

MORNING COLOR

January 9, 2020

Today's Driving Events

- **C-band on Pai's Mind Even Though It's Not on the FCC's Agenda:** Although the FCC will not consider an order to initiate the public auction process for the coveted C-band at its January 30th meeting, FCC Chairman Ajit Pai will have the commission take action to establish a fund aimed at closing the digital divide, and in the process, seeking to remove that issue as a political obstacle to conducting the C-band auction.
- **Search for Elusive PFAS Compromise Continues:** The House will consider today and ultimately pass a bill limiting the use of PFAS after Congress failed to pass compromise legislation on PFAS as part of the National Defense Authorization Act in December. However, the bill faces strong resistance in the GOP-controlled Senate, leaving any action to address PFAS likely coming from the state level at least through the remaining year of the first term of the Trump administration.
- **New SEC Effort Could Adversely Impact ICE, NDAQ, and CBOE:** The SEC initiated an effort yesterday geared toward modernizing the governance of the National Market System that would ultimately weaken the power of equity exchanges, primarily run by **Intercontinental Exchange Inc (ICE)**, **Nasdaq Inc (NDAQ)**, and **Cboe Global Markets Inc (CBOE)**, in operating the market data.

FCC Unveils Agenda for January Meeting: The C-band proceeding will not be taken up at this month's Federal Communications Commission (FCC) open meeting, as indicated by a [blog post published yesterday afternoon](#) by FCC Chairman Ajit Pai. While investors were cautiously optimistic that a C-band order would be included on the January 30th meeting agenda, we do not see waiting another month (or even two) as all that negative given the time it takes to redraft a completely new public auction order and the potential desire to have President Trump's impeachment trial over so that C-Band Alliance (CBA) critic Senator John Kennedy (R-LA) has less influence over the president. We continue to believe the CBA is working cooperatively with the FCC and still think there is a path forward that would ensure that they are sufficiently incentivized to move off the band in an

expeditious manner. As far as timing goes, we expect that an order will be taken up by the FCC at either next month's meeting or at the March meeting at the latest. Although the C-band item was not specifically mentioned by Pai in his blog post, the FCC's [recently announced \\$20.4 billion Rural Digital Opportunity Fund](#) was prominently discussed in the post, which we believe underscores Pai's desire to address lawmakers' concerns about the so-called digital divide and the need for additional rural broadband funding. **The new Rural Digital Opportunity Fund will receive a vote at this month's meeting, and we continue to believe Pai is pushing this measure as a way to ensure that he has adequate political cover on Capitol Hill in terms of addressing the digital divide, which is to say that this issue should not be an obstacle to moving forward on the C-band public auction.**

PFAS Legislation Gets House Vote: The House will begin consideration today of a bill that would require the federal government to take action to protect the population from per- and poly-fluoroalkyl (PFAS) contamination. The bill, known as the PFAS Action Act, follows on PFAS provisions that were under discussion to be included in the final version of the National Defense Authorization Act (NDAA) at the end of 2019 but many House Democrats believed that they did not go far enough, preventing an elusive compromise from being reached. Included among the provisions of the more stringent PFAS Action Act that is under consideration this week is one that would require the EPA to set a limit in drinking water for at least two of the best studied PFAS, perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). The PFAS Action Act also would require the EPA to designate all PFAS chemicals as "hazardous substances" within one year, which would require strict reporting requirements on the chemicals and automatic investigations into the need for a potential cleanup of any release over a certain threshold. Companies like **3M (MMM)**, **DuPont (DD)**, and **Chemours (CC)** could be on the hook for billions of dollars in cleanup fees if this designation were finalized. During negotiations over the NDAA last fall, House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) personally asked that provisions in the bill to set a hazardous designation under the Superfund program and the drinking water standard be removed because he felt that the limits being set in the legislation were too high to protect vulnerable populations. The PFAS Action Act would rectify those concerns for him. However, it is unlikely to make it past the House. The GOP has been somewhat divided in its response to Democrats' demands for stricter regulations of the chemicals, but leadership is for the most part opposed to the Democratic provisions. On Wednesday, Senate Environment and Public Works Committee Chairman John Barrasso (R-WY) told Bloomberg News that the House bill has "no prospects in the Senate." Rep. John Shimkus (R-IL), ranking member on the House Energy and Commerce Committee's Environment and Economy Subcommittee, told reporters that the Superfund provision in the PFAS Action Act is "really problematic" for Republicans, and was the reason the bill could not get Senate support last fall. The White House has said that President Trump would veto the bill if it does make it to his desk. **Consequently, today's bill will generate headlines, but little substantive action until at least late 2020. Expect more**

action this year, however, from state officials, who have begun to step up in the face of federal inaction.

Market Data Comes Front and Center at the SEC: The Securities and Exchange Commission (SEC) yesterday voted 3-2 along party lines to seek public comment on a [proposed order](#) to modernize the governance of National Market System (NMS) plans that produce public consolidated equity market data and disseminate trade and quote data from trading venues. **While the dissent from the two Democratic commissioners stems from the equity exchanges and FINRA being responsible for a new NMS plan, the details of what the SEC commissioners, including SEC Chair Jay Clayton, are seeking in a new plan are significant.** The equity exchanges, essentially run by **Intercontinental Exchange Inc (ICE)**, **Nasdaq Inc (NDAQ)**, and **Cboe Global Markets Inc (CBOE)**, have a lot not to like in this proposed order as the SEC has recognized the major changes in market structure in the past 15 years, particularly around market data, may require a wholesale change. As [market structure expert Larry Tabb noted](#), the proposed order would disrupt the governance structure and weaken the power of the exchanges in operating the market data. Private market data feeds will still exist, but there is a recognition that a real change has to be made, something that could eat into the profits of a growing sector of for-profit exchanges. Of course, going the route of a proposed order instead of a proposed rule gives time and power to the exchanges to wield their influence. But the upcoming comment letters and the SEC's decision on a final order will be important to watch in the coming months.

House

The House will convene at 12:00 p.m. and will begin consideration of a bill that would ban the use of PFAS chemicals, allow for their clean up under the Superfund program, and establish a drinking water standard for PFAS. The House will also consider a measure (H Con Res 83) that would direct the president to terminate the use of US armed forces to engage in hostilities in or against Iran.

Senate

The Senate will convene at 10:00 a.m. and will resume consideration of the nomination of Paul J. Ray to be administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

White House

President Trump will announce proposed changes to National Environmental Policy Act regulations that are intended to expedite the approval process for infrastructure projects at 11:00 a.m. At 2:00 p.m., the president will receive his daily intelligence briefing. At 7:00

p.m., he will give remarks at a Keep America Great political rally in Toledo, OH.

Macroeconomic

At 8:00 a.m., Federal Reserve Board of Governors Vice Chairman Richard Clarida will give a speech on the US economic outlook and monetary policy at the Council on Foreign Relations in New York, NY.

At 9:30 a.m., the US Chamber of Commerce will host the 21st annual "State of American Business" event to "explore the most important trends, opportunities and challenges facing America's business community in the coming year and beyond," followed by a news conference. [More information here.](#)

Agriculture

At 10:00 a.m., the House Small Business Committee's Subcommittee on Innovation and Workforce Development will hold a hearing titled "Farming in the 21st Century: The Impacts of Agriculture Technology in Rural America."

Antitrust and Consumer Protection

At 9:00 a.m., the Federal Trade Commission will hold a public workshop "to examine whether there is a sufficient legal basis and empirical economic support to promulgate a Commission Rule that would restrict the use of non-compete clauses in employer-employee employment contracts." [More information here.](#) Expected participants include:

- Rebecca Kelly Slaughter, commissioner, Federal Trade Commission

Geopolitical

At 9:45 a.m., Secretary of State Mike Pompeo will meet with UK Foreign Secretary Dominic Raab at the Department of State.

At 2:00 p.m., the Atlantic Council will hold a discussion titled "US-Iran Tensions Rising with Iraq in the Middle."

Tech-Media-Telecom

At 9:00 a.m., the Woodrow Wilson Center will hold an event titled "ED Games Expo Showcase: Esports and Education," focusing on the popularity of competitive video gaming.



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