

Economic Crisis Response Group

November 11, 2009

House Financial Services Committee Approves Investor Protection Bill

On November 4, the Financial Services Committee of the House of Representatives approved H.R. 3817, the Investor Protection Act of 2009, by a vote of 41-28. The bill would make wide-ranging reforms of the financial regulatory environment in the United States, including the following measures:

- Doubling the funding of the Securities and Exchange Commission over the next five years, providing new enforcement powers to the SEC, and creating two new SEC offices, one of which would examine the causes of major businesses' insolvency;
- Initiating an independent, comprehensive study of the entire securities industry to identify reforms and further potential improvements to the current regulatory framework;
- Imposing a new fiduciary duty on financial intermediaries that provide advice to their customers, and harmonizing the fiduciary duties owed by broker-dealers and investment advisers to their clients;
- Creating a new whistle-blower bounty program that will reward individuals whose tips lead to successful SEC enforcement actions;
- Giving the SEC the power to ban mandatory arbitration clauses in customer contracts in the financial services industry;
- Giving the Public Company Accounting Oversight Board new examination powers over broker-dealer auditors; and
- Requiring financial advisers to municipalities to register with the SEC, and permitting the SEC to delegate certain investment adviser enforcement responsibilities to self-regulatory organizations, such as the Financial Industry Regulatory Authority.

The bill will now proceed to the full House for a vote, which is expected to take place by the first week of December.

Federal Open Market Committee Announces Factors Influencing Interest Rates Increases

On November 4, the Federal Open Markets Committee (“FOMC”) released a statement announcing its decision to leave the target federal funds rate unchanged at zero to 0.25 percent. The FOMC stated that “economic conditions, including low rates of resource utilization, subdued inflation trends, and stable inflation expectations, are likely to warrant exceptionally low levels of the federal funds rate for an extended period.” This statement marks the first time since September 2008 that the FOMC identified the economic conditions that influenced its decision to continue its highly accommodative monetary policy.

The FOMC statement is understood by some analysts to be a signal from the Federal Reserve that absolute economic growth will not be the sole factor influencing future decisions with respect to the federal funds rate. On October 29, the Bureau of Economic Analysis released its report showing growth in U.S. gross domestic product for the third quarter of 2009, the first time in more than a year. Despite this growth, the unemployment rate exceeded ten percent as of the end of October, while inflation has remained stable.

The FOMC also announced the Federal Reserve’s intention to purchase \$1.25 trillion of agency-backed mortgage-backed securities and \$175 billion of agency debt through the first quarter of 2010 to provide support to mortgage lending and housing markets and to improve overall conditions in credit markets. The FOMC noted that while the amount of agency debt purchases is less than the previously announced maximum of \$200 billion, it is consistent with the trend of recent purchases and reflects the limited availability of agency debt.

House Financial Services Chairman Requests Input on Derivatives Bill from SEC and CFTC

On November 3, Barney Frank, Chairman of the House Financial Services Committee (the “Committee”), wrote to the Securities and Exchange Commission and Commodity Futures Trading Commission requesting input on strengthening the proposed Over-the-Counter Derivatives Markets Act of 2009, which the Committee passed in October. In particular, Frank asked for suggestions to clarify exceptions to coverage of the bill.

The House Agriculture Committee approved a different version of the bill on October 21 and majority members of both committees are reconciling the two bills so that one version can be debated on the House floor. Changes will attempt to clarify the counterparties and swaps that are exempt from the clearing and trading requirements of the bill; it is likely that such changes will grant the CFTC and SEC the authority to determine, based on criteria in the legislation, which swaps are required to be cleared rather than relying on determinations by clearinghouses (which are at least partly controlled by the financial firms which are being regulated). The exceptions in the bill were intended to protect end-users that use derivatives to hedge purchases and requirements; however, Chairman Frank has stated that such exceptions should be drafted in a manner that “prevent[s] speculators from masquerading as end-users.”

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