Securities Regulation Daily Wrap Up, DODD-FRANK ACT—Right choice-wrong choice: House FSC eyes Dodd-Frank corrections version 2.0, (Apr. 26, 2017)

Securities Regulation Daily Wrap Up

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The House Financial Services Committee heard testimony on the second version of congressional Republicans' attempt to repeal and replace portions of the Dodd-Frank Act. The Financial CHOICE Act of 2017 (Discussion Draft), sponsored by FSC Chairman Jeb Hensarling (R-Tex), takes aim at bank capital plus the SEC's structure, rulemaking process, and specific regulations, including familiar targets from CHOICE Act version 1.0 (Volcker rule repeal) and a few new ones such as raising thresholds for shareholder proposals and requiring the SEC to issue a fiduciary standard before the Department of Labor can implement a similar rule. Testimony on SEC provisions contained in the draft bill focused on capital markets, proxies, and disclosure issues.

IPOs, pay ratio rule, and shareholder proposals. One-time Obama administration SEC nominee Hester Peirce, director of the Financial Markets Working Group within the Mercatus Center at George Mason University, testified that Dodd-Frank should be subjected to a second look, especially regarding the SEC's rulemaking process, appropriations for financial regulators, the too-big-to fail problem, and capital markets. Representative Bill Huizenga (R-Mich) invoked a phrase Peirce had used ("meet in the marketplace") as inspiration for a series of questions on initial public offerings (IPOs) and the SEC's pay ratio disclosure rule.

With respect to IPOs, Peirce observed that the slowed pace of new offerings was a "big problem" and that it is also understandable that companies would wait to go public given the costs associated with an IPO. Peirce suggested it would be possible to foster IPOs and retain sufficient investor protections. In her prepared remarks, Peirce noted the CHOICE Act would aid capital raising by expanding the definition of "accredited investor" and by creating an exemption from the Sarbanes-Oxley Act's auditor attestation requirement for small companies.

Huizenga also asked Peirce about how the SEC can sustain its "cop-on-the-beat" role while also engaging in the "road maintenance" needed to police social disclosures such as for conflict minerals and the pay ratio rule. Peirce said these types of disclosures generally impose burdens on the SEC and companies in areas where the SEC may lack expertise. Moreover, Peirce said it would be difficult to implement the pay ratio disclosure rule in a manner that is meaningful to investors.

Representative Randy Hultgren (R-Ill) would later ask Peirce about the burdens companies must bear when targeted by shareholder proposals. Section 844 of CHOICE Act version 2.0, unlike its predecessor bill in the last Congress, includes a provision that would require the Commission to eliminate the dollar amount threshold for making shareholder proposals under Exchange Act Rule 14a-8(i)(12) while increasing the holding period from one year to three years. The provision also would increase the shareholder proposal resubmission thresholds from 3, 6, and 10 percent, to 6, 15, and 30 percent. Huizenga noted a 1997 SEC proposal that would have adopted the same increased resubmission thresholds.

Peirce said shareholder proposals take up both the SEC's and a company's resources. According to Peirce, the CHOICE Act provision could ensure that investors will not have to pay for these proposals. The CHOICE Act also would amend Exchange Act Section 14 to bar shareholder proposals made by persons acting as proxy on another shareholder's behalf. Moreover, the draft bill would prohibit the Commission from adopting a single ballot, an effort to stop the Commission from moving forward with its proposal for a universal proxy.

Hultgren followed up with a question about the fairness of SEC enforcement by noting the importance of the rule of law. He also wanted to know if CHOICE Act version 2.0 provisions that limit SEC enforcement could be

applied to the CFTC. Peirce said due process is critical to the enforcement process. She also agreed that some CHOICE Act provisions applicable to the SEC could be extended to other agencies.

Minority day hearing. Hensarling told members the CHOICE Act is needed to fix regulatory burdens that have rendered the recovery from the Great Recession "slow," "weak," and "tepid." The chairman explained that the CHOICE Act would restore market discipline as a substitute for regulations while also changing the structure of the Consumer Financial Protection Bureau, which Hensarling called a "rogue agency." Hensarling's opening statement to the FSC echoed his recent call for members to replace the Dodd-Frank Act.

Ranking Member Maxine Waters (D-Cal) replied that the CHOICE Act is a return to a risky, old financial system and that Republicans "irrationally want to clear the way for round two" of the Great Recession. Waters reiterated that Democrats would stand up for Main Street. Waters also queried Hensarling over his claim that Congress has held 145 hearings on the Dodd-Frank Act and the CHOICE Act. Meanwhile, Rep. David Scott (D-Ga) recalled 41 Dodd-Frank Act hearings, but wondered if today's hearing would be the only one on CHOICE Act version 2.0. Waters later sent a letter signed by all Democrats on the FSC to Hensarling requesting a "minority day hearing."

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