Republican Senators Urge Treasury to Index Capital Gains to Inflation

Key Points:

- 21 Republican senators sent a letter to Treasury Secretary Mnuchin urging the Treasury to use its regulatory authority to index capital gains to inflation as a way to help boost the economy.
- Republicans argue that since other tax provisions are adjusted for inflation annually, capital gains should be treated the same.
- Democrats argue that indexing capital gains to inflation would “undermine our government’s systems of checks and balances, further balloon the national debt, and only help the most well-off and well-connected in our country.”

On Monday, a group of 21 Republican senators sent a letter to Treasury Secretary Steven Mnuchin urging the Treasury to use its authority to index capital gains to inflation as a way to help boost the economy. Led by Senator Cruz (R-TX), the letter argued that the current system of taxing capital gains imposes an “unfair inflation tax on savings and investment” by not including the inflation-adjusted cost of assets as a factor.

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This action is the latest in a series of efforts to get Treasury to redefine basis and effectively reduce capital gains to eliminate taxes on inflationary gains. Republicans argued in the letter that since other tax provisions are adjusted for inflation annually, capital gains “ought to receive the same equitable treatment.”

Democrats, on the other hand, argue that indexing capital gains to inflation would “undermine our government’s systems of checks and balances, further balloon the national debt, and only help the most well-off and well-connected in our country,” according to House Ways and Means Committee Chairman Neal (D-MA). Senate Democrats have already said a court battle will ensue if the Treasury Department follows through and indexes capital gains to inflation. Senate Finance Committee Ranking Member Wyden (D-OR) stated; “[w]e will oppose this strongly, because this is another backdoor effort to flout responsible tax policy, and another gift to the people at the top.”

In related news, Democratic presidential candidate and New York City Mayor Bill De Blasio (D-NY) is proposing to increase capital gains to pay for his policy priorities. His plan would tax capital gains as ordinary income, require inheritances over $1 million to be taxed at ordinary income tax rates, and raise the corporate tax rate back to 35 percent, as well as reimpose the pre-2018 Alternative Minimum Tax regime. During this week’s Democratic presidential debates, Senator Klobuchar (D-MN) also suggested raising the capital gains tax rate to pay for environmental priorities.

Legislation Introduced in the Senate to Impose Market Access Tax/Fee to Require the Federal Reserve to Balance the Nation’s Current Account

Key Points:
- Senators Baldwin (D-WI) and Hawley (R-MO) introduced legislation that would require the Federal Reserve to balance the nation’s current account and make it the third official mandate of the Federal Reserve.
- Supporters argue that the dollar’s value has been elevated for decades, resulting in higher prices for American goods on world markets.
- President Trump has also argued that the Federal Reserve must do more to make American goods more competitive in global markets.

This week, Senators Baldwin (D-WI) and Hawley (R-MO) introduced legislation, the Competitive Dollar for Jobs and Prosperity Act, which would require the Federal Reserve to balance the nation’s current account, the most general measure of the trade balance, within five years. The bill would also make the task the third official mandate for the Federal Reserve, along with maintaining stable prices and promoting full employment.

Specifically, the bill would allow the Federal Reserve to impose a “market access charge” on all foreign purchases of U.S. stocks, bonds, property, and other assets. Within the last year alone, foreign investors purchased more than $21 trillion worth of U.S. stocks and bonds, according to Federal Reserve data.

Supporters of the legislation argue that the dollar’s value has been elevated for decades, yielding higher prices for American goods on world markets and encouraging U.S. consumers
to buy imports. President Trump has repeatedly agreed with this sentiment and even tweeted the following on Tuesday:

“The E.U. and China will further lower interest rates and pump money into their systems, making it much easier for their manufacturers to sell product. In the meantime, and with very low inflation, our Fed does nothing – and probably will do very little by comparison. Too bad!”

The legislation does not seem likely to move, but reflects an increasing focus on dollar values and possible taxes on financial transactions.

Bill on Family Leave Introduced, Receives Praise from White House

Key Points:

- Senators Cassidy (R-LA) and Sinema (D-AZ) introduce a bipartisan framework that would allow parents of newborns or recently adopted children under the age of six to receive $5,000 upon birth or adoption and receive a reduced child credit for the next decade.
- Ivanka Trump and the White House have indicated their support for the measure.

Senate Finance Committee member Bill Cassidy (R-LA) and Senator Kyrsten Sinema (D-AZ) proposed on Tuesday to give new parents the option of advancing a portion of their future child tax credits to the time of birth or adoption as an alternative to traditional paid family leave programs. The 2017 Tax Cuts and Jobs Act (TCJA) increased the child tax credit up to $2,000 per year for children under 17, with up to $1,400 of that being refundable. The proposal released this week would allow parents of newborns or recently adopted children under the age of six to receive $5,000 upon birth or adoption and receive a reduced child credit for the next decade.

The proposal would also enable low-income families who make less than $12,000 a year and are eligible for the full refundable portion of the child tax credit to advance the equivalent of 12 weeks of wage replacement and take an adjusted credit over the next 15 years.

Ivanka Trump, daughter of President Donald Trump, tweeted her support for the bipartisan framework and added the following:

“There is growing support in Congress to deliver a Paid Family Leave solution for American families, but the path forward requires legislators to work together in a bipartisan manner. Thank you Senators for leading the way! #PFL.”

President Trump later retweeted her comments. Paid family leave has been a priority for not only Ivanka Trump, but for the White House as well.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Henry Homans contributed to this section.
FINANCIAL SERVICES

SEC Holds Meeting of the Fixed Income Market Structure Advisory Committee

Key Point:
- The Advisory Committee approved a recommendation related to investor education regarding retail notes, as well as a recommendation on certain principal transactions with advisory clients.

On July 29, the Securities and Exchange Commission (SEC) convened a meeting of its Fixed Income Market Structure Advisory Committee (FIMSAC or the Advisory Committee). The Advisory Committee approved two items: (1) Draft Recommendation for Investor Education Regarding Retail Notes; and (2) Draft Recommendation on Certain Principal Transactions with Advisory Clients. The meeting also included panels on: (1) Content and Timeliness of Municipal Issuer Disclosures; and (2) Credit Ratings: Future Modifications or Status Quo.

Chairman Jay Clayton stated that liquidity is not free and that liquidity and execution are not coextensive. He emphasized the importance of recognizing that behavior will adjust in response to rule adjustments. He also underscored the need to constantly update and reevaluate regulations in the financial sector. He explained that SEC staff is also considering the regulatory framework for fixed income electronic trading platforms, as well as issues related to a classification scheme for exchange-traded products. He said that “pennyng” in the corporate bond market is being examined by the SEC staff and the Financial Industry Regulatory Authority (FINRA). He expressed his belief that the timeliness of municipal issuer disclosures can be improved. He explained it is an area where some have questioned the application of federal securities laws. He added he heard some issuers are receiving advice that disclosing material information to investors on the Municipal Securities Rulemaking Board’s (MSRB) Electronic Municipal Market Access (EMMA) system triggers a more rigorous liability standard than disclosing through other means. He noted that he directed the Office of Municipal Securities to provide a staff legal bulletin summarizing the application of securities laws to various disclosure scenarios. He said that retail investor education can be improved and that he is excited to learn about FIMSAC’s recommendation on this topic. He said that a Main Street investor education campaign has been launched which will include videos, websites, and events to help retail investors understand differences between broker-dealers and investment advisers, as well as the costs they are incurring.

Commissioner Allison Lee said that the fixed income markets have traditionally been the domain of institutional investors. She stated that recently more investment products have become available in these markets and are being utilized by retail investors. She stated that investor education and timely disclosures are critical given this shift.

Brett Redfearn (Director, Division of Trading and Markets, SEC) said that he appreciates FIMSAC’s continued engagement. He said that fixed income markets face a unique set of challenges given the different methods of trading and the expanding use of technology. He said that FIMSAC plays an important role in determining fixed income market policies.
Senate Banking Committee Holds Hearing on Regulation of Cryptocurrencies and Blockchain

Key Points:
- Chairman Mike Crapo (R-ID) called for the U.S. to adopt a comprehensive regulatory approach, in order to lead in the digital asset space.
- Ranking Member Sherrod Brown (D-OH) spoke in opposition to Facebook’s plan to create a digital currency.

On July 30, the Senate Banking, Housing and Urban Affairs Committee held a hearing entitled “Examining Regulatory Frameworks for Digital Currencies and Blockchain.” Chairman Mike Crapo (R-ID) noted the Committee held two hearings during the previous Congress about the digital marketplace. He noted Facebook recently announced it is seeking to develop its own digital currency, Libra, which would be governed by an association comprised of up to 100 financial and non-financial members. He said this project renewed interest in digital currencies, including issues related to money laundering and counter-terrorism. He added that data privacy, consumer protections, and monetary policy implications are also relevant issues in considering Libra. Crapo recalled a recent hearing with Facebook’s Head of Calibra, David Marcus, who testified there are a number of global regulators engaged in the Libra project, including the Federal Reserve, the Financial Stability Oversight Council (FSOC), the Financial Crimes Enforcement Network (FinCEN), the Financial Conduct Authority and the G-7. He added Marcus emphasized that no account data collected in the Calibra wallet would be shared with Facebook. He asserted that digital technology innovations are inevitable and the U.S. should lead in these innovations, and explained what the rules of the road should be. Crapo described the blockchain and digital currency market as diverse and argued the U.S. needs a comprehensive regulatory approach to lead in the evolution of this industry. He recalled statements from Treasury Secretary Steve Mnuchin, in which he explained that the U.S. welcomes responsible innovation, but the overriding goal in digital currencies is to maintain the integrity of the financial system. Crapo expressed interest in: the difference between technologies currently in market; how other countries are approaching regulation of digital currencies and the blockchain, along with successes and failures; potential gaps in the current regulatory framework; the potential for distributed ledger technology to facilitate better data privacy for individuals; and approaches Congress should consider in developing a regulatory regime for digital currencies. He emphasized that consumers should have “real control” over their data.

Ranking Member Sherrod Brown (D-OH) voiced serious concerns about Facebook’s plan to run its own currency out of a “Swiss bank account.” He criticized Facebook for dodging questions about accountability and asserted the company cannot be trusted. He contended Facebook’s goal is to “innovate Americans out of their paychecks.” He expressed skepticism that Libra would aid the unbanked and underbanked, comparing Facebook’s declared motives to pre-crisis claims about the positive aspects of subprime mortgages. Brown asserted major financial institutions are hiding behind innovation to obscure their true motives for taking over public resources. He argued that some infrastructure “works better as a public good” and expressed concern about ongoing
privatization efforts. He suggested the Federal Reserve should do more to protect the public nature of currency.

Upcoming Hearings and Meetings

**August 8**
*SEC Open Meeting:* The SEC will hold an open meeting to consider “whether to propose rule amendments to modernize the description of business, legal proceedings, and risk factor disclosures that registrants are required to make pursuant to Regulation S-K.”

**August 14**
*Small Business Capital Formation Forum:* The Securities and Exchange Commission (SEC)’s Office of the Advocate for Small Business Capital Formation will host the annual Government-Business Forum. The event will be held in Omaha, Nebraska.

*Homelessness:* The House Financial Services Committee will hold a field hearing in Los Angeles, California entitled “Examining the Homelessness Crisis in Los Angeles.”

**September 4**
*Financial Inclusion:* The House Financial Services Committee’s Subcommittee on Oversight and Investigations will convene a field hearing in Houston, Texas entitled “Examining Discrimination and Other Barriers to Consumer Credit, Homeownership, and Financial Inclusion in Texas.”

**September 10**
*Student Lending:* The House Financial Services Committee will hold a hearing entitled “A $1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable.”

**September 11**
*Private Market Exemptions:* The House Financial Services Committee’s Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets will convene a hearing entitled “Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment.”

*Climate Change:* The House Financial Services Committee’s Subcommittee on National Security, International Development, and Monetary Policy will convene a hearing entitled, “Examining the Macroeconomic Impacts of a Changing Climate.”

**September 12**
*Artificial Intelligence Task Force:* The House Financial Services Committee’s Task Force on Artificial Intelligence will convene a hearing entitled, “The Future of Identity in Financial Services: Threats, Challenges, and Opportunities.”

**September 18-19**
*Markup:* The House Financial Services Committee will convene for a markup. The agenda for the markup has not been announced.

**September 24**
*SEC Oversight:* The House Financial Services Committee will hold a hearing entitled “Oversight of the Securities and Exchange Commission: Wall Street’s Cop on the Beat.”

*Racial and Gender Wealth Gap:* The House Financial Services Committee’s Subcommittee on Diversity and Inclusion will convene a hearing entitled, “Examining the Racial and Gender Wealth Gap in America.”
September 25

**Financial Stability:** The House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions will convene a hearing entitled, “Promoting Financial Stability: Assessing Threats to the U.S. Financial System.”

**Reverse Mortgages:** The House Financial Services Committee’s Subcommittee on Housing, Community Development, and Insurance will convene a hearing entitled, “Protecting Seniors: A Review of the FHA’s Home Equity Conversion Mortgage (HECM) Program.”

September 26

**Debt Collection:** The House Financial Services Committee will convene a hearing entitled, “Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices.”

**Real-Time Payments:** The House Financial Services Committee’s Task Force on Financial Technology will convene a hearing entitled, “The Future of Real-Time Payments.”

For more information about financial services issues you may email Joel Oswald or Alex Barham.

ENERGY & ENVIRONMENT

**Senate Commerce Committee Approves Pipeline Safety Legislation**

**Key Point:**
- The Senate Commerce Committee voted to approve a pipeline safety reauthorization bill, sending the legislation to the full Senate.

On July 31, the Senate Committee on Commerce, Science, and Transportation voted to report the “Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2019” (S. 2299). The legislation would reauthorize the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) pipeline safety activities through September 30, 2023.

As described in the Committee’s press release, the bill:
- “Provides a four-year authorization of PHMSA’s pipeline safety program with greater resources allocated to state and local pipeline safety officials.”
- “Allows PHMSA to conduct pilot programs to evaluate innovative pipeline safety technologies to enhance pipeline safety.”
- “Provides greater Congressional oversight on pending PHMSA rulemakings.”
- “Directs PHMSA to update its current regulations for large-scale liquefied natural gas (LNG) facilities.”
- “Establishes [the] LNG Center of Excellence to promote and facilitate safety, education, training, and technological advancements for LNG operations.”

The legislation also includes a modified version of Senator Ed Markey’s (D-MA) “Leonel Rondon Pipeline Safety Act”, which he introduced following last September’s gas distribution system incident in Massachusetts. These provisions of the bill would require PHMSA to:
- Promulgate regulations to require gas distribution system operators to...
account for specified risks in their integrity management plans;

- Issue regulations to ensure that distribution system operators’ emergency response plans meet specified standards for communications with first responders and the public;
- Promulgate regulations to ensure that gas distribution system operations and maintenance manuals address: management of change; and responding to over pressurization incidents;
- Report to Congress on implementation of safety management systems (SMS) by gas distribution system operators;
- “[P]romote and assess pipeline safety management systems frameworks developed by operators of natural gas distribution systems”; and
- Promulgate regulations to: identify and update gas distribution system records and maps; and require that gas distribution systems have qualified employees to monitor system pressure and respond to over pressurization incidents.

During the markup, the Committee adopted, by voice vote, an amendment offered by Senator Tom Udall (D-NM), which would:

- Direct PHMSA to expedite the publication of the pending final rule on gas gathering pipelines; and
- Require the Government Accountability Office (GAO) to report on the mapping and geospatial information collected for gas gathering pipelines.

Udall also offered, but withdrew, an amendment to address methane emissions from natural gas pipelines. He observed that leak detection and repair technologies are very advanced. He also remarked, “Let’s keep our natural gas and methane in our pipelines and out of the atmosphere.” Udall suggested that limiting methane leaks would save $500 million annually.

**Upcoming Hearings and Events**

**August 8**  
**National Parks:** The Senate Energy and Natural Resources Committee’s National Parks Subcommittee will hold a field hearing “to examine opportunities to expand visitation at lesser-known National Park System units.” The Subcommittee will hold the hearing at the Grant-Kohrs Ranch National Historic Site in Montana.

**September 10-11**  
**Transmission Lines:** The Federal Energy Regulatory Commission (FERC) will hold a technical conference to “discuss issues related to transmission line ratings, with a focus on dynamic and ambient-adjusted line ratings”. The “conference will explore what transmission line rating and related practices might constitute best practices, and what, if any, Commission action in these areas might be appropriate.”

**September 19**  
**FERC Meeting:** The Federal Energy Regulatory Commission (FERC) will hold its monthly open meeting.

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Ashley Strobel contributed to this report. Updates on energy and environment issues are also available on twitter.
HEALTH

HHS Announces Plan for Drug Importation

Key Points:
- The Department of Health and Human Services announced a new plan outlining two potential pathways for drug importation.
- The pathways would include pilots to import drugs from Canada and guidance for manufacturers to import drugs they sell in foreign countries.

On July 31, the Department of Health and Human Services (HHS) announced a new action plan to create a pathway for the importation of prescription drugs. The Food and Drug Administration (FDA) published a Safe Importation Action Plan which outlines two potential pathways for safe importation.

- Pathway 1 – HHS and FDA will develop a rule through notice and comment rulemaking that would authorize pilot projects developed by states, wholesales, or pharmacists to import drugs from Canada which are versions of FDA-approved drugs that are manufactured consistent with FDA approval.
- Pathway 2 – FDA will issue guidance to manufacturers who seek to import U.S. versions of FDA-approved drugs sold in foreign countries. The manufacturer must establish the foreign version is the same as the U.S. version and label it appropriately for sale in the U.S.

HHS Secretary Alex Azar emphasized “this is the next important step in the Administration’s work to end foreign freelancing and put American patients first.” Acting FDA Commissioner Ned Sharpless noted “the FDA has a unique role to play in promoting competition that in turn can help reduce drug prices and improve access to medicines for Americans.” He emphasized ensuring these approaches pose not additional risk to public health and safety.

Read the Safe Importation Action Plan here.

CMS Proposes Rule to Improve Transparency

Key Points:
- The Centers for Medicare and Medicaid Services proposed changes to the CY 2020 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System aimed at increasing price transparency.
- Comments on the proposed rule are due September 27, 2019.

On July 29, the Centers for Medicare and Medicaid Services announced a proposed rule for the CY 2020 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System which incorporates the directives from the President’s Executive Order on “Improving Price and Quality Transparency in American Healthcare to Put Patients First.”

The proposed rule seeks to further advance price transparency to allow patients to be more informed about what they may pay for services. It implements Section 2718(e) of the Public Health Service Act which requires each hospital operating in the U.S. to establish a yearly list of the hospitals standard charges for items and services provided by the hospital and make that
list public. The proposed rule would (1) establish definition of hospital, standard charges, and items and services; (2) establish requirements for making a public, machine-readable file online that includes all standard charges for hospital items and services; (3) establish requirements for making payer-specific negotiated charges for a set of “shoppable” services publicly available in a consumer-friendly manner; and (4) create monitoring for hospital noncompliance and actions to address noncompliance.

In addition, the proposed includes several policy changes aimed at providing beneficiaries with more choices on where they seek care and expand the number of procedures payable when furnished in either the ambulatory surgery centers or outpatient hospital departments.

Read more on the full rule and fact sheet here.

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201.

TRADE

Post-Negotiations, President Trump Announces List 4 Tariffs on China

Key Points:
- On the heels of direct trade talks earlier this week, the U.S. will impose a 10 percent tariff on $300 billion worth of List 4 goods from China.
- President Trump warned that new tariffs can be imposed in stages and lifted up to above 25 percent, but he is “not looking to do that.”
- Trade talks between the countries will continue but tensions remain high around the issue of Huawei.

U.S. Trade Representative (USTR) Robert Lighthizer and Treasury Secretary Steven Mnuchin returned from Shanghai midweek after their first face-to-face meeting with their Chinese counterparts since May. President Trump tweeted that they had engaged in “constructive talks having to do with a future Trade Deal.” The President also noted that he believed China was ready to sign a deal three months ago, he said, “but sadly, China decided to re-negotiate the deal prior to signing.”

President Trump announced later on Thursday that the U.S. will impose a 10 percent tariff on $300 billion worth of Chinese goods starting on September 1. He cited China’s failure to buy U.S. agricultural goods and curb the flow of fentanyl to the U.S. as his reasons for applying the tariff. President Trump told reporters that the new tariffs may be imposed in stages. “Until such time as there is a deal, we’ll be taxing them,” he said. “If you remember when I did the 25 percent [on $250 billion], I did it in stages and this can also be lifted in stages or it can be taken off. We’re starting at ten percent and it can be lifted up to well beyond 25 percent but we’re not looking to do that necessarily.”

When the U.S.-China trade talks broke down in May, President Trump threatened tariffs on the remaining imports from China. After President Trump met with Chinese President Xi Jinping at the G20 Leaders’ Summit in Osaka, Japan in June he then agreed to delay tariffs on the so-called “List 4” products. President Trump has said that President Xi, at that meeting, recommitted to boosting purchases of U.S.
agricultural products. At the G20 Leaders’ Summit President Trump also agreed to relaxing some restrictions on Chinese telecom giant Huawei. However, Commerce Secretary Wilbur Ross has publicly stated that Huawei will remain on the Bureau of Industry and Security’s Entity List, and U.S. companies seeking to sell products to Huawei will have to apply for an export license under the “presumption of denial.” A Chinese Ministry of Commerce spokesperson told reporters that China hopes “that the U.S. will truly implement its commitments as soon as possible and stop using the wrong measures of the state to suppress Chinese enterprises.”

USMCA Developments

Key Points:

- Senate Finance Committee hearing on USMCA underscores Democrat resistance to “weak” enforcement process.
- USTR is seriously considering the Brown-Wyden enforcement proposal.

On Tuesday, the Senate Finance Committee held a hearing to discuss the U.S.-Mexico-Canada Agreement (USMCA), and invited stakeholders from various industries to give testimony on how they believe it will affect their businesses. While most Republican senators pushed for the swift ratification of the USMCA several Democrats explored enforcement options they believe the U.S. could endorse before the pact enters into force. The Brown-Wyden proposal, introduced by Ranking Member Ron Wyden (D-OR) and Sherrod Brown (D-OH), calls for Mexico to commit to increasing the number and training of enforcement personnel and would require U.S.-assisted capacity-building and other initiatives to promote the enforcement of core rights outlined by the International Labor Organization. Other goals include ensuring acceptable conditions for workers in Mexico. It would also allow the two governments to inspect facilities suspected of violating labor standards. If a facility were found in violation, the U.S. could deny preferential treatment afforded under the deal for goods from that facility. Chairman Grassley has called the proposal “legitimate”, but told reporters that he would like to see more details.

Sources indicate that the Office of the USTR is working on a “rapid-response” enforcement approach for the U.S.-Mexico-Canada Agreement that borrows heavily from the Brown-Wyden proposal. One labor source believes the final USMCA package could contain self-executing amendments relating to labor enforcement and will include something close to the Brown-Wyden mechanism. The USMCA Democrat working group members said last week that they intended to send detailed text proposals to USTR this week, expecting the administration to respond with counter-proposals.

For more information about trade issues you may email or call Christopher Hatcher at 202-659-8201. Cullen Neely contributed to this section.

This Week in Congress was written by Alex Barcham.