issued letter allows swap dealers to postpone reporting until the registration deadline expires. However, swap dealers may choose to report earlier if they register earlier. The relief granted by the no-action letter was released in response to matters raised by market participants. Prior to the November letter, certain regulations mandated swap dealer registration to occur before the reporting deadline. In addition and with respect to historical swaps, the no-action letter also delays the reporting deadline to thirty (30) days after the swap dealer is required to begin reporting swap transaction data. Both reliefs expire on April 10, 2013, at which time all swap dealers must be in compliance with reporting obligations. The CFTC no-action letter may be accessed at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-32.pdf>

Department of Treasury Issues Final Determination on FX Swaps and Forwards

The U.S. Treasury Department issued a final determination to exclude foreign exchange swaps and foreign exchange forwards ("FX swaps and forwards") from being regulated as swaps under the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The final determination exempts

HIGHLIGHTS

Rep. Frank and Rep. Capuano propose legislation to merge SEC and CFTC

Swap dealers may choose to postpone reporting data until registration

Foreign exchange swaps and foreign exchange forwards will not be regulated as swaps under the CEA

SEC Chairman to step down early December

FX swaps and forwards from being subject to mandatory clearing, mandatory on-facility trade execution or margin requirements.

Since FX swaps and forwards tend to operate on electronic monitoring platforms for which market data is readily available, they tend to be highly transparent, liquid, and efficient. FX swaps and forwards will still be subject to the Dodd-Frank trade reporting requirements and strict business conduct standards. Additionally, Dodd-Frank does not extend to other types of foreign exchange derivatives, such as options, currency swaps, and non-deliverable forwards, and makes it illegal to use these instruments to avoid other derivatives requirements.

FX swaps and forwards make up approximately a \$4 trillion global daily market for foreign exchange, according to the Basel-based Bank for International Settlements, and were the second-largest source of derivative trading for U.S. bank holding companies according to the U.S. Office of the Comptroller. The U.S. Treasury Department's press release may be accessed at: <http://www.treasury.gov/press-center/press-releases/Pages/tg1773.aspx>

SEC Chairman Mary Schapiro to Step Down

On December 14, 2012, after four (4) years in office, Mary L. Schapiro will step down as Chairman of the U.S. Securities Exchange Commission ("SEC"). This position is one of many that Ms. Schapiro has held in the regulatory industry including, commissioner of the SEC from 1988 to 1994 as appointed by both President Ronald Reagan and President George H.W. Bush. President Bill Clinton appointed her Acting Chairman of the SEC in 1993 and later appointed her chairman of the U.S. Commodity Futures Trading Commission ("CFTC"). Chairman Schapiro was appointed on January 20, 2009 by President Barack Obama to serve as SEC Chairman. Ms. Schapiro has gone on to have one of the longest-lasting tenures as chairman, serving longer than 24 of the previous 28 chairs. Chairman Schapiro is the only person to ever have served as both chairman of the SEC and CFTC.

Chairman Schapiro oversaw unprecedented financial reform. This reform has increased safeguards for investors and strengthened the SEC's ability to better uncover financial wrong-doings. Investors can now obtain clear and more meaningful information on the advisers with whom they invest and companies in which they invest. In addition, the SEC strengthened regulation surrounding asset-backed securities and gave investors the right to vote on executive compensation. The SEC further broadened its ability to identify wrongdoers by creating a new whistle-blower program, and increased market intelligence capabilities.

A quote from Ms. Schapiro's November 26 announcement: "It has been an incredibly rewarding experience to work with so many dedicated SEC staff who strive every day to protect investors and ensure our markets operate with integrity. Over the past four years we have brought a record number of enforcement actions, engaged in one of the busiest rulemaking periods, and gained greater authority from Congress to better fulfill our mission." The SEC press release may be accessed at: <http://sec.gov/news/press/2012/2012-240.htm>

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