FedFin Daily Briefing

Monday, March 28, 2022

Hsu Open to New Merger Policy on Inter-Agency Basis

As noted on Friday, the FDIC has now officially released a controversial RFI on bank-merger policy (see FSM Report **MERGER9**). Press included a statement from Acting Comptroller Hsu indicating that he supports this public-comment effort, especially with regard to reconsidering financial stability at larger banks. However, Mr. Hsu also emphasized the need for coordinated inter-agency action to update current merger guidelines, implying that he will not press for freestanding FDIC standards or issue anything specific to national banks. It remains to be seen if this policy will hold if the FRB is unwilling to take public action to update merger policy even as the Department of Justice does so (see FSM Report MERGER10).

Progressives Propose a Treasury, not Central Bank, Digital Dollar

As anticipated when we reviewed a Brookings proposal for a "Treasury dollar", legislation (H. R. 7231) has now been introduced to create what its sponsors call "ECASH" – that is, a digital currency issued by the U.S. Treasury, not the Federal Reserve. Introduced by Rep. Stephen Lynch (D-MA) and several progressives, the ECASH program would launch three Treasury pilots under a new high-level Treasury office to create a digital dollar with physical cash's privacy and anonymity. The Brookings proposal viewed the digital dollar as an instrument of government spending suitable for handling government benefits and perhaps over time becoming an account-based currency without the complexity associated with CBDC. However, ECASH is designed to be the equivalent of bearer-based, tokenized instrument that would prevent banks from monopolizing digital dollars as sponsors believe might be the case with CBDC. ECASH pilots would craft hardware, inter-operability with the payment system, and debit-card functionality for government payments without reliance on DLT or cryptocurrency. Sponsors believe this instrument would promote financial inclusion, but others may fear its implications for illicit finance despite safeguards included in the bill. The ECASH program would need to be fully implemented within 48 months of enactment and is intended to advance the goals of the President's crypto order (see *Client Report* **CRYPTO26**) without the downside sponsors and progressive advocacy groups attribute to CBDC.

The bill also includes an unusual provision -- allowing the Treasury to create what it calls "overdraft" accounts at the Fed through which ECASH development would be funded versus a direct appropriation. It remains to be seen if other initiatives adopt this deficit work-around, monetizing the Fed's portfolio versus the Fed's increasing role monetizing Treasury obligations.

House Panel Presses CS on Sanctions Compliance

Signaling a new source of sanctions-related reputational risk, the House Oversight Committee today demanded information from Credit Suisse following assertions that the bank had ordered counterparties to destroy Russia-related documentation. The panel's letter demands material (e.g., the names of all investors in certain securitized instruments) that the bank may be hard-pressed to produce unless the records reside in the U.S. or other domiciles that do not adhere to strict customer-privacy rules. It is unlikely that the panel will be swayed by the bank's failure to comply with the disclosure demands due to Swiss law, putting the company in an awkward position other banks may fear based on transaction domicile and Russia-related activities. Answers are due back to the panel by April 11.

Chopra Goes after Charters, Activities, Officers for Repeat Enforcement Violations

CFPB Director Chopra today expanded his attack on large financial-services firms, arguing that those who repeatedly violate consumer-protection or other core standards should lose their charters. Much of Mr. Chopra's talk focuses on Facebook, which he says violated an array of FTC sanctions that he opposed as an FTC commissioner because they were not sufficiently stringent, suggesting not only that Facebook should not be allowed into the financial-services arena, but also that this is likely to be the case for other tech-platform companies.

Mr. Chopra does not have the statutory authority to levy charter restrictions on the banking organizations he also targets and sometimes names, leading him to call for forcing large firms out of certain activities. He may be able to deploy this sanction under certain circumstances if the activity is related to consumer finance by virtue of setting terms and conditions in such a way that a company decides that the business line ceases to be viable. The CFPB director also calls on other agencies to revoke bank charters. However, even if federal banking agencies were to agree with Mr. Chopra, they still generally lack the statutory authority to revoke a banking charter for enforcement violations unless it is related to severe resolution-planning deficiencies, critical under-capitalization, or AML violations. Reflecting this, Mr. Chopra suggests that the biggest banks could be punished by withdrawing their FDIC insurance, imposing fines directly on senior officers, adding growth and capital limits akin to those mandated for Wells Fargo (see *Client Report* **REFORM126)**, or denying certain operating privileges.

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-032222:** As detailed in our new in-depth analysis, the CFPB's exam-manual rewrite dramatically redefines the compliance-, legal-, and reputational-risk terrain for any consumer-financial company and the vendors or counterparties on which it relies.
- **CONSUMER39:** Reflecting one of its new director's top priorities as well as that of the Biden Administration, the Bureau of Consumer Financial Protection has significantly revised its examination manual when it comes to behavior that might be viewed as discriminatory in a wide range of consumer-financial products, services, underwriting, advertising, marketing, governance, and other arenas.
- **SANCTION17:** The Senate Banking Committee's hearing today on illicit finance focused as expected on cryptocurrency and suggests that targeted legislation addressing specific jurisdiction or compliance issues might advance on a bipartisan basis.
- **GSE-031522:** Although we have done extensive analysis of a U.S. central-bank digital currency (CBDC) in our sister analytical service, we have not viewed as it as an imminent strategic consideration for housing-finance agencies and financial institutions.
- **CRYPTO26:** We follow our initial client alert here with an in-depth analysis of President Biden’s long-awaited executive order laying down steps intended quickly to construct a U.S. digital-asset policy construct.
- **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 that 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.

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