FedFin Daily Briefing

Thursday, June 29, 2023

Powell Stands by Big-Bank Reg Rewrite

In remarks today**,** Chair Powell echoed Vice Chair Barr's "humble" comments yesterday about the need to anticipate additional risks despite banking-system resilience, noting that rules and supervision require review. Building on the Fed's internal SVB review (see *Client Report* **REFORM218**), Mr. Powell suggested that the Fed had succumbed to the "natural tendency" to fight the last war and needs now to update its standards to address new risks. These may well need to include additional capital standards despite the need also to recognize possible trade-offs and protect smaller banks, but Mr. Powell is emphatic that the biggest banks require the very toughest standards. He is also pleased with the rapid-fire decision by the Board and other agencies to invoke the systemic exception following the SVB and SBNY failures.

FTC Finalizes Tough New Guidance On Deceptive Reviews And Endorsements

The FTC today finalized an updated version of its Endorsement Guides, setting new standards for the advertising and endorsement behavior that may constitute unfair or deceptive practices. These include implementation of a Consumer Review Fairness Act ban on standardized contract provisions penalizing consumers for negative reviews, a practice the CFPB last year called "gag" clauses that are banned under this law. The FTC's final revised Guides also establishes new principles for consumer reviews to prevent distorting consumer product perception, addresses incentivized and fake reviews, adds a definition of clear and conspicuous, alters the definition of product to include the term "brand," alters the definition of endorsements to refine how social media tags are treated, increases marketing liability, and highlights that a platform's built-in disclosure tool may not provide adequate disclosure. The Commission also updated its FAQs for the Guides to address incentives and treatment of negative feedback for online reviews as well as influencer disclosures of material connections. The update was approved on a 3-0 vote and is effective upon publication in the *Federal Register*.

Banking Agencies Encourage Banks To Go Easy On CRE Borrowers

The banking agencies and NCUA today finalized changes to troubled-loan standards in a policy statement that is substantially similar to last year's proposal. As noted, the policy codifies action during the GFC on CRE-related allowances for loan and lease losses (see FSM Report **ALLL5**) and Covid-crisis era regulatory and CECL actions (see FSM Report **CECL7**). Unlike the proposal, the final guidance includes a section on short-term loan accommodations, expressly allowing and may even be read as encouraging accommodations for troubled CRE borrowers who are deemed good repayment prospects. This gives banks still more protection from examiner concerns should they extend and can prove that this isn't also "pretend." It is effective upon publication in the *Federal Register*.

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.

- **COMPENSATION37:** The Senate Banking Committee has overwhelmingly approved bipartisan legislation to reform executive compensation following larger insured-depository institution (IDI) failures, with parent-company executive compensation also at risk in some circumstances.

- **ESG4:** Late Friday, GOP HFSC Members issued a withering report criticizing the Biden Administration for using financial regulators to do its political bidding on ESG objectives that it believes "contort" financial regulators into political instrumentalities that put retail investors at risk.

- **GSE-062223:** A *Bloomberg* article tells a fascinating tale of high-flying personal real-estate investment and other alleged acts of self-dealing at the expense of the seemingly-hapless Federal Reserve Bank of San Francisco.

- **FEDERALRESERVE74:** Chairman Powell's HFSC appearance today led to unusually substantive discussion of pending financial-policy actions.

- **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.

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