



FedFin Daily Briefing

Tuesday, March 8, 2022

Congress Prepares Gold-Related Sanctions vs. Russia

Sens. Cornyn (R-TX), Hassan (D-NH), and bipartisan colleagues have added to the Congressional proposals to sanction Russia with S. 3771, legislation to impose secondary sanctions related to American entities that knowingly engage in gold sales or transport involving the Russian central bank. We will review the text of the bill to determine its reach, but we would expect it to affect all U.S.-domiciled banks, traders, bullion exchanges, and all entities engaged in any facet of this market, likely reaching not only FBOs in the U.S., but also via indirect restrictions to their parent organizations. The legislation's goal is to block Russian gold sales designed to prop up the ruble; the measure is likely to be added to the anti-Russia package now being prepared for Congressional action.

Mandatory-Arb Bill Gets Low-Priority, Partisan Reception

As we [anticipated](#), today's Senate Banking hearing on mandatory arbitration in financial products was partisan and provided little in the way of an actionable agenda. The hearing was also poorly attended due to higher-priority concerns, with Chairman Brown (D-OH) and Democrats supporting the legislation they recently introduced to ban mandatory arbitration and class-action waivers. Ranking Member Toomey (R-PA) countered by defending the existing framework. Supporting witnesses such as Paul Bland, Executive Director of *Public Justice*, highlighted the lack of corporate accountability within what they described as a largely-secretive system and the adverse impact of dense (and often unknown) arbitration clauses on choice. Todd Zywicki, Law Professor at George Mason University, and other witnesses in opposition to the bill emphasized that consumers enter these agreements willingly and can freely choose non-arbitration products, encouraging a free and efficient market. Chairman Brown announced no plans for mark-up and there is little HFSC interest to date in companion legislation, making enactment highly unlikely. However, as noted, the CFPB may well further the Democrat's goals to the extent possible under current law, perhaps by mandating new disclosures and even opt-out clauses.

Energy Financing Now Under Sanctions Gun

As anticipated, President Biden's executive order [today](#) barring oil and related energy imports also extends the sanctions regime to financing, approving, guaranteeing or facilitating sanctioned imports and any energy-related investments. U.S. persons covered by the prohibition are broadly defined, making it clear that an array of commodities-based transactions will need quickly to be unbundled to segregate Russian and related counterparties and, where this cannot be done, to terminate activities from direct lending to hedging or other exposures that could be considered facilitation. A separate note will shortly discuss near-term strategic implications of increasing commodity-market volatility.

FedFin Advisory: Commodity Risk Would Renew Political Challenge

A key question we hear from large-bank investors is the extent to which the Ukraine crisis may lead to significant commodity-related losses at the largest U.S. banks due not only to their own exposures, but also to Archegos-like risk positions in these often opaque markets. Fears will surely increase now that the Biden Administration has added energy-related transactions and investments to the sanctioned list per our alert earlier today, but loss exposure exists across an array of commodities as well as oil and gas. To the extent that direct or trading-related commodity losses garner attention, political risk related to this business line will also begin anew.

Clients are thus reminded that Senate Banking Chairman Brown (D-OH) was a determined opponent of bank-related commodity activities when these were highlighted in the aluminum sector in 2013. Initial campaigns simply to bar banks from this sector apart from direct lending did not advance, but the Federal Reserve made it clear that it had significant qualms about certain derivative-related activities authorized by the OCC allowing physical possession and with more expensive ownership stakes via grandfathered activities or merchant-banking affiliates. The Fed thus proposed rules in 2016 ([see FSM Report COMTRADE8](#)) to sharply restrict the merchant-banking operations in this sector, standards it may advance again and perhaps expand once current crises have abated if losses materialize and the composition of the Board at that time favors intervention, as it well may.

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-030722](#): A new Urban Institute study suggests that banks are more likely to discriminate when it comes to minority borrowers, heightening concerns at a time with increased political risk related to racial equity and mortgage finance.
- [GSE-030122](#): As we noted late [last week](#), FHFA has finalized revisions to its [2020 capital rule](#) that most importantly lighten the GSEs' capital load and reinvigorate credit risk transfer.
- [GSE-022822](#): Responding to continuing FSOC complaints about [nonbank servicers](#), FHFA has proposed [new seller-servicer eligibility standards](#) that crack down hard on any nonbank servicer whose size evokes systemic qualms.
- [SANCTION16](#): In this report, we address many of the questions we've received about U.S. policy in the wake of Russia's invasion into Ukraine.
- [GSE-022422](#): As noted late [yesterday](#), the CFPB has gotten a jump on FHFA and the banking agencies with the first step towards a long-delayed AVM rule demanded in the [Dodd-Frank Act](#).
- [CRYPTO25](#): Despite fierce partisan fighting over pending Fed nominations, today's Senate Banking hearing on stablecoin regulation was considerably more bipartisan than last week's HFSC session ([see Client Report CRYPTO24](#)).
- [GSE-021022](#): Moving far ahead of the banking agencies [AI](#), FHFA [today](#) released a series of supervisory AI/ML standards for Fannie, Freddie, and CSS, perhaps leaving the FHLBs alone because none so far does much within this arena or nobody cared.
- [GSE-020922](#): Continuing her very different vision of Fannie and Freddie, FHFA Acting Director Thompson [today](#) has released a new strategic plan for the agency emphasizing the importance of both equitable and sustainable housing finance.
- [CRYPTO24](#): Today's HFSC hearing on stablecoins makes it clear that the bipartisan legislation Chairwoman Waters (D-CA) prefers is at best a long way off.
- [FEDERALRESERVE69](#): As this report details, all three Fed nominees before the Senate Banking

Committee today emphasized the vital importance of Fed independence and their anti-inflation zeal to quell GOP opposition and cement it among moderate Democrats.

- [CONSUMER38](#): Taking action to advance President Biden's competition order, the CFPB is seeking views on fees which it believes exploit consumers by virtue of unfair competition.
- [GSE-020122](#): Nothing could do as much damage to a business based on fee revenue as a determined CFPB inquiry into fee revenue.
- [CBDC10](#): Months after initially promising to release a discussion draft on central bank digital currency (CBDC), the Federal Reserve is now seeking comment on whether and how it might create one.
- [GSE-012422](#): A new Federal Reserve Bank of Atlanta [study](#) adds another element to those [prior research argues](#) are evidence of widespread racial discrimination in U.S. mortgage finance.
- [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.