



FedFin Weekly Alert

Monday, February 20, 2023

❑ WILL ANY CRYPTO BE LEFT FOR CONGRESS?

Although media [last week](#) seems suddenly to have discovered that banking is getting a divorce from cryptoassets, FedFin noted the inevitability of a parting following our analysis of the Fed's crypto standards ([see FSM Report CRYPTO31](#)), the inter-agency statement [reaffirming it](#), and Basel's tough stand on crypto-related capital requirements ([see FSM Report CRYPTO37](#)). Many in the cryptoverse have demanded that the SEC stop de facto regulation via tough enforcement actions, but they may well think differently when they look at the agency's [new proposal](#) for crypto-related custody. As we noted last week, this proposal has broad implications for custodian banks and the investment advisers who need them, but its stringent new standards could be so toxic to cryptoassets as to reconfigure them into the tokenized versions of fiat-currency obligations to which the banking agencies and the SEC are far more friendly.

All this comes as Congress gets down to work on crypto-reform legislation. As we noted in our analysis of last week's Senate Banking hearing ([see Client Report CRYPTO39](#)), Republicans differ strongly from Chairman Brown (D-OH) and other Democrats on rhetorical and political issues, but they actually agree that reform is needed. This goes double for reform along the lines proposed last year in Warren-Marshall [legislation](#) to impose AML and related standards on crypto companies, with House Republicans also focused on national-security questions raised not only by exemptions that allow illicit transactions to go unnoticed, but also by those facilitating rogue nations such as North Korea.

Will both sides come to terms? We think it's possible when it comes to stablecoins, especially with regard to reserve-asset transparency and resilience, cryptoasset commingling and conflicts of interest, and the aforementioned law-enforcement and foreign-policy issues. However, Democrats will draw the line if Republicans try to use these bills to bar CBDC, punish SEC Chairman Gensler, or rewrite bank prudential or capital regulation. Similarly, Republicans will block efforts to impose environmental standards on crypto-mining and any restriction they think goes so far as to effectively ban private digital assets.

As always, it won't be easy for Congress to agree and, even if it does, crypto will look a lot different than it does now by the time Congress gets around to rewriting its statutory construct. As a result, we'll continue carefully to monitor and analyze all of these regulatory developments, putting them in the ever-lively market context that then determines the shape of crypto things to come.

Headlines From the Past Week's Daily Briefings

February 13

- **Bowman: Large-Bank Supervisory Guidance to Come, Capital Reform to Exempt Smaller Banks** - FRB Gov. Bowman acknowledged that, while Fed supervision and regulation must be independent of political objectives, they must also be accountable and therefore transparent, predictable, and tailored.

February 14

- **What's Next At The Post-Brainard Fed** - Clients have asked us to advise on what may be next for the Fed if Vice Chair Brainard is indeed named as head of the White House NEC, which now seems certain.

February 15

- **GOP Launches Anti-SEC Climate-Risk Legislative Attack** - As [anticipated](#), House Republicans have gone beyond blasting the SEC's pending climate-risk disclosure [proposal](#) to laying out a consensus bill to force Chairman Gensler in fact to retract it.
- **FDIC Adds Punch to FDIC-Misrepresentation Enforcement Promise** - Building on its insurance misrepresentation final rule ([see FSM Report DEPOSITINSURANCE113](#)), the FDIC issued four cease and desist [orders](#) demanding the removal of false claims and thus made it clear that it is surveying the marketplace to take far more rapid action than has been the case thus far.
- **Calling Out Hsu, Warren Demands Merger Reform** - In a wide-ranging [speech](#) urging tough U.S. antitrust policy, Sen. Warren (D-MA) reiterated her claims that banking agencies "rubber-stamp" mergers and pressed for immediate reform.
- **Will SEC Custody Rules Kill Crypto?** - Conceding that rulemaking is needed on at least one crypto question, the SEC voted 4-1 to approve proposed changes to investment-advisor [asset custody](#) regulation.

February 16

- **House GOP Slams Beneficial-Ownership Database** - Reiterating longstanding concerns, HFSC Chairman McHenry (R-NC) and National Security, Illicit Finance, and International Financial Institutions Subcommittee Chairman Luetkemeyer (R-MO) submitted a comment [letter](#) strongly opposing FinCEN's latest beneficial ownership [NPR](#).
- **House GOP Decries SEC Crypto-Custody Construct** - Reflecting GOP concerns about the SEC's new [custody proposal](#) as well as broad GOP objections to much of what Chairman Gensler does, HFSC Republicans [tweeted](#) that the proposal will not ensure sufficient investor safeguards in part because restrictions on bank custody services remain.

- **Biden Order Reasserts Racial-Equity Agenda** - Reiterating much of his last racial-equity [executive order](#), President Biden issued an [order](#) directing federal agencies to establish equity teams and comprehensive strategies to implement the order's new equity initiatives.
- **FSB Pledges Further Work on DeFi Financial-Stability Risks** - The FSB released a [report](#) finding that DeFi's financial stability risks are limited but may grow should linkages increase to traditional finance.
- **CFPB: Unfair Credit-Card Competition Evident Via Data Suppression** - Following strongly-worded letters to six credit card [lenders](#), the CFPB [concluded](#) that these companies have suppressed payment data for competitive purposes.
- **FHFA Floats Single-Family ESG Bonds** - Building on its equitable-finance [initiative](#), FHFA released a [request for input](#) on the benefits and risks of Fannie and Freddie single family social bonds.

[February 17](#)

- **Senate Dems Frame FRB-Nomination Demands** - In conjunction with a bill spearheaded by Sen. Jack Reed (D-RI), Banking Chairman Brown (D-OH) joined other Democrats in introducing S. 496, legislation to require that the Federal Reserve Board have a governor dedicated to worker interests much as the seat now held by Gov. Bowman is by law required to focus on community-bank considerations.
- **Swiss Bank Role In SEC Crypto Action Sure To Hike Pressure On Banking Agencies** - We draw to your attention the reference to a Swiss bank in the SEC's enforcement [order](#) against Terraform Labs and its founder, Do Kwon.

This Week

No meetings of note.

Future Events of Note

Tuesday, February 28

Senate Banking Hearing entitled: "Advancing National Security and Foreign Policy through Sanctions, Export Control, and Other Economic Tools." [10:00 am, webcast]. Witnesses: TBD.

Tuesday, March 7

Senate Banking Hearing entitled "The Semiannual Monetary Policy Report to the Congress." [10:00 am, webcast]. Witnesses: **The Honorable Jerome H. Powell**, Chairman, Board of Governors of the Federal Reserve System.

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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](#).

- **[CRYPTO39](#)**: Although Chairman Brown (D-OH) remained non-committal on the need for crypto legislation, he emphatically called for reform to protect consumers and investors.
- **[GSE-021323](#)**: Following our [initial report](#), we turn here to a more detailed analysis of what's in store for the Home Loan Banks following the [Brookings high-impact forum](#) on Home Loan Banks that are also facing far more unflattering public attention than has been their fate for years.
- **[CREDITCARD36](#)**: Following on a controversial advance notice of proposed rulemaking, the CFPB has now released an NPR setting specific standards for credit-card late fees that also eliminates the inflation adjustments established by the Federal Reserve when implementing the 2009 credit-card law.
- **[GSE-020623](#)**: A new [post](#) from the Federal Reserve Bank of Atlanta summarizes key findings from recent pandemic-era mortgage refinancing research, reiterating [prior findings](#) that more White mortgage borrowers got lower refinancing interest rates in 2020 compared to Blacks.
- **[CHARTER29](#)**: In conjunction with rejecting an uninsured crypto bank's application for Federal Reserve membership, the Federal Reserve issued a policy statement conforming state member bank powers only to those authorized for national banks even if the state member is an uninsured depository institution.
- **[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](#).