



Tuesday, February 13, 2024

Durbin Tries Another Approach to Advance Card-Fee Limits

After trying various ways to bring his credit-card fee bill to the [floor](#), Senate Judiciary Committee Chair and Majority Leader Durbin (D-IL) has scheduled a [hearing](#) on this controversial bipartisan measure ([see FSM Report INTERCHANGE10](#)). Letters invited witnesses from Visa, Mastercard, United and American Airlines to call the CEOs to testify despite refusals to do so in the past from the payment companies. The letters also sharply criticize lobbying against the bill and statements opposing it on earnings calls. While Mr. Durbin will surely get his hearing, we doubt he will get his bill. Concerted banking-industry opposition has bottled it up in the Senate and House GOP leaders are unlikely to advance it despite some GOP support for the merchants' cause.

FinCEN Reaches SEC Agreement to Bring Investment Advisers Under AML/CFT Standards

As it has [repeatedly promised](#), FinCEN today [revised](#) a 2015 proposal and issued a new one to subject investment advisers to AML and CFT requirements similar to, but still less restrictive than, those that have long governed banks. The proposal was accompanied by a [report](#), laying out the ways in which FinCEN believes bad actors make use of investment advisers, noting also that the sector has doubled since its 2015 proposal and thus clearly warrants attention. Covered investment advisers are generally those registered with or reporting to the SEC, also bringing their information within the scope of what FinCEN shares with law-enforcement and other agencies. However, investment advisers would not be immediately subject to KYC requirements, with these to come at some point via a proposed rule FinCEN would issue with the SEC. Beneficial-ownership filings would come under a separate FinCEN rulemaking at some future date. Overall supervision of the rule would be delegated by FinCEN to the SEC, with comments on the proposal due April 15. Compliance would then be required twelve months after issuance of a final rule, a relatively rapid schedule sure to be opposed by the investment-adviser industry.

HFSC Rallies to Crypto AML/CFT Defense

The HFSC [staff memo](#) on Thursday's Digital-Assets Subcommittee hearing makes it clear that cryptoasset entities will be given a strong platform from which to resist calls in the [Senate](#) to subject cryptoasset transactions to AML and sanctions law. Witnesses are principally from crypto-related ventures and the bills on which a record will be established generally call for studies of possible issues and greater FinCEN focus on innovation.

Gensler Reinforces AI Concerns

In remarks today, SEC Chair Gensler acknowledged AI's benefits in a manner consistent with the President's executive order ([see Client Report AI3](#)), but then launched into a sharp critique of its risks in line with the agency's pending rule in this [arena](#). Key to Mr. Gensler's concerns is AI's systemic and microprudential risks. His talk reiterates many of the AI concerns in FSOC's recent annual report ([see Client Report FSOC29](#)) without indicating if the Council plans to do anything to address them. Mr. Gensler also discussed the risk of mass adoption of certain AI foundational models leading to herding and network effects, warning that AI may play a central role in the "after-action reports of a future financial crisis." Microprudential worries focus on explainability, bias, and outcome. The Chair also stated that current guidance on model risk management is insufficient, also focusing on AI-washing as a potential source of SEC enforcement actions

along with fraud and any other violations that, solely because they are executed through AI, will not escape SEC attention.

Bowman Takes Fed Accountability, Transparency to Task

In an [essay](#) today, FRB Gov. Bowman emphasized that regulatory accountability does not undermine the independence also essential to a sound, innovative banking system. Noting that there are numerous Congressionally-mandated forms of accountability, Ms. Bowman says that these must be accompanied by transparency when it comes to regulatory and supervisory policy and actions. This does not mean “leniency,” she says, but clarity as to Fed expectations that permits the FRB to hold banks accountable and at the same time be accountable to others. This discussion could be read as a call for greater transparency into Fed stress tests, but Gov. Bowman does not elaborate. Bank regulation and supervision should also, she says, not implement standards not expressly required by Congress, a position on which she does not provide examples such as the climate-risk principles ([see FSM Report CLIMATE17](#)) that she strongly opposed.

Gensler Turns to Bank/Hedge-Fund Interconnection

In addition to his speech on AI earlier today, SEC Chair Gensler today engaged in a wide-ranging discussion of key financial policy questions. Most notable was his view that the biggest systemic stress to U.S. financial stability is the amount of financing banks have extended to macro hedge funds which are in turn highly leveraged. This line of business “works until it doesn’t,” he said, doubtless a view borne at least in part from the criticism now being directed at the SEC’s new hedge-fund dealer [rules](#). These concerns reinforce those implicit in the banking agencies’ recent request for more data on bank exposures to [NBFIs](#), but elevate it in ways not clearly addressed by FSOC.

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](#).

- [FSOC31](#): Treasury Secretary Yellen’s hearing today before Senate Banking followed the path set in Tuesday’s HFSC session ([see Client Report FSOC30](#)), with Ms. Yellen refusing to take a stand on matters such as the capital rules and banking-agency supervisory effectiveness.
- [FSOC30](#): As [anticipated](#), today’s HFSC hearing with Treasury Secretary and FSOC Chair Yellen showcased sharp Republican criticism of the Council’s nonbank designation authority ([see FSM Report SIFI36](#)), with Chairman McHenry (R-NC) and Financial Institutions Subcommittee Chairman Barr (R-KY) citing the guidance as yet another example of regulatory politicization, calling FSOC a “rogue” and “roving” regulator.
- [MERGER14](#): Although all of the banking agencies have for years promised a new bank-merger policy, none has proposed one until this OCC rulemaking.
- [PAYMENT28](#): Today’s Senate Banking Committee hearing on scams and fraud in the banking system focused on the rise of P2P payment app scams, the growing popularity of traditional methods of fraud executed via wire transfer and check fraud, and emerging crypto and AI risks.
- [AI5](#): Although FSOC’s latest annual report highlights AI risk, it does not request any express agency action, a hands-off approach that led to bipartisan legislation demanding a more forceful approach.

- **[GSE-013124a](#)**: Common-stock investors clearly [think so](#), but they're a notably speculative lot and more than likely wrong.
- **[GSE-013124](#)**: We have reviewed the 2024 scorecards FHFA [released](#) for Fannie and Freddie.
- **[CONSUMER55](#)**: The CFPB has followed up a controversial proposal to set prices for larger-bank overdrafts exempt from certain consumer standards with a proposal to simply ban certain non-sufficient fund (NSF) fees when banks decide in real time to decline a consumer-payment request.
- **[GSE-012424](#)**: In this report, we build on our previous analyses of the [mortgage implications of the pending capital rules](#), forecasting what's next for mortgage assets as the FRB, FDIC, and OCC wrestle with the mess Karen Petrou has elsewhere [argued](#) they brought upon themselves by careless analytics and political misjudgment.
- **[OVERDRAFT12](#)**: Building on a bulletin and circular from late 2022 warning banks about certain overdraft practices, the CFPB has now proposed a rule that would sharply and expressly limit fees for extensions of credit related to overdrawn transaction accounts unless the account comes under an array of consumer-protection requirements.