



AMERICAN
BANKRUPTCY
INSTITUTE

2017 Midwest Regional Bankruptcy Seminar

Public and Governmental Policies in the Trump Administration in the Financial Services Arena

Matthew D. Cutts

Squire Patton Boggs; Washington, D.C.



Trump Effect and Market Movers: Policy Considerations for the Insolvency Industry

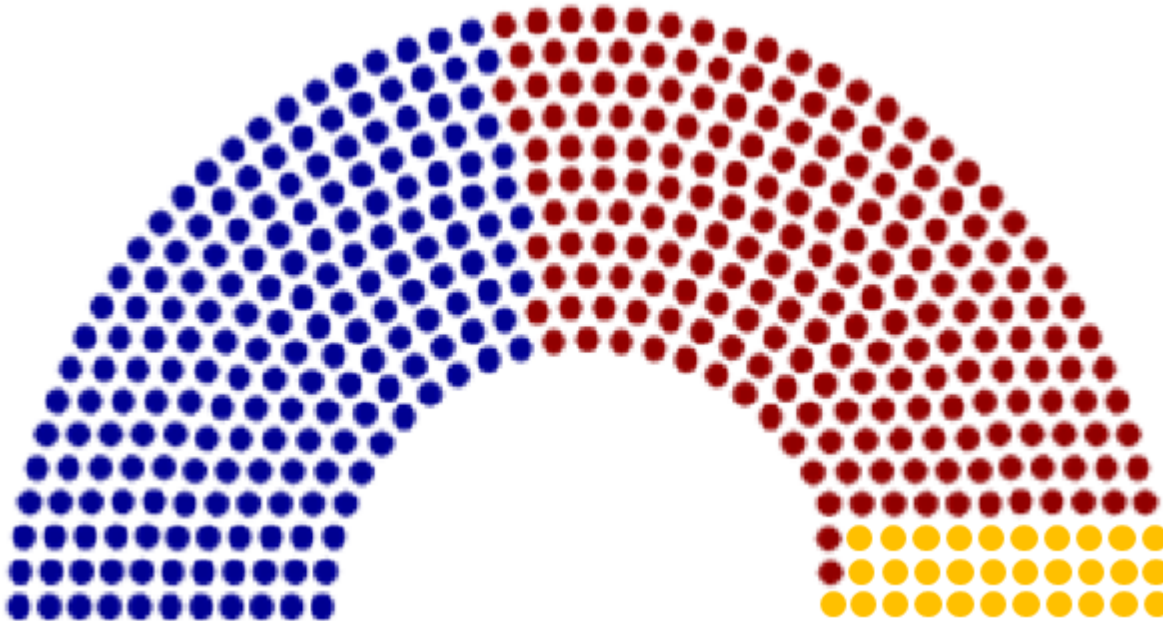
*American Bankruptcy Institute
Midwest Regional Bankruptcy Seminar*

August 24, 2017

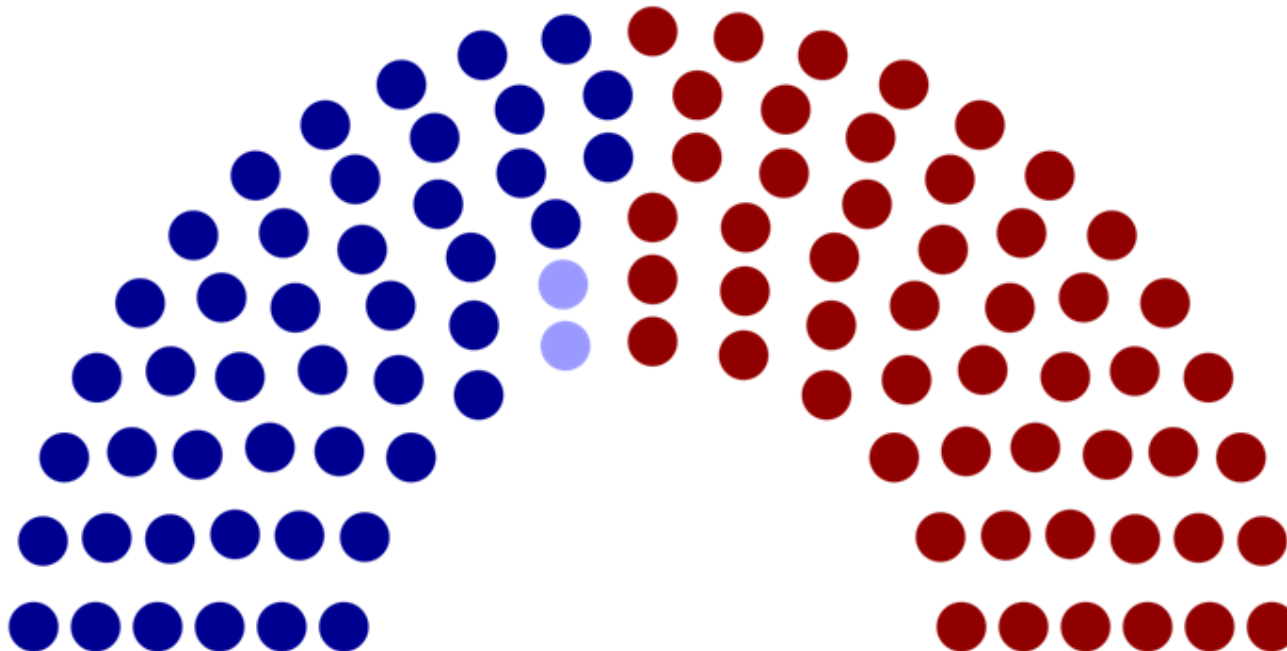


Post-2016 Election





- 240 Republicans (31 in House Freedom Caucus)
- 194 Democrats
- 1 vacancy
- Bills need at least 218 votes to pass (22 vote margin for Republicans)



- 52 Republicans
- 46 Democrats
- 2 Independents (Caucus with Democrats)
- No Filibuster-Proof Majority

Leadership Senate

Majority Leader: Mitch McConnell (R-KY)	Minority Leader: Chuck Schumer (D-NY)
Majority Whip: John Cornyn (R-TX)	Minority Whip: Dick Durbin (D-IL)

Leadership House

Speaker of the House: Paul Ryan (R-WI)	Minority Leader: Nancy Pelosi (D-CA)
Majority Leader: Kevin McCarthy (R-CA)	Minority Whip: Steny Hoyer (D-MD)

Senate Finance Committee

Chairman:
Orrin Hatch (R-UT)

Ranking Member:
Ron Wyden (D-OR)

Senate Banking Committee

Chairman:
Mike Crapo (R-ID)

Ranking Member:
Sherrod Brown (D-OH)

House Ways and Means Committee

Chairman:
Kevin Brady (R-TX)

Ranking Member:
Richard Neal (D-MA)

House Financial Services Committee

Chairman:
Jeb Hensarling (R-TX)

Ranking Member:
Maxine Waters (D-CA)

- Market Impact
 - S&P 500 is up ~15% since Election Day
 - “What the stock market is saying now: In Trump we trust” – MarketWatch
 - Confidence within business community may be waning
 - More worry about possible disruption in markets
 - Twitter
 - Boeing
 - Lockheed Martin
 - General Motors
 - Nordstrom
 - Amazon
- Key Players
 - Gary Cohn, National Economic Council (NEC) Director
 - Steven Mnuchin, Treasury Secretary
 - Wilbur Ross, Commerce Secretary
 - Robert Lighthizer, United States Trade Representative (USTR)
 - ~~Steve Bannon, White House Chief Strategist~~

- Executive Orders and Presidential Memoranda
 - ~~E.O. 13805—Establishing a Presidential Advisory Council on Infrastructure~~
 - E.O. 13777 – Regulatory Reform Task Forces Within Federal Agencies
 - E.O. 13772 – Review of Current Financial Services Laws and Regulations
 - E.O. 13771 – Reduction in the Current Number of Regulations
 - Presidential Memorandum – Review of the Orderly Liquidation Authority
 - Presidential Memorandum – Review of the Financial Stability Oversight Council (FSOC)
 - Presidential Memorandum – Review of the Department of Labor’s Fiduciary Rule

Market Movers



- House: “A Better Way” – Blueprint
 - Released in June 2016
 - Lowers the corporate tax rate from 35 to 20%
 - Restructures the corporate tax to convert it to a cash flow tax (immediate write offs for most capital expenditures and no deduction for net interest expense)
 - Proposes a Border Adjustment Tax (BAT) in which export receipts are not taxed and imports are taxed (further discussed later)
 - Creates a fully territorial tax system, exempting from U.S. tax 100% of dividends from foreign subsidiaries and imposing an 8.75% tax on accumulated offshore earnings
 - Taxes income derived from pass-through businesses at a maximum rate of 25%
 - Consolidates the current seven tax brackets into three, with rates of 12% (\$0 to \$37,650), 25% (\$37,650 to \$190,150), and 33% (\$190,150+)
 - The tax rates on investment income would also be narrowed and lowered to: 6% (\$0 to \$37,650), 12.5% (\$37,650 to \$190,150), and 16.5% (\$190,150+) based on the individual’s tax bracket

- Senate: Has not put forward a plan or major ideas yet
 - Chairman Hatch is leading effort in Senate
 - Corporate Integration
- Gary Cohn “leading” on President Trump’s plan for corporate and individual tax reform
 - Released in April, Trump’s two-page tax plan outline is light on details but provides room for negotiation
 - 15% business tax rate
 - Territorial tax system to “level the playing field for American companies”
 - One-time tax on trillions of dollars held overseas
 - Eliminates tax breaks for “special interests”
- “Big Six” meeting weekly to develop unified Republican proposal
 - NEC Director Cohn, Secretary Mnuchin, Leader McConnell, Hatch, Speaker Ryan, Chairman Brady
 - Big Six staffers meeting daily
 - Joint Statement released last month
 - High-level overview of tax reform principles on which there is agreement
 - Key to showing that tax reform does in fact have some momentum
 - Provided lawmakers with talking points for this month’s recess as they returned home

- Current Status
 - Big Six agreed to “set aside” BAT
 - BAT was a significant offset to pay for reducing corporate and individual tax rates (\$1-1.2 Trillion) and an anti-base erosion measure
 - Faced significant opposition from Senate Finance Committee members, other Senators and House members
- Timing
 - The goal remains to wrap-up the tax reform process and enact legislation this year:
 - **September**: Big Six may release an additional, more in-depth principles document (potentially four-to-six pages), which will guide the tax-writing committees as they finish drafting legislation that will move through regular order
 - » Once drafted, tax-writers will mark-up the bill in committee
 - **October**: The House will consider the bill
 - **November**: The Senate will consider the bill; it is unclear whether the House and Senate will need to conference their legislation

- **Healthcare**

- Although some Senate Republicans have advocated for moving on from healthcare reform, President Trump does not appear willing to let it go
 - The plan to dismantle the Affordable Care Act could spark new wave of healthcare company out-of-court restructurings

- **Puerto Rico**

- In May, Puerto Rico's federally appointed oversight board filed the largest municipal bankruptcy in U.S. history (\$72 billion in debt and near-insolvent public health and pension systems)
- Last year, Congress enacted a law called "Promesa" that gives insolvent territories a way to seek court protection from their creditors; work then began on a five-year fiscal reform plan

- **Trade**

- NAFTA renegotiations could also impact insolvency industry
 - **Key players:** USTR Robert Lighthizer and Assistant USTR for the Western Hemisphere John Melle (serving as the U.S. Chief Negotiator)
 - **Timing:** The parties concluded the first round of NAFTA renegotiation talks on August 20
 - » In a joint statement issued at the conclusion of the round, the parties provided few substantive details
 - » However, they confirmed that teams of experts discussed over two dozen negotiating topics, and "negotiating groups began work to advance text and agreed to provide additional text, comments or alternate proposals during the next two weeks"
 - Negotiators are expected to meet every three weeks for seven rounds, alternating between Canada, Mexico, and the U.S.
- Protectionist measures by the U.S. may trigger retaliatory actions that could hurt U.S. exporters' sales and lead to job cuts

Financial Services Reform and the Impact on the Insolvency Industry



Financial Services Regulatory Reform

- Possibility for partial overhaul of financial services regulation (Dodd-Frank)
- House Financial Services Committee Chairman Jeb Hensarling (R-TX)
 - Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs Act (CHOICE Act) – highlights include:
 - Provides an “off-ramp” from the post-Dodd-Frank supervisory regime and Basel III capital and liquidity standards for banking organizations that choose to maintain high levels of capital
 - Retroactively repeals the authority of the FSOC to designate nonbank firms as SIFIs
 - Imposes stricter accountability requirements on other financial regulators
 - Timing
 - CHOICE Act passed the House in June but unlikely to move forward in the Senate
- Senate Banking Committee Chairman Mike Crapo (R-ID) is expected to be active and willing to compromise
 - Likely to focus on finding middle ground with Democrats on more targeted regulatory relief efforts (i.e., community banks) instead of comprehensive overhaul
- SIFI Threshold
 - SIFI threshold that triggers enhanced prudential standards for financial institutions could be raised from its current level of \$50 billion
 - Recently, Secretary Mnuchin expressed support for raising the threshold to at least \$250 billion

Bankruptcy Reform

- Bankruptcy Provisions in the CHOICE Act
 - Reforms the bankruptcy process for financial firms with more than \$50 billion in assets
 - Replaces Dodd–Frank’s orderly liquidation authority (OLA) with a new bankruptcy process which would, among other provisions:
 - Involve a bankruptcy judge to oversee proceedings
 - Create a bridge company for failing firms
 - Appoint a special trustee to hold the firm’s securities
- Republicans split on OLA
 - Trade groups representing banks support it
 - But Chairman Hensarling and Senator Pat Toomey (R-PA) (Chairman of Senate Banking’s Financial Institutions and Consumer Protection Subcommittee) strongly oppose it
- Unclear how Trump Administration would reform bankruptcy code, but the CHOICE Act is likely to serve as the starting point for reform efforts
 - Gary Cohn
 - “No one can prove that orderly liquidation works”
 - “We’re exploring the different options out there, and we are comfortable we can come up with a suitable solution”

Questions and Comments?