Banking and Finance Law Daily Wrap Up, TOP STORY—New executive action curtails use of SIFI designation and orderly liquidation authority, (Apr. 21, 2017)

Banking and Finance Law Daily Wrap Up

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Appearing at the Treasury Building, President Donald J. Trump signed two Presidential Memoranda that affect the ability of the Financial Stability Oversight Council to designate non-bank financial institutions as systemically important financial institutions (SIFIs) and the bank regulators to exercise the orderly liquidation authority (OLA) found in Title II of the Dodd-Frank. A separate Executive Order instructed instructs Treasury Secretary Steven Mnuchin to begin the process of tax simplification.

This latest executive action follows the president's February Executive Order entitled "Core Principles for Regulating the United States Financial System," that directed the Treasury Department to conduct a 120-day review of financial regulations to assess the impact these regulations have on seven core principles (see *Banking and Finance Law Daily*, Feb. 3, 2017).

During a press briefing before the signing ceremony, Treasury Secretary Steven Mnuchin noted that all three executive actions were "specifically designed to focus on certain aspects that are enormously important to the Treasury and to the President, and that fill in with his campaign promise to make sure that Dodd-Frank is not harming our financial system."

Dodd-Frank OLA. The orderly liquidation authority found in the Dodd Frank Act authorizes financial regulators to wind down a large, complex financial institution that is failing and dismantle it in a way that is less harmful and disruptive than taxpayer bailouts or bankruptcy.

The Presidential Memorandum on the orderly liquidation authority provides that the Treasury Department conduct an analysis to ensure that the OLA does not encourage excess risk-taking, moral hazard, and exposure to taxpayers. The Treasury Secretary noted that the OLA could be used in an emergency.

FSOC designations. The designation of non-bank firms, such as insurance companies, allows FSOC to monitor the risks posed by nonbank financial companies and to address these risks through enhanced supervision and stricter rules.

The Presidential Memorandum affecting the designation of non-bank SIFIs calls for a 180-day review to ensure that the SIFI designation is "a fair and transparent process."

In his introductory remarks at the signing ceremony, the Treasury Secretary noted that the executive action regarding FSOC designation provided "a much needed time out."

Trump remarks. Upon signing Presidential Memorandum on FSOC, the president said, "This is the subject of Financial Stability, the Oversight Council. Very important." When signing the OLA Presidential Memorandum, Trump commented, "It doesn't sound like much, but it is. That's a biggie. It doesn't sound good, but it is."

Following the signing ceremony, congressional reaction fell along party lines.

Deserves tremendous praise. House Financial Services Committee Chairman Rep. Jeb Hensarling (R-Texas) said, "President Trump deserves tremendous praise for taking decisive action to protect taxpayers and our economy. He pledged to dismantle Dodd-Frank, and his actions today are another significant step towards ending the Dodd-Frank mistake that has given Washington bureaucrats more power to politically control our economy. I am especially pleased that the President's actions reflect the principles of the Financial CHOICE Act, our plan to end bailouts, make Wall Street and Washington accountable, and build a healthier economy for all."

Two steps back. The Committee's Ranking Member Rep. Maxine Waters (D-Calif) stated, "Let's be clear: these two executive actions are two steps back to the risky financial system that brought us the Great Recession and very nearly dragged our economy into a death spiral." She added, "When it comes time for Trump to put up or shut up on his promises to hardworking Americans, all he puts up are giveaways to his buddies on Wall Street that come at the expense of the nation's economic security and stability." She concluded, "By using his executive authority to dish out favors for Wall Street, Donald Trump is once again showing who he really is, and in the process, putting our economy on a dangerous path."

Another catastrophe. Finally, Sen. Sherrod Brown (D-Ohio), the Ranking Member of the Senate Banking Committee said, "After the 2008 financial crisis almost destroyed our economy, Wall Street reform put tools in place to protect working Americans from once again bailing out 'too-big-to fail' banks and financial institutions. Any actions to undermine these protections encourage Wall Street's risky behavior and leave taxpayers and our economy exposed to another catastrophe."

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