



Monday, December 13, 2021

❑ THE FRACAS AT THE FDIC

As we noted on [Thursday](#), the FDIC's decision-making process broke wide-open when Directors Gruenberg and Chopra [announced](#) that the FDIC had a request for input (RFI) on bank M&A primed to go out for public comment. Indeed, a text of the [RFI](#) was posted, but only on the CFPB's website along with a statement from Mr. Chopra pressing the RFI's points on grounds that bank mergers are a "privilege, not a right." But, after just a couple of hours, it became clear that what purported to be an FDIC action wasn't an FDIC action at least as far as FDIC Chair McWilliams is concerned. A statement from the [agency](#) – not directly from her – not only refuted the RFI, but also soundly condemned the process by which it surfaced.

This isn't the end of this story for either bank M&A or the broader framework of inter-agency regulation while Ms. McWilliams chairs the FDIC but the majority of its board is Democrats. Indeed, the next dust-up on both fronts may well come at the otherwise-routine FDIC board meeting noted below. We'll be watching that and reporting back. We'll also provide an in-depth analysis of the RFI because, whatever its fate at the FDIC, the issues on which comment is solicited and the analysis backing them will drive M&A decision-making not just at the FDIC, but also at the OCC, Fed, and the Department of Justice.

Headlines From the Past Week's Daily Briefings

[December 6](#)

- **BIS Tackles NBF- Reform Specifics** - Building on the FSB's NBF- priority focus, BIS Managing Director Agustín Carstens reiterated his call for both entity- and activity-based standards for systemic-scale nonbanks.
 - **White House Emphasizes Anti-Corruption Commitments** - In connection with the President's democracy summit, the White House issued a fact sheet laying out a reinvigorated version of the President's prior anti-corruption commitment.
- OCC Outlines Climate-Risk Agenda** - The OCC's semi-annual risk report includes a new section on the agency's climate-risk plans.

[December 7](#)

- **FBO Sanctions Update** - Sens. Cotton (R-AR), Rubio (R-FI) and eleven GOP colleagues have introduced S. 3318, legislation pressing the U.S. to deny foreign

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financial institutions access to the U.S. financial system if they provide “Palestinian martyr” payments.

- **Chopra Slams “Banking Cartel” as CFPB Sets LIBOR Standards** - The CFPB issued its final LIBOR-transition rule, with Director Chopra’s accompanying statement emphasizing that this rule will now prevent the “banking cartel” from again illegally setting disadvantageous consumer interest rates.
- **CFPB Accepting Additional Bigtech Inquiry Comments** - The CFPB reopened the comment period on its bigtech inquiry, now accepting comment until December 21.
- **Warren Readies Anti-Powell Attack** - Sen. Warren (D-MA) released a letter making it clear that she will strongly oppose Chairman Powell when his confirmation comes before the Senate Banking Committee.
- **FSB: Persistent Gaps Challenge Resolution Regimes** - The FSB updated progress on implementing its key attributes of effective resolution regimes, reporting significant advances at GSIBs despite gaps at smaller banks, insurance companies, and CCPs.
- **HFSC Dems: Investment Firms Must Increase Diversity** - Ahead of a hearing sure to be critical of large financial companies, a new [HFSC majority staff report](#) on diversity and inclusion looks at large investment firms (including those owned by banks) and finds little progress.

December 8

- **BIS Staff: DeFi Demands Tough Prudential, Governance Standards** - In this alert, we assess a [study](#) of the “decentralization illusion” arguing that DeFi is considerably more centralized than appearances suggest.
- **BIS CBDC Experiment Successfully Settles Wholesale FX Transactions** - The BIS ended its joint wholesale CBDC experiment with the French and Swiss central banks, concluding that CBDC can be effectively deployed for international settlements.
- **OCC Defines a “Good-Overdraft” Construct** - Acting Comptroller Hsu advanced the anti-overdraft campaign launched last week by CFPB Director Chopra, arguing that overdrafts disadvantage lower-income households and thus erode the trust essential to an industry success.

December 9

- **IMF Presses for Fast, Hard Global Crypto Standards** - The IMF reiterated its commitment to work with global regulators to craft crypto regulation due to inherent risks in the sector exacerbated by disorderly capital flows resulting from regulatory arbitrage.
- **FRB-NY Tackles Maternal-Health Inequity** - Although Reserve Banks are facing harsh criticism from Senate Banking Ranking Member Toomey (R-PA) about “woke” actions he believes beyond the Fed’s mission, the New York Federal Reserve released

a study of maternal health that – despite public concern in this area – may spark renewed criticism with problematic implications for Vice-Chair nominee Brainard.

- **LIBOR Fix Powers Through House** - By an overwhelming 415-9 vote, the House passed H.R. 4616, the Sherman (D-CA) bill providing legal certainty for legacy LIBOR contracts.
- **BIS: Bond Funds Need Radical Regulatory Rewrite** - We follow our analysis of the BIS paper on DeFi regulatory policy with an assessment of another high-impact analysis of open-end funds.
- **FDIC Does, Doesn't, May Advance New Bank M&A Policy** - In a most unusual move, the FDIC announced it did not release an RFI on bank merger policy hours after two directors – Messrs. Gruenberg and Chopra – said it had.
- **HFSC Ducks Tough Asset-Management Diversity Demands** - Although the majority staff report released ahead of HFSC Diversity and Inclusion Subcommittee hearing highlighted several legislative proposals, Members did not address these and instead focused only on oversight.

December 10

- **FSB Advances Cross-Border Payment Revamp** - Building on its new cross-border payment policy, the FSB sought comment on how national and regional data frameworks affect the cost, speed, access, security, and the interoperability of cross-border payments.
- **Aborted Merger Paper Hits Partisan Battle Lines** - Following the battle over an [RFI on bank mergers](#), senators are squaring off on both process and policy.
- **FRB Stipulates Archegos-Risk Remedies** - As forecast when Archegos broke, the FRB issued new, tough guidance detailing its supervisory expectations for large-bank exposures to investment funds. Sparked by the Archegos incident, the guidance warns banks, BHCs, and counterparties not only of exposure restrictions, but also of practices that may warrant supervisory censure.
- **Waters Demands Regional-Bank Merger Moratorium** - Uping the ante on bank mergers after the FDIC fracas over an RFI, HFSC Chairwoman Waters (D-CA) late this afternoon called on the FRB, OCC, and FDIC to hold all M&A over \$100 billion until completion of this review, one under way by the FRB and Department of Justice, and any similar OCC assessments.

This Week

Tuesday, December 14

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Senate Banking hearing entitled: “Stablecoins: How Do They Work, How Are They Used, and What Are Their Risks?” [10:00am, 538 Dirksen SOB] Witnesses: Ms. **Alexis Goldstein**, Director Of Financial Policy, Open Markets Institute; and Professor **Hilary J. Allen**, Professor, American University Washington College of Law

FDIC Open Meeting [10:00am, webcast] Matters to be Considered: **Summary Agenda:** Disposition of Minutes of a Board of Directors’ Meeting Previously Distributed; Memorandum and resolution re: Credit Risk Retention Rule Determination - Qualified Residential Mortgage and Related Exemptions; Memorandum and resolution re: Designated Reserve Ratio for 2022; Memorandum and resolution re: FDIC Strategic Plan, 2022-2026; and Status report of actions taken pursuant to authority delegated by the Board of Directors. **Discussion Agenda:** Memorandum and resolution re: Proposed 2022 FDIC Operating Budget; and Briefing: Restoration Plan Semiannual Update.

Wednesday, December 15

SEC Open Meeting [10:00am, webcast] Matters to be considered: 1. The Commission will consider whether to approve the 2022 Final Budget and Accounting Support Fee for the Public Company Accounting Oversight Board. 2. The Commission will consider whether to re-propose a rule prohibiting fraud, manipulation, or deception in connection with security-based swaps, as well as whether to propose new rules prohibiting undue influence over the Chief Compliance Officers of security-based swap dealers and major security-based swap participants and requiring reporting of large security-based swap positions. 3. The Commission will consider whether to propose amendments to certain rules that govern money market funds under the Investment Company Act of 1940. 4. The Commission will consider whether to propose amendments to modernize share repurchase disclosure, including more detailed and more frequent disclosure about issuer share repurchases and requiring issuers to present the disclosure using a structured data language. 5. The Commission will consider whether to propose amendments to Rule 10b5-1 and new disclosure regarding 10b5-1 trading arrangements and insider trading policies and procedures, as well as amendments regarding the disclosure of the timing of certain equity compensation awards and reporting of gifts on Form 4.

Friday, December 17

FSOC Open Meeting and Executive Session [11:00am, Virtual] **Preliminary Open Session Agenda:** a vote on the Council’s 2021 annual report; a vote on establishing a staff-level Climate-related Financial Risk Committee of the Council; and the transition from LIBOR. **Preliminary Executive Session Agenda:** forthcoming proposed SEC rulemakings; the crypto-asset policy sprint by the federal banking agencies; and the Council’s climate-related work.

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

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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](#).

- **[GSE-120921](#)**: On Tuesday, [HUD](#) and the [CFPB](#) opened the door to [special-purpose mortgage finance](#). Now, we expect FHFA to use this safe harbor to mandate express GSE equitable-finance programs and for banks to take much of what's left in all their commitments after George Floyd's murder and turn it into mortgage and other community-finance products.
- **[CRYPTO23](#)**: As [anticipated](#), today's HFSC hearing was a marathon session at which industry witnesses defended their business model, Republicans liked it fine, and Democrats worried about a wide array of policy challenges.
- **[COVEREDFUNDS3](#)**: The OCC is "clarifying," but also in many respects rescinding one aspect of controversial 2020 rules expanding the "covered funds" under which banks may make equity investments as provided by the Volcker Rule.
- **[GSE-120621](#)**: As we noted on [Friday](#), Senate Banking Ranking Member Toomey asked SEC Chairman Gary Gensler a trick question about GSE [obligations](#) at the very end of a lengthy letter focused principally on cryptography.
- **[GSE-120221](#)**: Two recent studies add fuel to the fire we first spotted [late last year](#): demands for ARMs that only go down.
- **[FEDERALRESERVE65](#)**: Continuing the partisan and often-acrimonious tone of the Senate Banking hearing ([see Client Report FEDERALRESERVE64](#)), HFSC today heard from Chairman Powell and Secretary Yellen.
- **[CRYPTO22](#)**: Although the OCC joined other agencies issuing a non-committal "roadmap" for future cryptography actions, the agency at the same time and far more decisively stated that crypto activities are permissible only if they are also safe and sound.
- **[FEDERALRESERVE64](#)**: Most of the news at today's Senate Banking hearing revolves around Chairman Powell's concession that inflation may not be transitory and economic growth is now so robust that quantitative tightening might proceed more quickly than planned, pandemic permitting.
- **[GSE-113021](#)**: Unsurprisingly, [FHFA today raised](#) the GSEs' conforming loan limit to about \$647,000 and the high-cost limit to nearly \$1 million.
- **[GSE-112421](#)**: Because FHFA tends to take its cue from both the Basel Committee on Banking Supervision and its U.S. cousins, we here drill down to look at the housing-finance implications of the proposed global framework we assessed in a [recent in-depth report](#).
- **[CLIMATE12](#)**: Following the UN's COP26 climate-risk summit, the Basel Committee has proposed high-level principles guiding risk management and supervision related to both physical and transition climate risk.
- **[REFORM210](#)**: [As expected](#), today's hearing with Comptroller-nominee Saule Omarova included an unprecedented amount of fireworks for what is normally a low profile appointment.
- **[FAIRLEND10](#)**: The CFPB has followed a study earlier this year finding significant mortgage

product and price discrepancies based on race or ethnicity with a request for input (RFI) on the HMDA data on which the study was based.

- [GSE-111721a](#): FHFA's [new scoring system](#) for the GSEs and CSS is a startling, if unsurprising, mission rewrite.