Boehner Quits, and The Can Gets Kicked

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Our last white paper, *Wake Me Up When September Ends* (May 2015), predicted a tumultuous September in Washington – and, by extension, in the markets. The month, capped off last week by Speaker John Boehner's surprise resignation announcement, did not disappoint.

Boehner ultimately was undercut by the so-called Hastert Rule. Named for a former Republican House Speaker, the "rule" – really a loose convention – states that the Speaker will not introduce legislation that is not supported by a majority of the Republican House members. With Boehner often at odds with his party's conservative wing, he has at times ignored the Hastert Rule to pass legislation with the support of Democrats and moderate Republicans. Perhaps the most well-known example was the fiscal cliff compromise, which a majority of Republicans opposed because it raised taxes on upper income payers.

Boehner resigned as Congress faced an imminent deadline to fund government operations. The government's fiscal year ended on September 30. Congress had to pass a funding bill by that date to avoid a government shutdown on October 1.

Senate Majority Leader McConnell's promise there would be no shutdown put Boehner in a tough place. Conservative members of his caucus demanded that he introduce a funding bill that defunded Planned Parenthood. With the President making clear he would veto that legislation, the House's adoption of such a funding bill almost certainly would have led to a government shutdown. The only way to avoid a shutdown was for Boehner to have the House pass a clean funding bill with Democratic and moderate Republican support.

Conservative Republicans, however, threatened to oust Boehner if he introduced clean funding legislation. Rather than force a divisive vote, Boehner resigned. The conservatives in turn agreed to allow the passage of a short-term bill that will fund the government through December 11, avoiding a shutdown -- for now.

Lost in the commotion is the fact that Boehner's resignation is not effective until October 30. This additional month gives Boehner the opportunity before he departs to pass other divisive legislation, with Democratic support if necessary. Boehner almost certainly believes that these controversial measures must be passed to keep the country moving forward, even as the conservative wing is concerned the bills unduly compromise important principles.

There is no shortage of important legislation that must be considered before or around Boehner's resignation date:

- *Raising the debt ceiling:* Congressional borrowing authority ended on March 15, 2015. Since that date, the federal government, unable to borrow, has been using tax receipts and emergency funds to operate. But current estimates suggest the government will run out of cash and need to borrow again sometime in November. Failure to raise the debt limit by that time would impinge on the government's ability to pay interest on debt outstanding, leading to default on U.S. debt.

- *Highway funding:* Authorization for separate funding for national infrastructure work (road and bridge repair) runs out on October 29. Congress needs to find a permanent source for highway funding.

- *Export Import Bank:* Authority for the bank ended last June. Many Republicans have opposed reinstituting the authorization.

- *Tax extenders:* Congress needs to extend a popular group of tax provisions that expired at the end of 2014. Included is a provision that allowed an IRA holder over the age of 70-1/2 to transfer up to $100,000 from an IRA directly to a charity and avoid tax on the IRA distribution (which nonetheless counts toward the holder's annual required minimum distribution). Charitably-minded IRA holders over the requisite age might consider holding off on RMDs and large charitable contributions until Congress passes the "extenders" bill this fall. Important to business owners, the tax extender package likely will also include bonus depreciation and other tax relief provisions.

Even assuming Boehner gets the House to address these deadlines, the short term funding legislation all but guarantees a reprisal of the government funding battle later this year. Conservatives almost certainly will push for a bill that defunds Planned Parenthood when the extension expires on December 11. And this time they will be led by a (presumably) more confrontational Speaker of their choosing. Added to the confusion is McConnell's desire to adopt a two-year government appropriations package to avoid this same discussion next year.

December could bring a replay of 2013, when the Republicans passed a funding bill that defunded the Affordable Care Act. The president vetoed that bill and the government shut down for sixteen days. But that year the government was scheduled to run out of cash in mid-October, requiring Congress to address the debt ceiling shortly after the shutdown. With the threat of a default looming, Congress and the White House agreed on a plan to raise the debt ceiling, reopening the government in the process. (That plan included caps on future spending on defense and domestic programs, which many individuals in both parties now would like to scrap.)

The difference this time is that the debt limit deadline is likely to have been addressed *before* the shutdown. So, if the government shuts down, what will force Congress and the President to compromise and reopen it in the near term? Boehner's resignation increases the ultimate risk of a shutdown only somewhat, but the dangers resulting from a shutdown have increased.

Historically, markets often are volatile as fiscal deadlines approach and Congress appears unable to agree on a solution – until it does. Markets will likely react positively if Boehner successfully pushes through an increase in the debt ceiling, thereby putting to rest (at least for now) the risk of a national debt default. But December could prove tumultuous as the parties head toward disagreement. Investors might consider taking action to protect against volatility until the deadlines have been addressed. More aggressive investors might view a market pullback as a buying opportunity; markets tend to recover nicely after Congress and the President finally agree on needed legislation.

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