View from Washington

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The speculation of a Republican takeover proved to be true as the results of the November midterm elections ousted the Senate Democratic majority and greatly increased the Republican majority in the House. The Republican controlled 114th Congress is expected to rock the boat in tackling insurance regulation as the sun sets on a number of key provisions, while new faces in the House Financial Services and Senate Banking Committees have stated their hopes in unraveling provisions of the Dodd-Frank Act. In addition to the changes in Congress, state and federal regulators are adapting to the impact of global insurance regulation and continue to grapple with its effect on the U.S. insurance market.

Results and Predictions: The 114th Congress

With the midterm elections resulting in a Republican wave that successfully rebuked the President, his agenda and the Democratic Party, the 114th Congress will be significantly redder as Republicans relish in their largest majority since 1928 with 247 members. They also have built up a significant cushion going into the Congressional elections during the big Presidential election cycle in two years. On the Senate side, Republicans gained 9 seats. With Republicans expanding their majority to 54 seats, they will have an easier time passing legislation in the Senate because they will need fewer Democratic votes to overcome filibusters (which require a 60 vote supermajority). This could mean the many Republican members calling for a gutting of Dodd-Frank will have an easier time getting their wish.

Also worth noting are the changes in the Senate Banking and House Financial Services Committees. With a Republican takeover in the Senate, Retiring Senate Banking Committee Chairman Tim Johnson will be replaced by Republican Senator Richard Shelby, who, due to his prior Chairmanship service, will serve as chair for only two years since caucus rules only permit a Chairman to serve for a total of six years. On the minority side, Senator Sherrod Brown of Ohio will assume the Ranking Member position. The key House Financial Services Committee leadership will not change: Chairman Hensarling remains as chairman. Some subcommittee leadership will change and Representative Blaine Luetkemeyer of Missouri will be the new chair of the insurance subcommittee as former insurance subcommittee chair Randy Neugebauer assumes the chair position of the financial services subcommittee.

Expect Chairman Hensarling in the House to be more aggressive in pushing harder some of the measures that stalled in the Senate this Congress, knowing that Chairman Shelby in the Senate will make sure that some Dodd-Frank changes will pass both bodies with bipartisan support. That is in contrast with what the Senate Banking Committee didn’t do in this Congress—the Senate hasn’t been able to move anything, even eight non-controversial bills that passed the House with overwhelming bipartisan support.

Terrorism Risk Insurance Act Extension

Enacted after the World Trade Center terrorist attacks on September 11, 2001, the Terrorism Risk Insurance Act ("TRIA"), which provides a federal backstop in the event of an act of terror, is quickly approaching the end of its 2014 expiration date. Negotiators in the House and Senate remained at odds on a proposed deal to reauthorize TRIA before its expiration date. On December 10 the House passed their version of the Terrorism Risk Insurance Reauthorization Act on a 417-7 vote. The bill raises the trigger to $200 million in losses over five years, double the current trigger of $100 million. The House version also includes the Dodd-Frank "end user" provision, which would allow non-financial institutions to skirt regulations imposed on big banks. On Tuesday, December 16, Senate Majority Leader Harry Reid (D-NV) attempted to hold a final vote on the reauthorization. However, in his final act as a Senator, retiring Senator Tom Coburn (R-OK) refused to agree to a unanimous consent request due to his last minute objection to the NARAB II provision, which would have created a licensing program to allow insurance agents to sell across State lines and streamline the licensing process. Because TRIA sunsets on December 31, 2014, the 114th Congress will have to revisit reauthorizing the program when they return in January.

Continued Criticism of the Financial Stability Oversight Council

The Financial Stability Oversight Council ("FSOC") continues to be criticized by members of Congress and the Government Accountability Office. During a 9/17 House Financial Services Subcommittee on Oversight and Investigations hearing entitled "Oversight of the Financial Stability Oversight Council", members of the subcommittee focused on the overall opaque nature of FSOC regarding its SIFI designation process. Subcommittee Chair McHenry and Vice Chair Fitzpatrick grilled FSOC Deputy Assistant Secretary Patrick Pinschmidt on FSOC's total lack of any information flow to the public and overall lack of transparency in providing financial institutions in question with a clear explanation of its findings and its processes before an institution reaches level two in FSOC's three stage SIFI designation process. Even more criticism has mounted after MetLife was designated a SIFI on September 4, making it the fourth non-bank financial institution slapped with a SIFI designation after AIG, Prudential and GE Capital were designated in 2013. MetLife is currently appealing its designation. Additionally there continues to be strong support in Congress to raising the threshold for a SIFI designation from $50 billion to $100 billion, and legislation that does just that is likely to pass in the Republican controlled 114th Congress.

More recent criticism came in the form of a GAO report released on November 20th. The report identified specific ways FSOC could improve on their transparency and accountability of its SIFI designation process, especially when it comes to non-bank SIFI designations. Specifically the GAO cited three areas of concern that included tracking and monitoring, disclosure and transparency and the scope of FSOC's evaluation procedures.

Capital Standards

The House unanimously passed the Insurance Capital Standards Clarification Act, which gives the Federal Reserve more flexibility in tailoring capital standards for insurers. The Senate unanimously approved the legislation back in June of this year and it will now head to the President's desk and is expected to be signed by President Obama.

International Association of Insurance Supervisors (IAIS) and International Insurance Regulation

International insurance regulation continues to make waves for the U.S. insurance market. Discussions on the impact of the IAIS and international insurance regulation continues as seen during a November 18th House insurance subcommittee hearing on international regulatory standards. FIO Director Michael McRaith, Federal Reserve insurance representative Tom Sullivan, Pennsylvania Insurance Commissioner Mike Consedine and New York State Senator Neil Breslin testified about the pushes and pulls that define the raging state v. federal v. international debate, including within the IAIS. The hearing was particularly timely as the IAIS currently is working on capital standards for globally systemically important insurers ("GSIIs") and standards for basic capital requirements. Also leading the discussion topics was the IAIS's ComFrame project that seeks to establish a more comprehensive approach to international insurance oversight. All of this comes in the wake of the IAIS's decision to eliminate the observer status system during its annual meeting in October, which previously allowed consumer advocates and others to weigh in on IAIS decisions, and replaced it with an "invite only" system.