FedFin Daily Briefing

Thursday, May 25, 2023

Gensler Calls On Banking Regulators To Tighten Short-Term, Collective Fund Rules

In remarks today, SEC Chairman Gensler announced that the SEC is in talks with bank regulators to close what he believes are regulatory gaps in short-term and collective-investment funds governed by the banking agencies, not the SEC. Calling for like-kind rules and noting the OCC's lack of action in this area since 2012, he pointed to potential regulatory arbitrage and financial-stability risks, raising concern over the funds' lack of limits on leverage and illiquid investments. He is also concerned by the absence of requirements for independent boards and investor reporting requirements. Mr. Gensler also reiterated the need for pending MMF rules (see FSM Report **MMF19**) and OEFs but did not announce a timeline for final action.

HFSC Reports Transparency, LLPA Bills

After the lengthy debate and Democratic amendments we described yesterday at yesterday's HFSC markup, the committee late last night reported both Rep. Barr's (R-KY) regulatory transparency bill and Rep. Davidson's (R-OH) LLPA rescission bill on strictly party lines by votes of 26-22. Each of the eight Democratic amendments proposed for the regulatory transparency bill were rejected, again down party lines by votes of 22-26. Rep. Sherman (D-CA) rescinded both his AOCI and stress test amendments before they came to a recorded vote.

OCC Redesigns Liquidity-Risk Framework to Capture Recent High-Impact Developments

In conjunction with a tough new enforcement policy (see forthcoming FedFin analysis), the OCC today updated the liquidity section of its examination Handbook to gather the data the agency believes essential in light of recent history. Now, examiners will also gather information on wholesale funding, reserve balances, and "surge" deposits – i.e., "outsized" inflows of deposits following periods of economic downturn such as the pandemic. Wholesale funding is expanded now to include FHLB advances, discount window funding – broken down into primary, secondary, and seasonal credit facilities, reciprocal deposits, and sweep deposits. The manual describes reserve balances as asset-based liquidity sources, noting that Fed account balances are among the most liquid and highest quality. Under the strategic risk section, the OCC notes that the behavior of surge deposits is difficult to predict and may be unstable. The handbook emphasizes the importance of considering tangible GAAP capital-based restrictions in several sections.

OCC Targets Poor CAMELS, Repeat-Offender Banks With New PCA Framework

In conjunction with a new liquidity manual designed to position examiners to address recent risks (e.g., social-media runs, FHLB funding), the agency today issued a touch new enforcement policy. Applied only to large, complex banks, the policy essentially adopts the prompt corrective action construct now triggered only by capital shortfalls to include increasingly stringent restrictions on nationally-chartered institutions with "persistent weaknesses." These include a 3 in any one of the CAMELS components or a record of being the kind of "repeat offender" that Rohit Chopra castigates when companies fail to remediate risks following formal enforcement intervention. Clearly banks which fail quickly to act on supervisory concerns as was all too evident at SVB and SBNY (neither of which was governed by the OCC), the new PCA construct could include requirements to hold more capital or liquidity, restrictions on capital distributions, and/or restrictions on growth or activities. If prior enforcement actions go unheeded, then these sanctions would be increased and include requirements such as mandatory divestitures. In addition to positioning the OCC as the first federal agency to act in light of recent failures, this policy and the companion liquidity exam manual put considerable pressure on the Fed and FDIC to toughen their supervisory standards even as formal rulemaking advances.

House Judiciary Leadership Accuses BofA of Politically-Inspired Data Breaches

Bringing banks into the GOP campaign against "weaponizing" domestic activities, House Judiciary Chairman Jordan (R-OH) and Antitrust Subcommittee Chairman Massie (R-KY) today sent a letter to Bank of America's CEO alleging that the bank voluntarily provided the FBI with sensitive transaction information related to the violent protests during January 6th without any legal process. Citing an FBI whistleblower, they accuse the bank of data-mining every transaction made with a Bank of America card in Washington DC from January 5-7, 2021, making a list of target transactions. From that list, the letter claims, the bank checked if the consumer made a firearm purchase, regardless of geography or timeline. They demand all communications between the bank, the FBI, and the DoJ, as well as any internal communications regarding the matter, by June 8.

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.

- **GSE-052323:** Today's HFSC hearing with Sandra Thompson was the anti-LLPA event we anticipated when it came to Republicans that also saw the stout defense Democrats were sure to provide combined with FHFA's resolute stand on doing nothing to change the LLPAs or guarantee-fees beyond what might come of the pending RFI.
- **REFORM226:** Describing the CEOs' statements at his last hearing as "the dog-ate-my-homework" excuses for grievous failings, Senate Banking Committee Chairman Brown (D-OH) also attacked Republicans for placing blame on monetary policy, not the culture of supervisory laxity he details with various quotes from Trump Administration officials.
- **CRYPTO44:** Although there were still considerable party-line differences of opinion on stablecoin legislation, today's HFSC Digital-Assets Subcommittee hearing suggests that remaining divides are narrowing, increasing the odds of a new federal-regulatory framework.
- **GSE-051723:** With Republicans on the anti-LLPA warpath, FHFA is hoping to preserve as much of the current fee structure as possible without paying too high a political price, issuing a request for information (RFI) in hopes that letter-writing will keep everyone busy until Congress moves on to other matters.
- **REFORM225:** A joint hearing today of HFSC's Financial Institutions and Oversight Subcommittees expanded on themes at yesterday's full Committee session with bank regulators (see *Client Report* **REFORM224**) and Senate Banking's session with SVB's and SBNY's CEOs, with First Republic's CEO now added to the Congressional firing line.
- **REFORM224:** In their first appearance following the reports on recent failures, FRB Vice Chairman Barr and FDIC Chairman Gruenberg were harshly criticized by Republicans for both the bank failures and recommended remedies.

- **DEPOSITINSURANCE120:** As the law requires and the FDIC Chairman promised after SVB and Signature Bank were declared systemic, the FDIC has now proposed a special assessment to compensate the Deposit Insurance Fund (DIF) for the cost of backing the two banks' uninsured deposits.

- **CRYPTO43**: Today's joint HFSC-House Ag hearing on assessing crypto's regulatory gaps saw bipartisan calls for Congressional action, but none on what that should be done.

- **GSE-050923**: As our in-depth report earlier today details, the Fed's latest financial-stability report pulls a lot of punches because, as always, it's afraid to frighten the children with frank discussion of what might actually threaten financial stability in the near term.

- **SYSTEMIC96**: Perhaps because its last financial-stability report (see *Client Report* **SYSTEMIC94**) was contradicted just five months later by a systemic-risk designation, the Federal Reserve's latest report eschews a conclusion about prospective risk in favor of a review of current concerns.

- **SIFI35**: In concert with proposing a new systemic-risk methodology, the Financial Stability Oversight Council sought comment on guidance that significantly rewrites the manner in which nonbanks are designated as systemically important financial institutions (SIFIs).

- **DEPOSITINSURANCE119**: In this report, we follow our initial assessment of the FDIC's deposit-insurance reform report with an in-depth analysis of its recommendations and their prospects.

- **REFORM223**: Following our analyses of the Fed's report on SVB (see Client Report REFORM221) and the FDIC's on SBNY (see Client Report REFORM222), we turn now to one from the General Accountability Office sure to have at least as much impact on bipartisan consideration of what needs next to be done to govern regional banks.

- **REFORM222**: In this report, we build on our assessment earlier today of the Fed's SVB autopsy (see Client Report REFORM221) with an assessment of the FDIC's self-review of Signature's failure.

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