Charles Richardson and Daniel Lightfoot, of Faegre Baker Daniels
08:44, 02 July 2014
TAGS: REGULATION, LEGAL FOCUS, USA & CANADA, UNITED STATES

View from Washington

With the US Congressional primary season well under way and the mid-term elections just around the corner, the 113th Congress continues to make waves for the US insurance world

With the US Congressional primary season well under way and the mid-term elections just around the corner, the 113th Congress continues to make (or threaten) waves for the US insurance world.

The legacy of the Dodd-Frank Act is fuelling discussion and debate as federal agencies and legislators work to modernise insurance regulation and improve oversight, while Congress revisits re-authorisations before the sun sets on a number of key provisions.

All of this plays against a backdrop of potential electoral results and speculation over what will happen if Republicans get control of both houses of Congress.

Perspective

A lot has happened in the past year, here and abroad. Financial regulators have continued to work on a long and complex list of regulations and reports. This fact alone has created uncertainty for many players in the financial services industry.

The Financial Stability Oversight Council (FSOC) has tapped two insurance companies as being systemically significant, and the Federal Reserve is doing its thing. State regulators continue to work on their agenda.

The Federal Insurance Office (FIO) is more fully staffed and operational than it was a year ago, and its modernisation report was issued December 12, 2013. FIO director, Michael McRaith, has taken on an increasingly important role in the International Association of Insurance Supervisors and is necessarily devoting much of his time to that new role. Ditto state regulators. The “Too Big to Fail” debate continues, with Congress weighing in regularly.

As we think back on September 2008, and the unprecedented economic turmoil that followed – remember on March 9, 2009, the stock market hit 6547, 40% of what it is today – it is heartening that our part of the financial services sector has largely performed well.

Stock prices are up, most institutions are deemed to be well capitalised and healthy, and deal flows are increasing.

However, economic uncertainty remains as high unemployment rates continue, and the US experiences historically low post-recession economic growth and interest rates. We increasingly worry as a country about our ageing demographics, the financial security of people in retirement and whether there will ever be another singer like Kate Smith and her song “God Bless America”.

Woody Allen once said his idea of hell was to be buried alive with an insurance salesman. I do not think anyone would accuse our industry of being a sleepy, boring one any more. The industry is adapting to a global marketplace, and that is an imperative. After all, if you do not change and adapt, you can be a rooster today but a feather duster tomorrow.

TRIA extension

The Terrorism Risk Insurance Act (TRIA), enacted in the wake of 9/11, has safeguarded Americans and the US economy against devastation by providing for a federal backstop to ensure adequate insurance coverage. Set to expire at the end of 2014, both the House and the Senate have worked to craft proposals to extend TRIA.

Senate bill S. 2244, the Terrorism Risk Insurance Program Reauthorization Act of 2014, was approved on June 3, 2014, by the Senate Banking Committee and now awaits a vote by the full Senate. The Senate version would extend TRIA for seven more years while increasing insurers’ co-pay from 15% to 20% and increasing the mandatory recoupment threshold from $27.5bn to $37.5bn.

The House Financial Services Committee unveiled its TRIA extension bill on June 12, 2014. HR 4871 contains key differences from S 2244, namely its shorter extension period of five years. Another provision would phase in an increase in the trigger amount for non-nuclear, biological, radiological and chemical events, from $100m to $500m by 2019. The Committee approved HR 4871 on June 20, 2014.

Despite their differences, each bill addresses a number of industry concerns, and all constituencies are hopeful an agreement will be reached to extend TRIA before it expires.

Congressional hearings on capital requirements

In the wake of Dodd-Frank reform, agencies and legislators jumped on the bandwagon to impose more regulation on the US banking/financial service sector.

However, as the economy has begun to crawl out of the dark hole that was dug in 2008-09, many are scrutinising a number of Dodd-Frank provisions as hindrances to the journey to economic recovery.

One provision that has been the subject of debate in Congress is the issue of capital standards imposed on the insurance industry. Section 171 of the Dodd-Frank Act, known as “the Collins amendment” after its author, Susan Collins (R-ME), broadly defines capital standards requirements for banks and insurance companies.

Recently, the insurance industry has critiqued this provision, stating “bank-like” capital standards requirements for insurance companies are not appropriate due to the fundamental difference between banks and insurance companies.

In her testimony in front of the Senate Banking Committee in March 2014, Senator Collins supported the insurance industry’s contention. Her legislation, S 2270, which passed the Senate in early June 2014, seeks to clarify the difference between bank and insurance capital standards by allowing the Federal Reserve to apply insurance-based capital standards to insurance entities while maintaining “bank-centric” capital standards for banks.

The bill would give the Federal Reserve more flexibility to differentiate between capital standards for banks and insurance companies, while still providing oversight to prevent future financial crises. The House version, HR 4510, introduced by Representatives Gary Miller (R-CA-31) and Carolyn McCarthy (D-NY-04), was the subject of hearings before the sub-committee on housing and insurance in early May 2014, and although the bipartisan House bill remains in committee, it has a good chance of passing.

Two attempts to “rein in” FSOC

On June 20, 2014, the House Financial Services Committee passed two measures designed to rein in, at least temporarily, the Financial Stability Council created by the Dodd-Frank Act to designate firms as systemically significant (called SIFIs) and, thus, needing extra federal regulation.

HR 4881, by Rep. Randy Neugebauer (R-TX), places a one-year moratorium on the authority of FSOC to make any determinations that an insurance company or asset manager should be designated as a SIFI (FSOC has already so designated AIG and Prudential). During the moratorium period, Congress would take a look at FSOC's process.

HR 4387, the "FSOC Transparency and Accountability Act," by Rep. Scott Garrett (R-NJ), increases scrutiny of FSOC's decisions to designate SIFIs and open FSOC's meetings to non-FSOC members (including House Financial Services and Senate Banking Committees).

It also permits any FSOC member to have one or more individuals on its staff attend a meeting of FSOC, including any meeting of representatives of the member agencies other than the members themselves.

While these bills could be considered on the House floor, it is unlikely the Senate would take them up this year.