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Legislative Bulletin.....December 10, 2009

Contents:

Amendments to H.R. 4173—Wall Street Reform and Consumer Protection Act

The House is scheduled to consider amendments to H.R. 4173, the Wall Street Compensation Fairness Act, on Thursday, December 10, 2009 and Friday, December 11, 2009. The rule for amendment debate waives all points of order against consideration of the bill, and also waives all points of order against amendments made in order under the rule except for the earmark rule and the “PAYGO” rule.

The rule allows the chair of the Committee on Financial Services or his designee to offer amendments made in order en bloc. The rule makes in order a total of 36 amendments (analyzed below), the vast majority of which are debatable for ten minutes. The following amendments, by contrast, are debatable for 30 minutes: the Manager’s amendment, Peterson (D-MN) #3, and Bachus (R-AL) #36. Minnick (D-ID) #35 is debatable for 20 minutes.

See [here](#) for the summary of the RSC Legislative Bulletin for H.R. 4173, as well as the summary of the rule governing general debate.

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AMENDMENTS MADE IN ORDER UNDER THE RULE

1. Frank (D-MA). The Manager’s Amendment is a 255 page amendment to the bill. *Highlights* of the amendment are as follows:

- Attempts to clarify the position of foreign financial parent companies if the Board applies heightened prudential standards. Allows the Financial Services Oversight Council and the Federal Reserve to coordinate with foreign regulators.

- With respect to consumer protection laws, the manager's amendment states that any heightened prudential standard applied to a company shall not supersede any regulation promulgated by the CFPB or the FTC with respect to consumer protection.
- Prohibits mergers and acquisitions between companies if the resulting company would control more than 10% of total insured deposits in the US.
- Changes the type of company that can be labeled in "default or danger of default" for the purposes of resolution from "financial holding company" to "financial company".
- Adds a Subtitle L to Title I dealing with Securities Holding Companies. A securities holding company is any person other than a natural person that owns or controls one or more brokers or dealers as defined in section 3 of the Securities Exchange Act and any associated persons of the securities holding company. Under the new subtitle, they are required to register with the Federal Reserve. The Federal Reserve is then allowed to examine and supervise these companies and establish reporting requirements as they would for systemically significant financial institutions (capital requirements, risk exposure, interaction with other financial companies, etc.). This is a new class of company that has not been marked up or vetted.
- Limits the CFPB assessment authority for non-depository institutions if the financial activities represent less than a substantial portion of the total assets of such institution and gross revenues from a financial activity are not a substantial portion of overall gross revenue.
- Increases the credit union threshold for carve out of CFPB examination and enforcement from \$1.5 billion to \$10 billion, on par with the bank carve out.
- Adds a pawnbroker carve out from CFPB. Preserves FTC authority to regulate pawnbrokers.
- Inserts new language into arbitration section: "This authority shall not prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen."
- Attempts to define "abusive acts" which CFPB could regulate as: "the act or practice is reasonably likely to result in a consumer's inability to understand the terms and conditions of a financial product or service or to protect their own interests in selecting or using a financial product or service; and (B) the widespread use of the act or practice is reasonably likely to contribute to instability and greater risk in the financial system." The term abusive is a new term established for CFPB regulation.

- Adds a new section regarding short sales. Any investment manager executing a short sale must report the sale to the SEC daily. Makes it unlawful to manipulate a short sale and allows the SEC to issue rules to ensure short sales are conducted in the public interest.
 - Siphons \$3 billion from TARP to go to the Emergency Homeowner's Relief Fund and \$1 billion of TARP for the Neighborhood Stabilization Program (passed under HERA 2008).
2. **Sessions (R-TX).** The amendment removes language in the bill that would amend the pleading standard in a private right of action. This provision in the underlying bill provides the Securities and Exchange Commission (SEC) enforcement authority over credit agencies.
 3. **Peterson (D-MN)/Frank (D-MA).** The 220 page amendment would restructure the legislation to impose a central clearing requirement on certain swaps and security-based swaps that clearinghouses will accept if the CFTC/SEC has determined that clearing is mandatory for such swap. Swaps that must be cleared must also be traded on an exchange or a swap execution facility (SEF) - a facility for the execution or trading of swaps defined to include an electronic trade execution or voice brokerage facility. All contracts with non-eligible contract participants must be exchange-traded.

The amendment establishes capital and margin requirements for dealers and the option to segregate accounts to an independent third-party custodian for over-the-counter swap security-based swap transactions. Additionally, the amendment requires the CFTC to establish position limits on swaps that perform a significant price discovery function and require aggregate limits across markets. The amendment also requires the CFTC to establish position limits on futures transactions for physically deliverable commodities.

The amendment grants the Treasury Secretary the authority to regulate foreign exchange swaps and requires the Foreign Boards of Trade to establish standards to provide legal certainty for certain contracts traded on or through a foreign board of trade.

Some conservatives have expressed concern that the amendment creates a regulatory regime to govern a sector of the marketplace that has functioned well. The regulatory burdens imposed on the marketplace could undermine the usefulness of derivatives as a risk mitigation tool. Additionally, the amendment creates broad authority for regulators to determine which transactions are standardized and subject to mandatory clearing and exchange trading. According to CBO, implementing this amendment would cost \$872 million over the 2010-2014 period.

4. **Peterson (D-MN).** The amendment adds a new section to the bill that would grant authority to the Commission to define what constitutes "Commercial Risk", "Operating Risk", and "Balance Sheet Risk" under the Commodity Exchange Act.

5. **Lynch (D-MA):** Provides rules toward the governance of clearing houses and swap exchange facilities. Specifically, the amendment adds a new section to Title III that prohibits swap dealers and participants from the purchase of stock transactions that would increase ownership of voting securities above twenty-percent. The amendment requires swap execution facilities to establish a process for minimizing a “conflict of interest” and establish a resolution process if one occurs. Additionally, the amendment prohibits swap dealers and major swap participants from making up a majority of the board of directors of an entity that participates in derivatives market.

Since the amendment imposes strict corporate governance on the market, some members have expressed concern the amendment could create a stagnant marketplace for swap execution facilities. Additionally, it would weaken the ability for existing businesses to compete and provide transparency, liquidity, and risk mitigation in the market.

Groups Opposed: ABA Securities Association, International Swaps and Derivatives Association (ISDA), NYSE, Euronext Securities Industry and Financial Markets Association (SIFMA)

6. **Murphy (D-CT)/McMahon (D-NY)/Kratovil (D-MD).** The amendment would add a new section to define a “major swap participant” as one who maintains a substantial new position in outstanding swaps, which would create have “serious adverse effects” on the financial stability of the United States. This is a more lenient definition of major swap participant in the underlying bill and the language originally included from the House Agriculture Committee.

Groups Supportive: National Association of Manufacturers (key vote), American Council of Life Insurers, American Gas Association, American Public Gas Association, American Public Power Association, American Wind Energy Association, America’s Natural Gas Alliance, Edison Electric Institute, Electric Power Supply Association, Independent Petroleum Association of America, Natural Gas Supply Association, National Rural Electric Cooperative Association

7. **Frank (D-MA).** The amendment would grant authority to the SEC and the CFTC to place margin or collateral requirements in swap or securities based swaps (SBS) on transactions involving a bank or bank holding company end user. The requirements must be commensurate with the risks involved and allow for the use of non-cash collateral.

Some conservatives have expressed concern that if government regulators are allowed to dictate requirements, the ability of businesses to control costs and manage risks would be undermined.

Groups Opposed: US Power Generating Company, Independent Petroleum Association of America

8. ***Stupak (D-MI)/Van Hollen (D-MD)***. The amendment adds additional rules on the exchange of security based swaps by requiring all non-cleared swaps to be executed on a registered swap execution facility.

Conservative Concerns: Some conservatives have expressed concern that this amendment creates de-facto mandatory exchange trading and is unnecessary because non-cleared trades already must be reported.

Groups Opposed: US Power Generating Company, Independent Petroleum Association of America (key vote).

9. ***Stupak (D-MI)/DeLauro (D-CT)/Larson (D-CT)/Van Hollen (D-MD)***. The amendment grants the authority to the CFTC and SEC to ban swaps determined to be detrimental to the stability to a financial market or detrimental to participants in a financial market. Additionally, the amendment eliminates the consideration of balance sheet risk in the determining the risk of bona fide hedge end users.

Some conservatives have expressed concern that the amendment would create uncertainty as to what qualifies as a legitimate hedge because it disregards balance sheet risk in the definition of what constitutes commercial risk. Additionally, the amendment narrows the bona-fide end user exemption in the bill to prevent loopholes allowing major financial companies from evading requirements to clear their transactions. This would have the unintended consequence of excluding many legitimate end-users from participating in the derivatives market.

Groups Opposed: Independent Petroleum Association of America (key vote), and U.S. Chamber of Commerce.

10. ***Matsui (D-CA)/Sutton (D-FL)/Castor (D-OH)***. The amendment would create a new title that requires a mortgage servicer provider or lender participating in the Making Home Affordable Program established under the so-called “stimulus” to report to the Department of Treasury on a monthly basis. Within two weeks of each monthly data report, they must publically make available to Treasury and Congress a report that includes: data on the number of loan modification requests received, number of loan modification requests being processed, the number of loan modification requests that have been approved, and the number of loan modification requests that have been denied.
11. ***Paulsen (R-MN)***. The amendment would prohibit the advisory members of the Financial Services Oversight Council (a state insurance commissioner, and a state banking supervisor) from being excluded from the Financial Services Oversight Council’s meetings, discussions, and deliberations.
12. ***Kanjorski (D-PA)***. During Financial Services Committee consideration of the underlying bill, Representatives Garrett (R-NJ) and Adler (D-NJ) offered an

amendment—which was adopted in committee—to exempt small public companies, with a market capitalization of less than \$75 million, from having to comply with the requirements of Section 404(b) of the Sarbanes-Oxley Act. These reporting requirements are a major expense for small businesses. This amendment would strike this provision from the bill. In other words, if this amendment passes, small businesses (with market capitalizations of less than \$75 million) would have to comply with these reporting requirements.

Groups Opposed: Independent Community Bankers Association, American Bankers Association, New York Stock Exchange, NASDAQ, Biotechnology Industry Association, Property Casualty Insurers Association of America, TechAmerica

- 13. *Marshall (D-GA)*.** The amendment would state that nothing in the Consumer Financial Protection Agency title (Title IV of H.R. 4173) can be construed to create a private right of action, or to deny any private right of action arising under the enumerated consumer laws.

Groups Supportive: Independent Community Bankers Association

- 14. *McCarthy (R-CA)*.** The amendment deletes section 6012 of the bill. This section would prevent Rule 436(g), promulgated by the Securities and Exchange Commission (SEC) from taking effect. Rule 436(g) provides an exemption for credit ratings provided by nationally recognized statistical rating organizations (“NRSROs”) from being considered a part of the registration statement prepared or certified by a person within the meaning of Sections 7 and 11 of the Securities Act.

- 15. *Cohen (D-TN)*.** The underlying bill allows the SEC to permit or require a national securities association registered under Securities Exchange Act of 1934 to enforce compliance by its members with the provisions of this act, the rules and regulations thereunder, and to adopt such rules as the association may deem necessary and in the public interest to further the purposes of the act. This amendment would repeal this provision.

- 16. *Peters (D-MI)*.** The amendment allows the FDIC to make assessments for the Systemic Dissolution Fund on financial companies in such amount and manner and subject to terms and conditions that the corporation determines, with the concurrence of the Secretary of the Treasury and the Federal Reserve Board, are necessary to pay any shortfall in the Troubled Asset Relief Program (TARP) that would add to the deficit or national debt, as identified by OMB (in consultation with CBO).

- 17. *Watt (D-NC)*.** The underlying bill creates an exception from the reach of the Consumer Financial Protection Agency (Title IV of the bill) for auto dealers. This amendment significantly limits the reach of the exclusion.

Groups Opposed: National Automobile Dealers Association, and the American International Automobile Dealers Association.

18. Frank (D-MA). Strikes Section 6005 from the bill regarding a designation change to statistical rating agencies.

19. Conyers (D-MI). The cramdown amendment. The amendment would allow bankruptcy courts to extend repayment periods, reduce excessive interest rates and fees, and adjust the principal balance of the mortgage to a home's fair market value as necessary to prevent foreclosure and revised to allow the VA, FHA, and RHS to take steps to facilitate mortgage modifications. The amendment is substantively identical to title I, subtitle A and sections 121-123 of subtitle B of H.R. 1106 (Helping Families Save Their Homes Act of 2009), which passed the House on March 5, 2009 by [234-191](#). This is bankruptcy “cramdown.” Rather than making bankruptcy a last resort, this amendment allows a borrower to get a voluntary modification and then still go through bankruptcy – the debtor gets to pick whatever suits him. It allows judges to re-write the mortgage to terms of a no interest loan – essentially free money. Ultimately, this amendment will allow irresponsible borrowers to have an out in bankruptcy.

Groups Opposed: American Bankers Association (possible key vote), American Council of Life Insurers, American Financial Services Association, American Land Title Association, American Securitization Forum, Consumer Bankers Association, Consumer Mortgage Coalition, Credit Union National Association (possible key vote), Community Bankers Association of Georgia, Independent Community Bankers Association, Mortgage Bankers Association (possible key vote), National Association of Federal Credit Unions (possible key vote), The Financial Services Roundtable (possible key vote), The Housing Policy Council Securities Industry and Financial Markets Association, and the U.S. Chamber of Commerce (key vote)

20. Burgess (R-TX). The amendment would strike the word "orderliness" from the list of items the Financial Services Oversight Council must advise Congress on how to improve financial regulatory developments. There is no understandable explanation or common understanding of what “orderliness” means in financial parlance.

21. Burgess (R-TX). In the underlying bill, the section creating the Systemic Resolution Fund indexes the amount to inflation, while mitigatory action imposed by the Council involving a financial holding company subject to stricter standards does not. The amendment would index to inflation any mitigatory action imposed by the Financial Services Oversight Council involving the sale, divestiture, or transfer of more than \$10 billion in total assets by a financial holding company subject to stricter standards.

22. Burgess (R-TX). The amendment would require the Federal Reserve to define by rule or regulation the term “significantly undercapitalized” at a threshold the Fed determines to be prudent for the effective monitoring, management and oversight of the financial system. Currently the definition neither gives a fixed dollar amount, a ratio or even a formula leaving too much to individual interpretation. Requiring the

Fed to better define “significantly undercapitalized” could provide more certainty to banks in danger of being closed.

- 23. Burgess (R-TX).** The underlying language has no limit on the amount of time the GAO can use to audit the Federal Reserve. The amendment would set a time limit of two years.
- 24. Burgess (R-TX).** The amendment would remove from the GAO study of the SEC’s “revolving door” the requirement to determine if employees of the SEC who are later employed by financial institutions “have engaged in information sharing”. This would strike a Castle/Speier amendment adopted in Committee to study the revolving door between the SEC and Wall Street. The underlying bill’s definition of what is (or is not) information is not well defined and could encompass basic unwarranted information as a part of the SEC “revolving door.”
- 25. Herseth Sandlin (D-SD).** The amendment would direct the SEC, when making exceptions to the elimination of private advisers, to also “take into account the relative risk profile of different classes of funds as it establishes, by rule or regulation, the new registration requirements for private funds”.
- 26. Garrett (R-NJ).** The underlying bill strikes the procedures for Nationally Recognized Statistical Rating Organizations (NRSRO) to voluntarily terminate registration, established in the Securities Exchange Act of 1934 (Sec. 15(e)). The amendment would add back in language allowing rating agency firms to voluntarily withdraw from registration as NRSRO, *provided* such NRSRO certifies that it received less than \$250 million during its last full fiscal year in compensation for providing credit ratings on securities and money market instruments issued in the U.S. Furthermore, a provision in the manager's amendment would remove the current voluntary nature of registration by require all credit rating agencies register as NRSROs and thus be subject to all regulatory requirements. This amendment would allow smaller credit rating agencies to de-register and not be subjected to those regulatory requirements.
- 27. Dent (R-PA).** The amendment would add a sense of Congress that “mortgage lenders should provide loan applicants with a simplified summary of their loan contracts, including an easy-to-read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information.”
- 28. Moore (D-KS)/Garrett (R-NJ).** The amendment would specify that only the tax policies, licensing and other regulatory requirements of the home state of the policyholder will manage a surplus lines transaction. This amendment allows intricate commercial entities to have direct access to the surplus lines market. This amendment will also prohibit states from voiding established, contractual agreements between reinsurers and primary companies.

- 29. Wittman (R-VA).** The amendment allows national banks to accept deposits or handle checks for a state, or state employee, that administers a lottery. Allows national banks to announce, advertise, publicize, or deal in any lottery where the money obtained by the lottery benefits nonprofit tax-exempt organization.
- 30. Minnick (D-ID).** The amendment allows the CFPA to determine the definition of unfair, deceptive, and abusive practices.
- 31. Bartlett (R-MD).** The amendment allows a state loan originator supervising authority to have the ability to review and grant exceptions on a case by case basis to the mortgage originators lifetime ban.
- 32. Schakowsky (D-IL) / Titus (D-NV).** The amendment gives the Director of the Consumer Financial Protection Agency the ability to issue regulations for reverse mortgage transactions. The Director would have authority to consider additional consumer protections under current consumer protection laws and HUD regulations.
- 33. Kilroy (D-OH).** Would make explicit that financing for the Systemic Dissolution Fund would come from assessments on industry.
- 34. Murphy (D-NY).** Current law states that member banks shall not pay any interest on any deposit which is payable on demand. This amendment repeals this provision.
- 35. Minnick (D-ID) / Schock (R-IL) / Shuler (D-NC) / Castle (R-DE) / (Childers (D-MS) / Campbell (R-CA) / Markey (D-CO) / Reichert (R-WA) / Teague (D-NM) / Bright (D-AL) / Boren (D-OK) / Griffith (D-AL).** This amendment creates a Consumer Financial Protection Council (CFPC) of regulators that will have the ability to create rules governing institutions and consumer protections regarding all financial products. The CFPC will be comprised of 12 members including the Secretary of Treasury, Secretary of Housing and Urban Development, the Chairman of the Federal Reserve, the chairman of the CFTC and SEC, among other federal and state regulators. The CFPC would be in lieu of the CFPA in the underlying bill.
- 36. Bachus (R-AL) / Biggert (R-IL) / Capito (R-WV) / Hensarling (R-TX) / Garrett (R-NJ) / Neugebauer (R-TX).** The amendment provide an alternative bill that establishes a new chapter of the bankruptcy code to resolve certain non-bank financial institutions. It creates a consumer protection council comprised of existing Federal regulators to revise and circulate model regulations in order to enhance consumer protection and improve disclosure. This new bill will strengthen anti-fraud provisions as well as regulate over-the-counter derivatives markets, address executive compensation, remove statutory reliance on credit ratings, reform the Government Sponsored Enterprises (Fannie Mae and Freddie Mac), as well as create a Federal Insurance Office.