



# FedFin Weekly Alert

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Monday, September 18, 2023

## ❑ LET IT BE RESOLVED...

Or, maybe not. As detailed below, FedFin has delved into the depths of three new proposals designed to ensure that any big U.S. bank that isn't made still more impregnable by all the new rules proposed and to come is also indestructible. Karen Petrou has written about the wisdom – if there is any – of making big banks de facto utilities, but this will occur only if all of the new rules work as intended. We've had our doubts about that with regard to recent proposals, and our review of the new resolution proposals raises still greater concerns. These are:

- Can regional banks really raise all the long-term debt which the proposed standards think essential as a buffer against costly resolution no matter all the new capital rules? As we note in [FSM Report TLAC9](#), this could be highly problematic for non-GSIBs with limited capital-market access and strong reliance on deposit funding.
- Will the joint Fed and FDIC living-will standards force unintended consequences that make large foreign banks in the U.S. take more risk? As our in-depth report ([see FSM Report LIVINGWILL22](#)) notes, more resolution planning is all to the good, but only if more is meaningful – not unnecessarily burdensome – and big banks are safer as a result.
- Can the FDIC actually absorb all the plans it's going to get? In addition to the joint Fed rule, the FDIC is proposing its own resolution standards for IDIs over \$50 billion ([see FSM Report LIVINGWILL23](#)). The new requirements would mandate much advance planning sure to make it easier for the FDIC to resolve a massive IDI with less prospect of systemic risk or macroeconomic disruption, but that's only if the FDIC is able to judge the plans it gets, respond meaningfully and quickly if they are deficient, and then ready its own woeful arsenal for ready intervention along contemplated, approved lines. As we noted in our assessment most recently of the FDIC's analysis of First Republic's [failure](#), so far is not so good for the FDIC.

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## Headlines From the Past Week's Daily Briefings

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### September 11

- No news of note.

### [September 12](#)

- **Presses Basel Action on Lessons Learned** - Basel's group of Governors and Heads of Supervision (GHOS) met, [listing](#) strong bank risk management and governance arrangements, effective supervision, and the need for a robust regulatory framework as the primary lessons it learned from this year's banking turmoil.

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- **Gensler Takes Swing-Pricing, AI Fire** - At the Senate Banking hearing with SEC Chairman Gensler, Democrats largely defended the pace and scope of recent SEC work while Republicans criticized the agency for rulemakings they said were ideologically driven and inadequately analyzed.

### September 13

- **GOP Plans Still More Nails in CBDC Congressional Coffin** - The [memo](#) for the HFSC CBDC hearing leaves no doubt as to continuing staunch GOP opposition, with Majority Whip Emmer (R-MN) reintroducing legislation barring the Fed from issuing a CBDC to individuals or using it to implement monetary policy.
- **FSI: Contingent Capital Fails as TLAC** - Reinforcing the decision by U.S. agencies not to allow CoCo to serve as TLAC ([see FSM Report TLAC9](#)), a new BIS staff [brief](#) concludes that the current regulatory framework for Additional Tier 1 (AT1) bonds may not be fit for purpose, encouraging regulators to rethink CoCo as well as to consider heightening disclosure standards.
- **Gensler Emphasizes Prime Broker, Crypto, AI Risks** - SEC Chairman Gensler [highlighted](#) his ongoing worries about prime brokers, reiterating leverage and systemic-risk concerns.
- **Chopra Suggests Bank Merger Rewrite in Works** - CFPB Director Chopra [reiterated](#) the Bureau's priorities, stating that the current bank merger review process lacks analytical rigor which will soon be addressed in ways he did not specify.

### September 14

- **IOSCO Proposes Leveraged Loan, CLO Best Practices** - IOSCO released a [consultation report](#) proposing best practices for leveraged loans and CLOs that address origination and refinancing, EBITDA and documentation transparency, aligning interests from loan origination to end investors, managing conflicts of interest throughout the intermediation chain, and disclosures.
- **Durbin, Marshall Press Credit-Card Interchange Bill** - Reiterating [concerns](#) and comments on the [Senate floor](#), Senate Whip and Judiciary Chairman Durbin (D-IL) and Sen. Marshall (R-KS) were joined this time by Sen. Welch (D-VT) and four House Members calling on Visa and Mastercard to reverse planned fee hikes.
- **GAO Presses for FSOC Power to Regulate, Not Just Designate** - The GAO issued a [report](#) recommending that Congress consider legislation allowing FSOC to compel regulatory action, arguing that this would better accomplish the Council's mission because FSOC currently has limited power to respond to systemic risk.
- **HFSC GOP Highlight CBDC Privacy Concerns** - As [anticipated](#), HFSC Digital Assets GOP Members continued their staunch opposition to a U.S. CBDC, with Subcommittee Chairman Hill (R-AR) and Majority Whip Emmer (R-MN) asserting that private innovation can modernize payments without the risk of government surveillance.
- **Brown Doubles Down on Opposition to House Crypto Bill** - Making it still more clear that he is not supportive of pending House cryptoasset legislation, Senate Banking Chairman Brown (D-OH) sent a [letter](#) to Treasury Secretary Yellen, SEC Chairman Gensler, and CFTC Chairman Behnam asking for views on where new authority may be needed.

### September 15

- **Warren Adds Interest-Rate Risk to Fed Concerns** - Heightening her attack on Fed interest-rate hikes, Sen. Warren (D-MA) [pressed](#) Treasury Secretary Yellen for FSOC action addressing interest-rate risks.

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## This Week

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### Tuesday, September 19

Senate HFSC Capital Markets Subcommittee Hearing entitled: "Oversight of the SEC's Division of Investment Management." [10:00 am, 2128 RHOB]. Witness: **Director William Birdthistle**, Director of Division of Investment Management, Securities and Exchange Commission ("SEC").

HFSC Financial Institutions and Monetary Policy Subcommittee Hearing entitled: "A Holistic Review of Regulators: Regulatory Overreach and Economic Consequences." [2:00 pm, 2128 RHOB]. Witnesses: **Ms. Karen Petrou**, Managing Partner, Federal Financial Analytics Inc.; **Mr. Hal Scott**, Nomura Professor of International Financial Systems, Emeritus, Harvard Law School; and **Ms. Mayra Rodríguez Valladares**, Managing Principal, MRV Associates.

### Wednesday, September 20

Senate Banking Hearing entitled: "Artificial Intelligence in Financial Services." [10:00 am, Dirksen Senate Office Building 538]. Witnesses: **Ms. Melissa Koide**, Director and CEO, FinRegLab; and **Mr. Daniel Gorfine**, Founder & CEO, Gattaca Horizons, LLC, Adjunct Professor of Law, Georgetown University, former Chief Innovation Officer, Commodity Futures Trading Commission.

SEC Open Meeting. [10:00 am, 100 F Street, NE]. Matters to be discussed: Investment Company Names Rule.

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## Future Events of Note

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### Tuesday, September 26

Treasury's Federal Advisory Committee on Insurance Open Meeting. [1:30 pm, 1500 Pennsylvania Ave. NW.] Matters to be discussed: discuss topics related to climate-related financial risk and the insurance sector; discuss topics related to cyber insurance developments and international insurance issues; receive status updates from its subcommittees and from the FIO; and consider any new business.

### Wednesday, September 27

Senate Banking Markup. [TBD]. Matters to be discussed: SAFE Banking Act of 2023.

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## Recent Files Available for Downloading

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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](http://www.fedfin.com) or

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clients may obtain the reports/analyses by e-mailing [info@fedfin.com](mailto:info@fedfin.com) giving the requested item name, firm, and e-mail address. To learn more about *GSE Activity Reports*, click [here](#).

- **[LIVINGWILL23](#)**: Although a pending FDIC/FRB proposal imposes a raft of new requirements for resolution plans from IDIs with over \$100 billion in assets, the FDIC has also issued a freestanding proposal doing the same, also setting information-filing standards for IDIs below \$100 billion but above \$50 billion.
- **[CAPITAL235](#)**: With HFSC Chairman McHenry (R-NC) leading the way, GOP Members of the panel's Financial Institutions Subcommittee today blasted the banking agencies' end-game proposal ([see Client Report CAPITAL234](#)).
- **[LIVINGWILL22](#)**: In conjunction with proposing a new long-term debt (LTD) requirement for categories II, III, and IV banks, the Fed and FDIC are pursuing other ways to enhance resolvability.
- **[TLAC9](#)**: Building on an advance notice of proposed rulemaking, the banking agencies have issued several proposals to enhance the resolvability of large banking organizations not covered by stringent GSIB standards.
- **[GSE-083123](#)**: As we noted [yesterday](#), the global banking, securities, and insurance regulators who comprise the Financial Stability Board (FSB) are heading back [to look](#) again at securitization to see if the post-08 framework it crafted still works.
- **[GSIB22](#)**: As anticipated in the wake of recent bank failures, the FRB has proposed a significant revision