K&L GATES

K&L GATES LLP
1601 K STREET, N.W.
WASHINGTON, DC 20006

MEMORANDUM

TO: CalPERS Investment Committee

FROM: K&L Gates LLP

DATE: July 30, 2015

RE: Federal Monthly Report on Investment Policy - July 2015

In July, the CFTC and SEC continued key rulemaking activity. Additionally, the House and Senate advanced appropriations measures pertaining to CFTC and SEC funding and, consequently, implicating the implementation of the Dodd-Frank Act.

Derivatives
Rulemaking. On June 29, the CFTC voted unanimously to propose a rule that would apply margin requirements to cross-border uncleared swaps transactions. The proposed rule would seek to promote international harmonization by outlining when CFTC margin rules apply and by permitting substituted compliance. Generally, cross-border transactions would be subjected to CFTC margin requirements for uncleared swaps if guaranteed by a U.S. person; however, there could be substituted compliance if the CFTC determines that applicable foreign margin rules are comparable under an outcome-based test.

On July 29, the CFTC Energy and Environmental Markets Advisory Committee ("EEMAC"), sponsored by CFTC Commissioner Giancarlo, held a public meeting that addressed the CFTC's proposed rules on Aggregation of Positions and Position Limits for Derivatives and trade options exemption, as well as the Commission's recent final interpretation regarding forward contracts with embedded volumetric optionality.

Fifth Anniversary of Dodd-Frank. July 2015 marked the fifth anniversary of Dodd-Frank. To mark the anniversary, CFTC Chairman Timothy Massad delivered remarks to the District of Columbia Bar Association. Chairman Massad reviewed progress on implementing reforms to the derivatives markets and noted that one area the Commission is currently focused on is data harmonization and standardization.

The House Agriculture Committee held a hearing to assess the progress of the derivatives markets reforms under Dodd Frank. The hearing focused on the global harmonization of derivatives markets reforms. Chairman Conaway (R-TX) expressed his opinion that the CFTC should not receive funding until it is has been reauthorized.

Appropriations. On July 8, the House Appropriations Committee marked up and approved its FY 2016 Agriculture Appropriations bill by voice vote. Under the bill, the CFTC appropriations level is lower than the White House's request of $322 million, but essentially maintains its current funding levels at $250 million ($245 million appropriated, plus $5 million in rental credits). The bill was amended to include a provision discouraging the CFTC from imposing margin requirements on derivatives trades between affiliated entities (internal trades) that would otherwise impose additional costs that would be passed onto the consumer and reduce liquidity.

Also on July 23, the Senate Appropriations Committee marked up and approved the FY16 "Financial Services and General Government Appropriations Act" as amended ("FSGG Appropriations bill"). The bill maintains the FY15 funding levels for the CFTC.

Housing Finance

Discussions continue regarding the GSEs increasing volume and variety of credit-risk transfer transactions that include more and different sources of private capital. There is a legislative effort underway to force the GSEs to engage in more upfront and first-loss transfers and questions on the interest of large funds in participating in these kinds of deals. In the Senate, legislative text exists in the partisan, "Federal Regulatory Improvement Act" ("FRIA"), while concepts are coalescing in the House.

The mortgage finance market is also closely watching the Highway Trust Fund discussion and other tax-related bills because certain "pay-fors" touch the industry. One persistent - threat is extending the 10-basis point fee on all GSE loans for 4 more years than originally required under a previous piece of legislation in 2011 that funded the payroll tax credit extension. The industry and consumer groups oppose the "pay-for", but it continues to exist (as of July 30th) in the Senate version of the Highway Trust Fund legislation.

Securities

On July 1, the SEC proposed a rulemaking to implement the Dodd-Frank "clawback rule." The proposed rules would require national securities exchanges to establish listing standards that would require listed companies to develop and enforce recovery policies that, in the event of an accounting restatement, would "claw back" from current and former executive officers incentive-based compensation they would not have received based on the restatement of their financial statements.

Senator Mike Rounds (R-SD) introduced a bill (S. 1722) that would repeal the requirement that companies disclose the ratio of their CEOs' pay to their workers' median pay. Senator Rounds noted that "Repealing the pay-ratio rule would allow companies to find more productive uses of their time and money so they can invest in the future and create jobs."

On July 21, 13 state treasurers and comptrollers wrote a letter to SEC Chair Mary Jo White, urging the SEC to improve the transparency of private equity firm fee disclosures. Although the officials noted that private equity fees are generally disclosed, these fees are not clearly or directly reported to limited partners; instead, they are "often reported deep in annual financial statements." The signatories included state treasurers from the District of

Columbia, Wyoming, California, South Carolina, Nebraska, Oregon, Rhode Island, Missouri, North Carolina, Vermont, and Virginia, along with Comptrollers from New York City and New York state.

Notable Developments

On July 22, Senator Shelby succeeded in amending the Senate FSGG Appropriations bill to include the contents of the Senate Banking Committee's FRIA legislation. Adopted on a party-line vote, the inclusion of the FRIA provisions in the FSGG Appropriations bill was a surprise move. Amending the FSGG Appropriations bill to include FRIA could put FRIA provisions on track for inclusion in an omnibus package later this year, particularly if certain FRIA priorities are also captured in House appropriations measures.

Senator Warren (D-MA), Senator McCain (R-AZ), and Senator King (I-ME) introduced a bill that would reinstate the Glass-Steagall Act. The Warren-McCain-King bill is largely a messaging bill, with virtually no prospects of advancing in the current Congress.