FedFin Daily Briefing

Wednesday, March 15, 2023

Waters Reiterates ICE/BKI Opposition

HFSC Ranking Member Waters (D-CA) released a statement today applauding the FTC's move to block Intercontinental Exchange from acquiring the mortgage software company Black Knight. Citing a letter she sent urging the FTC to reject the merger, she claims that ICE's past practices of controlling capital markets data significantly increased prices for investors and market participants, suggesting a similar outcome if ICE had gained monopolistic power in the mortgage software market. Thus, she argues that the FTC's move to block the acquisition protects home ownership.

Progressives Press For Tailoring Redo

Cementing prior denouncements of 2018 Dodd-Frank "rollbacks" into legislative action, 17 Democratic senators and 31 House Members today took direct aim at Trump-era banking policy by introducing legislation that would repeal Title IV of the Economic Growth, Regulatory Relief, and Consumer Protection Act. But, while this initiative is gaining considerable attention, its legislative prospects are dim – indeed, even Senate Banking Committee Chairman Brown (D-OH) suggested as much. As we noted when the bill was signed into law (see FSM Report **SIFI27**), the Act raised the SIFI asset threshold to $250 billion, thereby altering and in some cases reducing several prudential requirements for some mid-sized banks. While action on this bill is unlikely, it will surely be extensively discussed at near-term hearings on recent bank failures.

Bowman Presses Small-Bank Mergers, Climate Caution, Third-Party Guardrails

In remarks today, FRB Governor Bowman noted that delays in merger reviews cause significant operational and reputational risks and suggested considering all competitors when evaluating a small bank merger's competitive effect to reduce delays. She also emphasized the need to carefully balance the costs and benefits of both the CRA rewrite and of climate guidance, stressing that the agencies must evaluate the CRA's impact on institutions of different sizes that engage in different activities. She also highlighted the risk management and due-diligence challenges associated with third-party service providers, specifically citing the challenge faced by community banks as they rely more on third parties to innovate. The agencies issued an NPR in 2021 (see FSM Report **VENDOR9**) that is frequently mentioned by regulators in discussing this key concern, but clearly faces significant interagency disputes despite broad agreement on the need to address fintechs.

New CFPB RFI Brings Data Brokers Under Scrutiny

Ahead of a planned rulemaking, the CFPB today released an RFI seeking comments on the business practices of data brokers, focusing on new business models to determine if certain practices fall under the scope of FCRA. It also seeks input regarding consumer harm and potential market abuses such as those that may occur when individuals attempt to remove, correct, or regain control of their data. The RFI comes in concert with a more sweeping CFPB effort to lay out the scope of consumer data rights (see FSM Report **DATA3**), suggesting that the agency will look not only at this question in terms of the financial institutions directly targeted in that action, but also more broadly on data brokers as many banking-industry comments sought. Comments on the RFI are due by June 13.

Warren, Blumenthal Call on DOJ, SEC to Investigate SVB

Although media reports indicate that an investigation is already under way, Sens. Warren (D-MA) and Blumenthal (D-CT) sent a letter today to Attorney General Garland and SEC Chairman Gensler urging them to investigate senior SVB officials if they are not already doing so. The Senators claim that SVB may have violated the law by self-dealing with its venture capital clients, utilizing exclusivity clauses that made it difficult for depositors to bank elsewhere, and failing also to disclose risks. They also ask the agencies to investigate senior officials receiving what they call “oversized” bonuses hours before the bank collapsed and assertions that the bank’s asset-liability committee ignored an internal recommendation to buy shorter-term bonds. The letter concludes by asking for the agencies to prosecute any criminal activity and notify Congress if they find “outrageous and indefensible behavior” that does not violate federal law. We would note that numerous matters in this letter – e.g., the exclusivity clauses – are also under the purview of the banking agencies due to their authority over tying, safety and soundness, and corporate governance; these and much more is clearly in the Fed’s sights with its new investigation. No deadline is given for a response from the SEC and DOJ.

FHFA Delays New DTI-Based Upfront Fee

Following an announcement this January that FHFA would implement changes to Fannie and Freddie’s single-family pricing framework, Director Thompson today announced that the Agency will delay the effective date of a new upfront fee for certain borrowers with a DTI ratio above 40 percent. The new effective date is August 1. Director Thompson indicates that this decision is the result of mortgage-industry feedback, pointing to implementation challenges as well as the need to ensure a level playing field among large and small companies. Further, lenders will not be subject to post-purchase price adjustments related to the DTI ratio-based fee for loans acquired by the Enterprises between August 1 and December 31.

Federal Financial Analytics, Inc.
2101 LStreet, N.W. – Suite 300, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com

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- **DEPOSITINSURANCE118:** As promised in our first post-SVB impact assessment (see *Client Report* **RESOLVE49**), this report begins a series of analyses of specific policy issues.
- **RESOLVE49:** As we noted last night, the President concurred with Treasury, the Fed, and FDIC in deciding that SVB's Friday failure and imminent runs on Signature Bank and, most likely, others posed a systemic risk.
- **GSE-030923:** As detailed in our reports earlier this week on Powell's appearance before Senate Banking and HFSC, much was said about the pending rewrite of big-bank capital standards.
- **FEDERALRESERVE73:** At today's HFSC hearing, Chairman Powell modulated his hawkish stance just a bit, continuing as he long has done to refuse to take a stand on fiscal policy while advocating for rapid debt-limit action.
- **FEDERALRESERVE72:** Although Chairman Powell's testimony kept exclusively to monetary policy, today's Senate Banking hearing seemed only to go through the motions set at previous hearings with regard to inflation, growth, and the Fed's long-term objectives.
- **GSE-030123:** A recent FRB-Atlanta study finds that closing the racial homeownership gap alone would not redress housing market racial disparities because minority homeowners cannot equitably access home equity and thus enjoy comparable access to the economic opportunities afforded by homeownership.
- **SANCTION20:** In a remarkably bipartisan session, the Senate Banking Committee today made it clear that Congress wants tougher sanctions against Russia, near-term action against hold-out nations to oil-price caps and other efforts, and perhaps even confiscation of Russian assets to fund U.S. Ukraine aid.
- **CRYPTO40:** In the wake of revelations by Silvergate and other banks about significant deposit exposures to cryptoasset entities, federal banking agencies have issued a statement about the need to manage liquidity risk associated with cryptoassets.
- **GSE-022723:** FHFA has proposed a set of refinements to the current GSE capital construct.
- **CUSTODY5:** Making full use of powers granted in the 2010 Dodd-Frank Act, the SEC is proposing a wholesale rewrite of the rules dictating how investment advisers must place assets in custody and which institutions are considered qualified for this purpose.
- **GSE-022123:** As we noted, FHFA is venturing onto treacherous political ground with a request for input on expanding Fannie and Freddie's ESG imprint.

Federal Financial Analytics, Inc.
2101 LStreet, N.W. – Suite 300, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com