



FedFin Weekly Alert

Monday, October 19, 2020

❑ TOUGH TIMES

Two striking enforcement actions in the last week or so signal that, for all the talk of relaxed supervision by Trump Administration appointees, the banking agencies will take strong action when they believe bad actions warrant more than a confidential rebuke. Wells Fargo's manifold embarrassments did lead to putative Fed action in 2018 ([see Client Report CORPGOV26](#)), but most supervisory discourse since then has been focused on [crafting the new model](#) espoused by FRB Vice Chairman Quarles that still languishes in the bowels of Fed decision-making. Now, we've seen two high-profile actions in such very short order that one wonders if the banking agencies are buffing up their toughness credibility ahead of sharp questioning should Democrats take charge after the election. Key legal and reputational risk developments include:

- Citigroup: Karen Petrou's [memo](#) last week and the *American Banker* [op-ed](#) based on it open the big book thrown at this banking organization by the Fed and OCC on October 7. As we detailed in [Client Report CORPGOV31](#), the Citi orders are striking in their disdain for Citi's internal risk management, the role of the board, the ability of senior management to ensure effective information flow, and – perhaps most damning – the bank's ability to prevent yet another cycle of enforcement action followed by much expensive consulting and lawyering leading to no meaningful improvement in internal controls, validation, auditing, or operational resilience. It may well be that other banks will need to rub their regulators Citi's very wrong way to receive like-kind sanction, but...
- USAA: It sure doesn't look that way. On October 14, the OCC announced a strikingly expensive [enforcement action against USAA](#). One notable aspect of the Citi order is the agencies' disdain not just for internal controls, but also for the independent monitors that have long been an accepted, not to mention expensive, feature of prior cases. USAA had invested last year in significant external help to allay the OCC's initial concerns about violations of various rules meant to protect USAA's core customers, military personnel and their family. In its order, the OCC was at least as biting about USAA's remediation efforts as Citi's even though USAA's problems were of considerably more recent vintage. USAA thus reinforces the agencies' message about corporate governance, not third-party vendors. However, it

goes farther – the OCC also lowered the CRA boom, downgrading USAA to “needs to improve” even before the full order was released.

Both the OCC’s new CRA rule ([see Client Report CRA28](#)) and the Fed’s proposal ([see FSM Report CRA30](#)) reiterate that illegal credit practices may warrant CRA downgrades, but these have been rarely issued in the past. Going forward, this seems far more likely.

Of course, banking agencies aren’t the only ones to wield enforcement swords. The CFPB is another critical dispenser of legal and reputational risk. In contrast to the banking agencies, it has recently taken several actions to temper its vengeance. Last week, it laid out a [new policy](#) for considering early termination of consent orders. This week, it announced an organizational overhaul of its Division of Supervision, Enforcement, and Fair Lending that has already [drawn the ire of Democrats](#) who see it as an effort to hinder the Bureau’s consumer-protection mission. Still, these changes buy some time for erring consumer-finance companies.

A Democratic win puts a hard stop on this offer. In the wake of the recent Supreme Court decision on the Bureau director’s status, the CFPB’s director will be replaced as soon as the Biden Administration gets around to second-tier agencies and maybe sooner given its importance to Sen. Warren (D-MA) and other top Democrats. Even though it will take time to rewrite the agency’s official policies, a few high-profile actions can and surely will fast move forth to burnish the new team’s image.

Headlines From the Past Week’s Daily Briefings

October 12

No news of note.

[October 13](#)

- **IMF Study: Current Fed Monetary Policy May Exacerbate Economic Inequality** - Although many central banks – the Fed very much included – strongly contest assertions that they have a role in economic inequality, a new IMF staff paper finds that monetary-policy choices in fact have considerable inequality impact.
- **Global Digital-Payment, Stablecoin Policy Advances on Multiple Fronts** - Reflecting ongoing warp-speed policy action on digital currency, the G7 finance ministers issued a statement reasserting the importance of digital-payment policies that ensure stable, secure, and law-abiding payments systems even as innovation advances.
- **Global Insurance Regulators Outline Climate-Risk Supervisory Regime** - Reflecting ongoing global efforts to address climate risk, the IAIS issued for consultation a draft paper on climate-risk supervision.

October 14

- **Fed Staff Study: Credit-Risk Migration to NBFIs Poses Few Worries** - The Fed released a staff paper taking on the hot-button question of how much risk results when nonbank financial intermediaries (NBFIs) compete with regulated banks.
- **SF Fed: Fed Policy Makes America More Equal** - In a speech, San Francisco Fed President Daly took a dramatically different tone than usual from the Fed on its ability to influence economic inequality.
- **FSB Continues Low-Level Work on Market Fragmentation** - Continuing a series of reports to the G20, the FSB detailed ongoing work to address market fragmentation.
- **FSB Working on NBFIs, Climate-Risk Rules** - In his capacity as Financial Stability Board chair, FRB Vice Chairman Quarles laid out the FSB's 2021 work plans for the G20.
- **FOMC Proposes Technical Changes to FOIA Procedures** - The FOMC proposed what it describes as technical changes to its rules governing FOIA procedures.
- **Quarles: Year-End Release of Bank-Specific CCAR Results, NBFI Review is Wide, Slow-Go** - FRB Vice Chair for Supervision Quarles defended the FRB's decision to suspend stock repurchases and limit dividends through the fourth quarter, arguing that economic uncertainty combined with widely-varied bank outcomes require capital preservation.

October 15

- **Quarles Reiterates Calls for SCP, Treasury, NBFI Reform** - FRB Vice Chair for Supervision Quarles outlined reforms that may be required to address short-term funding risk, citing reduced commercial-paper markets liquidity in March.
- **Treasury Reiterates Need for MMF-Liquidity Rewrite** - The SEC's lengthy roundtable on credit-market risk and interconnectedness revisited the critical question of MMF and other asset-management substitutes for bank financial intermediation.

October 16

- **FSB Lowers the LIBOR Boom** - Continuing its efforts to propel LIBOR transition, the FSB issued a roadmap of steps which financial and nonfinancial institutions and agencies should take to ensure that new benchmarks are fully operational ahead of the official end of LIBOR at year-end 2021.
- **COVID Subcommittee: Treasury/SBA, Not Banks, to Blame for PPP-Loan Patterns** - The Select Subcommittee on the Coronavirus Crisis issued a staff report concluding that Treasury and SBA encouraged big banks to provide loans to wealthy, existing clients rather than to struggling small businesses in underserved communities.
- **COVID Commission: MLF Gets a Pass, SMCCF Should Stop** - Following what were reportedly significant and partisan disagreements, the Congressional Oversight Commission released its report on the Fed's Municipal Liquidity Facility (MLF).

This Week

Tuesday, October 20

FDIC Board of Directors Open Meeting [10:00 AM] **Matters to be Considered: Summary Agenda:** Memorandum and resolution re: Final Rule on Branch Application Procedures. Memorandum and resolution re: Notice of Proposed Rulemaking on Removal of Transferred OTS Regulations Regarding Subordinate Organizations (Part 390, Subpart O). Memorandum and resolution re: Notice of Proposed Rulemaking on Role of Supervisory Guidance. Report of actions taken pursuant to authority delegated by the Board of Directors. **Discussion Agenda:** Memorandum and resolution re: Final Rule on Regulatory Capital Treatment for Investments in Certain Unsecured Debt Instruments of Global Systemically Important U.S. Bank Holding Companies, Certain Intermediate Holding Companies, and Global Systemically Important Foreign Banking Organizations; Total-Loss Absorbing Capacity Requirements. Memorandum and resolution re: Final Rule on Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements. Memorandum and resolution re: Interim Final Rule on Applicability of Annual Independent Audits and Reporting Requirements for Fiscal Years Ending in 2021.

Thursday, October 22

FDIC Advisory Committee on Economic Inclusion Open Meeting [1:00 PM] **Matters to be Considered:** The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

SEC and CFTC Joint Open Meeting [10:00 AM] **Matters to be Considered:** Joint Final Rule: Customer Margin Rules Relating to Security Features - The Commissions will consider whether to adopt rule amendments to align the minimum margin required on security futures with other similar financial products; Request for Comment: Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps - The Commissions will consider whether to issue a request for comment on the portfolio margining of uncleared swaps and non-cleared security-based swaps. The request for comment would solicit comment on all aspects of the portfolio margining of uncleared swaps, non-cleared security-based swaps, and related positions, including on the merits, benefits, and risks of portfolio margining these types of positions, and on any regulatory, legal, and operation issues associated with portfolio margining them.

Recent Files Available for Downloading

The following reports and analyses have been sent to retainer clients recently. Copies are also available to retainer clients on the Archives section of Federal Financial Analytics' website: www.fedfin.com or clients may obtain the reports/analyses by e-mailing requests@fedfin.com giving the requested item name, firm, and e-mail address. To learn more about GSE Activity Reports, click: http://www.fedfin.com/index.php?option=com_content&view=article&id=18&Itemid=18

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- [**GSE-101520**](#): Although direct mortgage discrimination based on race and ethnicity has abated in recent years, a new [study](#) from the Federal Reserve Bank of Boston shows a striking difference in prepayment rates due to refinancing-speed differences directly attributable to race and ethnicity after controlling for an array of well-accepted underwriting risks.
- [**CRA30**](#): Following opposition to the OCC's CRA rewrite, the FRB has proposed an initial construct that takes some elements of the OCC's approach and adds further and in some cases different provisions to craft what the Fed hopes will become an inter-agency CRA construct in 2021.
- [**BIGTECH**](#): The House Judiciary Antitrust Subcommittee released a lengthy, high-impact Democratic [report](#) calling for structural changes to the nation's biggest tech-platform companies.
- [**GSE-100920**](#): As will soon be detailed in an our in-depth report, the Federal Reserve's long-awaited [CRA proposal](#) is a comprehensive rewrite that, while preliminary, would dramatically change large bank community-focused lending and investing.
- [**CORPGOV31**](#): In this report, we analyze the strategic implications of enforcement actions against Citibank issued by the [Fed](#) and [OCC](#).
- [**CAPITAL226**](#): In conjunction with numerous changes to its supervisory stress test (CCAR) for the largest U.S. banking organizations in response to COVID, the Federal Reserve is seeking comment on structural changes to current capital-planning requirements.
- [**GSE-100120**](#): A troubling new IMF staff paper looks at U.S. housing policy since COVID to uncover some worrisome aggregate and distributional effects.
- [**CRYPTO15**](#): Continuing Acting Comptroller Brooks' efforts to enhance innovation at national banks and federal savings associations, the agency has now authorized these institutions to hold reserves associated with certain stablecoin offerings.
- [**GSE-092820**](#): Following its [morning meeting](#), FSOC released the staff [statement](#) expressing its near-term decision on systemic risk in the secondary mortgage market.
- [**AML132**](#): FinCEN is beginning a process that, while apparently not revising or eliminating any existing anti-money laundering (AML) requirements, would add an over-arching principle that AML programs be efficient, "reasonably-designed," and capable of providing high-quality information to law enforcement and other government entities.
- [**COVID15**](#): HFSC's second CARES Act-required hearing with Treasury Secretary Mnuchin and FRB Chair Powell continued to stress the theme that has become apparent ever since negotiations on a Phase IV relief bill stalled: Democrats primarily want additional direct fiscal support and Republicans are pushing for adjustments to existing relief programs funded by unused 13(3) Treasury backstops.
- [**GSE-092220**](#): As usual, FHFA's [new strategic plan](#) is more rhetorical than real. Still, it has a noteworthy emphasis on ending the conservatorship, promulgating new standards, and

enhancing inclusion not just at the GSEs and within FHFA, but also in credit access.

- **CRA29:** Emphasizing its new focus on racial equity ahead of several Congressional hearings this week, the Federal Reserve Board unanimously [approved a long-awaited ANPR](#) revising its CRA regulations.
- **GSE-092120:** The [Federal Reserve Bank of New York](#) announced that the Fed bought almost \$56 billion in agency MBS over the past two weeks.
- **GSE-091720:** [As anticipated](#), today's marathon HFSC hearing with FHFA Director Calabria covered a wide-range of issues we will shortly analyze in detail due to the policy and strategic importance of several exchanges.
- **FAIRLEND8:** HUD has largely finalized a controversial fair-housing rule as proposed, with the new standards for adjudicating fair-housing disputes giving defendants numerous additional protections.
- **GSE-091020:** As we [noted in our in-depth analysis](#), a CFTC subcommittee has issued a landmark [report](#) laying out an array of climate-change risks it urges policy-makers to prioritize to prevent systemic and sector risks.