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MEMORANDUM

TO: CalPERS Investment Committee

FROM: K&L Gates LLP

DATE: May 28, 2015

RE: Federal Monthly Report on Investment Policy - May 2015

In May, the House and Senate Agriculture Committees took significant steps towards CFTC reauthorization. Meanwhile, the Senate Banking Committee also approved a sweeping financial regulatory reform bill that would make several changes to the mortgage market as well as systemic risk regulation. Several new housing finance and securities rules were also proposed and finalized a month of significant regulatory activity.

Derivatives

On May 14, the House Agriculture Committee marked up H.R. 2289, the "Commodity End-User Relief Act," which would reauthorize the CFTC. The bill was amended and passed by the Committee by voice vote. Chairman Conaway (R-TX) said that the Committee will consider a collection of narrowly targeted changes to the Commodity Exchange Act to provide the "right relief to the right people." He outlined the reforms in the bill falling into three broad categories: protecting customer funds; improving the deliberative process at the CFTC; and providing relief to end-users managing risk.

The next day, the Senate Agriculture Committee met for its first CFTC reauthorization hearing, which was devoted to end-user concerns. Chairman Roberts (R-KS) indicated that CFTC reauthorization is a priority and that he would be working in a bipartisan fashion with Ranking Member Stabenow to address these issues and reauthorize the Commission. Chairman Massad agreed during the hearing that he would work with the committee in a bipartisan way on their CFTC reauthorization bill.

Housing Finance

FHA released new lender certifications for comment that have the impact of possibly limiting FHA's ability pursue the claims against lenders for certain minor underwriting errors. It is the enforcement activity around these certifications and the lack of a materiality threshold that caused many to pullback from FHA lending. However, few believe this change will have the desired impact of encouraging lenders to open the credit box.

The FHFA also released an update on its progress in developing the single security, including details on transition/exchange protocol for legacy Fannie Mae and Freddie Mac securities, disclosures, and other procedures for harmonization between the two existing regimes. It is worth noting that the new common security will have many of the same features as the current Fannie Mae Mortgage-Backed Security, including a payment delay of 55 days.

FHFA also finalized the proposed rule for non-bank mortgage servicer capital rules, largely unchanged from the proposal. The new requirements will have the greatest impact on smaller servicers; the three largest are expected to meet the requirements on their effective data at year's end.

Finally, FHFA published a request for comment that seeks input on their choice to use the FHFA's own quarterly expanded-data house price index to adjust the conforming loan limits. Putting this out for comment is a way for the FHFA to gather political cover to support their decision to maintain their housing price index in the face of criticism regarding their methodology and political calls for lower conforming loan limits in order to stimulate the private securitization market. Furthermore, under existing law, loan limits may not be raised until home prices all of their previous losses from the crisis.

Securities

On May 20, the SEC proposed amendments to Form ADV and the Advisers Act recordkeeping rule, as well as new rules regarding reporting by registered investment companies (including periodic reporting through websites). The proposed rules focus on additional data reporting on separately managed accounts, new recordkeeping for performance records, and new "umbrella registration" rules for private fund advisors relying on existing staff no-action relief.

On May 27, former SEC Chairmen Arthur Levitt and William Donaldson urged SEC Chair Mary Jo White to make companies disclose campaign donations. The two chairmen stated that there was an expectation companies would disclose political spending following the 2010 *Citizens United* Supreme Court Case and that it was up to the SEC to enforce.

Notable Developments

The Senate Banking Committee recently reported *Financial Regulatory Improvement Act*., which focuses on community bank regulatory relief. It will very likely be significantly changed before reaching the Senate floor. Key provisions impacting to mortgage market include: permitting all loans kept on balance sheet (not restricted to banks) to have the benefit of QM safe harbor protection, prohibiting the recapitalization of the GSEs without express Congressional support, mandating new forms of risk sharing transactions, and requiring changes to the development of the Common Securitization platform to include private label securities. There are also several changes made to systemic risk regulation.

Consistent with the narrative that federal housing and mortgage market policy lacks clear leadership or focus, further erosion occurred this month with the departure of Seth Wheeler from the White House's National Economic Council. Seth is replaced by Dr. Michael Stegman, the former senior advisor to the Secretary of the Treasury on Housing.