

Public Insight, LP's *Regulatory Alpha*: The Weekly Regulatory Update for Institutional Investors

April 12, 2010

Dear Clients and Friends of Public Insight,

We're pleased to send you the April 12 edition of **Regulatory Alpha***

In this issue, we provide sector-by-sector updates of the key policy and regulatory developments that we believe may have impacts on your portfolio and be relevant to your investment decision-making processes.

Please feel free to contact us if we can be of assistance in any way.

Sincerely,

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*Important Information: Please see the last page of this report for all disclaimer/disclosure information. We thank our colleagues at Dow Lohnes Government Strategies in Washington, D.C. for their contributions to this update.

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Public Insight's Regulatory Alpha
March 27 – April 9, 2010

ECONOMIC REGULATION AND OVERSIGHT

Treasury Plans to Sell Citigroup Common Shares

The Treasury Department will sell its 27 percent stake in Citigroup, Inc. during the course of 2010. It plans to sell a specified share of Citigroup trading volume on a regular basis without trying to time the market. This could mean selling shares equal to 5 percent to 10 percent of typical daily trading. The Treasury's stake in Citigroup had a market value of \$32.2 billion as of March 29, 2010, which makes for a paper profit of \$7.2 billion.

White House to Expand Housing Fund

President Barack Obama announced a plan to help five states – North Carolina, Ohio, Oregon, Rhode Island, and South Carolina – by giving them federal funds for troubled homeowners. These five states have the largest number of counties suffering unemployment rates above 12 percent.

This follows President Obama's announcement last month of the Hardest Hit Fund, which awarded \$1.5 billion to state housing agencies in California, Arizona, Florida, Nevada, and Michigan. Those states were chosen because they were hit hardest by the housing bust, with home prices declining more than 20 percent.

Corker: Cannot Support Dem-only Bill

Senator Bob Corker (R-TN) told *The Wall Street Journal* that he "absolutely cannot support" a bill written by Senate Democrats to overhaul financial legislation.

Dems May Extend Tax Cuts

Rep. Chris Van Hollen (D-MD) announced to *The Hill* that he expected several middle-class tax cuts to be extended before the midterm election. House leaders hope to extend a tax break that benefits married couples and increases the child tax credit. They would like to extend tax cuts for individuals earning less than \$200,000 per year and couples earning less than \$250,000 per year.

Frank Optimistic on Financial Reform

House Financial Services Chairman Barney Frank (D-MA) said that the financial reform overhaul bill would pass through the Senate later this month and be signed by President Obama by the end of May. However, the White House has said that it would like to sign a bill by August. Senate Banking Chairman Chris Dodd (D-CT) has said he would like to see a bill pass by the end of the year.

Shelby Presents Consumer Agency Compromise

Staff members for Senate Banking Committee Ranking Member Richard C. Shelby (R-AL) sent a proposal to Chairman Christopher Dodd's (D-CT) staff that could create an independent consumer financial protection agency. It is not clear if Sen. Shelby is seeking anything in return for this concession.

Republicans have been objecting to the creation of this agency, saying that it may conflict with regulators responsible for oversight of financial firms. The creation of the consumer protection agency is one of the most contentious items in the financial reform bill debate.

The Senate Banking Committee passed Chairman Dodd's financial reform draft bill on a party-line vote last month. This bill is scheduled to go to the Senate floor later this month. Chairman Dodd hopes to have the bill signed by the President before the November midterm elections. The White House said it would like a bill passed by both chambers before Memorial Day.

Financial Crisis Inquiry Commission Seeks Answers from Greenspan, Rubin, Prince

This week, the Financial Crisis Inquiry Commission, which is charged with examining what caused the financial meltdown, heard testimony from former Federal Reserve Chairman Alan Greenspan. Much of his hearing focused on accusation and causation, with hardly any emphasis on solutions.

The Commission also heard from Former Treasury Secretary and Citigroup Chairman Robert Rubin, and former Citigroup CEO Chuck Prince. The men said that the events leading up to the meltdown were unforeseen by them. They also apologized for the outcome.

HEALTH CARE REFORM IMPLEMENTATION

Waxman Calls on CEOs to Explain Health-Reform Law-Related Write-Downs

In the weeks since the health reform bill was signed, a number of large corporations, including AT&T, Caterpillar, Prudential Financial, Verizon Communications, and Deere & Co., reported in filings with the Securities and Exchange Commission that they would take big first quarter write-offs to reflect the cost of provisions in the health care reform law that reduce tax benefits for their retiree drug programs. A study by Roland McDewitt of Towers Watson, an international consulting company, projects as much as \$14 billion in write-offs over the next two quarters by 3,500 for-profit businesses offering retiree drug benefits.

Rep. Henry Waxman (D-CA), Chairman of the House Energy and Commerce Committee, has scheduled an April 21 hearing to assess the situation. Chairman Waxman wrote a March 26 letter to the CEOs of AT&T, Caterpillar, and Deere and Co. calling on them to appear at this hearing. In his letter, Waxman cited a November 2009 study commissioned by the Business Roundtable. This study predicted that the health-care overhaul could reduce costs for businesses by more than \$3,000 per employee over a 10-year period, saying "the new law is designed to expand coverage and bring down costs, so your assertions are a matter of concern."

Congressional Republicans Criticize Predicted Increase In IRS Workforce

Republican lawmakers on the House Ways and Means Committee predicted that as a result of the passage of health reform – specifically the \$500 billion in new subsidies and tax credits, and the penalties on individuals who do not obtain coverage – the Internal Revenue Service (IRS) will need between 11,800 and 16,000 new employees and agents. Senator Judd Gregg (R-NH) of the Budget Committee, Senator Richard Burr (R-NC), and others pointed to this as an example of the bill's expansion in the size and scope of government in speeches on the Senate floor. Earlier, House Ways and Means Subcommittee on Oversight Ranking Member Charles Boustany (R-LA) said the IRS provisions in the bill "dangerously expands, in an ominous way the tentacles of the IRS and it's reach into every American family."

IRS Commissioner Douglas Shulman told a House Ways and Means subcommittee last month that the new law will require an investment of money and people, but neither he nor any other administration officials have as of yet offered any estimates about what those number might be.

Pending Decision by State Court Regarding Insurer's Premium Hikes

A state court in Maine will soon rule in a case involving a state regulator that refused to allow an insurer, Anthem Blue Cross and Blue Shield, to increase its premiums. The case has implications for

regulators and future lawsuits around the country. Insurers claim that new mandates, such as requiring the acceptance of those with “pre-existing conditions,” will necessitate increases in premium levels.

Tax Impact of Health Care Reform

The cost of the provisions in the health care reform law expanding coverage to those without insurance is expected to reach as high as \$940 billion over the next ten years, according to the Congressional Budget Office (CBO) estimations. The proposed expenditures to achieve enhanced coverage will be paid for by a variety of new taxes, including an increased Medicare tax on high income individuals, taxes on insurance premiums, new taxes on medical devices, and an excise tax imposed on high premium “Cadillac” insurance plans.

Five More States Join Florida-Led Lawsuit Challenging Health Care Overhaul

A joint lawsuit led by Florida, which was filed on March 23, now includes 18 states. The suit claims that the new health care law violates state government rights outlined in the Constitution and that the law will force massive new spending on hard-pressed state governments. Virginia has filed a separate suit, arguing that the law’s requirement that individuals buy coverage violates a Virginia state law that exempts Virginians from federal fines imposed for not owning health insurance.

The Justice Department has promised to fight any challenges, insisting that the law is constitutional. The White House also predicted that such suits will fail. Health and Human Services Secretary Kathleen Sebelius said Tuesday that the vast majority of state attorneys general filing challenges to the constitutionality of the health overhaul law do so because they are seeking higher political office.

At least six states are also pushing for legislation to block abortion coverage in some health plans. Since the beginning of 2010, legislation blocking abortion coverage in exchange plans has been introduced in five state legislatures.

CLIMATE CHANGE/ ENVIRONMENT

Health Care Law Excludes Black Liquor from Cellulosic Tax Credit

Under the newly signed health care reconciliation bill, the “fixes” legislation to the larger health care reform measure, paper companies can no longer claim a biofuel tax credit for their production of a wood-pulping byproduct known as “black liquor.” This byproduct is used as a biofuel to generate electricity for paper-making companies.

Senate Trio Hopes for Earth Day Climate Bill Unveiling

Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joe Lieberman (I-CT) hope to reveal their climate bill during the week celebrating the 40th anniversary of Earth Day on April 22. The bill is expected to include sector-specific emission limits for power plants starting in 2012. Emissions limits will hit manufactures four years later. Additionally, the bill likely will send all revenue generated by the sale of utility industry emission allowances back to consumers through local distribution companies.

Obama Administration Announces Offshore Drilling Plan

In hopes to win Republican support for his broader energy agenda, President Obama announced a five-year plan for energy development. The plan would allow new oil and gas leasing in federal waters off the shores of the mid-Atlantic and southeastern United States and the Gulf of Mexico. The plan restricts drilling along the North Atlantic coast, the Pacific Coast, and Alaska’s Bristol Bay. Some Republicans are critical of the policy, saying that it would keep a majority of offshore resources off-limits to development.

Murkowski Issues Statement on EPA Response

On Monday, March 29, Senator Lisa Murkowski (R-AK) released a statement criticizing Environmental Protection Agency (EPA) Administrator Lisa Jackson for failing to “shed any light” on how the EPA plans to regulate greenhouse gas emissions from stationary industrial sources. Earlier this month, Sen. Murkowski sent a series of detailed questions to Jackson. Sen. Murkowski says that she failed to get an adequate response to these questions.

Derivatives Language to Come from Lincoln, Chambliss

Senate Banking Chairman Chris Dodd's (D-CT) derivatives proposal is rumored to be a placeholder in the financial reform bill. This is because Chairman Dodd's language is too strong to pass the Senate, as it does not provide an adequate exemption for end users conducting legitimate hedging activities. Dodd's derivatives language will likely be replaced with a compromise negotiated by Agriculture Committee Chair Blanche Lincoln (D-AR) and Agriculture Ranking Member Saxby Chambliss (R-GA). Because voters cannot understand derivatives reform, it will be easy for Democrats to concede on weaker derivatives reform. However, the White House is advocating for strong derivatives regulation. Senator Dick Durbin (D-IL) recently met with pro-reform groups and encouraged them to focus on derivatives instead of consumer protection. Also, House Financial Services Chair Barney Frank recently said he regrets the derivatives provision that appears in his House reform bill, which is weaker than Dodd's derivatives language.

Senate Climate Bill to Include “Terminal Rack” Tax?

Climate legislation being crafted by Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joe Lieberman (I-CT) could include an oil-industry tax at the "terminal rack," the point at which refined oil products wait to be shipped to their retail destinations. The purpose would be to encourage more efficient transportation. The tax revenues could head to the Highway Trust Fund, pay for green projects or for highway repairs that would otherwise be paid for by the trust fund. The proposed climate bill will probably be unveiled on April 22, although passage in the Senate before the midterm elections appears to be unlikely.

A coalition has formed to encourage lawmakers to spend tax revenue on transportation infrastructure. The coalition includes unions, road builders, contractors, and state transportation departments.

BANKRUPTCY, CORPORATE TAXATION AND EXECUTIVE COMPENSATION

Obama Budget Proposes LIFO Repeal Starting in 2012

LIFO is the tax-friendly “last in, first out” method of accounting for inventory that has become increasingly touchy in recent years. It keeps lower-priced inventory on the books and expenses more recently purchased, usually higher-priced inventory, which suppresses the immediate tax liability. The proposed budget suggests a LIFO repeal would have no impact on the federal budget until 2012; but projects revenue of up to \$61 billion through 2019 that would help offset the federal deficit.

The debate around LIFO has erupted in recent years in the context of a U.S. move to adopt International Financial Reporting Standards. While U.S. Generally Accepted Accounting Principles permit the use of LIFO in financial reporting, IFRS does not. That already has U.S. companies concerned they will have to give up their LIFO ways as the United States moves closer to adopting IFRS for financial reporting purposes.

Also significant, is another line item in the budget plan to “implement international enforcement, reform deferral, and other tax reform policies.” Though offering no further detail on what those proposals mean, the plan provides for an additional \$210 billion through 2019 as a result of them. According to sources, the administration apparently is planning increased enforcement of transfer pricing, or the tax

related to inter-company transfer across international borders, which could include taxing companies on profits earned outside the United States currently instead of when they are repatriated (or brought into the U.S. parent company).

Despite SEC Rules, It's Tough To Track Executive Pay

Despite the SEC's efforts to force companies to disclose executive compensation in a clear, straightforward manner, investors can still easily get lost trying to sort out the numbers. Many companies add pages of elaborate footnotes, caveats, and tables to help explain the various pieces of compensation, ranging from stock awards, different kinds of bonuses, and retirement plans. In many cases, for instance, executives won't receive all of the stock awards or bonuses unless they remain with the company for a certain number of years or hit performance targets.

Boeing Complains About Losing Health Care Tax Break

Since health care reform became law, some of the country's largest companies have complained about a provision that preserves a federal subsidy they receive for providing retirees with prescription drug coverage, but prevents them from deducting the subsidy from their taxes. Boeing Co. is the latest corporation to complain, announcing that it expects to take a \$150 million tax hit because of the new law. An association representing 300 of the largest U.S. corporations is pushing for a repeal of the provision that ends the tax break on the government subsidy.

Administration Seeks to Change Pay Incentives at Major Firms

When the Obama administration imposed restrictions on executive pay last year at some of the largest companies the government had bailed out, officials said they were aiming to set a new standard for compensation across corporate America that would discourage risky business practices. But as firms begin to disclose last year's bonuses ahead of annual shareholder meetings, it is becoming clear that companies across a wide range of industries are paying executives in ways that officials worry will not discourage the kind of excessive short-term risk-taking that led to the financial crisis.

What the Top U.S. Companies Pay in Taxes

The Obama administration has proposed doing away with tax deferrals on overseas income. If the plan passes, a U.S. company that pays a 25 percent tax on profits in China would have to pay an additional 10 percent income tax to Uncle Sam to bring it up to the 35 percent corporate rate. The Tax Foundation has said that eliminating deferrals would put U.S. companies on an unlevel playing field, especially if competing with the likes of Germany, which only taxes companies on domestic operations.

Critics Say Funds Should Do More to Police Corporate Pay

Over the past 30 years, as retirement plans such as 401(k)s replaced pension funds as the retirement engine for millions of Americans, mutual funds became the largest shareholders at most big U.S. corporations. Not only do they and other corporate shareholders get to vote on company directors, who approve executive-compensation deals, they sometimes have a nonbinding say on pay matters as well.

VAT: Will the U.S. Adopt a Value-Added Tax?

White House adviser, Paul Volcker, said that the U.S. should consider using a European-style value added tax (VAT) to reduce the climbing federal deficit, which is approaching \$13.8 trillion dollars. A VAT can be assessed in several different ways. In the most common method, the VAT is assessed on a good at each stage of production and distribution – when the raw material is sold, when the product is manufactured, when a store stocks up, and when the consumer buys it. When a business calculates its VAT payment, it deducts the tax paid at the previous stage, based on records every company along the chain keeps.

BROADBAND, BROADCAST AND INTELLECTUAL PROPERTY

Obama Signs Short-Term Extension of Satellite TV License; Senate Passes 10-Year Extension

On March 26, President Barack Obama signed legislation allowing an additional 30-day extension of the statutory license allowing satellite television providers to retransmit local network signals to their customers. On the same date, the Senate unanimously passed the Satellite Television Extension and Localism Act (STELA), which would renew the statutory license for ten years. Previous reauthorizations of the license lasted for five-year periods. Other similar bills will need to be reconciled before the House makes a decision regarding STELA.

Telecom Giants Oppose Increased Regulation

The nation's largest telecommunications companies have begun fighting against increased regulation proposed in the National Broadband Plan. In a Wall Street Journal editorial, Google CEO Eric Schmidt and Verizon CEO Ivan Seidenberg called on the Federal Communications Commission (FCC) to apply "minimal regulation" on the Internet. In addition, Verizon joined AT&T in filing a petition with the FCC opposing conditions on a satellite broadband merger that would exclude them from partnering with the new company. All of these actions seem aimed at countering efforts to reclassify broadband as a common carrier service. Republican FCC Chairman Robert McDowell has weighed in against increased broadband regulation, as well. McDowell submitted an op-ed to the Washington Post touting the success of the Internet sector and warning against the consequences of increased regulation.

FCC Announces Broadband Agenda

The Federal Communications Commission (FCC) will begin releasing its national broadband policies at its meeting on April 21. The FCC is expected to begin with USF reform, mobile data roaming, set-top-box reform and cybersecurity. Partially in anticipation of this meeting, the FCC has released an ambitious 2010 "Broadband Action Agenda" that calls for significant action on the National Broadband Plan's proposals despite the D.C. Circuit's *Comcast* decision.

Broadcasters Battle FCC's Spectrum Plan

More than 500 broadcasters have visited Capitol Hill during the past month to lobby against the National Broadband Plan's spectrum reallocation proposals. The National Broadband Plan proposes an auction of up to 120 MHz of spectrum from television broadcasters.

Court Curbs FCC Authority

On April 6, a federal appellate court ruled that the Federal Communications Commission (FCC) lacked the authority to require Comcast to treat all Internet traffic equally on its network. The ruling calls into question the FCC's ability to enact several major portions of the National Broadband Plan, including network neutrality rules and Universal Service Fund reforms. Indeed, the FCC has acknowledged that the decision "invalidated the prior Commission's approach to preserving an open Internet." Many analysts believe that the FCC's next move will be to reclassify broadband as a "common carrier" service. Despite the ruling, however, the FCC plans to move forward quickly on many of the key recommendations of the broadband plan.

Second Round Broadband Stimulus Applications Total \$11 Billion

The National Telecommunications and Information Administration (NTIA) received 867 applications second round broadband stimulus funding applications totaling \$11 billion in proposed grant funding. NTIA said applications came in from a diverse range of parties including state, local, and tribal governments; nonprofits; industry; anchor institutions, such as libraries, universities, community colleges, and hospitals; public safety organizations; and other entities in rural, suburban, and urban areas.

AUTO INDUSTRY

Ford Finds Buyer for Volvo

The independent Chinese automaker Zhejiang Geely Holding Group has signed a binding deal to purchase Ford's Volvo unit for \$1.8 billion. Ford has been trying to sell Volvo since 2008. Ford paid \$6.45 billion for Volvo in 1999.

Chrysler CEO Expects Double Sales

Chrysler CEO Sergio Marchionne said that his company will break even this year and that Chrysler sales will double in five years.

GM Posts Loss, Shows Strong March Sales

GM posted a \$4.3 billion loss in the second half of 2009. While the company admits that it has a long way to go, some GM officials believe that it may achieve profitability this year.

However, both GM and Ford had strong sales in March. GM sales were up 21 percent over last March, and up 43 percent in its four core brands (Buick, GMC, Chevrolet and Cadillac), while Ford's sales were up almost 40 percent. Ford's share of the individual retail market rose for the seventeenth time in 18 months. In contrast, Chrysler sales fell 8 percent.

Pension Trouble for Automakers

GM and Chrysler will need to return to profitability in order to maintain the solvency of their pension plans. GM and Chrysler's pension plans are underfunded by a total of \$17 billion dollars.

NHTSA Fines Toyota

The National Highway Traffic Safety Administration is fining Toyota the maximum amount allowed by law – \$16.38 million – for waiting more than four months to notify the government of defective gas pedals. While the fine is by far the largest the agency has ever assessed against an automaker, analysts believe that the amount is far too small to deter automakers from repeating Toyota's actions.

LABOR AND PENSIONS

Specter Outlines Proposal for Workers' Bill of Rights

Recently, the Pennsylvania AFL-CIO endorsed Senator Arlen Specter's (D-PA) candidacy for Senate reelection. At an April 1 meeting of American steelworkers, Specter outlined a Workers' Bill of Rights aimed at helping workers. As part of that effort, Specter plans to encourage legislation which would: (1) strictly enforce U.S. trade laws, (2) offer more efficient remedies for illegal trade claims, (3) remove the President's authority to overrule International Trade Commission recommendations, (4) require China to end its practice of pegging currency to the U.S. dollar, and (5) promote the economic stimulus package's "Buy American" initiatives.

ESTATE TAX

Estate Taxes In Flux: Is The Silver Spoon Tarnished?

On February 2, Treasury Secretary Timothy Geithner and Senate Finance Committee Chairman Max Baucus (D-MT) said that they supported extending the 2009 estate-tax rates to 2010, and that the tax increase should be retroactive to January 1, 2010. Until 2009, tax basis was relatively easy to determine on inherited assets-it was the fair value at death. But if the repeal remains real, the carryover

basis rules require that the decedent's initial purchase price be determined. Determining tax basis will get harder for wealthy heirs who will need to consider far more holdings with lower basis than before.

Millionaires' Group Willing To Pay More

On April 6, a group of wealthy individuals called on Congress to go further than President Obama and let taxes go up for those earning less than \$200,000 and apply a steeper estate tax to heirs of the richest families. The group said that the tax cuts enacted in 2001 and 2003 under former President George W. Bush, set to lapse January 1, should be allowed to expire for the top 5 percent of income earners. That would apply the looming tax increases to a broader group than the roughly 2 percent Obama is targeting – individuals earning more than \$200,000 and households with more than \$250,000 in annual income.

Also, the group said that Congress should go further than Obama and most Democrats by imposing a graduated estate tax that hits the largest inheritances the hardest. Obama would reinstate and make permanent the 2009 rate of 45 percent, with an exemption for up to \$3.5 million per spouse. They support a proposal from Rep. Jim McDermott (D-WA) which would cost less. His bill would exempt the first \$2 million from the estate tax; apply a 45 percent tax to estates worth between \$2 million and \$5 million; raise the rate to 50 percent for asset values between \$5 million and \$10 million, and top out at 55 percent for inherited assets worth more than \$10 million.

HIGHER EDUCATION

Obama Signs Higher Education, Health Bill into Law

On Tuesday, March 30, President Obama traveled to Northern Virginia Community College in Alexandria, Virginia, to sign H.R. 4872 into law. H.R. 4872 is the second half of President Obama's health care overhaul. The bill moved through Congress using budget reconciliation procedures and increases the subsidies available to individuals to purchase health insurance starting in 2014, along with taxes and fees to pay for an expansion in coverage. It also makes the federal government the sole originator of student loans for postsecondary education, caps repayment of loans at 10 percent of income for new borrowers starting in 2014, and increases both the number and size of Pell grants for low-income students.

Judge Rules Myriad's Gene Patents Invalid

The *Chronicle of Higher Education* is reporting that the court ruling against Myriad and the University of Utah may signal a trend of questioning genetic patent rights. This would have broad implications for academic-industry partnerships. Judge Robert W. Sweet issued a March 29 ruling that invalidated the University of Utah's patent claims on genes linked to cancer in women and ruled that isolated DNA sequences are not patentable subject matter.

The case, *Ass'n for Molecular Pathology v. U.S. Patent & Trademark Office*, challenges a claim by Myriad Genetics, Inc. to own the rights to test people for variations in two genes whose mutations are associated with an elevated risk of cancer. A co-founder of Myriad, Mark H. Skolnick, identified the significance of these genes while working as a professor of genetic epidemiology at the University of Utah.

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We cover all regulated sectors through Public Insight's carefully-recruited and pre-qualified Analyst Network members, based in each of the 50 U.S. states, all key municipalities, Washington D.C., and various international jurisdictions.

Each week, our proprietary Regulatory Alpha newsletter provides sector-by-sector updates of the key policy and regulatory developments that we believe may have impacts on your portfolio and be relevant to your investment decision-making processes.

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