Federal Financial Analytics, Inc.

# MEMORANDUM

**TO:** Federal Financial Analytics Clients

**FROM:** Karen Petrou

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The fact that both the House and Senate passed a Congressional Review Act resolution overturning the Department of Labor's ESG standards makes it clear that striking an anti-woke blow is deemed good politics by red and purple politicians. The President's certain veto also makes it clear that a blue man sees matters quite differently, as did 204 House Democrats and 46 of their Senate colleagues. This stalemate will continue for changes to federal law, but it won't stop Republicans from taking a lot out on financial regulators and big banks that they can't get into the law books. Thus, anyone deemed even a bit woke-ful will get an earful.

Even if all these excoriations are only rhetorical, they will prove meaningful because even federal regulators immune from the appropriations process are susceptible to political influence – as well they should be if they are not also to be unaccountable. That anti-wokeness is already making its mark is evident in many ways, most recently in the inter-agency crypto-liquidity risk statement at great pains to refute any Republican suggestion that tough new standards amount to a blanket ban on engaging in any form of legal cryptoasset activity. In essence, the new statement says, "banks can do crypto if it's legal, but they almost surely shouldn't do crypto because it's way risky and we're watching."

To be sure, anything crypto isn't always toxic. Another way the agencies will handle accusations that they are conducting a stealth-woke anti-crypto campaign is to make it clear that they are just fine with some kinds of cryptoassets in most forms of regulated financial institutions.

This is also the approach taken in Basel's crypto capital standards, the SEC's custody rule, and other recent pronouncements. Indeed, not only do federal agencies accept some forms of cryptoassets within the regulatory perimeter – they like at least one: tokenized deposits. As detailed in Treasury statements on CBDC last week and a BIS call the week before for central bank "unified ledgers," these digital assets are likely to have a glorious future if someone first figures out how to make them work.

Another indication of regulatory susceptibility to political pressure came late last year and bears watching. As we noted at the time, Senate Banking Republicans issued a scathing report arguing that asset managers were abusing their passive-investment privileges by favoring shareholder proposals for super-stakeholder capitalism in the form of net-zero pledges, gender diversity, and other contentious questions. They then dropped a big bomb, suggesting that companies such as BlackRock and Vanguard should be deemed bank holding companies because, when they voted for non-financial governance changes at banking organizations at which they held large stakes, they exercised control. Shortly thereafter, the Federal Reserve announced that it will look into this when considering who's a BHC. We doubt this will come to much beyond a lot of paperwork by Fed staff and their new friends at big asset managers, but even an inquiry of this magnitude may well have consequences for proxy voting this year and beyond – it's hard to think of anything BlackRock, Vanguard, and other firms would like less than becoming a bank holding company with all the capital, examination, and flat-out cost this entails.

And then there's woke's third rail: climate change. So far, the banking agencies and the SEC are standing firm on pending climate-risk actions, but we suspect the SEC will fold when it comes to Scope 3 disclosures in its pending rule and the banking agencies will redouble their efforts insisting that all they do about climate risk is strictly financial. Anti climate-woke rules will no more be enacted than anti-woke pension standards, but anti-woke pressure will blunt any new climate-change standards the agencies might contemplate in 2024 that could be called woke that then wreak political cost on initiatives over which Congress has more direct control. Pre the GOP take-over of the house, much pretty-woke in the way of climate risk was under consideration in at least one banking agency. Now, not so much.