



## Biweekly Bulletin on Capital Markets & Financial Services Policy

Volume 13 (July 1 – July 22, 2022)

**In the Face of Uncertainty, House Leaders Prepare to Unveil Bipartisan Legislation Regulating “Payment Stablecoins”; Some Progressives & Securities Practitioners Seethe.** As today’s *Bulletin* goes out the door, close observers of financial regulatory policymaking in Washington DC are fixated on an emerging draft [bipartisan](#) piece of legislation that is rumored to be on the brink of being unveiled for consideration by the House Financial Services Committee at its upcoming [July 27 markup](#). The bill, which would create a bank-like regulatory framework for so-called “stablecoins” – or virtual currencies whose value is pegged to traditional currencies or other collateral – has shot to the top of the 117<sup>th</sup> Congress’s financial regulatory to-do list in recent weeks, in the face of apparent breakthroughs in negotiations between key House Democrats and Republicans, and in the wake of the May [collapse of “terra,”](#) an “algorithmic stable coin” whose stability was based on algorithms tied to its sister cryptocurrency, “luna,” rather than being pegged to a stable reserve asset such as gold or the dollar. As LXR has previously reported, the top Republican leaders of the HFSC and the Senate Banking Committee both publicly... ([Cont. as “FSC,” P. 2](#))

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**Key Trade Association Announces “Multi-Year Advocacy Effort” to Achieve “Legal Recognition of the Financial Planner” Title.** On July 21, the [Financial Planning Association](#)<sup>®</sup> (FPA<sup>®</sup>), which describes itself as “the leading membership organization and trade association for Certified Financial Planner<sup>™</sup> professionals and those engaged in the financial planning process,” [announced](#) the initiation of “a multi-year advocacy effort to achieve the legal recognition of the term ‘financial planner’ through title protection.” The decision, undertaken during FPA’s annual ‘State of FPA’ Virtual Update, will “focus the Association’s advocacy efforts in the coming years and will reinforce FPA’s role as a leader in the financial planning profession.” According to the FPA, the rationale for the new campaign is four-fold: (1) to distinguish financial planners from other financial service providers; (2) to establish minimum standards for financial planners; (3) to enable consumers to identify and engage with a qualified financial planner for “holistic, comprehensive financial planning services,” and; (4) to undertake “a critical step in recognizing financial planning as a distinct, essential profession.” ([Cont. as “Planners,” P. 5](#))

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**Potential Endgame Emerges for Constellation of Bipartisan House Capital Markets Bills.** For close watchers of securities legislation, July has been a busy and exciting month. One interesting development that has yet to be fully appreciated occurred on July 14, when the House voted 329-101 to approve its version of this year’s National Defense Authorization Act (NDAA), with 180 Democrats and 149 Republicans voting for passage. What caught our attention was the success of Democratic members of the HFSC in attaching [a range of financial regulatory riders](#) to the bill. With only a handful of months left in the current session, the House move to attach these riders to the NDAA – and hence, procedurally, put them in play for inclusion in the final bill expected to pass in the Fall – is potentially quite significant. The NDAA is [sprawling defense policy bill](#) that is enacted annually to authorize appropriations for the Defense Department and national security programs within the Department of Energy. In contrast to any other policy bill of we are aware of, the NDAA is truly must-pass annual legislation: **Congress has passed an NDAA into law every year for the past 61 years.** Historically, this has made the NDAA... ([Cont. as “NDAA,” P. 4](#))

**PLUS:** *Congressional Developments, Hearing Summaries, Regulatory Updates and Analysis, Weekend Reading and Podcast Recommendations, Financial Policy Job Postings, Upcoming Events, and much more from the world of Financial Services and Capital Markets Policy!*

The LXR Group, L.L.C.  
800 Connecticut Avenue, NW, Suite. 300  
Washington, D.C. 20006  
(202) 803-0170

**(FSC, continued from P.1)** ...stated in early June that they believed the passage of stablecoin regulatory legislation was probable prior to the end of the Congressional session in January 2023. Based on LXR Group's understanding, as of Thursday, any bill that may emerge is likely to deal almost exclusively with *payment stablecoins* – with “asset backed” coins being subject to oversight from prudential banking regulators, and algorithmic or other stablecoins subject to regulation by the Fed. The bill is likely to be largely silent on the authority of the SEC. Earlier in the week, in remarks at a Financial Services Forum conference, Treasury Undersecretary Nellie Liang said any legislation governing stablecoins, whose value is pegged to an underlying asset like the dollar, would be aimed at allowing both banks and nonbanks to issue the tokens.

For the past 18-months, influential progressive [think tanks](#), advocates and [academics](#) have invested significant energy toward making a case that federal legislation is not necessary to regulate stablecoins, arguing that the SEC is the most appropriate regulator and already has clear authority to regulate the bulk of stablecoins. They make a compelling and well-reasoned argument. However, with consumer organizations having bet against the passage of any cryptocurrency legislation in the 117<sup>th</sup> Congress, and entered negotiations late or not-at-all, the forthcoming legislation was written in something of a vacuum, and is expected to more-or-less reflect primarily the priorities of the stablecoin issuers, whose lobbying has [supercharged](#) the proposal – including Tether, USD Coin etc. The race to pass stablecoin legislation by the end of the year will be fascinating to observe – especially given the likelihood that SEC investigations and/or enforcement actions are now (and have been) underway against some of the stablecoin issuers who are bankrolling the lobbying blitz.

## **Top Congressional Developments.**

**House Financial Services Subcommittee Holds Hearing on Oversight of the SEC's Division of Enforcement.** On Tuesday, July 19, the HFSC Subcommittee on Investor Protection, Entrepreneurship and Capital Markets held a hearing entitled “Oversight of the SEC's Division of Enforcement.” The lone witness at the hearing was SEC Enforcement Division Director Gurbir S. Grewal. In his [written testimony](#), Director Grewal emphasized the SEC's enforcement record throughout the course of the pandemic, while also noting that “the SEC's whistleblower program had a record-breaking year, with the SEC awarding a total of \$564 million to 108 whistleblowers...and surpassing \$1 billion in awards over the life of the program.”

For the Democratic majority on the Subcommittee, the subtext of the hearing appeared to be enforcement of Regulation Best Interest - including last month's [announcement](#) by the agency of its first enforcement action pursuant to the new rule – and roughly coinciding [criticism](#) by some consumer advocates to the effect that the pace of enforcement (i.e. – zero) was unacceptable, given that two years had elapsed since the rule took effect. During the hearing, HFSC Full Committee Chair Maxine Waters asked Grewal to “describe [his] experience in enforcing Regulation Best Interest [and] also address, if at all, how broker-dealers have changed their practices, how are they better managing conflicts of interest, for example? Do they offer the same kinds of products, and get paid at the same level, ... prior to Reg BI?” Grewal responded since Reg. BI took effect in June 2020, the SEC has conducted exams “with a priority focus of looking at Reg BI compliance.” That, he said, “yielded a number of referrals, including ... our first Reg BI action ... There are other referrals.” Grewal also said that the question of Reg. BI's efficacy was a priority for the SEC, and the exams division would be collecting data with a view to answering the question of whether or not BI is living up to expectations.

For Republicans, the hearing served as an opportunity to call attention to the fact that – despite the SEC's being in the midst of “one of the most ambitious rulemaking agendas in our modern era” – SEC Chair Gensler has not appeared before the HFSC (or the Senate Banking Committee) since [October 5, 2021](#). “I would be remiss if I didn't mention the one person who is not here this morning, the Chair of the Securities and Exchange Commission, Chair Gensler, but I know he is paying attention, so Chair Gensler, I -- while I appreciate all -- appreciate you allowing Director -- Director Grewal to come in before the subcommittee, I can't help but mention your absence and request your attendance,” said Ranking Republican Rep. Bill Huizenga (R-MI). Republican also reiterated criticism what they consider the SEC's failure to “provide any clarity surrounding the application of (ph) securities laws to digital assets, the unit plans to focus on violations related to crypto asset offerings -- so crypto asset exchanges, crypto asset lending, and state -- and staking products, decentralized finance platforms, non-fungible tokens, stablecoins, et cetera, et cetera.”

**House Approves FY 2023 Financial Services and General Government Appropriations Act; Senate Appropriators Eager to Get Going.** On July 20<sup>th</sup>, the House voted 220-207 to approve a legislative package or “minibus” that would appropriate funding for the activities of the SEC, the CFTC, and slew of other federal departments and independent agencies and departments, for the fiscal year ending September 30, 2023. The package, [H.R. 8294](#), is comprised of 6 of the total 12 appropriations bills required to fund the federal government next year – appropriates funding for the U.S. Departments of Agriculture, Energy, Interior and Transportation, as well as the departments of Housing and Urban Development and Veterans Affairs, and several other independent agencies. All told, the House passed bill appropriates approximately \$560 billion in government funding. Among the bills embedded into the package is House version [FY 2023 Financial Services and General Government Appropriations Act](#), which included a total of \$29.8 billion, which is \$4.3 billion, or 7%, more than last year’s version of the appropriations legislation.

Meanwhile, on the other side of the Capitol, the Senate Appropriations Committee issued a [press release](#) on July 12<sup>th</sup> stating that “*Chairman Leahy (VT) continues to push for a bipartisan, bicameral topline agreement. That is the most efficient path to completing FY 2023 bills. But in the absence of a deal, the Appropriations Committee needs to do its work. It has a responsibility to the American people... The Subcommittee Chairs are working to draft fair, responsible bills to release to the public at the end of July. The Committee has a responsibility to move this process forward, and the Chairman intends to fulfill that responsibility. The Chairman is continuing to work closely with his Subcommittee Chairs and staff to complete the work of the Committee during his recovery.*” The Senate is not expected to begin its consideration of appropriations legislation in earnest until September.

**As August Recess Looms, Bipartisan Economic Competitiveness Package Remains on Ice, but Smaller Pieces of the Package are Beginning to Break Free.** One of the few significant bipartisan pieces of legislation that has long been viewed as likely to pass into law in 2022 is a major piece of industrial policy legislation that members of both parties have characterized as essential to the ability of U.S. companies to compete with China. A [version](#) of the bill passed the Senate in June 2021 with 19 GOP votes, and in February a similar though partisan [version](#) of the bill passed the House in February. The [differences](#) between the bills triggered negotiations between the two bodies to reconcile their differences. In May, President Biden [urged](#) Congress to “Pass the damn bill and send it to me. If we do, it’s going to help bring down prices, bring home jobs and power America’s manufacturing comeback,” and a recently as late last month Congress appeared on track to do so. However, two weeks ago, Senate Minority Leader Mitch McConnell announced his [intent to block](#) Congressional action on the bill unless Senate Democrats drop their efforts to pursue a “partisan reconciliation bill.”

On Wednesday, July 20, Sen. Rob Portman (R-OH) [took to the Senate Floor](#) to excoriate the body for its inaction on the legislation. Portman’s remarks came after Intel Corp. announced it was pulling the plug on the groundbreaking for its Ohio factory to protest Congress’s inaction on the bill, which includes a provision to provide \$52 billion of incentives to computer chip manufacturers. “I can’t stress enough the importance of passing this legislation and it should be done on a bipartisan basis because it has been done before,” said Portman. “Who could be for China being able to have better access to this information? Nobody.”

In the first bit of good news for supporters for some time, on Tuesday, the Senate [voted](#) 64 to 34 to reject a “poison pill” amendment that would have foreclosed the likelihood of any version of the bill advancing this year. Tuesday’s vote – which considered a “test vote,” succeeded only because of 16 Republicans who bucked Leader McConnell to back changes that would benefit universities in their states.

**“Sometimes you’ve got to have more than one train running.” - Sen. Richard Shelby (R-AL)**

**(NDAA, continued, P.1)** ...the ideal legislative “train” for other popular policy riders looking to make their way to the President’s desk The NDAA is [sprawling defense policy bill](#) that is enacted annually to authorize funds for the Defense Department and national security programs within the Department of Energy. In contrast to any other annual policy legislation of which we are aware, the NDAA is truly a “must-pass” bill: *Congress has passed the NDAA into law every year for the past 61 years.*

Historically, the NDAA's unique status has made it an [ideal](#) legislative “train” for other popular policy riders looking to make their way to the President’s desk. In fact, the NDAA has a long history of being used as a vehicle for financial services policy changes - especially when such provisions have solid bipartisan support in the Senate. For example, the 2020 NDAA included unrelated policy provisions to [combat the use of shell companies by criminals](#)

The bulk of the policy riders attached to this year’s NDAA are unlikely to make it into the final bill. But – especially with the [potential](#) for one or both chambers of Congress to change control in January – there is a very good chance that at least a handful of provision will make it through and become law.

One of the provisions that we consider as a plausible contender to make it into the final NDAA is the

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