Securities Regulation Daily Wrap Up, TOP STORY—House passes CFTC reauthorization bill with end user relief, CFTC reforms, (Jun. 9, 2015)

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By Lene Powell, J.D.

Over the strong objections of Agriculture Committee Ranking Member Collin Peterson (D-Minn), the Commodity End User Relief Act (H.R. 2289) passed the House today with a vote of 246-171. The bill would amend the Commodity Exchange Act to reauthorize the CFTC for five years and make changes regarding relief for derivatives end users, reform of CFTC processes, and enhancement of customer protections. Amendments were adopted relating to technical corrections, technology acquisition and diversity standards at the CFTC, indemnification of swap data repositories for sharing of data, and warehousing of aluminum.

The bill is sponsored by Agriculture Committee Chairman Mike Conaway (R-Tex). The Obama administration issued a veto threat on June 2, 2015 regarding the proposed legislation, saying it would hinder the CFTC in implementing critical derivatives reform.

End user relief. According to Chairman Conaway, the bill would "provide relief for the businesses that make things in our country" including farmers, utilities, and manufacturers, but "would not roll back a single tenet of Dodd-Frank Title VII" regarding derivatives reform. The CFTC has imposed regulatory burdens on end users, and the bill would make "narrowly targeted changes" to correct this.

Rep. David Scott (D-Ga), ranking member of the House Agriculture subcommittee with CFTC oversight, expressed support for the bill. He said this is the third year of not reauthorizing the CFTC, and end users cannot wait another three years for relief, they need it now. We operate in a global market, said Scott, and if the bill is delayed, it will put the U.S. financial system at a disadvantage on the international financial stage. He added that the European Union is discriminating against U.S. market participants by not granting equivalency status for the U.S. regulatory regime, even though the EU has granted equivalency for other jurisdictions with identical regimes.

"They are discriminating against our financial system, straight and bare," said Scott.

Ranking Member Peterson said he did not have any problems with the end user relief provisions, adding that end users did not cause the financial crisis.

CFTC reforms. Peterson had strong objections to provisions that would affect how the CFTC carries out its regulatory processes. Regarding a tightening of requirements regarding cost-benefit analysis, he said the provision was "all cost, no benefit, unless you're one of the nine big banks pushing for it." It would open the door to lawsuits seeking to delay or roll back reform. He added that CFTC Chairman Timothy Massad told him in a letter that the cost-benefit provisions would disregard existing statutory requirements, impose limitations not required of any other agency, lead to more lawsuits instead of policy informed by data-driven analysis, and weaken the CFTC for administrations to come.

Scott said the increased cost-benefit analysis would make the CFTC more efficient. In addition, the amendment provides that the court must uphold a CFTC decision unless there is an abuse of discretion, which is a very high standard, and any challenge would have to have "beyond compelling" facts to support it, he said.

Conaway said the cost-benefit provisions are "very similar" to last year's reauthorization bill, which passed the House with "overwhelming support," but was not taken up in the Senate. It also mirrors in most instances President Obama's Executive Order of 2011 regarding regulatory transparency, he said.

Regarding CFTC funding, Rep. Rosa DeLauro (D-Conn) advocated for user fees to help fund the agency, saying the CFTC is only one of two federal financial regulators that are dependent solely on appropriations from the general fund. The SEC and other regulators collect user fees, and so should the CFTC. Moreover, the first president to suggest user fees was Ronald Reagan. The bill deliberately sets out to weaken one of our most

important financial regulators, and is a recipe for another financial disaster, like the one that caused the Great Recession and the loss of nine million American jobs, said DeLauro.

Conaway noted that the CFTC funding level is up 49 percent since the passage of the Dodd-Frank Act in 2010.

Concerning provisions that would impose additional formal requirements on how the CFTC conducts rulemaking, Peterson said Chairman Massad has reported good progress in negotiating regulatory harmonization with the EU, and the bill would hamper that. The bill would “cut the CFTC off at the knees,” he said.

“This is a bad bill that can’t be fixed. It should be defeated by the House. I ask my colleagues to oppose the bill,” said Peterson.

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