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K&L GATES

2019 WASHINGTON D.C. INVESTMENT MANAGEMENT  
CONFERENCE – November 12, 2019

# Federal Policy Update

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# THE TRUMP ADMINISTRATION



# PRESIDENT DONALD J. TRUMP



# EXECUTIVE BRANCH OFFICIALS

Fed Chair  
Jerome Powell



Treasury Secretary  
Steven Mnuchin



# EXECUTIVE BRANCH OFFICIALS

SEC Chairman  
Jay Clayton

CFTC Chairman  
Heath Tarbert





# THE 116TH CONGRESS



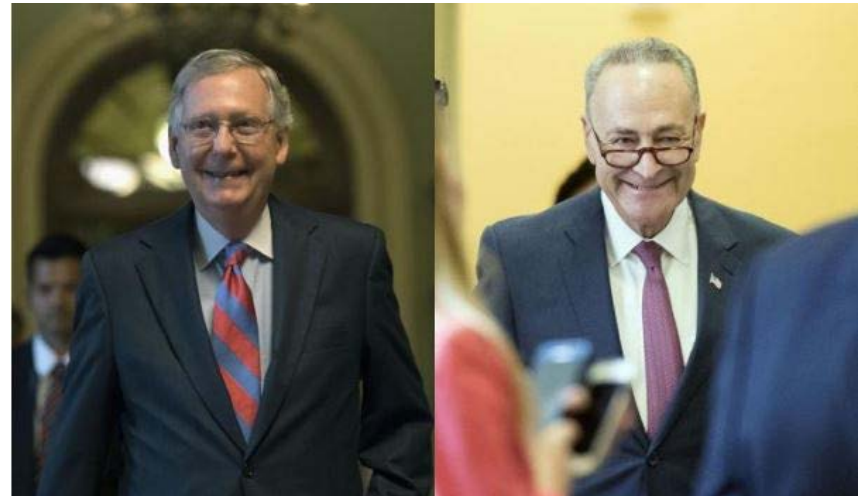
# KEY PLAYERS IN CONGRESS

- House Leadership
  - Speaker of the House: Nancy Pelosi (D-CA)
  - Minority Leader: Kevin McCarthy (R-CA)
- House members to Watch
  - New Democrat Coalition (pro-business, moderate)
    - Chair: Rep. Derek Kilmer (D-WA-06)
  - House Freedom Caucus (conservative/libertarian)
    - Chairman: Andy Biggs (R-AZ-05)
  - Tuesday Group (moderate)
    - Co-Chairmen: John Katko (R-NY-24), Susan Brooks (R-IN-05)
  - Congressional Progressive Caucus (liberal)
    - Alexandria Ocasio-Cortez (D-NY-14), Katie Porter (D-CA-45)



## KEY PLAYERS IN CONGRESS (CONT.)

- Senate Leadership:
  - Senate Majority Leader Mitch McConnell (R-KY)
  - Senate Minority Leader Chuck Schumer (D-NY)
- Senate Potential Swing Votes:
  - Susan Collins (R-ME)
  - Lisa Murkowski (R-AK)
  - Rand Paul (R-KY)
  - Ted Cruz (R-TX)
  - Doug Jones (D-AL)





# HOUSE FINANCIAL SERVICES

**Chairwoman**  
**Maxine Waters (D-CA)**



**Ranking Member**  
**Patrick McHenry (R-NC)**



# HOUSE FINANCIAL SERVICES

**Chairwoman**  
**Subcommittee on Investor**  
**Protection, Entrepreneurship, and**  
**Capital Markets**  
**Carolyn Maloney (D-NY)**



**Ranking Member**  
**Subcommittee on Capital Markets,**  
**Securities, and Investment**  
**Bill Huizenga (R-MI)**



# SENATE BANKING

Chairman  
Mike Crapo (R-ID)



Ranking Member  
Sherrod Brown (D-OH)



# SENATE BANKING

**Chairman**  
**Subcommittee on Securities,  
Insurance, and Investment**  
**Pat Toomey (R-PA)**



**Ranking Member Subcommittee on  
Securities, Insurance, and  
Investment**  
**Chris Van Hollen (D-MD)**





# THE 2019 POLICY AGENDA



# IMPORTANT ISSUES

- Impeachment
- ESG
- Cannabis banking
- Oversight of rulemaking from the Treasury Reports
- CFPB generally (debt collection, small dollar lender rule; legal challenges)
- Housing finance reform
- Data privacy
- Big Tech
- Import-Export Bank
- Robocalls





# IMPEACHMENT



## HOUSE BEGINS PUBLIC INQUIRY

- Vote 232-196 to open impeachment inquiries to the public – October 31, 2019
  - Two Dems against; One Independent in favor
- Formal vote on articles of impeachment anticipated by end of year
- Key players: Pelosi, Schiff, Nadler
- White House not cooperating, various current and formal executive officials testifying
- Removal unlikely







## THE SAFE BANKING ACT (H.R. 1595)

- Access to core banking services, insurance, and payment processing for cannabis companies and their service providers
- Bipartisan: 321-103
  - Y: Waters, McCarthy, Luetkemeyer, Stivers
  - N: McHenry, Scalise, Huizenga
- Crapo controls destiny in Senate



## THE SAFE BANKING ACT (H.R. 1595), CONT.

- Crapo: focus on legacy cash, interstate banking
- Dems: focus on social equity, broader reform
- GOP: focus on limited banking services
- Even if passed, need SAFE Banking 2.0
  - Address capital formation (SEC-registered entities)
  - Credit/debit card access
  - Broader reform issues: safety standards, re/descheduling, social equity, expungement, tax reform





# REGULATORY REFORM



# REGULATORY UPDATE

- Shareholder Proposals
- Proxy Process
- ESG disclosures
- Capital formation and IPOs
- Passive vs. Active
- Fiduciary Duty
- Volcker Rule 2.0
- Systemic risk and stress testing
- Liquidity risk management
- SEC's Form N-PORT and N-CEN filing requirements
- Dual SEC and CFTC registration
- GDPR and foreign asset manager registration



# SEC FOCUS ON PROXY PROCESS

- Roundtable on Proxy Process – November 15, 2018
  - SEC Staff rescinded two letters about reliance on proxy advisory firms
  - SEC Staff has stated its letters do not constitute rules or regulations
  - Will review proxy voting mechanics, shareholder proposal process (Rule 14a-8), retail shareholder participation, role and regulation of proxy advisory firms
- Concern with the Decline in IPOs
  - Chairman Clayton has made capital formation through IPOs a priority
  - Confidential draft filings extended to all issuers



## SEC FOCUS ON PROXY PROCESS, CONT.

- SEC issue Proxy Process Guidance – August 21
  - Y: Clayton, Roisman, Peirce
  - N: Jackson, Lee
  - Addresses the relationship between IAs, their clients, and the use of proxy advisory firms
  - Proxy voting advice provided by PA firms generally constitutes a solicitation under the federal proxy rules
- Division of Corp. Fin. Revises No-action Request Policy
- Shareholder Proposal NPR – November 5, 2018



# SEC RULEMAKING AGENDA

- Exchange-Traded Funds
- Enhanced Disclosure for Separate Accounts Registered as Unit Investment Trusts and Offering Variable Annuities
- Personalized Investment Advice Standard of Conduct
- Harmonization of Certain Title VII Rules
- Investment Company Reporting Modernization; Option for Website Transmission of Shareholder Reports
- Amendments to Investment Advisers Act Rules to Conform to the FAST Act
- Volcker Rule 2.0







# TRADE DEVELOPMENTS



# TARIFFS

- Steel/Aluminum – Section 232
  - In 2018, the President announced the imposition of a 25% tariff on steel imports and a 10% tariff on aluminum imports after finding that imports of steel and aluminum are a threat to U.S. national security.
  - In May 2019, the U.S. reached a deal with Canada and Mexico to remove the steel and aluminum tariffs. Four other countries have negotiated permanent exclusions from the steel tariffs: South Korea, Argentina, Australia, and Brazil.
- China – Section 301
  - In August 2017, USTR initiated a “301 investigation” with respect to China’s intellectual property practices. To date, the U.S. has imposed a 25% tariff on approximately \$250bn of Chinese imports.
  - In addition, there is currently a 15% tariff on an additional \$112bn worth of Chinese imports (“List 4A”). A 15% tariff is scheduled to go into effect on another \$160bn worth of Chinese imports (“List 4B”) on December 15.
    - List 4A product exclusion process is now open – applications are due by January 31, 2020.
- Autos – Section 232
  - President Trump has also threatened to impose tariffs on automobiles and parts, but has delayed the imposition of such tariffs as talks with the EU and Japan continue



# NEGOTIATIONS

## ■ China

- On October 11, the US and China announced an agreement in principle, ostensibly the first of two or three phases of an all-encompassing agreement.
- “Phase One” includes:
  - China will buy \$40-\$50bn worth of US agricultural products.
  - China agreed to open up its market to US financial services firms.
  - Secretary Mnuchin said Treasury is evaluating and would make a decision on whether to rescind the designation of China as a currency manipulator.
  - Initial steps of technology transfer agreement, to continue in “Phase Two” or “Phase Three”.

## ■ Japan

- On September 25, President Trump and Japanese Prime Minister Shinzo Abe reached what the President called a “first step” towards a new, comprehensive US-Japan trade deal with Japan.
- Specifically, the US and Japan reached agreement on market access for certain agriculture and industrial goods, as well as a separate agreement on digital trade.

## ■ European Union

- US-EU disagreement over the scope of the talks continues to create uncertainty over their outlook. However, with the announcement of a US-Japan deal that appears to include exemption from pending 232 autos/parts tariffs, the pressure is on the EU to cut a deal.



# NAFTA – PROSPECTS IN CONGRESS

- The new NAFTA (the “USMCA”) contains:
  - **Higher thresholds for auto rules of origin:** 75% of auto content has to be NAFTA-originating. The old threshold is 62.5%.
  - **New “sunset” mechanism:** the new NAFTA has a 16 year term, and every 6 years the United States, Mexico and Canada will decide whether to extend the deal for another 16 years.
  - **Limitations on use of investor-state dispute settlement (“ISDS”) mechanism.** The full range of ISDS protections will be available only to U.S. investors who have investments with the Mexican government in certain sectors: oil & gas, infrastructure, energy generation and telecom.
  - **Canada agreed,** in part, to open up the Canadian dairy market to U.S. exports.
  - **Labor:** Mexican auto industry wages will rise because of the new rules of origin requirement that 40-45% of auto content be made by workers earning at least \$16/hour.
- **2019 Prospects for Passage:**
  - The House Democrats USMCA working group is in discussions with USTR to address key areas of concern, including drug prices and labor, environment and enforcement provisions. The working group and USTR have exchanged a series of detailed text proposals since early August.
  - The Trump Administration remains optimistic about finding compromise with House Dems and moving USMCA through the Congressional process. However, Senate Finance Chair Chuck Grassley has expressed concern that time is running out.
  - Getting the USMCA implementing legislation passed before the end of 2019 is still possible. If Congress does not vote on USMCA in 2019, the prospects for passage in the middle of the 2020 election are not good.





# TAX REFORM



# CONGRESSIONAL ACTION

- Major tax legislation has not moved in Congress since the “Tax Cuts and Jobs Act” was signed into law on December 22, 2017
- Currently, various tax priorities are aiming to ride alongside a year-end government funding package to reach the President’s desk:
  - **Tax extenders:** Leaders in both chambers have previously expressed some optimism that tax extenders—various temporary policies that Congress has extended in the past—would be enacted prior to year’s end.
  - **SECURE Act:** There continues to be strong desire in both parties to enact the Setting Every Community Up for Retirement Enhancement Act (“SECURE Act”; H.R. 1994), retirement reform legislation similar to the Retirement Enhancement and Saving Act.
  - **TCJA technical corrections:** In the nearly two years since the enactment of the TCJA, there have been ongoing efforts by stakeholders to advocate for various technical and non-technical corrections to the law, including fixes to errors regarding qualified improvement property and net operating losses.



# REGULATORY ACTION

- On October 8, the IRS released its initial 2019-2020 Priority Guidance Plan.
  - The Department of the Treasury and IRS annually use the Plan “to identify and prioritize that tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.”
- Implementation of the TCJA continues to play a prominent role in this year’s Plan, as do various of President Trump’s deregulatory efforts.
- Other items of note include the completion of regulations associated with the centralized partnership audit regime and revisiting of Section 385 regulations, which govern the debt-equity rule.
- Although it is unlikely that all the priorities listed in the Plan will be addressed, the document nonetheless serves as a valuable look into the IRS’s planned focuses for the coming year.



# INTERNATIONAL ACTION

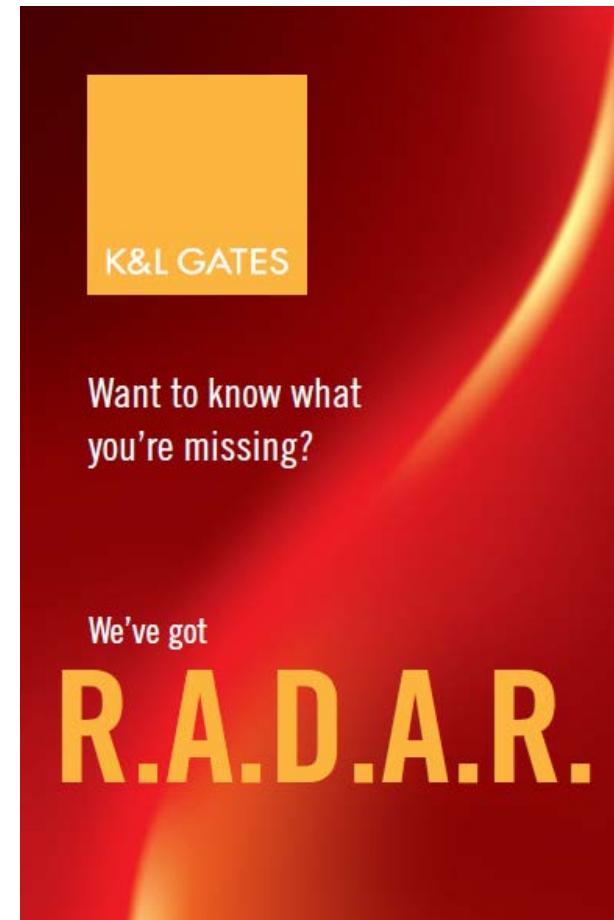
- On October 9, 2019, the OECD released its long-awaited proposal regarding taxation of the digital economy to the public for comments. The proposal represents a consensus solution of 134 countries.
  - Businesses subject to the proposal include those with at least \$828 million in global annual revenue and with business operations in multiple countries.
  - Under the proposal, businesses would first pay taxes to their home countries. After a certain profit threshold is reached, businesses' home countries would then share the tax revenue with other countries according to a formula that takes into account customer base and advertising presence.
  - Various aspects of the proposal must still be resolved, including certain thresholds and the proposal's treatment of losses.
  - The OECD plans a nine-month timeline to complete the proposal.





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