Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—House passes CAT cybersecurity bill, (Nov. 13, 2017)

Securities Regulation Daily Wrap Up

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By Mark S. Nelson, J.D.

The House passed by voice vote legislation that would delay the consolidated audit trail (CAT) from accepting market data until federal regulators can assure the security of data to be collected. The Market Data Protection Act of 2017 (H.R. 3973), sponsored by Rep. Warren Davidson (R-Ohio), sailed through the House Financial Services Committee earlier this year. One of motivations for the bill was the SEC’s revelation that its EDGAR database had been breached. The CAT is set to begin accepting data in mid-November.

**Pushing agencies to do more on cyber issues.** The bill would at least temporarily put the brakes on the CAT going live by requiring the Commission, national securities associations, and the CAT operator to work with the SEC’s chief economist to develop comprehensive internal risk controls for purposes of safeguarding market data. Moreover, the CAT operator could not accept (or continue to accept) market data until the required safeguards are in place. Entities subject to the CAT would not have to provide market data while the CAT operator implements the safeguards. The safeguards requirement also extends to market data sharing agreements and academic use of market data.

The bill explicitly acknowledges that the safeguards may be developed before enactment if the bill’s requirements are otherwise met (this provision specified that compliance with the bill would include consultation with the SEC’s chief economist). The bill defines "chief economist" to mean the director of the SEC’s Division of Economic and Risk Analysis or a comparable SEC employee.

Bill sponsor Davidson told members that federal agencies should lead by example on cybersecurity matters. Similarly, Rep. Bill Huizenga (R-Mich) noted that information is "modern day gold," and he said that while the CAT is expected to be an asset to the SEC’s regulatory activities, a lack of data security could render the CAT ineffective.

Representative Brad Sherman (D-Calif) confirmed the bill that passed by the House was the version that cleared the House FSC. According to Rep. Sherman, an effort to amend the bill to include other items after the committee vote had failed. But Rep. Sherman said members could address broader cybersecurity issues in additional legislation.

**JOBS Act drafting fix.** The bill also would correct a minor drafting error in the Jumpstart Our Business Startups (JOBS) Act, which had defined "emerging growth company" (EGC) and "funding portal" in the same Exchange Act Section 3(a)(80). The bill would re-assign "funding portal" to a new subsection and add yet another subsection to house the definition of "chief economist."

The JOBS Act fixes address definitional provisions that enable relaxed registration requirements for EGCs, including confidential staff reviews of registration statements, a benefit recently extended by the SEC to virtually all companies. The definition of "funding portal" supports Regulation Crowdfunding’s framework for crowdfunding intermediaries, which include funding portals, a more lightly regulated entity that can perform a limited set of services as compared to registered broker-dealers.

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