

## [Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—Lawmakers unfurl omnibus: SEC-CFTC spending, swaps, and cybersecurity, \(Dec. 16, 2015\)](#)

Securities Regulation Daily Wrap Up

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The long-awaited omnibus appropriations bill has finally arrived after congressional negotiators reached agreement on a few controversial add-ons. The bill contains spending provisions for the SEC and the CFTC, clarifies inter-affiliate swaps, offers Puerto Rico some health care relief (but not a larger aid package), and [contains](#) a major cybersecurity bill. This year's [omnibus](#) will likely be accompanied on its trip to the Senate by a [detailed tax extenders](#) bill.

**SEC and CFTC Spending.** The SEC is [allocated](#) \$1.605 billion, which is \$117 million short of what the White House requested. From this amount, \$11.3 million is earmarked for the SEC's inspector general, while \$68 million would go to the agency's Division of Economic and Risk Analysis. But the omnibus would strip away \$25 million from the SEC's reserve fund that was established by Dodd-Frank Act Section 991. The PCAOB is also authorized to use funds for scholarships under the Sarbanes-Oxley Act.

By contrast, the CFTC would get \$250 million, which is [equal](#) to its FY 2015 funding level, but still \$72 million below what the president requested. Of this amount, \$50 million is earmarked for information technology improvements and \$2.6 million would go to the agency's inspector general. The CFTC and other agriculture-related agencies also must provide a detailed spending plan to the House and Senate appropriations committees within 30 days of enactment of the omnibus.

On a more general front, the Office of Management and Budget would be required to report to the House and Senate appropriations committees on the costs of implementing the Dodd-Frank Act. The report would be due within 90 days of enactment of the relevant omnibus section.

The omnibus also would repeal the country-of-origin labeling requirement for some meat products. Litigation over the COOL requirement led to a divided D.C. Circuit [opinion](#) that expanded the Supreme Court's *Zauderer* test under the court's commercial speech doctrine. The circuit court decision played a critical role in two other decisions by a D.C. circuit panel ([April 2014](#); [August 2015](#)) striking down part of the SEC's required conflict minerals disclosures. The chairmen of the [House](#) and [Senate](#) agriculture committees both praised the repeal provision.

**Political donations, swaps.** The omnibus bars the SEC from using any funds to implement rules regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations. The issue of requiring companies to disclose their political donations has generated two rulemaking petitions ([CREW](#); [securities law academics](#)) that have prompted many thousands of public comments.

The bill also clarifies the treatment of certain inter-affiliate swaps and security-based swaps. Amendments to the Commodity Exchange Act and the Exchange Act exempt these swaps from provisions in Dodd-Frank Act Title VII regarding trades done by central treasury units of commercial end users for purposes of hedging.

Lastly, Exchange Act Section 21(h)(6) is amended to repeal an outdated reporting obligation of the SEC. The omnibus provision is similar to The Securities and Exchange Commission Reporting Modernization Act ([H.R. 3032](#)), sponsored by Rep. Kyrsten Sinema (D-Ariz). That bill sailed through the Financial Services Committee in July by a vote of 58-0 and passed the full House on a voice vote last month.

**Cybersecurity.** The Cybersecurity Information Sharing Act of 2015 occupies [Division N](#) of the omnibus spending package. This add-on made the cut after the Senate overcame many obstacles and passed its own version of cybersecurity sharing legislation, which the House had already done in two separate bills.

The CISA creates a voluntary regime for the sharing cybersecurity information with liability limits for private entities if the sharing complies with the law. Key definitions include: “cybersecurity purpose,” “cybersecurity threat,” “cybersecurity threat indicator,” and “defensive measure.” Many of these terms drew strong criticism during the Senate debate from some technology industry players who wanted different related privacy language.

**Puerto Rico debt crisis.** Legislation to deal with Puerto Rico’s ongoing debt crisis continues to wend its way through Congress. But the omnibus spending bill does offer some relief by creating parity for Puerto Rico regarding Medicare hospital rates, while side-stepping the question of a larger aid package.

Related bills in both the House and Senate would focus on either offering broader financial and technical assistance to help solve the island’s fiscal problems or bringing Puerto Rico within Chapter 9 of the Bankruptcy Code. The Puerto Rico Assistance Act of 2015 ([S. 2381](#)) would give a new entity called the Puerto Rico Financial Responsibility and Management Assistance Authority a wide mandate to achieve a variety of goals, including the elimination of the island’s budget deficit and cash shortfall via “visionary financial planning,” to enhance access to capital markets, and to continue the orderly payment of its debt service. Similar legislation has been introduced in the House ([H.R. 4199](#)).

The other bills would allow Puerto Rico to reorganize some of its debts under U.S. bankruptcy laws ([H.R. 870](#); [S. 1774](#)). The Supreme Court recently [agreed](#) to hear a [case](#) involving an attempt to do this via legislation in Puerto Rico.

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