# THE FINANCIAL CHOICE ACT 2.0, LEGISLATIVE TEXT REVEALED

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**Public Policy and Law Alert**

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On April 19, 2017, House Financial Services Committee ("HFSC") Chairman Jeb Hensarling (R-TX) released an updated version of the Financial CHOICE Act ("FCA 2.0"), a discussion draft that would reform the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The discussion draft builds on a previous version of the bill ("FCA 1.0" or H.R.5983 in the 114th Congress), which was introduced by Chairman Hensarling and passed by the HFSC last year.

Although large portions of the legislative text remain unchanged from FCA 1.0, FCA 2.0 generally provides even more regulatory relief. This may provide the House with additional negotiating room as the bill advances through the legislative process, particularly as it moves through the Senate where it will need bipartisan support to garner the necessary 60 votes.

This alert provides a high-level overview of FCA 2.0. The FCA 2.0 discussion draft text can be found here. A summary of the differences between FCA 1.0 and FCA 2.0 can be found here. For further background on the bill, please see our previous alerts. (The Financial CHOICE Act; Legislative Text Revealed, The Financial CHOICE Act; Dodd-Frank Reform (Not Repeal), and Details Emerge about the Financial CHOICE Act).

## CFPB REFORMS

One of the most notable revisions is preservation of the single-director structure of the Consumer Financial Protection Bureau ("CFPB"). However, the director would be removable by the President at-will, and the CFPB would be restructured as a law enforcement agency--without rulemaking authority--similar to the Federal Trade Commission. In addition, the FCA 2.0 seeks to repeal the CFPB's unfair, deceptive, or abusive acts or practices authority which was granted by the Dodd-Frank Act and has become a favored enforcement tool for the CFPB.

## BANK CAPITAL REFORMS

Chairman Hensarling has also revised the bill's "strongly capitalized, well-managed banking organization" regulatory relief title which would exempt banking organizations from capital and liquidity requirements. Under the original proposal, the requirements for relief were an average leverage ratio of 10% and a CAMELS composite rating of 1 or 2. The FCA 2.0 reduces the requirements for regulatory relief by removing the need for a CAMELS rating of 1 or 2. Also important to note, the FCA 2.0 would expand the regulatory relief under the title to include an exemption from stress tests and Comprehensive Capital Analysis and Review.

## CFTC REFORMS

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Numerous provisions contained in the FCA 1.0 instituting Commodity Futures Trading Commission ("CFTC") reforms have been removed. Specifically, the FCA 2.0 no longer requires the CFTC to harmonize rulemakings with the Securities and Exchange Commission ("SEC") and promulgate a rule regarding the cross-border regulation of derivatives. Many of the CFTC reform provisions that have been removed have been included in the House-passed CFTC reauthorization bill (H.R. 238), such as the requirement for rulemaking on the cross-border regulation of derivatives.

## FIDUCIARY DUTY RULE

FCA 2.0 takes a different approach for the Department of Labor's ("DOL") Fiduciary Duty Rule. Under the previous proposal, the DOL was prohibited from issuing a Fiduciary Duty Rule until 60 days after the SEC issues a rule. The FCA 2.0 abandons the time limit for a requirement that the DOL only issue a Fiduciary Duty Rule that is "substantially similar" to the SEC's rule. Since the SEC has not issued a Fiduciary Duty Rule, this provision would prohibit the DOL Fiduciary Duty Rule from becoming effective.

## PROXY ACCESS REFORM

FCA 2.0 amends requirements for shareholder proposals and prohibits the SEC from requiring use of a universal proxy ballot. Shareholders would be required to have 1 percent ownership for three years to submit a proposal as opposed to the current requirement that allows shareholders to submit a proposal if they have 1 percent ownership or $2,000 worth of stock for one year.

## WHAT HAPPENS NEXT?

The HFSC is scheduled to hold a hearing to discuss the FCA 2.0 on Wednesday, April 26 at 10:00 a.m. The bill is expected to be marked-up in early-May. In contrast to the markup in the 114th Congress, where the only amendment was an amendment in the nature of a substitute offered by Chairman Hensarling, Democrats are expected to offer numerous amendments, many of which will likely fail. The measure will almost certainly be voted out of the HFSC--probably along party lines--which sets the stage for passage by the House. A House vote could occur before the August recess.

The Senate Banking Committee leadership has indicated an interest in pursuing some Dodd-Frank reforms, possibly including provisions of the FCA. As noted above, a Senate Banking Committee package will likely require bipartisan support in order to garner sufficient votes to invoke cloture and block a potential filibuster.

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