FedFin Daily Briefing

Tuesday, January 17, 2023

FinCEN Opens Beneficial-Ownership Reports to Public Comment

Likely furthering its effort to garner greater public buy-in for its beneficial ownership information (BOI) standards, FinCEN is now requesting public comment on these reports. As previously noted, House Republicans have called the approach unnecessarily burdensome to small businesses and an infringement on civil liberties. Addressing Republican burden criticisms, FinCEN seeks comment on the necessity, cost, and operational burden of collecting BOI information. Comments are due by March 20.

CFPB Presses Consumers, Employees to Action

In a post today, the CFPB double-downed on its recent precedent-setting enforcement action against Wells Fargo (see *Client Report* **CONSUMER46**). The post lays out the criteria by which consumers can determine if they were harmed and thus seek restitution from the bank, a move that might increase the settlement's cost to the bank. The post also tells consumers who believe themselves harmed by Wells Fargo or any other financial company to attempt settlement and, should that fail, then to call on the Bureau. Employees who believe they have witnessed misconduct are told to attempt to address it or blow the whistle for the CFPB via a noted website.

Breaking Up Won't Be Hard to Do

In a high-impact speech today, Acting Comptroller Hsu expressly threatens that the OCC will not stop at the kind of growth restrictions imposed on Wells Fargo (see *Client Report* **CORPGOV26**) or the CFPB's fines (see *Client Report* **CONSUMER46**) if a large bank is a repeat offender in safety-and-soundness arenas. This builds on his stance on the need for large regional-bank resolvability buffers, but goes beyond it to state that the OCC should, and indeed does, have an escalation process not only to limit bank growth, but also force divestiture or other activity simplification. The speech also details how the OCC will deem a bank TBTM – i.e., too big to manage, noting for example that large banks and supervisors should not ignore lapses or risks solely because they are not material in terms of the percentage of affected consumers or the percentage of capital at risk; here, Mr. Hsu says that capital-at-risk judgments should be determined against allocated – not total – capital.

The Acting Comptroller also indicated that a TBTM escalation process already exists at the OCC, saying also that he will make it more transparent, even as he promised that his agency will work with the others to ensure this escalation process applies at the FRB and OCC. For the OCC to succeed as Mr. Hsu intends, it may need the Fed to demand simplification at the BHC level unless or until the OCC by way of new resolution plans is able to sever activities within a lead national bank. The extent to which the Fed and FDIC will agree on these severability standards in final regional-bank standards is uncertain (see FSM Report **RESOLVE48**).

Fed Begins Big-Bank Physical/Transition Financial Climate Risk Analysis

The Fed today announced a two module structure for its upcoming GSIB pilot climate scenario analysis, kicking off a process to identify the data, governance, and processes banks need to manage the financial risks related to physical and transition climate events. As anticipated, nothing in a bank's results will affect capital-adequacy determinations, a sharp distinction between the Fed's preliminary approach to climate risk and that emerging in several other nations. The physical-risk test must model the impact of various physical shocks to the Northeastern US on residential and commercial real estate portfolios. Two tests are also required on the effect of transition risks on the bank's corporate loan and commercial real estate portfolios, with one assuming current US climate policy and one based on the US achieving carbon neutrality by 2050. The Fed anticipates publishing insights by the end of 2023, suggesting no later than a mid-year turn-around from targeted banks. No bank-specific results will be disclosed.

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.

- **CRYPTO38:** Karen Petrou's memo earlier this week and her comments to the *American Banker* about Silvergate have sparked many client questions.
- **GSE-011123:** As the Fed has hiked interest rates, mortgage rates have of course also gone up, sending a sudden chill through the residential market and putting home ownership even more out of reach for all but those for whom the home equity they still have after prices correct suffices for long-term wealth accumulation.
- **GSE-010523a:** FHFA's latest scorecard for Fannie, Freddie, and CSS reiterates Director Thompson's overarching objectives for Fannie and Freddie in the new era of equitable finance, CRT, and capital compliance.
- **GSE-010523:** As we previously noted, the U.S. banking agencies will finally, finally, finally get around to proposing their version of the Basel IV capital rules more recently dubbed the "end-game" standards.
- **CRYPTO37:** The Basel Committee has finalized its second try at global standards governing bank cryptoasset exposures, laying out a path that U.S. agencies plan quickly to implement even as Congress continues to wrestle with this fast-changing sector.
- **DEPOSITINSURANCE117:** In the wake of increasing instances in which customers are confused and even misled about the extent to which fintech and cryptoasset holdings are insured deposits, the FDIC

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is proposing new standards addressing this problem as well as ways to modernize IDI representations of their own FDIC-insured offerings in branches and through the fast-changing array of retail banking delivery channels.

- **LIBOR9**: Shortly before its statutory year-end deadline, the Federal Reserve finalized its proposal defining legacy-contract benchmarks when there is no clear, practicable contractual fallback rate.

- **CONSUMER47:** The CFPB is proposing to create a public registry of certain enforcement actions that would initially cover nonbanks (including BHCs) with a goal of drawing public and enforcement-agency attention to what the Bureau's director calls "serial offenders."

- **GSE-122122:** Finally taking what was supposed to be an "interim" final rule in 2009, FHFA yesterday finalized a variation on Mark Calabria's 2020 new-product proposal.

- **CONSUMER46:** In this report, we provide an in-depth assessment of the CFPB's unprecedented $3.7 billion settlement earlier today with Wells Fargo (WFC).

- **FSOC28:** As promised, this FedFin report provides an in-depth analysis of FSOC's 2022 annual report, focusing on findings with near-term policy implications.

- **GSE-121922:** As promised Friday when FSOC's annual report was released, we here go into depth on its implications for residential housing.

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