



Thursday, March 21, 2024

FDIC Plans Merger Squelch

Both the policy and politics of the FDIC's proposed [merger policy](#) follow that of its 2022 RFI ([see FSM Report MERGER9](#)), a very stringent approach to bank-merger review that split the FDIC 3-2 on party lines. We will shortly provide clients with an in-depth analysis of the proposed approach, approved on a 3-2 vote. It tracks much in the OCC's proposal ([see FSM Report MERGER14](#)) but is still more stringent in several key areas. Notably, it does not rely on qualitative financial-stability considerations, instead setting a \$100 billion threshold for additional scrutiny. However, smaller mergers may also be blocked given that the FDIC has proposed to do away with current HHI thresholds – an approach akin to the new FTC/DOJ guidelines ([see FSM Report MERGER13](#)) – and focus more on prospective community impact rather than bank CRA ratings alone. Director Chopra strongly endorsed the proposal, asking staff to go through it statutorily point by point to support some of the more controversial aspects of the proposal. Mr. Chopra also made clear that one of these – advance divestiture of problematic activities as a condition of approval – is necessary since companies that divest after consummation also destroy value before a divestiture to limit post-M&A competition. Vice Chair Hill acknowledged the need for a new merger policy, but opposed this one on grounds that it adds uncertainty and delay along with blocking appropriate transactions. He cites for example the qualitative approach to judging undue concentration, which as proposed goes beyond deposits but he says does not clarify how and in what way. Director Jonathan McKernan joined Mr. Hill on these points, noting also that the end of the HHI test might block rural mergers even though these may be required to keep banks in key markets. Comment is due within sixty days of *Federal Register* publication.

Chopra Wants Far Tougher Bank-Merger Policy

CFPB Director Chopra [elaborated](#) today on his comments at the FDIC meeting, saying that he thinks the proposal is fine as far as it goes but that federal policy should go considerably further to curtail bank consolidation. Actions he advocates include hard caps on bank growth and size (presumably meaning a limit on organic growth as well as via acquisition) and a roll-back of the systemic exemption in failing-bank acquisitions to block any future JPM/FRC-style transactions. Mr. Chopra also wants to reduce what he views as the continuing TBTF subsidy by giving small-and-medium-sized banks a higher FDIC coverage level and find a way to protect consumers when post-merger operational integration falters, as he believes it often does. During questioning, Mr. Chopra took no direct stand on the CapOne/Discover merger, but he did reference the recent CFPB study on card-cost links to [size](#), noting that consumers will not necessarily benefit from mergers in this sector. Mr. Chopra also said that the banking agencies do not properly scrutinize bank agreements to meet community needs after merger consummation, also stating that “anticompetitive intent” needs to be assessed in approvals by scrutinizing board deliberations. Deputy AG Kanter attended the event but said little of substance beyond implicitly supporting the FDIC's decision to omit HHI ceilings in its proposal on grounds that rural M&A may need flexibility to preserve relationship banking. Here, he appears to read the proposal differently than Director McKernan, who stated that omitting the HHI threshold adversely affects rural areas.

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](#).

- **REFORM231**: Today's HFSC hearing on global governance featured [expected](#) Republican attacks on what they called the opaque nature of U.S. interactions with international organizations, with Chairman McHenry (R-NC) promoting a draft bill requiring regulators to report dealings with global standard-setting groups to Congress.
- **GSIB24**: Reflecting concerns expressed about banks that window-dress key regulatory data as the post-crisis framework took shape, the Basel Committee has now issued a request for views on how to prevent this when it comes to GSIB calculations related to their surcharge or possible designation.
- **CREDITCARD37**: Following a very controversial proposal, the CFPB has finalized credit-card late-fee restrictions in a final rule that does not differ significantly from the proposal on its key point: elimination of the manner in which inflation adjustments are now made by credit-card lenders when it comes to late fees.
- **GSE-031224**: The President's [FY25 budget](#) picks up FHFA's [recommendations](#), calling for statutory change to double the System's affordable-housing commitment.
- **FEDERALRESERVE75**: As [expected](#), Republicans took turns grilling Chair Powell on the Basel III endgame proposal and calling for its withdrawal, and were likely pleased with the results.
- **CONSUMER56**: The CFPB has issued a circular essentially banning digital and perhaps all other consumer-finance comparison-shopping and lead-generation tools for credit cards and other products not covered by prior orders.
- **GSE-021624**: In this report, we build on our in-depth analysis yesterday of the Fed's new stress-test scenarios to focus on their mortgage-market impact.
- **STRESS32**: In this report, we assess the strategic and policy implications of the Fed's new [stress-test regime](#).
- **LIQUIDITY34**: Today's HFSC Financial Institutions hearing on emergency liquidity featured much discussion of reform, but few indications of any action Congress will take to advance it apart from support for pending agency efforts to enhance discount-window [readiness](#).
- **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.