FedFin Daily Briefing

Tuesday, October 31, 2023

HFSC GOP Turns to Merger-Policy Demands

Financial Institutions Subcommittee Chair Barr (R-KY) and Rep. Fitzgerald (R-WI) last night sent the federal banking-agency heads a stiff letter demanding to know when they plan finally to issue the long-promised bank-merger policy following public notice and comment. The letter notes not only current merger-approval delays, but also considerable uncertainty they attribute in part to Biden Administration antitrust-policy pressure, noting also the need for a new de novo-bank charter policy to speed up new entrants. The letter asks for agency plans in this arena as well as any legislative suggestions without setting a deadline for doing so.

China Leads New BIS CBDC Pilot

In a new CBDC project sponsored by the BIS's Innovation Hub, central banks either directly associated with China or within its ambit will focus on multi-CBDC wholesale cross-border payments. The new effort may encourage those arguing for a U.S. CBDC on grounds that China will use CBDC to attack the dollar's reserve currency status even though the U.S. is an official observer to this pilot. It focuses on reducing cross-border payments costs and settlement risks while improving speed, supporting local currencies, and advancing settlement in central bank money. The Innovation Hub also plans to determine whether the blockchain-based mBridge Ledger can evolve into a minimum viable product.

White House, Labor Turn to Retirement Advice "Junk Fees"

Building on its "junk-fee" initiative, the White House today expanded Obama-era "best-interest" standards to retirement advisers to close what it believes are loopholes in the SEC's jurisdiction under its broker-dealer best-interest standard. In conjunction with the announcement, the Department of Labor announced proposed new standards for investment-advice fiduciaries to those providing retirement-finance advice – even on a one-time basis – for a fee. Although the White House release and DoL statement focused on fixed-index annuities, our initial read indicates it would also apply to banks and other entities providing advice on matters such as how best to invest an IRA. The proposal also establishes a new duty of care, prevents "unreasonable" fees, and imposes new conflict-of-interest standards. Comments will be due sixty days after the proposal is published in the *Federal Register* and Labor will also hold a public hearing on the proposal approximately 45 days after publication, a timeframe clearly set to ensure final standards early next year ahead of likely court and political challenges to the final rule.

BIS CPMI: Even Sound Stablecoins May Not Be Worth the Effort

A new report from the BIS Committee on Payments and Market Infrastructures finds that properly designed and regulated stablecoins could improve cross-border payments by increasing speed and transparency while lowering costs, especially in emerging markets and developing economies. However, the report also concludes that even sound stablecoins present challenges that could outweigh their benefits including network scale; operational, liquidity, and settlement risks; concentration and fragmentation risk; inconsistent access to on- and off-ramps; and a lack of inter-jurisdictional coordination. At the minimum, CPMI recommends that jurisdictions ensure stablecoin interoperability with other properly-regulated stablecoins and traditional payment options. It also calls for strongly-coordinated international cooperation to prevent stablecoin regulatory arbitrage. Future work should explore the implications of stablecoins used for cross-border and domestic payments, the implications of stablecoin arrangements backed by multiple fiat currencies and other types of assets, and interdependencies among multilateral platforms, CBDCs and stablecoins. Global regulators also suggest that improving current payments infrastructure or developing CBDCs may be preferable stablecoin alternatives.

GAO Vacates Key SEC Crypto Ruling

The GAO today released a report finding that the SEC's staff accounting bulletin (SAB) 121 is a rule subject to the Congressional Review Act, throwing a key Gensler anti-crypto ruling into immediate ineffectiveness and an uncertain future. As noted in our analysis of the SEC's pending crypto-custody standards (see FSM Report **CUSTODY5**), SAB 121 requires balance-sheet recognition of crypto exposures that would often not otherwise be considered exposures for purposes of bank prudential regulation. The effect of the bulletin has thus been to put a still larger impediment in the path of bank's wishing to undertake crypto activities. The banking agencies have from time to time indicated that they will consider whether to invalidate the SEC's ruling for purposes of capital and other rules, but they have yet to do so and clearly plan to consider it only in the broader context of crypto rules they have also promised for several years and have yet even to propose. The SEC strongly objected to the GAO's finding, but the GAO's finding is binding and thus invalidates the bulletin. The SEC could quickly put it back into effect, perhaps doing so via an interim rulemaking or other action to give it immediate effect or – if this is considered a "major" rule – effect sixty days after publication. However, this rule would trigger Congressional review. It seems likely the House will quickly act to invalidate any such SEC action, but Senate repeal is less certain and White House veto is likely even should this succeed.

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.

- **INTERCHANGE12:** As suggested when the Fed last year finalized controversial new debit-card routing requirements, the central bank is now proposing a sharp reduction in the cap mandated on debit-card interchange fees under the Dodd-Frank Act's Durbin Amendment for debit-card issuers with over $10 billion in assets.

- **AI3:** In this report, we assess the detailed executive order (EO) issued late Monday afternoon after days of private showings of selected versions.

- **DATA4:** Following a request for information that was a de facto advance notice of proposed rulemaking, the CFPB has now proposed a preliminary, but binding framework for consumer data rights covering consumer "transaction" accounts offered by banks, credit unions, and – a departure from the initial outline – nonbanks/fintechs.

- **GSE-102323:** As noted in our report earlier today, the Federal Reserve's latest financial-stability report expresses deep misgivings about complex securitizations.

- **SYSTEMIC97:** As promised, this in-depth report assesses Friday's semiannual financial-stability report from the Federal Reserve.

- **DEPOSITINSURANCE122:** Bipartisan senators have introduced legislation to provide FDIC coverage for certain noninterest-bearing transaction accounts, a move designed to prevent the stress and potential systemic risk evident when Silicon Valley and Signature Banks failed in March.

- **GSE-101723:** As we noted earlier this month, the Federal Reserve inserted a significant capital provision for credit-linked notes in an otherwise-obscure FAQ.

- **GSE-101623:** The White House today rolled out a new housing plan that smacks mightily of many old housing plans.

- **GSE-101323a:** With smaller lenders today joining MBA, NAR, and HomeBuilders' campaign to squeeze the 30-10 spread, we take a look at the odds the White House, Fed, or Treasury will do as hoped.

- **GSE-101323:** As we noted yesterday, OMB's Office of Information and Regulatory Affairs (OIRA) has pronounced a new pro-competition standard for all existing and prospective federal regulations.

- **CONSUMER52:** Using its advisory process to issue guidance that may lead to enforcement actions, the Bureau has for the first time set standards for the obligations of large banks and credit unions to respond to certain consumer inquiries.

- **REFORM228:** As we noted yesterday, the Basel Committee's October meeting concluded not only with plans for new disclosure consultations, but also a report on lessons learned from the 2023 crisis.

- **GSE-100223:** As we noted earlier today, the FRB has issued a seemingly technical FAQ liberalizing the treatment of certain credit-linked notes.

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