FedFin Daily Briefing

Tuesday, January 5, 2021

Brooks Blasts Through Another Crypto Barrier

Moving forward with a sharp rebuttal to the President's Working Group on Financial Markets, the OCC late yesterday issued an interpretive letter (IL) establishing a new framework allowing national banks and FSAs to provide banking and payment services via Independent Node Verification Networks (INVNs) and stablecoins, thus setting the standards for banks but not the cryptocurrency they use or facilitate. In a little-noticed report late last month (see *Client Report* **CRYPTO16**), the PWG laid out an array of U.S.-specific stablecoin concerns that go well beyond global policy (see FSM Report **CRYPTO14**). Regardless, the OCC has – as we anticipated – disregarded that to advance Mr. Brooks' vision ahead of the new Administration. The IL addresses many issues ordinarily finalized via a notice-and-comment process and could be revoked, modified, or of course retained by a new Comptroller.

A forthcoming FedFin report will analyze the letter because, even if retracted, it lays out a new, instant payment construct that could evolve in partnership with banks or solely via nonbanks as the Fed remains slow to build out its own real-time retail-payment construct (see FSM Report **PAYMENT20**). The IL builds on prior OCC action allowing national banks to hold stablecoin reserves (see FSM Report **CRYPTO15**), stipulating a 1:1 reserve ratio without the currency valuation, rehypothecation, or disclosure safeguards demanded by the PWG. Preliminary analysis of the IL also suggests that the OCC imposes no restrictions on the stablecoins a national bank may employ or facility. Instead, the agency bases its new interpretation on its new permissible-activities framework (see FSM Report **CHARTER27**) which makes permissible any activity delivered electronically that is otherwise permissible for a national bank or FSA.

CFPB Taskforce: New Fintech Charters, An Open Payment System, New Data Use and Reporting Standards Just a Few Ideas

The CFPB's Taskforce on Federal Consumer Financial Law today recommended consumer-protection changes not only within the Bureau's ambit, but also for Congress and other regulators. The report lays out an agenda proposed by industry and advocacy groups sure to dominate debate in 2021. But, while nonpartisan, the Taskforce's recommendations break new ground, often on very contentious questions. For example, the paper urges Congress to grant the CFPB authority to issue licenses to non-depository institutions that provide lending, money transmission, or payment services. Home-state regulation should then apply even in interstate transactions, essentially extending federal preemption to entities now licensed and/or regulated on a state-by-state basis. Failing this, the report says that Congress should allow for OCC regulation and resulting preemption along with giving the Bureau the power to preempt state law when this impedes fintech adoption.

The report also addresses an array of payments-system questions, recommending for example that the Bureau advance nonbank payments-systems access and regulatory changes to increase speed. Like-kind rules are proposed for pre-paid and debit cards along with repeal of the Durbin Amendment.
With regard to consumer reporting, the report pushes both regulators and Congress to promote the use of nonfinancial alternative data along with greater reliance on emerging financial data for loan underwriting such as cash flow. The Taskforce also seeks more clarity on the obligations of consumer reporting agencies and furnishers in FCRA disputes along with eliminating "undue restrictions" on CRA

and data-aggregator use of payment and cash-flow data. Although the Biden platform pressed the Bureau to become a public credit registry, the report does not tackle this question.

The report also recommends further research on financial-inclusion issues such as access for rural communities, allowing all credit union charters to serve underserved areas, facilitating creditor access to credit-report information from recent immigrants prior to their arrival, and amending ECOA to include disability as a prohibited basis group. Inclusion should also factor in CFPB cost-benefit analyses.

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 info@fedfin.com giving the requested item name, firm, and e-mail address. To learn more about *GSE Activity Reports*, click here.

- **TMARKET**: As we noted earlier (see *Client Report* **REFORM200**), we do not expect U.S. regulators to extend SLR relief (see FSM Report **LEVERAGE23**) after its scheduled March expiration.

- **GSE-010421**: It's not exactly news to suggest that the Biden Administration will take a more demanding view of the GSEs' affordable-housing obligations than the Trump Administration. What's more intriguing is how FHFA is setting the wheels in motion for new policy without anyone having to tell it to do so via an advance notice of proposed rulemaking. While a few of its questions may provoke Democratic ire, most are direct responses to longstanding advocacy-group complaints about current goals.

- **DEPOSITINSURANCE111**: Easing restrictions from a proposal already intended to facilitate additional funding from products then considered brokered deposits, the FDIC has finalized new rules creating a new brokered-deposit framework in which funding relationships long considered brokered deposits instead may be gathered without impediments even by under-capitalized insured depository institutions (IDIs).

- **GSE-122820**: As we noted last week, FHFA is barreling through the systemic rulebook, finalizing capital rules, proposing liquidity standards, and, now, laying out living-will requirements to ensure orderly GSE resolution under even acute stress.

- **CRYPTO16:** Late Wednesday, the President's Working Group on Financial Markets (PWG) issued yet another unprecedented U.S. policy statement, following one on MMF reform just the day before with a statement from Treasury, the FRB, SEC, and CFTC on U.S. stablecoin policy.

- **MMF16**: Late yesterday, the President's Working Group on Financial Markets (PWG) issued an unusual report signaling agreement by Treasury and the FRB, SEC, and CFTC on the urgent need for changes in the MMF sector to prevent systemic "dash-for-cash" events such as the most recent March crisis.

- **GSE-122320:** It's beginning to look a lot like a major policy theme: research continues to show that GSE mortgages cost Black and Hispanic borrowers considerably more than non-Hispanic whites, especially over the course of a loan, not just at origination.

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- **FEDERALRESERVE59**: It's hard to envision a Federal Reserve still more central to every aspect of U.S. macroeconomic, financial, and fiscal policy, but that's what FedFin forecasts for 2021.

- **ILC15:** Setting the stage for new charters and legislative battles in 2021, the FDIC has finalized a controversial proposal addressing source-of-support and certain other obligations for the parent companies of some industrial banks and industrial loan companies (ILCs).

- **GSE122120:** As previously noted, FHFA late last week issued a long-promised proposal implementing LCR- and NSFR-like – but not light – rules for Fannie Mae and Freddie Mac.

- **CONSUMER36**: On Monday, the Biden transition released a readout of a meeting between Treasury nominees Janet Yellen and Wally Adeyemo with various racial-equity associations, reinforcing the importance this issue will have in crafting financial regulation in the Biden Administration.

- **GSE121720**: FHFA's controversial capital rule is in today's *Federal Register*, setting an effective date of February 16.

- **GSE-121620**: Secretary Mnuchin's comments yesterday make it clear – at least mostly – that Fannie and Freddie will remain in conservatorship as the Biden Administration takes charge.

- **REFORM200**: In this report, we continue our 2021 forecasts, moving from our assessment of digital finance (see Client Report **DIGITAL6**) and asset-management regulation (see Client Report **RECOURSE6**) to an assessment of the U.S. capital and liquidity framework for large banks and FBOs.

- **RECOURSE6**: In this report, we assess the regulatory consequences of one of the ironies of March's market turmoil: among the reasons it was not worse is because some large banks stepped in and backed customers or investors despite the lack of any legal obligation to do so.

- **CHARTER28:** Continuing Acting Comptroller Brooks' policy of considering precedent-breaking applications and charters, the agency has received a controversial application from Figure to establish a national bank that, by virtue of this charter, would also be a Fed member.

- **GSE-120720:** The last Trump FSOC annual report reiterates 2019's findings: nonbank originators and servicers are weak and interconnected, thus posing systemic risk.

- **DIGITAL6:** Even though 2020 was of course preoccupied by the pandemic, there was no scarcity of the oft-repeated nostrum that law and rule must define the future of digital finance.

- **CHARTER27**: In conjunction with a wide-open request for views on ways to increase the innovativeness of national banks and federal savings associations (FSAs), the OCC has finalized a significant rewrite of their more traditional powers and activities.

- **GSE-120220**: Today's House Financial Services session with Mnuchin and Powell shed just a bit more light – or provided still more uncertainty – on the critical question of whether Treasury will work with FHFA to end the conservatorships before the Biden Administration surely keeps them for a long, long time.

- **GSE-120120A**: At today's Senate Banking hearing on the CARES-funding fracas, Secretary Mnuchin told Sen. Rounds (R-SD) that the GSEs should be quickly brought out of conservatorship but that they will not be let out without sufficient capital.

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