FedFin Daily Briefing

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ECB Targets Bank Risk to NBFIs

A speech earlier today from the ECB's top bank supervisor makes it clear that the EU is pressing ahead with FSOC's proposed limits on bank inter-connections with NBFIs (**see FSM Report SYSTEMIC95**). Karen Petrou's memo today also addresses this issue. Andrea Enria today said the EU wants banks to limit systemic risk via this transmission channel because global regulators will take years to go beyond talking about NBFI risk to curtailing it. He thus urged banks to take immediate steps to ensure that growing liquidity and leverage risks from nonbank counterparties are buffered. He is particularly concerned with margining related risk but notes that EU banks must take quick actions to identify risk-transmission channels under stress conditions at all nonbank counterparties.

New M&A Policy Sets High Bar For Banking-Agency Approval, Increases Odds Of DOJ Rejection

Making M&A a good deal harder to pull off, Assistant Attorney General Jonathan Kanter today redefined U.S. bank-merger policy in light of comments on a recent RFI (see FSM Report **MERGER10**) and dramatic changes since current policy was set in 1995. The new approach reflects Biden Administration competition policy (see *Client Report* **MERGER6**) and will make it considerably more difficult for banks of all sizes to win DOJ approval if the banking agencies approve their proposed transaction after getting a new, likely more dire competitive-factor report from the Department of Justice. As with the FTC, DOJ is now focused on ensuring upfront competition, not seeking retroactively to address antitrust problems via remediation such as branch divestitures. DOJ now will reflect what it believes to be the full range of "market realities" via competitive-factor analyses assessing all relevant forms of competition in retail and small-business banking and concentration levels across a wide range of metrics beyond local deposits and branch overlaps. Competitive factors considered going forward include fees, interest rates, branch location, product variety, network effects, interoperability, and customer service. The Antitrust Division will also closely scrutinize mergers that increase risk of coordinated effects and multimarket contacts with other banks and examine the extent to which transactions threaten to entrench big bank power by excluding potential disruptive threats or rivals. Mr. Kanter was also emphatic that the Division will not limit its analysis to small and local bank acquisitions, working with banking agencies to augment data sources to calculate market concentration.

In a Q&A following his remarks, Mr. Kanter emphasized that the Division's antitrust analyses and competition assessments will review all relevant dimensions of competition and present these to banking regulators, calling this approach "heartland" enforcement. Asked if the Division will recognize what the questioner called a TBTF implied subsidy, Mr. Kanter said it will, emphasizing the critical role of community banks to local economies. Mr. Kanter also emphasized that analyses will be highly "fact-specific" and will evaluate competitors such as credit unions and neobanks to the extent they are relevant to competition. Technologies that facilitate "multi-homing" or could disrupt or provide greater transparency to consumers are also relevant to competitive dynamics, but the Division will not prejudge fact patterns.

FRB-KC: Community Banks Better Capitalized than GSIBs

The Kansas City Fed today released an analysis of 2022 bank capital, finding that community banks continued to hold higher levels of capital compared to G-SIBS: ten percent to six percent, respectively. The study also found that G-SIB supplementary leverage ratios (SLR) increased thirty basis points to 5.94

percent, the first increase since the beginning of the pandemic, excluding the impact of the Fed's temporary capital relief. US G-SIBs were also found to have higher leverage ratios than all foreign G-SIBs other than certain Asian counterparts.

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.

- **GSE-061523:** The FHFA's report to Congress this year was eagerly awaited to see if it shed any insight into what FHFA might do after its listening sessions and Sandra Thompson's promise to do something sometime soon about the Home Loan Banks.
- **CONSUMER51:** With Rep. Andy Barr (R-KY) leading the attack with an accusation of CFPB "McCarthyism," today's HFSC hearing with Director Chopra tracked much in yesterday's Senate Banking session.
- **REFORM227:** Treasury Secretary Yellen was pressed at today's HFSC hearing to comment on pending bank capital standards, the scope of FDIC coverage, and failed-bank resolutions.
- **CONSUMER50:** Reflecting Acting Comptroller Hsu's focus on consumer protection, fairness, and inclusion, the OCC is seeking views on what could become an annual survey of what consumers and especially bank customers think of their bank.
- **VENDOR10:** After frequently citing third-party relationships and outsourcing as worrisome risk, the banking agencies have now finalized guidance first proposed in 2021 to govern them.
- **GSE-060823:** As we will detail in a forthcoming in-depth report, the banking agencies' new "guidance" on third-party vendors essentially brings all nonbank counterparties with whom banking organizations deal under the agencies' enforcement thumb.
- **COMPENSATION36:** Sen. Warren (D-MA) has introduced a revised version of legislation to ensure that both the FDIC and other federal banking agencies can demand that executives and others governing failed banks refund direct and indirect compensation to the federal government.
- **GSE-060223:** As we detailed earlier this week, the OCC's new enforcement policy is a paradigm shift in terms of the legal and reputational risk run by national banks and federal thrifts – that is, by the depository institutions that matter the most to mortgage finance.
- **CHINA17:** While largely focused on countering fentanyl, today's Senate Banking hearing on China, saw Committee Democrats try to ascertain the details of a potential outbound investment executive order and Republicans addressing what they believe to be shortcomings in data privacy, AML regulation, and sanctions policy.
- **SUPERVISION2:** Following a speech earlier this year by the Acting Comptroller arguing that some banks are "too big to manage" and the furor caused by recent failures, the OCC has significantly revised its enforcement policy.
- **GSE-052323:** Today's HFSC hearing with Sandra Thompson was the anti-LLPA event we anticipated when it came to Republicans that also saw the stout defense Democrats were sure to provide combined with FHFA's resolute stand on doing nothing to change the LLPAs or guarantee-fees beyond what might come of the pending RFI.

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