FedFin Daily Briefing

Tuesday, September 19, 2023

FSB Finally Takes Concrete CCP-Resolution Action

Following longstanding announcements that it would advance CCP resolvability, the FSB today released a consultative report recommending a toolbox approach to CCP resolution providing sufficient loss absorption and liquidity that is readily available and mitigates adverse effects on financial stability. Specific tools that FSB highlights include bail-in bonds, resolution funds, insurance, third-party contractual support, cash calls, variation margin gains haircutting, and first-loss equity. FSB notes that each tool varies in its strength and impact on financial stability, stressing that resolution authorities need to have both the specific legal authority to use non-exhausted resolution tools and the power to intervene before recovery resources have been exhausted. It seeks comment on whether other resolution specific resources should be considered, the effectiveness of the toolbox approach, and whether the standard should apply to all systemically important CCPs or just CCPs that are systemic in more than one jurisdiction. Comment is due by November 20.

Treasury Advances Climate-Risk Principles, Not Mandates

Cautiously advancing the President's climate-risk order (see FSM Report **GREEN8**), Treasury today released nine nonbinding principles for net-zero financing and investment encouraging financial institutions to focus on limiting scope 3 emissions by implementing robust net-zero transition plans. To do so, companies should manage phase-outs from high-emitting assets, establish credible metrics for activities and services, and assess client and portfolio-company alignment with transition goals. Treasury also urges financial institutions to establish robust governance processes, account for environmental justice and environmental impacts, and be transparent about their progress. The release is at pains to note that the principles are voluntary and that business models and size will affect net-zero approaches.

CFPB Expands AI Crackdown

Expanding on last year's adverse action guidance (see FSM Report **FAIRLEND11**), the CFPB today issued a circular stating that lenders – especially those using AI – cannot use CFPB sample adverse actions forms and checklists to deny consumers credit if the samples do not accurately portray the reasoning behind the denial. The Bureau maintains that its forms are only illustrative and that issuing unmodified checklists without directly addressing the factors of a denial to consumers does not satisfy ECOA requirements. It also reiterates that lenders using AI or other predictive models must still accurately explain denials and ensure that their models do not result in discrimination.

HFSC Republicans Expand Attack From Capital to LTD Rules

Today's HFSC Financial Institutions Subcommittee hearing on the economic consequences of the banking agencies' slate of recent proposals showcased strong Republican concerns. Subcommittee Chairman Barr (R-KY) called the regulatory capital proposal "arbitrary and capricious," arguing that regulators' failure to conduct sufficient quantitative analysis or understand its interaction with other rules is a systemic risk. Rep. Rose (R-TN) took issue with the long-term debt proposal's holding company provisions (see FSM Report **TLAC9**), while Rep. Timmons (R-SC) stated that the proposal does not consider short-term transition costs. Other Republicans also raised concerns about the effect of the proposals on regional banks, tailoring, international competition, economic growth, and credit availability. Subcommittee Ranking Member Foster (D-IL) agreed that the banking regulators should provide more data and analysis to the Committee but argued that bank capital regulation is not "an exact science." Full Committee Ranking Member Waters (D-CA) strongly defended the proposals on grounds that stronger rules are needed for banks, although Rep. Sherman (D-CA) questioned the need for higher capital requirements and argued for improved supervision. Karen Petrou's testimony at the hearing may be found here.

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.

- **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 to the current rules calculating systemic-risk scores that lead to GSIB designation.

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