



FedFin Daily Briefing

Monday, May 9, 2022

U.S. Adopts Powerful Back-Door Campaign vs. Shell Companies, Trusts

In conjunction with a G-7 statement strongly condemning [Russia](#), [Treasury](#) took an innovative move to address shell companies linked to the Russian Federation even as FinCEN's beneficial-ownership rules remain bogged [down](#). In its latest round of [sanctions](#), Treasury sanctioned U.S. persons who directly or indirectly in the U.S. or elsewhere provide accounting, trust, and corporate-formation services to sanctioned entities and more broadly to anyone in the Russian Federation. OFAC also sanctioned the trust, corporate-formation, accounting, and management-consulting access points in Russia and sanctioned them as well. As a result of this action, any shell-company or trust assets in the U.S. or in the possession of U.S. persons are blocked and must be reported. Although this back-door approach to beneficial-ownership reporting could not be used in purely domestic, criminal or similar enforcement efforts, it remains to be seen if the U.S. will use this approach for shell companies and trusts associated with other sanctioned persons or entities not directly involved in the Ukraine invasion (e.g., those related to drug trafficking, and kleptocracy outside the U.S.).

Hsu Promises Deal-By-Deal Review of Large Regional M&A Pending Broad, Forward-Looking Policy

Citing changes in both U.S. banking and inequality since the last round of merger-policy statements in 1995, [Acting Comptroller Hsu](#) today called for a new policy that is neither pro- nor anti-merger but rather determines which larger mergers are "good" transactions so that only risky ones are rejected. This approach draws on his earlier [comments](#), emphasizing the importance of ensuring the resolvability of large regional banks and arguing that GSIB-resolvability criteria (e.g., TLAC) can be tailored for the largest regional banks on a deal-by-deal basis until the FRB and FDIC set new rules in this area. Although banking agencies are generally well able to judge post-transaction managerial skills, Mr. Hsu notes that too-big-to-manage remains one of his concerns, especially for "serial" M&A that warrant additional inter-agency review. Mr. Hsu's approach also draws on that from [former FRB Gov. Tarullo](#), looking at individual bank products rather than "blunt" HHI competitiveness indices. Merger analytics should also, he said, go beyond CRA per se to judge transactions also on community feedback gathered at sessions such as the recent public hearing on the USB/MUFG merger. More transparency about community agreements ahead of merger approval is also recommended, with the Acting Comptroller also emphasizing during Q&A that the new CRA proposal ([see Client Report CRA31](#)) ends "grade inflation."

SEC Bows to Critics with Longer Comment Periods

In a significant concession to Congressional Republicans and industry critics, the SEC [today extended](#) the comment period for two of its most controversial initiatives. The deadline for comments on its [climate-risk disclosures](#) is moved forward by twenty-eight days to June 17. The agency has also taken the still more unusual step of reopening comments on its [private-fund rule](#), which extends the period for comments until thirty days following publication of the notice in the *Federal Register*, likely with an eye on ensuring that this rule does not inadvertently inhibit activist investors.

CFPB Takes Administrative Action Expanding ECOA Reach, Lender Risk

Living up to its promise on [Friday](#) to address structural racism, the CFPB today issued a new [advisory](#) extending its fair-lending enforcement scope under the ECOA to all aspects of a credit transaction, not just

loan origination or servicing. The new policy reflects a recent CFPB/FTC amicus brief in pending litigation on which no decision has yet been handed down, suggesting that the Bureau has no hesitancy extending its supervisory scope into disputed areas. Under the new advisory, lenders and those providing other credit-related services may be held liable for ECOA violations found with regards to credit approval, denial, renewal, continuation, or revocation in open-end credit arrangements. Notably, "applicant" is no longer defined only as someone actively seeking credit, making it clear that the Bureau intends to pursue instances in which it believes that disparate impact adversely affect credit availability or the provision of adverse-action letters. Lenders in areas such as mortgage refis, HELOC balance changes, and credit-card limits may face particularly acute compliance, legal, and reputational risk. Friday's fair-lending report emphasized UDAAP liability for ECOA violations, making it clear also that any findings under this new policy could have significantly heightened risk under the new Bureau examination manual ([see FSM Report CONSUMER39](#)). The new policy will be effective when this notice is published in the *Federal Register*, with the Bureau describing this action as an "interpretive rule" exempt from APA's prior notice-and-comment requirements. It thus continues the CFPB's practice of taking sweeping policy actions outside the scope of the Congressional Review Act, a practice to which Republicans took strong exception at recent hearings ([see Client Report CONSUMER42](#)).

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](#).

- [CRA31](#): The FDIC today led the way with release of a long-awaited inter-agency [proposal](#) updating decades-old CRA regulation.
- [CLIMATE13](#): The FSB's report is aimed at establishing global standards that prevent fragmentation along national or regional lines as well as ensuring that regulatory and supervisory actions mitigate climate risk to the greatest extent possible in the face of an array of data and measurement challenges.
- [INTERCHANGE9](#): As anticipated, bankers and card networks squared off with merchants at today's Senate Judiciary hearing addressing credit-card interchange fees.
- [GSE-042822](#): In this note, we expand on our analysis of the CFPB's new campaign against [nonbank financial institutions](#) to look more deeply at its impact on residential-mortgage finance.
- [CONSUMER42](#): Today's HFSC hearing with CFPB Director Chopra plowed much ground broken yesterday before the Senate Banking Committee ([see Client Report CONSUMER40](#)), but several new furrows were also unearthed.
- [CONSUMER41](#): Using what it describes as "dormant" authority, the CFPB is seeking comment on a rule setting the procedures under which it expands its authority to nonbank financial companies it believes pose consumer-protection risk.
- [CONSUMER40](#): The Senate Banking Committee's hearing today with CFPB Director Chopra was a sharply partisan session with little immediate impact on what Mr. Chopra plans to do to achieve his sweeping new vision.
- [GSE-042122](#): In our last CRT [analysis](#), we looked at transaction viability under the Basel IV rewrite set

for rapid release once key Fed nominees are finally confirmed.

- **[GSE-042022](#)**: As we noted [yesterday](#), the IMF's financial-stability [report](#) includes a searing assessment of fintech risk.
- **[CBDC11](#)**: As [promised](#), we turn here to an in-depth analysis of a [paper](#) from global regulators on whether CBDC contributes to financial inclusion – one of the most vital arguments from those advocating CBDC in the U.S. and in many other nations.
- **[GSE-041522](#)**: Cementing her very different vision of Fannie and Freddie, Acting Director Thompson has now finalized a new strategic plan for the FHFA emphasizing the importance of both equitable and sustainable housing finance.

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