



FedFin Weekly Alert

Monday, July 17, 2023

❑ ALL ROADS LEAD TO CHOKEPOINT

As we noted [last week](#), HFSC's anti-ESG agenda includes a strong poke at banks and their regulators, going beyond the climate-risk concerns that lie at the center of these sessions also to resurrect efforts during the Trump Administration to sanction any bank that decides on reputational or other grounds not to lend to a creditworthy, legal business ([see FSM Report ESG3](#)). Much is said in this context about "Operation Chokepoint," a decade-plus old effort by the FDIC and OCC to block bank exposures to payday lenders, firearms firms, or others the agencies believed posed so much reputational risk as to make the loans unsafe or unsound.

Operation Chokepoint was never as sweeping as opponents said, but it was more than controversial and quickly reversed. Still, as these most recent efforts make clear, Chokepoint created a significant obstacle to regulatory credibility when it comes to recent assertions that climate risks are only addressed if they are financial and issues such as new firearms credit-card codes are solely private-sector initiatives.

HFSC's ESG agenda isn't the only venue for anti-Chokepoint interventions. It became clear last week that the cannabis-banking bill Sen. Brown (D-OH) hopes at long last to bring to the Senate floor faces a significant chokepoint: Republicans won't go for it without a prohibition on reputational-risk based lending and Sen. Reed (D-RI) and other Democrats won't support the cannabis bill if it has any language along these lines. And, not to be outdone by the House, several Senate Republicans last week took a [new stand](#), introducing a bill to ban reputational-risk sanctions as well as create a new IG in Treasury to look at misconduct allegations, especially those related to bias, across the sweep of federal financial regulators.

Will Republicans hold hostage the cannabis bill or others such as the pending measure on executive compensation ([see FSM Report COMPENSATION37](#))? Could Sen. Brown's initial acceptance of some rep-risk language mean he'll accept something in this arena to get something else?

We shall see and FedFin will of course be watching.

Headlines From the Past Week's Daily Briefings

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July 10

- **HFSC Lays Out Its ESG Priorities** - The majority staff [memo](#) ahead of HFSC's hearing on ESG follows the outline [anticipated](#) and that laid out in the GOP agenda for ESG-related action ([see Client Report ESG4](#)).
- **OCC Concurs On Capital, Tries For The Merger Middle** - Acting Comptroller Hsu confirmed our assessment of Vice Chair Barr's comments ([see Client Report CAPITAL228](#)) that the three banking agencies are aligned on the new capital construct to be shortly released for public comment.
- **Barr, Foster Demand Delay to Capital Rewrite** - Anticipating Vice Chair Barr's remarks detailing near-term capital policy changes ([see Client Report CAPITAL228](#)), HFSC Financial Institutions Subcommittee Chair Barr (R-KY) and Ranking Member Foster (D-IL) sent a [letter](#) demanding that he appear before the Subcommittee to present the conclusions of his capital review and upcoming Basel III implementation plans prior to public release, asking also for details and likely outcomes for industry consolidation.
- **House Republicans Keep Spotlight On FRB-SF** - Continuing the GOP's attack on the San Francisco Fed's supervision of SVB in the wake of what many believe are "woke" priorities, House Oversight Committee Chairman Comer (R-KY) was joined by Financial Services Subcommittee Chairwoman McClain (R-MI) in sending a [letter](#) to FRB Chairman Powell taking serious issue with the Federal Reserve Bank of San Francisco and the Fed for what they describe as SVB-related transparency and communication failures.
- **BIS Survey: Most Central Banks Considering CBDCs** - The BIS released the [results](#) of its 2022 CBDC and crypto survey of central banks, finding that 93% of central banks are engaged in some form of CBDC work and that 80% agree in principle of the value of having both a fast payment system such as FedNow and a CBDC.

July 11

- **FRB-NY Staff: Climate Transition Risk Meaningful, Manageable** - A [new blog post](#) from Federal Reserve Bank of New York staff concludes that climate-transition risk in bank loan portfolios is meaningful, but also manageable.
- **CFPB, OCC Team Up To Sanction BofA Transaction, Card Account Practices** - The [CFPB](#) and OCC took action against Bank of America in ways that renew questions about potential overlaps between the CFPB's jurisdiction and that of the banking agencies.
- **GOP Urges Supreme Court to Uphold Fifth Circuit CFPB Decision** - Continuing the GOP's longstanding campaign to redesign the CFPB, HFSC Chairman McHenry (R-NC), Senate Banking Ranking Member Scott (R-SC), and 130 Members of Congress filed an [amicus brief](#) urging the Supreme Court to uphold the Fifth Circuit's [decision](#) declaring the CFPB's funding mechanism unconstitutional.

July 12

- **SEC Concedes, Drops MMF Swing Pricing** - In a startling bow to industry comments, the SEC finalized MMF rules for institutional prime and tax-exempt funds that dispense with the proposal's swing pricing ([see FSM Report MMF19](#)).
- **HFSC Bickers Over ESG, SEC Authority, Investor Rights** - The ESG hearing was the partisan show-down we [anticipated](#) – indeed, Rep. Sherman (D-CA) denounced the GOP for “waging war” against capitalism like Leon Trotsky.
- **Fed Nominations Advance** - As [anticipated](#), Senate Banking approved the nominations of all three Federal Reserve Board nominees for the full Senate.

Warren Heightens Anti-Merger Campaign - Republicans were absent from Senate Banking's Economic Policy bank-merger hearing.

July 13

- **FSB Sees Climate-Risk Disclosure, Analytical Progress** - The FSB released a [progress report](#) on its Roadmap for Addressing Climate-Related Financial Risks that updates work toward the four key goals identified in its [2021 Roadmap](#).
- **New Lummis-Gillibrand Crypto Bill Faces Steep Odds** - Sens. Lummis (R-WY) and Gillibrand (D-NY) introduced an [updated version](#) of their comprehensive crypto bill ([see FSM Report CRYPTO28](#)).
- **FTC Settlement May Signal Move into Crypto Regulation** - Wading into crypto regulation, the FTC reached a [settlement](#) with the crypto platform Celsius Network, permanently barring it from handling customer assets and charging three executives with misleading customers.

July 14

- **HFSC ESG Efforts Tackle Insurance Risk Pricing** – HFSC's Subcommittee hearing on ESG's housing and insurance market impacts focused almost entirely on insurance.
- **HFSC Republicans Target Bank Supervisors** - The HFSC memo ahead of the hearing looking at the political independence of the [banking agencies](#) makes it clear that top agency supervisors will principally be grilled on climate-risk initiatives.
- **Senate GOP Targets “ESG” Lending, Ideological Bias** - Sens. Vance (R-OH), Lummis (R-WY) and Marshall (R-KS) introduced [legislation](#) that would bar regulators from taking action against any regulated entity based on fears of reputational risk and establish a Treasury special IG tasked with collecting tips on regulatory misconduct with a focus on ideological bias

This Week

Tuesday, July 18

HFSC Subcommittee on Capital Markets Hearing entitled: "Oversight of the SEC's Division of Corporation Finance." [10:00, 2128 RHOB]. Witness: **Erik Gerding**, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission.

HFSC Subcommittee on Financial Institutions and Monetary Policy Hearing entitled: "Climate-Risk: Are Financial Regulators Politically Independent?" [10:00, 2220 RHOB]. Witnesses: **Michael S. Gibson**, Director, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System; **Greg Coleman**, Senior Deputy Comptroller for Large Bank Supervision, Office of the Comptroller of the Currency; **Doreen Eberley**, Director, Division of Risk Management and Supervision, Federal Deposit Insurance Corporation; and **Rendell L. Jones**, Deputy Executive Director, National Credit Union Administration.

HFSC Subcommittee on National Security, Illicit Finance, and International Financial Institutions Hearing entitled: "Potential Consequences of FinCEN's Beneficial Ownership Rulemaking." [2:00 pm, 2128 RHOB]. Witnesses: **Kevin Kuhlman**, Vice President, National Federation of Independent Business (NFIB); **Jim Richards**, Founder and Principal, RegTech Consulting LLC; **Pete Selenke**, Vice President and Anti-Money Laundering/Bank Secrecy Act Officer, Central Bank (Jefferson City, MO); and **Gary Kuhlman**, Executive Director, Transparency International US.

Wednesday, July 19

Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights Hearing entitled: "Trends in Vertical Merger Enforcement." [2:45 pm, Dirksen Senate Office Building Room 226]. Witnesses: TBD.

Senate Appropriations Subcommittee on Financial Services and General Government Hearing entitled: "A Review of the Fiscal Year 2024 Budget for the U.S. Securities and Exchange Commission." [2:45 pm, Dirksen Senate Office Building 124]. Witness: **The Honorable Gary Gensler**, Chairperson, U.S. Securities and Exchange Commission.

HFSC Committee Markup. Matters to be discussed: Stablecoin and crypto market structure bills, flood insurance legislation and a resolution that would nullify the CFPB's small-business data collection rule.

Thursday, July 20

Senate Banking Hearing entitled: "Perspectives on Deposit Insurance Reform after Recent Bank Failures." [10:00 am, Dirksen Senate Office Building 538]. Witnesses: **Ms. Emily DiVito**, Sr. Program Manager for Corporate Power at the Roosevelt Institute; and **Mr. Thomas J. Fraser**, CEO, First Mutual Holding Co.

Future Events of Note

Wednesday, July 26

HFSC Committee Markup. [TBD]. Matters to be discussed: ESG-related bills.

Thursday, July 27

HFSC Committee Markup. [TBD]. Matters to be discussed: National security bills.

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-071123](#): As we detailed [yesterday](#), FRB Vice Chair Barr laid out what he called a holistic view of bank capital standards that encompasses [end-game rules](#), stress testing, post-SVB lessons, GSIB restrictions, and resolvability.
- [CAPITAL228](#): FRB Vice Chairman Barr's speech [today](#) outlines near-term U.S. regulatory-capital policy, confirming our [earlier assessment](#) that a sweeping proposal will soon be released.
- [GSE-070523](#): As an in-depth FedFin analysis today addresses ([see FSM Report REALESTATE25](#)), the banking agencies and NCUA late last week issued far-reaching [guidance](#) encouraging loan accommodations and even forbearance for troubled commercial real estate (CRE) projects, including multifamily obligations.
- [REALESTATE25](#): The banking agencies and NCUA have agreed on a final policy statement providing guidance for how financial institutions are to handle troubled commercial real estate loans, giving banks considerable latitude to forbear when borrowers are unable to meet their obligations but are deemed to be able to pay at least some of it over time.
- [GSE-063023](#): In non-public remarks ahead of a presentation by FedFin managing partner Karen Petrou, Sen. Jack Reed (D-RI) laid out what he thinks banking agencies will do next, doubtless based on what they've told him that they'll do next.
- [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.