FedFin Daily Briefing

Tuesday, April 16, 2024

House GOP Takes on New Merger Guidelines

The House Small Business Committee today sent a GOP letter to the FTC and Justice Department strongly protesting new merger guidelines (see FSM Report **MERGER13**) on grounds that they sharply curtail needed small-business capital. The letter focuses particularly on venture-capital finance transactions, the majority of which are said to seek to achieve desired investor return via merger-based exit strategies. The committee asks how small-business considerations factored into the guidelines, requesting an answer by April 30. Beyond a possible hearing, no legislative action is likely nor will this alter the current guidelines.

House Hikes Iran Sanctions

Working through a series of sanctions bills in the wake of recent geopolitical developments, the House yesterday voted 294-105 to advance H.R. 5921, a bill introduced by Rep. Huizenga (R-MI) that prohibits Treasury from authorizing transactions by U.S. financial institutions in connection with Iranian imports or exports other than food, medicine, and other humanitarian assistance. The measure also prohibits the Export-Import Bank from providing guarantees or loans for transactions for which Iran or an entity controlled by the Government of Iran is the lender or obligor. Some Democrats opposed the bill on grounds that it might harm U.S. international standing, arguing also that it halts EXIM bank financing for American small businesses that would need to undergo a complex certification process before obtaining backing. Still, nearly half of House Democrats voted for passage. While there is no Senate companion to this measure, Secretary Yellen today announced that the U.S. will shortly hike sanctions on Iran and the Senate's willingness to expand the President's authority in this area is heightened as well. As a result, the measure could advance.

House Passes Bill Targeting China-Iran Petroleum Trade

Continuing its response to recent geopolitical events, the House yesterday voted by a 383-11 margin to pass H.R. 5923, a bill from Reps. Lawler (R-NY) and Gottheimer (D-NJ) that would require the President to periodically determine if any Chinese financial institutions have purchased petroleum or petroleum products from Iran, stating that U.S. financial institutions also may not open or maintain certain accounts with Chinese institutions that have done so. Senate Foreign Relations today is also marking up S. 1829 from Sen. Rubio (R-FL), the Senate companion to another bill by Rep. Lawler, H.R. 3774, imposing additional sanctions on foreign persons that purchase petroleum products from Iran. This passed the House by a 342-69 vote in November.

Warren Again Targets OCC Merger Decisions

Continuing recent attacks on the OCC's approach to mergers, Sens. Warren (D-MA) and Blumenthal (D-CT) yesterday sent a letter to Acting Comptroller Hsu sharply criticizing the agency's decision first to allow NYCB to acquire Flagstar bank and then do the same shortly thereafter for Signature. As detailed in a recent Petrou client memo, the letter notes that the FDIC raised concerns about Flagstar's lending practices and NYCB's multifamily loan exposure when reviewing the merger application, prompting the banks to restructure their merger to only require OCC approval. The letter goes on to assert that the agency then granted approvals through what it calls the OCC's usual "rubber-stamp" without addressing the risks identified in the FDIC's review. The letter also asserts severe examination deficiencies following the Flagstar merger because the OCC allowed dividends even after quarterly earnings review. The OCC is asked to respond to a series of questions related to the Flagstar/NYCB merger and its oversight of NYCB by May 15.

OCC Toughens LCR, NSFR via New Reporting Requirements

The OCC today sought public comment as required by law for changes to the reporting required of large banks under both the LCR and NSFR. The new requirements would add reporting and data-collection filings for aspects of the liquidity rules such as a bank's ongoing ability to monetize HQLAs and ensure these assets are segregated, any time the bank falls below designated ratios, relevant remediation plans, and overall risk management procedures. Nothing in these requirements expressly changes the LCR or NSFR rules – this would of course require formal notice and comment – but the documentation requirements indirectly, but meaningfully, put national banks under much tougher standards when it comes to matters Acting Comptroller Hsu has highlighted also need substantive regulatory tightening. FRB VC Barr previously also has stated that the LCR and NSFR may be insufficient to stem rapid runs, suggesting that the Fed may support the OCC's regulatory approach at least in principle. Comments are due by June 17.

Basel Takes Go-Slow Approach to Climate-Risk Standards

Perhaps reflecting U.S. opposition to new Basel climate standards, the Basel Committee today released only a climate-risk discussion paper for comment, not new standards heightening those in its 2022 release (see FSM Report **CLIMATE14**). Global bank regulators are now seeking comment on how to make climate scenario analyses more consistent across both banks and borders. As the discussion paper states, some nations use scenario analyses to assess individual entities while others use them to track financial-stability concerns and others have no scenario analysis standards at all. The new U.S. inter-agency climate risk-management principles (see FSM Report **CLIMATE17**) include scenario analyses for banking organizations over $100 billion clearly designed as de facto stress tests. They do not include express capital consequences but, as noted in FedFin's analysis, it seems likely that banks found to be highly exposed to risks will be asked to include new buffers. How these then factor into overall capital-resilience requirements is unclear. Comment on the Basel standards is sought by July 15.

CFPB Strengthens Its Nonbank Enforcement Toolkit

Building on its 2022 standards expressly extending its supervisory reach to nonbanks (see FSM Report **CONSUMER41**), the CFPB today issued final rules on which it also seeks comment that operationalize how the Bureau will target nonbanks. The rule thus lays out who in the Bureau will do what when in voluntary agreements and involuntary enforcement actions. Much in the rule delegates power now held exclusively by the agency director to its supervisory director. Perhaps the most substantive change in this rule "clarifies" the earlier standards, stating that consent agreements will not be made public, creating a reputational-risk incentive for nonbanks to settle with the CFPB. The rule also makes it clear that multiple respondents may be included in a single enforcement action. The rule is effective upon *Federal Register* publication; comment will be due thirty days thereafter, with the Bureau not making clear why, if it solicits comment, it nonetheless issued these new procedures in final form.

CFPB Funding Again Comes Under GOP Attack

The HFSC Financial Institutions Subcommittee hearing today considered CFPB funding, a topic that elicited calls again from Subcommittee Chair Barr (R-KY) and other Republicans for the Supreme Court to rule that the current arrangement is unconstitutional. Democrats rallied to the Bureau's defense, arguing that independent reviews of the agency's financial statements found no noncompliance issues. The hearing was

Federal Financial Analytics, Inc.
2101 LStreet, N.W. – Suite 300, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com

scheduled to review GAO's financial report on the Bureau, but the GAO's witness was canceled so shortly before the hearing that Rep. Posey (R-FL) said he was unable to use most of his prepared questions. GOP witnesses joined the Members' attack on funding constitutionality; the lone Democrat supported it.

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.

- **RESOLVE51:** In its first public statement since 2013 about how it would execute an SPOE resolution (see FSM Report **RESOLVE23**), the FDIC yesterday released a report Chair Gruenberg described as demonstrating the FDIC's readiness to resolve a U.S. GSIB and the process it has developed for doing so under the orderly liquidation authority (OLA) provided in the Dodd-Frank Act (see FSM Report **SYSTEMIC30**).

- **GSE-041024:** *Bloomberg* today reports that the CFPB may simply ban consumer payment for lender title insurance.

- **AML137:** Senate Banking Committee's Hearing with Deputy Secretary Adeyemo reviewed the Administration's request for additional digital asset AML/CFT authority.

- **GSE-040824**: It wasn't hard for us to forecast that, after NEC Director Brainard endorsed CFPB Director Chopra's jihad against mortgage "junk fees," that the discount points that received particular opprobrium would be moved up the priority ladder for federal restriction.

- **GSE-032924:** Following FSOC's fulminations about nonbank mortgage companies, FHFA in 2023 heightened its supervisory standards mandating GSE prudential governance of eligible seller servicers.

- **MERGER15:** Following its 2022 request for input, the FDIC has released a formal proposal that would redefine the agency's bank-merger policy into one that will make it difficult for all but the smallest and simplest transactions within its jurisdiction to have the clear prospects for approval usually necessary in non-emergency transactions, subjecting other M&A applications to protracted review with a high likelihood of denial.

- **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.