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## What a Republican-Controlled House Means for the Industry

By Peter Ortiz November 9, 2010

The recent Republican landslide that handed the GOP control of the House could bode well for the mutual fund industry as it faces a number of new requirements under the Dodd-Frank Act.

Though controlling one legislative body is not enough to lead to an outright repeal of Dodd-Frank, Republican legislators are positioned to help the industry eliminate, delay or water down particularly onerous provisions of the financial reform law and other measures, say industry lawyers.

“Keep in mind that the House controls the purse strings, which is critical when it comes to rulemaking,” says Dan Crowley, partner at **K&L Gates**, who served as the general counsel to former House speaker Newt Gingrich from 1998 to 1999. “As a practical matter, the congressional intent is whatever the person holding the gavel on the oversight committee says it is.”

The House Republicans’ focus during the lame-duck session will be on getting the Bush tax cuts extended, which would favor financial services in general, industry sources say. Health care will garner much of the Republicans’ attention once they officially assume the majority in January, while Dodd-Frank will be a core focus, Crowley says.

Mutual funds were largely not impacted by Dodd-Frank, but several issues, such as systemic risk, fiduciary duty for brokers, the Volcker rule, over-the-counter derivatives reform, regulation of municipal securities advisors and securitization and risk retention, are likely to be of interest to funds, Crowley says.

Many worry that potential reforms aimed at money market funds could hurt their competitiveness. The Securities and Exchange Commission is now seeking comment on possible reforms detailed in the President’s Working Group Report on Money Market Fund Reform. The working group started after the Reserve Primary Fund broke the buck in September 2008 and is aimed at mitigating money funds’ susceptibility to runs. The report recommends that more should be done to reduce systemic risk, and while not endorsing adoption of a floating rate net asset value and recognizing the potential risks, it lists this as a potential option. The industry has vehemently opposed a floating NAV.

Under Dodd-Frank, money market funds also may have to contend with a new regulator. The law created the Financial Stability Oversight Council, which is charged with selecting non-bank financial companies that pose systemic risk to the U.S. economy. The council didn’t single out money funds in a recent advance notice of proposed rulemaking, but it did unnerve some by inquiring how it should interpret the financial support some firms provide to investment vehicles sponsored or managed by the firm. To many, the inquiry highlights the council’s concern with money market funds’ potential for systemic risk.

Additionally, the council is dominated by banking regulators, who represent an industry that has long championed a regulatory regime ill-suited for money market funds, sources say. Once the council determines

which companies pose a systemic risk, it will designate the Board of Governors of the Federal Reserve System as a regulator of these firms.

But having a Republican-controlled House lessens the likelihood of regulators' imposing unfavorable rules on money funds. Republicans will want regulators to approach the regulatory process from a capital markets, costs-versus-benefits analysis standpoint, not a bank-centric, safety-and-soundness prism, Crowley says.

"I think for financial service providers in general this is beneficial because it gives them the ability to try and change problematic rules," he says.

Tom Gorman, partner at **Porter Wright**, says an outright repeal of Dodd-Frank is unrealistic, but says House Republicans could help the industry by hampering the rulemaking efforts of regulators. This could lead to appropriation bills' being used as "bargaining chips for other items, like derivative regulation, which is a key target," he writes in an e-mail response to questions.

"All appropriation bills start in the House, which means they have to come out of a House committee that will be chaired by a Republican," Gorman writes, noting that Republicans also can hold hearings on items they don't like. "If [regulators'] budgets are cut, it may slow the issuance of new regulations and inspections, and hinder enforcement."

The fund industry also is likely to get a reprieve from recent worries, such as the strong focus on 401(k) disclosure under a Democratic-led House, says Niels Holch, president of the Coalition of Mutual Fund Investors and former chief of staff to Senate minority leader Mitch McConnell. Holch says that though the fund industry, in general, has had good relationships with both parties, Republicans are seen as more business friendly and not likely to tinker with contentious issues.

Michael Rosella, chair of the investment and management practice at **Paul Hastings**, agrees that a Republican-led House provides the industry with greater leverage in slowing down or reversing unfavorable regulatory measures.

But Tamar Frankel, professor of law at Boston University School of Law, says that despite the changes in the House, the SEC commissioners remain the same, and that the majority have sided with greater regulation on behalf of protecting investors against risk.

"You still have a commission that wants to tighten and rein in some problems," Frankel says. "So I wouldn't jump up and down so quickly to assume that we will go back to the go-go years."

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