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Financial Services Industry Back Under Congress' Microscope

Investigations into financial services companies are expected to heat up during the 117th Congress, with Democratic leadership already signaling interest

With a newly seated Democratic majority in both chambers, we anticipate heightened congressional oversight of the private sector, including particular attention on the financial services industry. That will bring investigations of certain industry practices, followed by high-profile hearings and public reports to build support for legislative priorities.

Influential Democrats now chair powerful committees in both chambers of Congress and are in the process of establishing their agendas for the next two years. The Senate's 50-50 split may limit the range of sweeping legislation that can be passed, but that will tend to drive more effort on the investigations and hearing fronts. Based on public statements during the past few months, as well as consistent messaging over the past few years, we expect committees with jurisdiction over the financial services industry will focus their investigative powers on several programmatic issues:

- ❖ **Private Equity**
- ❖ **Consumer Finance**
- ❖ **Fintech**
- ❖ **Environmental, Social, and Governance ("ESG") Issues**

After a brief survey of the key committees in each chamber, this alert will address each of these issues in turn.¹



Key Committees, Leadership

Both the House and Senate include multiple committees and subcommittees with jurisdiction to oversee aspects of the financial sector and active, powerful Chairs at the helm. While much of their work involves holding accountable the federal government agencies that regulate financial markets, focus has often shifted to private-sector companies and individuals viewed as central to, or emblematic of, particular issues. Even those reluctant to produce sensitive documents or become witnesses on the Hill can be pulled in, as most have subpoena power to compel cooperation. The following chart lists key committees, along with their leadership.

Committee / Subcommittee	Chair	Ranking Member
Senate Committee on Banking, Housing and Urban Affairs	Sherrod Brown (D-OH)	Pat Toomey (R-PA)
Senate Committee on Finance	Ron Wyden (D-OR)	Mike Crapo (R-ID)
Senate Permanent Subcommittee on Investigations	Tom Carper (D-DE)	Rob Portman (R-OH)
House Committee on Financial Services	Maxine Waters (D-CA)	Patrick McHenry (R-NC)
House Committee on Oversight & Reform	Carolyn Maloney (D-NY)	James Comer (R-KY)
House Committee on Energy & Commerce	Frank Pallone (D-NJ)	Cathy McMorris Rodgers (R-WA)
House Select Subcommittee on the Coronavirus	James Clyburn (D-SC)	Steve Scalise (R-LA)
House Ways and Means Subcommittee on Oversight	Bill Pascrell (D-NJ)	Mike Kelly (R-PA)
House Select Committee on Economic Disparity	not yet assigned	not yet assigned

Private Equity

The incoming congressional Democratic leadership has already pledged to focus more oversight on private equity firms during the 117th Congress. We expect the Senate Committee on Banking, Housing, and Urban Affairs (“Senate Banking”), chaired by Sen. Sherrod Brown (D-OH) to help lead that charge. Sen. Elizabeth Warren (D-MA) is expected to chair Senate Banking’s Subcommittee on Financial Institutions and Consumer Protection and has already announced her plans to “rein in the private equity industry,” to which Sen. Brown pledged his support, promising to hold hearings aimed at the industry.² Sen. Ron Wyden (D-OR), now chair of the Senate Committee on Finance (“Senate Finance”), has also expressed a desire to revisit tax benefits that could impact private equity firms’ profitability.³ In addition to these full committees, Sen. Tom Carper (D-DE) will chair the Permanent Subcommittee on Investigations (“PSI”) — one of the most powerful and dogged sources of congressional investigations — and is a member of a working group created by Sen. Warren and others last fall to “develop legislative proposals and conduct oversight focused on fundamentally reforming corporate governance.”⁴ PSI has led multiple investigations into the



financial sector when chaired by Democrats in the past and traditionally works on a bipartisan basis in a highly effective manner.⁵

On the House side, we also expect the Committee on Financial Services (“House Financial Services”) to continue pursuing an aggressive investigative agenda, centering in part around the private equity industry. House Financial Services Chair, Rep. Maxine Waters (D-CA), has been a vocal critic of private equity firms in the past and is expected to continue as such.⁶ In one sign of that committee’s eagerness to begin the new term, in December 2020 Rep. Waters provided then President-elect Biden with an extensive list of Trump-era financial policies she recommended be immediately reversed. Several of her recommendations related directly to the private equity industry, including reinstating and strengthening the Volcker Rule, which restricts commercial banks from investing in private equity funds, and restoring the Financial Stability Oversight Council and Office of Financial Research to full staffing levels to increase oversight of the industry.⁷

On the House Committee on Ways and Means, Rep. Bill Pascrell (D-NJ), who chairs its Subcommittee on Oversight, has the private equity industry on his oversight agenda, as well. On February 16, he introduced the Carried Interest Fairness Act, a bill designed to eliminate tax breaks for specific profits derived by private equity and hedge fund partners.⁸ Given his history as a fierce critic of the industry as a whole — once calling it a “cancerous influence” on American industries — we can expect Rep. Pascrell to use his position to apply significant legislative (and perhaps investigative) pressure to private equity firms.⁹

The Select Subcommittee on the Coronavirus, chaired by House Democratic Whip James Clyburn (D-SC), and the newly created Select Committee on Economic Disparity & Fairness in Growth may also use hearings related to economic inequality and fallout from the COVID-19 pandemic to pull private equity firms and other financial services companies under the congressional microscope.

Consumer Finance

We expect House Financial Services to take a lead role on investigations into consumer finance issues. In her letter to President Biden, described above, Rep. Waters recommended increased consumer safeguards around debt collection, student loans, credit services, and housing.¹⁰ Under Rep. Waters’ leadership, we expect the Committee to focus its investigatory powers on each of these consumer financial issues.¹¹ In the past, Rep. Waters has been an aggressive advocate for consumer protections, using congressional hearings to target executives from major financial institutions.¹² A recent press release made that point directly: “Congresswoman Waters has transformed the Committee to focus its agenda on fairness, protecting consumers and investors, and accountability for large financial institutions. She has made it a practice to call Committee hearings with CEOs of big financial institutions and companies to hold them accountable.”¹³

We also expect several Senate committees to be active in pursuing investigations into consumer-facing financial services firms. As chair of Senate Banking, Sen. Brown has already vowed to restore Consumer Financial Protection Bureau (“CFPB”) to its “full strength.”¹⁴ Sen. Wyden, chairman of Senate Finance, has a history of pursuing aggressive investigations into a wide range of financial service issues.¹⁵ And Sen. Warren, long a vocal advocate for consumer protection issues and an early champion of creating the CFPB, now sits on both Senate Banking and Senate Finance.

In addition to congressional investigations, private sector entities should be prepared for scrutiny stemming from congressional desire for increased CFPB enforcement. While the Bureau dialed back its enforcement efforts during the Trump administration,¹⁶ Democratic lawmakers have expressed frustration with that fact.¹⁷ Interim Director Dave Uejio has now announced that the Bureau’s top priorities moving forward will be providing relief for consumers facing hardship due to COVID-19 and addressing racial equity in the consumer finance industry.¹⁸ Those issues align with Congressional priorities, and Congress is likely to linger on companies spotlighted by early examples of the CFPB’s increased enforcement activity. That could include cases involving housing and retail home lending, debt collection,



student loans, credit reporting services, and COVID-related consumer protections, like eviction moratoriums and loan deferrals.¹⁹

Fintech

Companies in the financial technology sector — especially those garnering media attention — may also find themselves singled out for congressional oversight and investigations.

In the wake of the recent GameStop scandal, Sen. Brown and Rep. Waters have made clear that both the Senate and House would hold hearings to include fintech companies as witnesses and/or as the subjects of hearing questions.²⁰ On February 18, House Financial Services held the first of what will be a series of related hearings.²¹ A similar hearing by Senate Banking has been announced for the first half of March but was not yet scheduled when this alert was finalized.²² Given the vocal, bipartisan criticism from legislative opposites like Rep. Alexandria Ocasio-Cortez (D-NY) and Sen. Ted Cruz (R-TX), we expect congressional interest in the fintech industry to persist.²³

This recent, and quite sudden, interest in retail trading done in part over new fintech platforms is just one example of how Congress quickly can latch onto novel issues raised by the rapidly growing worlds of fintech and digital assets.

Environmental, Social, and Governance Issues

Executives, investors, and regulators alike are now focusing in earnest on how companies should tackle a broad array of environmental, social, and governmental (“ESG”) issues. Congress is also interested, including in how financial services companies are addressing issues like climate change, employee relations, and shareholder rights — both in terms of the financial services companies themselves and the operations that they help fund.²⁴ For example, House Financial Services’ Subcommittee on Investor Protection, Entrepreneurship and Capital Markets will convene a virtual hearing on February 25 titled “Climate Change and Social Responsibility: Helping Corporate Boards and Investors Make Decisions for a Sustainable World.”

Among the wide variety of ESG issues, we expect that diversity and inclusion will be a particular focus of Congress. House Financial Services’ Subcommittee on Diversity and Inclusion will continue to investigate and scrutinize financial companies’ records on diversity and inclusion. Rep. Joyce Beatty (D-OH), chairwoman of the Subcommittee, worked alongside Rep. Waters last term to compile an extensive report on the diversity practices of financial services companies, and both are expected to continue this investigative work during the 117th Congress.²⁵

In addition to the Subcommittee on Diversity and Inclusion, the House also possesses a newly-created Select Committee on Economic Disparity and Fairness in Growth. Although this committee does not have an independent subpoena power, it does have a broad mandate to investigate policies related to economic fairness, access to education, and workforce development.²⁶ We expect the Committee’s oversight efforts around diversity to involve a wide range of private-sector industries, including financial services.

Conclusion

Along with the issues outlined here, one other trend is inevitable — any major scandal or publicly reported high-profile regulatory investigation is also likely to draw congressional scrutiny. So financial services companies involved in large-scale investigations by the Securities and Exchange Commission, Department of Justice, groups of state attorneys general, or other financial regulators, should also be prepared to field questions from Congress at some point. Responding to Congressional investigators involves a different approach than litigating or navigating a regulatory investigation. Keeping an eye on how these committees’ priorities and areas of focus develop during the 117th Congress can help financial services companies be prepared for when that interest shifts in their direction.



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ABU DHABI	CHARLOTTE	GENEVA	MOSCOW	RIYADH	TOKYO
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AUSTIN	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	
BRUSSELS	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE	

¹ The authors are very grateful to Emma Rose for her assistance with research and drafting.

² Zach Warmbrodt, *Biden’s Wall Street backers face new threat from Warren*, POLITICO (Jan. 19, 2021), available [here](#).

³ Zach Warmbrodt, *Biden’s Wall Street backers face new threat from Warren*, POLITICO (Jan. 19, 2021), available [here](#).

⁴ Warren, Carper, Baldwin, and Warner Form Corporate Governance Working Group to Fundamentally Reform the 21st Century American Economy, Press Release (Oct. 30, 2020), available [here](#).

⁵ Niels Lesniewskit, *The Levin Legacy: Next-Gen Congressional Oversight*, ROLL CALL (Jun. 6, 2017), available [here](#).

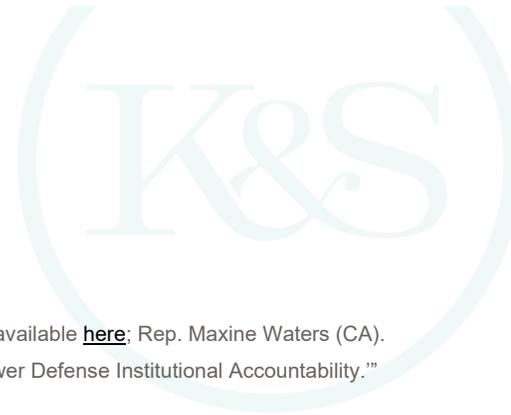
⁶ *Waters Calls Out Harmful Practices of Some Private Equity Firms*, U.S. House Committee on Financial Services (Nov. 19, 2019), available [here](#).

⁷ *Waters Provides Recommendations to President-Elect Biden on Trump Actions to Reverse*, U.S. House Committee on Financial Services (Dec. 4, 2020), available [here](#).

⁸ *Pascrell, Levin, Porter Move to Close Infamous Tax Loophole Favored by Wall Street Bankers*, Press Release (Feb. 16, 2020), available [here](#).

⁹ *Pascrell Blasts Private Equity Impact on Health Care Costs*, Press Release (Feb. 12, 2020), available [here](#).

¹⁰ *Waters Provides Recommendations to President-Elect Biden on Trump Actions to Reverse*, U.S. House Committee on Financial Services, Press Release (Dec. 4, 2020), available [here](#).



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- ¹¹ *E.g.*, Rep. Maxine Waters, *America Needs Emergency Rental Assistance Now*, MEDIUM (Jun. 29, 2020), available [here](#); Rep. Maxine Waters (CA). “Providing for Congressional Disapproval of Rule Submitted by Department of Education Relating to ‘Borrower Defense Institutional Accountability.’” *Congressional Record* 12:30 (Jun. 26, 2020) p. H2548, available [here](#).
- ¹² *Waters Announces Robinhood, Citadel, Melvin Capital, Reddit CEOs and Keith Gill to Testify at Committee Hearing*, U.S. House Committee on Financial Services, Press Release (Feb. 12, 2021), available [here](#).
- ¹³ *Waters Announces Robinhood, Citadel, Melvin Capital, Reddit CEOs and Keith Gill to Testify at Committee Hearing*, U.S. House Committee on Financial Services, Press Release (Feb. 12, 2021), available [here](#).
- ¹⁴ Sabrina Eaton, *Ohio’s Sherrod Brown plans to take on corporations as chair of Senate Banking Committee*, CLEVELAND.COM (Jan. 19, 2021), available [here](#).
- ¹⁵ Brian Schwartz, *Senate Finance Committee is gearing up to take on billionaires and dark money groups, Wyden says*, CNBC (Feb. 5, 2021), available [here](#).
- ¹⁶ *Dormant: The Consumer Financial Protection Bureau’s Law Enforcement Program in Decline*, Consumer Federation of America (Mar. 11, 2019), available [here](#).
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- ²⁵ Rep. Maxine Waters and Rep. Joyce Beatty, *Diversity and Inclusion: Holding America’s Large Banks Accountable*, U.S. House Committee on Financial Services (Feb. 2020), available [here](#).
- ²⁶ *Pelosi Announces Creation of Select Committee on Economic Disparity & Fairness in Growth*, Office of the Speaker of the House (Dec. 30, 2021), available [here](#).