Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—Congress to fund SEC and CFTC, add studies of smaller issuers, diversified companies, (Dec. 22, 2020)

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The SEC and CFTC each would get funding raises for FY21 while the SEC will be directed to conduct studies of smaller issuers and diversified companies.

Congress is expected to pass legislation to fund the government in FY21 and to provide additional COVID-19 relief before a week-end-long stop-gap funding measure expires. The final version of the bill, the Consolidated Appropriations Act, 2021 (H.R. 133), not only funds the SEC and the CFTC, but it includes several GOP-led bills that had previously passed the House regarding SEC studies of smaller issuers and diversified companies. The House Appropriations Committee provided additional resources about the legislation via press release.

Speaker Nancy Pelosi (D-Calif) said on the House floor that the bill is a "good bipartisan bill," although she noted the many ways in which it falls short of Democrats' expectations. Senate Majority Leader Mitch McConnell (R-Ky) and Minority Leader Chuck Schumer (D-NY) exchanged barbs on the Senate floor, McConnell praising the bill as "No sprawling left-wing wish list," while Schumer called the process in reaching the final bill "so nastily partisan" and also characterizing as "false" McConnell's accusations about Democrats' stalling the legislation for months.

Perhaps the bigger story, at least according to Sen. Dick Durbin (D-Ill), is how a group of eight senators from both parties met over dinner four weeks ago to hammer out a compromise version of COVID-19 legislation that formed the core of the additional COVID-19 relief contained in the final combined appropriations/COVID-19 legislation. Durbin said that group had since expanded to include two or three more senators.

Representative Nita Lowey (D-NY) is retiring, and the FY21 bill is her last appropriations package. "In times of crisis like we face today and after September 11th and Superstorm Sandy, delivering relief has been my sacred duty," said Lowey while pressing for the continuing resolution that allowed for completion of the FY21 package.

SEC and CFTC funding. The appropriations portion of the bill funds the SEC for FY21 at $1.895 billion. Of the funds available to the SEC, $16.3 million are earmarked for the agency's inspector general. Two other provisions would account for replacement leases for the SEC's Washington, D.C. and San Francisco Regional offices ($18.7 million and $12.7 million, respectively). The CFTC will receive $304 million in FY21 appropriations, of which $3.6 million is set aside for the agency's inspector general.

Small issuer research. The appropriations bill also includes a provision requiring the SEC to study the availability of research on small issuers. The provision tracks the Improving Investment Research for Small and Emerging Issuers Act (H.R. 2919), sponsored by Rep. Bill Huizenga (R-Mich), which passed the House by voice vote in July 2019. The study would include emerging growth companies and companies mulling initial public offerings.

Specifically, the bill requires the SEC to examine: (1) demand for research; (2) availability of research; (3) conflicts of interest; (4) costs of research; (5) payment mechanisms; (6) the unique concerns of minority-, women-, and veteran-owned small issuers; and (7) a variety of other factors, including the concentration/consolidation of investment advisers, SEC rules, and overseas regulations such as the MiFID II.

Diversified company thresholds. The appropriations bill further contains a provision requiring the SEC to study the effects of the 10 percent threshold limit on diversified companies under Investment Company Act Section

5(b)(1). The provision tracks the Expanding Investment in Small Businesses Act of 2019 (H.R. 3050), sponsored by Rep. Bryan Steil (R-Wis), which passed the House 417-2 in July 2019.

The provision mandates an SEC study in which the agency must consider: (1) the size and number of diversified companies now subject to the limit; (2) how investment preferences have changed over time; (3) the impact of a changed threshold on EGCs and small companies; and (4) liquidity risk.

No political donation rules. As has been Congressional practice for several years, the FY21 appropriations bill also includes the now familiar ban on the SEC finalizing rules that would require public companies to make disclosures about their political spending habits. House Democrats had previously sought to strip out such provisions in an earlier version the FY21 appropriations bill.

Fed lending authorities curbed. A provision in the COVID-19 portion of the COVID-19 legislation would limit the Fed's ability to continue to run some of its lending facilities. Specifically, the provision bars the Fed from making loans under its Section 13(3) authorities if the Treasury Secretary made a loan, loan guarantee, or other investment pursuant to Section 4003(b)(4) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748).

Under the provision, certain loans made before December 14, 2020 would be excluded from the rollback of the Fed's authorities. The limit on the Fed's authority would apply on or after December 31, 2020. Similarly, the Fed, after December 31, 2020, cannot modify the terms and conditions of affected facilities, nor can it modify or restructure a loan, obligation, asset, or security held in one of the facilities. The provision, however, also makes an exception regarding the ban on new facilities in the case of the Term Asset-Backed Securities Loan Facility (TALF).

The provision limiting Fed lending facilities was inserted at the last minute by Sen. Pat Toomey (R-Pa), a possible future chair of the Senate Banking Committee if Republicans hold at least one of the Georgia senate seats subject to runoff elections in January. Compromise language later added to the legislation and contained in a separate section, however, provides assurance that the Fed's Section 13(3) authorities as they existed before enactment of the CARES Act remain intact.

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