



FedFin Daily Briefing

Wednesday, January 25, 2023

SEC Re-Proposes Rule Targeting ABS Conflicts of Interest

The SEC today voted 5-0 to re-propose a controversial 2011 rule required under the Dodd-Frank Act ([see FSM Report ABS17](#)) barring the kinds of conflicts of interest all too evident before the great financial crisis related to asset-backed securitizations (ABS). Although the vote was unanimous, GOP commissioners had significant concerns with the [proposal](#), several of which were shared by Democratic Commissioner Crenshaw. Questions on which the SEC will seek comment or where regulatory changes are possible include the extent to which internal firewalls could be considered sufficient under the law as barriers to conflicts of interest and/or if disclosures to investors are a possible alternative. GOP Commissioner Peirce noted that the “sponsor” definition in the new proposal tracks the 2011 one even though comments opposed coverage of collateral managers and other non-traditional issuers. The extent to which parties are governed by conflict standards if they only indirectly participate in ABS transactions is also problematic, in her view. She also believes the NPR is in some places inconsistent with the Volcker Rule. Chairman Gensler did not share GOP views on several of these issues, but did make it clear that he thinks public comment on them is critical. He also pointed to the need for comment on the market-making and hedging exceptions to ensure they suffice. As we will address in a forthcoming in-depth report, the GSEs are exempt as long as they remain in conservatorship – another example of regulatory action providing protection for Fannie and Freddie from market-defining standards only under this status. Comments are due the later of sixty days after posting on the SEC’s website (i.e, today) or thirty days after *Federal Register* publication.

FinCEN Targets CRE Sanctions Evasion

Building on its sanctions evasion [alert](#) last year, FinCEN today issued an [alert](#) detailing red flags that may signal potential sanctions evasion via U.S. CRE investment. Citing the lack of visibility in CRE markets and its large proportion of foreign investors, FinCEN again warns that Russian oligarchs may use shell companies, third-parties, or other proxies to circumvent money laundering and beneficial ownership controls. It also lists the use of an offshore private investment vehicle, ownership of CRE through multiple jurisdictions without a clear business purpose, and failure to disclose beneficial ownership information, among others, as potential red flags that may warrant a suspicious activity report. Red flag warnings of this sort are often indicators that FinCEN is seeing significant risks and, in this case, potential SAR shortfalls. As a result, financial institutions may wish to review their exposure in this sector.

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](#).

- **CONSUMER49:** Using one of its controversial edicts to set what some consider a new rule, the CFPB has opined that negative-option or “subscription” marketing of consumer-financial products or services may be unfair, deceptive, or abusive (UDAAP) and thus subject to significant sanction for both the provider and any third parties with which it works.
- **GSE-012323:** Under Director Thompson, FHFA’s top policy priority is [equitable housing](#).
- **CONSUMER48:** Building on its proposed nonbank registry related to enforcement orders, the CFPB is now also proposing a public registry requiring posting of provisions in consumer-finance contracts the agency believes threaten consumer legal or free-speech rights when issued by supervised nonbanks.
- **GSE-011923:** We will shortly send clients an in-depth analysis of the CFPB’s latest controversial [proposal](#) which would establish a public registry on which supervised nonbanks would file a lot of data on any form contracts they require which includes covered provisions the Bureau thinks unfairly and even dangerously lead consumers to abandon important protections.
- **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 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.