FedFin Daily Briefing

Tuesday, January 18, 2022

FinCEN Takes Cautious Steps to AML Innovation

In remarks just released today, Acting FinCEN Director Him Das largely revisited recent FinCEN actions in response to Congressional requirements. Reflecting the caution in FinCEN's most recent release, (see FSM Report **AML135**) Mr. Das said that the agency recognizes blockchain's efficiencies, but is unsure of its accuracy as an AML identifier. However, FinCEN and the banking agencies are now exploring regulatory sandboxes and new approaches to customer risk rating, digital IDs, and SAR-automation processes. No action timeline is provided.

Brown Lays Out Fed Confirmation Plan

Senate Banking Chairman Brown (D-OH) today told press that he will accelerate hearings on Fed-nominees Bloom Raskin, Cook, and Jefferson as well as seek floor time in early February. He did not make it clear if he hopes to package all these nominations with Mr. Powell's in hopes that this will provide additional votes, but Senate procedure requires votes on each nomination even if all are taken up together. As noted (see *Client Report* **FEDERALRESERVE66**), we expect Ms. Bloom Raskin's nomination to be the most difficult to confirm, with Gov. Brainard's a close second. As we anticipated, Sen. Brown also said that he -- and thus presumably also the Administration -- is in no hurry to replace Acting FDIC Chairman Gruenberg and Acting Comptroller Hsu.

DOJ/FTC Propose Structural Antitrust Rewrite

Although the Department of Justice already has opened the door for public comment on bank mergers (see FSM Report **MERGER10**), it and the Federal Trade Commission today sought comment on the entire U.S. antitrust construct. Echoing the President's competition order (see Client Report **MERGER6**), the agencies stress that this review will go beyond traditional consumer-welfare and legal criteria to look also at issues such as workers' rights, innovation, and "resiliency" and deploy new, possibly-qualitative evaluation criteria for both horizontal and vertical mergers. In general, the agencies plan to go well beyond price criteria also considering traditional "point-in-time" analyses to consider "nascent" competitors.

This suggests not only a new approach to bank and financial-sector mergers, but also one going well beyond the traditional and limited market-share review Justice has long accorded after banking-agency merger approval. We will shortly review the request for comment and advise clients of its financial-sector impact. No mention of it was made today beyond FTC Chair Khan's comment about private-equity roll-up deals and the need to consider them in the antitrust context. Public comment on the release is due sixty days after *Federal Register* publication. After reviewing comments, the agencies will then seek comment on draft merger policies replacing those now in place, but it seems likely that transactions in the interim will review more scorching review wherever the agencies think it possible in the absence of final guidance to that effect.

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.

- **GSE-011422**: As noted in our in-depth analysis of Acting FHFA Director Thompson's confirmation hearing, it's clear that Democrats and Republicans are thinking hard about resurrecting statutory changes to the GSEs' charters.
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- **FEDERALRESERVE68**: At today's confirmation hearing, Gov. Brainard took a lot of the heat on inflation

Republicans only mildly mentioned during Mr. Powell's Tuesday confirmation hearing (see Client Report **FEDERALRESERVE67**).

- **REFORM211:** As promised, FedFin begins our 2022 forecasts with this in-depth report on bank regulation.

- **FEDERALRESERVE67:** As promised yesterday (see *Client Report* **FEDERALRESERVE66**), we listened closely today to gauge the extent to which Chairman Powell faces a serious challenge to reconfirmation.
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- **FEDERALRESERVE66:** Many of you have asked us to forecast key policy implications ahead of two high-powered hearings this week considering President Biden's top Fed nominees.

- **GREEN12:** Issuing the first formal U.S. climate-risk proposal, the OCC is seeking comments on high-level risk-management principles to set the context for additional, more binding action governing larger U.S. banking organizations.

- **GSE-010322**: New economic commentary from the Federal Reserve Bank of Cleveland assesses several recent studies on homeownership from an investment perspective.

- **MMF19:** In the wake of noncommittal statements from global regulators on ways to address money-market fund systemic risk, the Securities and Exchange Commission has proposed sweeping changes to the 2014 standards adopted after the 2008 crisis.

- **GSE-122721**: Late last week, the NCUA put a small addition into the Christmas stockings already stuffed by the regulator over the past few months with numerous regulatory liberalizations.

- **MERGER10**: Just days after the FDIC chair refused to advance a request for comment on bank-merger policy, the Department of Justice released one signaling agreement with many of the concerns Democrats aired in concert with the RFI.

- **GSE-122021**: As noted on Friday, the Biden Administration's first FSOC systemic-risk hit list reiterates Trump Administration fears about nonbank mortgage companies.

- **GSE-121721**: As noted on Thursday, FHFA continues to tread carefully through the big-bank rulebook, adopting standards said to be like-kind that aren't quite so similar when it comes to critical details.

- **MERGER9**: Released in a highly-controversial fashion (see below) by two Democrats on the FDIC's board, this RFI posits the need for a significant review of mergers involving insured depository institutions (IDIs) due to many changes in the financial industry and, so it says, the lack of substantive competitive analysis over past decades even of the largest transactions.

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