FedFin Client Report

Tuesday, April 11, 2023

FedFin Assessment: Top Brainard, Gruenberg Regulatory Rewrites

Client Report: REFORM220

Executive Summary

In this report, we drill down on prior forecasts (see *Client Report* **REFORM219**) of near-term regulatory action to identify the revisions sure to be prioritized as NEC Director Brainard and FDIC Chairman Gruenberg seek to reverse rules finalized over their objections when they were in the minority. Ms. Brainard does not have a direct role dictating what the Fed will do given central-bank independence, but she has a good deal of influence as evidenced most recently by the White House action list. Acting Comptroller Hsu was not casting formal votes over these years, but he was an influential staff leader in this area and clearly has his own list – see for example his efforts on bank merger and resolution policy (see FSM Report **RESOLVE48**). We expect he will concur with Vice Chairman Barr and Mr. Gruenberg if they all advance the rewrites to the tailoring rules to which Ms. Brainard and Mr. Gruenberg so strongly objected. One option may be to focus not only on banks with assets between \$10 and \$250 billion as has been widely discussed, but also on those between \$250 and \$700 billion as the then Fed Governor sought. Further, as this report shows, changes to stress testing are likely not only to address glaring scenario errors, but also on a few smaller changes providing significant capital-distribution relief. One vote Mr. Gruenberg cast on an enforcement action is also worthy of note given the flood of those soon to come.

Analysis

FRB Standards

Ms. Brainard's objections to recent rule include:

- **Tailoring:** Ms. Brainard strongly objected to provisions going beyond S. 2155 in general and with particular attention to standards governing banks with assets between \$250 and \$700 billion**.** She subsequently objected also to tailoring standards for foreign banks, noting with concern the decision not impose liquidity restrictions on branches and agencies (see FSM Report **SIFI34**).

- **Stress Testing:** She voted against the decision to eliminate the Board's ability to object qualitatively to a large bank's stress test. Consistent with her longstanding opposition to what she feared are procyclical capital distributions, Ms. Brainard also objected to actions at the height of the Covid crisis to allow limited capital distributions.

- **Resolution Planning:** Ms. Brainard voted against eased resolution-plan requirements for larger banks (see FSM Report **LIVINGWILL21**). She also voted against new guidance that would ease an array of reporting requirements, particularly those related to capital and liquidity, for Category II FBOs but agreed to additional resolution-plan actions.

- **Volcker Rule:** While this is a low-priority item given current actions addressing post-SVB issues, it is important to note that Ms. Brainard also objected to provisions in the Volcker rewrite with regard to scope, bank self-assessment, and CEO attestation. She also voted against changes to the covered-funds rule (see *Client Report* **TAKEOVER9**).

- **Swap Margins:** Again, this is not a current priority, but it is useful to note Ms. Brainard's exception to the rule on grounds that it provided too much room for risk, especially with regard to inter-affiliate transactions (see FSM Report **DERIVATIVES36**).

Although the issue has not come to a vote in recent years, it is worth noting that Ms. Brainard is a longstanding, persistent advocate of deploying the counter-cyclical capital buffer. She is likely to press for triggering the CCyB if macroeconomic and financial-markets meet her criteria for counter-cyclical intervention, a move Vice Chair Barr may advance on a freestanding basis if he is unable quickly to advance his holistic construct.

FDIC

Key opposing votes from Mr. Gruenberg include:

- **Enforcement:** In 2019, Mr. Gruenberg opposed settlement with PWC regarding a long-ago failed bank for accounting malpractice because the settlement lacked an admission of wrongdoing.

- **Tailoring:** Like Ms. Brainard, Mr. Gruenberg opposed both the U.S. and FBO tailoring rules, noting in particular the absence of liquidity standards for foreign branches and agencies.

- **Capital:** Although Ms. Brainard supported the interim final rule extending Covid-era SLR relief (see FSM Report **LIQUIDITY31**) until March of 2021, Mr. Gruenberg opposed it. He also objected to the changed treatment of retained earnings for stress-test capital purposes to which Ms. Brainard objected.

- **Brokered Deposits:** On an issue sure to come up in the wake of recent failures (see *Client Report* **DEPOSITINSURANCE118**), Mr. Gruenberg strongly opposed liberalizing brokered-deposit standards (see FSM Report **DEPOSITINSURANCE111**). He did so on grounds that easing the types of deposits considered brokered exposes the DIF to undue risk.

- **ILCs:** Mr. Gruenberg voted against granting Square a banking license. He also opposed a rule demanding only limited sources of support from ILC parents (see FSM Report **ILC14**).

- **Volcker Rule/Margins/Covered Funds:** Again like Ms. Brainard, Mr. Gruenberg opposed many aspects of these revisions.

- **True Lender:** Mr. Gruenberg opposed the FDIC's version of the true-lender rule (see FSM Report **PREEMPT33**) on grounds it weakened consumer protections.

- **CRA:** Mr. Gruenberg strongly opposed the Trump Administration's approach to CRA reform (see FSM Report **CRA25**).

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