

Banking and Finance Law Daily Wrap Up, WORTH NOTING—Other regulatory, legislative, litigation, and industry developments, (Dec. 18, 2020)

Banking and Finance Law Daily Wrap Up

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By WK Editorial Staff

A weekly roundup of other items of interest to the banking and finance law community.

BANKING OPERATIONS—The Federal Deposit Insurance Corporation has adopted a series of final rules rescinding and removing Office of Thrift Supervision regulations. The final rules rescind and remove: Application Processing Procedures for State Savings Associations and Conforming Amendments to Other Regulations ([12 CFR part 390, subpart F](#)); 12 CFR part 390, [subpart G](#), and Conforming Amendments to Existing FDIC Regulations; Prompt Corrective Action Directives (part 390, Subpart Y) [and](#) Conforming Amendments to part 308, Subpart Q. Report of actions taken pursuant to authority delegated by the Board of Directors; and Subordinate Organizations ([part 390, Subpart O](#)). The FDIC proposed to remove Part 390, subparts G-Y in August (see [Banking and Finance Law Daily](#), Aug. 24, 2020). The final rules take effect 30 days after publication in the *Federal Register*.

BANKING OPERATIONS—The Federal Deposit Insurance Corporation has approved a [2021 Operating Budget](#) of \$2.279 billion. According to the FDIC's [release](#), the budget provides funding for the continuation of FDIC information technology modernization, supports projects to foster innovation at banks, and expands initiatives to support diversity and inclusion. The budget also provides funding for contingency reserves in the event pandemic-related economic uncertainty leads to a deterioration in financial institution health. "Recognizing that we are facing many uncertainties about the economic impact of the pandemic, this budget will provide requisite flexibility while allowing us to continue modernizing the FDIC's operations and to promote innovation," [said](#) FDIC Chairman Jelena McWilliams. The budget "reflects a continuing period of extraordinary uncertainty as to the impact of the Coronavirus pandemic on the financial condition of FDIC-insured banks next year." FDIC board member Martin J. Gruenberg [added](#). "Depending on how events unfold, the FDIC's supervisory and resolutions functions, in particular, may be subject to increasing demands to address problems at banks."

BANK SECRECY ACT—The Financial Crimes Enforcement Network has [announced](#) a further extension of time for certain Report of Foreign Bank and Financial Accounts (FBAR) filings in light of the notice of [proposed rulemaking](#) FinCEN issued on March 10, 2016, which proposes to revise the regulations implementing the Bank Secrecy Act regarding FBARs.

BANK-SECRECY ACT—The Financial Crimes Enforcement Network has [rescinded](#) a prior administrative ruling, FIN-2012-R006. On Dec. 10, 2020, FinCEN noted this rescission in a revised fact sheet posted on FinCEN's website relating to the administration of Section 314(b) of the USA PATRIOT Act.

CONSUMER FINANCIAL PROTECTION BUREAU—The Consumer Financial Protection Bureau has [published](#) its [Fall 2020 Agenda](#), which lists the regulatory matters the Bureau expects to focus on between November 2020 and November 2021. The Bureau has already completed some of the actions listed on the Fall 2020 Agenda, some represent a further step on matters described in its Spring 2020 Agenda, and some are new regulatory projects. The CFPB noted that it continues to monitor the need for further actions by the Bureau to protect consumer financial well-being during and after the ongoing COVID-19 pandemic.

DEBT COLLECTION—The Federal Deposit Insurance Corporation is amending the FDIC's [Procedures for Corporate Debt Collection](#) to include delinquent civil money penalties (CMPs) within the debt covered by those procedures. The FDIC's existing debt-collection regulations, found in 12 CFR part 313, do not currently provide

for collection of CMP debt. The amendments would allow the FDIC to refer debts arising from its enforcement-related activities to the Treasury Department for collection with the intention of improving the effectiveness of the FDIC's debt-collection efforts. The final rule becomes effective 30 days after publication in the *Federal Register*.

DEBT COLLECTION—W.D.N.C.: The federal district court in Charlotte, North Carolina, was called to review a mortgage loan borrower's claims in her proposed class-action against a loan servicer and mortgage sub-servicer for their alleged violations of the North Carolina Debt Collection Act (NCDCA), North Carolina Mortgage Debt Collection and Servicing Act (NCMDCSA), and/or North Carolina Unfair and Deceptive Trade Practices Act (NCUDTPA), arising out of what the borrower contended was an unlawful service-fee arrangement. The borrower maintained that a \$10 fee for each mortgage payment she made online was neither authorized by her mortgage agreement nor otherwise permitted by law. Underscoring in its analysis that the borrower was not in default when she made these mortgage payments online or via phone, the court ultimately determined that the borrower failed to state a claim under the NCDCA or the NCUDTPA, but allowed the NCMDCSA claim to advance beyond the pleading stage of the litigation ([Brown v. Lakeview Loan Servicing, LLC](#), Dec. 16, 2020, Whitney, F.).

FEDERAL OPEN MARKET COMMITTEE—The Federal Reserve Board has [released](#) illustrative [examples](#) of new charts that will be included in the Federal Open Market Committee's quarterly Summary of Economic Projections. The new charts show FOMC participants' judgments of uncertainty and risks related to their projections of the change in real gross domestic product, the unemployment rate, personal consumption expenditures (PCE) inflation, and core PCE inflation.

FEDERAL OPEN MARKET COMMITTEE—Based on developments in connection with COVID-19 and on economic information it received since it last met in November, the Federal Open Market Committee [decided](#) unanimously to maintain the target range for the federal funds rate at the current zero- to 0.25-percent level. The FOMC [expects](#) it will be appropriate to maintain this target range "until labor market conditions have reached levels consistent with the Committee's assessments of maximum employment and inflation has risen to 2 percent and is on track to moderately exceed 2 percent for some time." The ongoing public health crisis will continue to weigh on economic activity, employment, and inflation "in the near term, and poses considerable risks to the economic outlook over the medium term," the FOMC stated. In connection with the primary credit "discount" rate, the interest rate charged for short-term credit extensions to depository institutions, the Federal Reserve Board voted unanimously to maintain the primary credit rate at its existing level of 0.25 percent.

FEDERAL RESERVE SYSTEM—The Federal Reserve Board has [announced](#) the extension of its temporary U.S. dollar liquidity swap lines and the temporary repurchase agreement facility for foreign and international monetary authorities (FIMA repo facility) through Sept. 30, 2021. These facilities were temporarily established in March 2020 to ease strains in global dollar funding markets resulting from the COVID-19 shock and mitigate the effect of such strains on the supply of credit to households and businesses, both domestically and abroad.

FEDERAL RESERVE SYSTEM—The Federal Reserve Board has provided [notice](#) of the 2020 aggregate global indicator amounts, as required under the Fed's rule regarding risk-based capital surcharges for global systemically important bank holding companies (GSIB surcharge rule). The GSIB surcharge rule establishes a methodology to identify global systemically important bank holding companies in the United States (GSIBs) based on indicators that are correlated with systemic importance. The notice includes the amounts by category. The notice took effect on Dec. 17, 2020.

FEDERAL RESERVE SYSTEM—The Federal Reserve Board has [formally joined](#) the Network of Central Banks and Supervisors for Greening the Financial System (NGFS) as a member. NGFS supports the exchange of ideas, research, and best practices on the development of environment and climate risk management for the financial sector. The Fed began participating in NGFS discussions and activities more than a year ago.

INTEREST-USURY—N.D. Cal.: In connection with the previously established liability of a bank for non-payment of interest on the escrow accounts of California mortgage loan borrowers, as required under Section 2954.8(a) of California's Civil Code, the federal district court for the Northern District of California addressed the plaintiff borrowers' request for summary judgment, restitution, and injunctive relief in the certified class action (brought

under Section 17200 of California's Business and Professions Code). The court awarded the plaintiff borrowers \$8.1 million for restitution of accrued and outstanding interest on the escrow accounts. Also, because violations of Section 2954.8(a) were deemed to be "ongoing with respect to a subclass of class members" whose mortgage loans the bank "continues to service," the court certified a subclass, appointed subclass representatives, and granted injunctive relief accordingly as well (*Kivett v. Flagstar Bank, FSB*, Dec. 10, 2020, Alsup, W.).

LAW FIRM NEWS— Nine McGuireWoods Partners have been [named](#) to Elite List of BTI Client Service All-Stars singled out by corporate counsel for client service excellence in BTI Consulting Group's 2020 Client Service All-Stars report. The annual report honors attorneys "who stand above all the others in delivering the absolute best in client service." McGuireWoods attorneys recognized include Cheryl L. Haas, chair of the firm's Financial Services Litigation Department. Haas advises Fortune 100 companies, investment advisers and broker-dealers in high-stakes disputes in courts and before securities regulators. She is also a member of the firm's Diversity Action Council.

Chambers Fintech Legal has [ranked](#) global law firm White & Case LLP as Band 1 for Blockchain & Cryptocurrencies in the United States. The firm has advised on landmark deals in the blockchain and cryptocurrency space, and continues to advise on novel fintech, payments, and InsureTech matters. Chambers highlighted the cross-practice strength of White & Case's Fintech group. In addition to the Band 1 ranking, White & Case received Fintech practice rankings in Germany, Mexico, and globally, reflecting our growing capabilities to handle the most complex, multi-jurisdictional fintech, blockchain, and payments projects.

LOANS—The Federal Reserve Board has filed a [periodic report](#) providing updates pursuant to Section 13(3) of the Federal Reserve Act concerning a lending facility established by the Fed in response to economic effects of the COVID-19 pandemic. The Fed is required to submit an initial report regarding each facility established under Section 13(3) and periodic updates at least every 30 days thereafter. This report provides the next periodic update on the Primary Dealer Credit Facility (PDCF), the Money Market Mutual Fund Liquidity Facility (MMLF), the Commercial Paper Funding Facility (CPFF), the Primary Market Corporate Credit Facility (PMCCF), the Secondary Market Corporate Credit Facility (SMCCF), the Term Asset-Backed Securities Loan Facility (TALF), the Municipal Liquidity Facility (MLF), the Paycheck Protection Program Liquidity Facility (PPPLF), the Main Street New Loan Facility (MSNLF), the Main Street Expanded Loan Facility (MSELF), the Main Street Priority Loan Facility (MSPLF), the Nonprofit Organization New Loan Facility (NONLF), and the Nonprofit Organization Expanded Loan Facility (NOELF). In addition, the Fed has released transaction-specific disclosures for the [SMCCF](#), [TALF](#), [MLF](#), [PPPLF](#), and [Main Street Lending Programs](#).

PRUDENTIAL REGULATION—The Office of the Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation are [seeking](#) comments on a change to the Call Report forms and instructions (FFIEC 031 and FFIEC 041 only) to implement the FDIC's proposed amendments to the deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs, to address the temporary deposit insurance assessment effects resulting from certain optional regulatory capital transition provisions relating to the implementation of the current expected credit losses (CECL) methodology. The change to the Call Reports would enable the FDIC to remove the double counting of a specified portion of the CECL transitional amount or the modified CECL transitional amount, as applicable (collectively, the CECL transitional amounts), in certain financial measures that are calculated using the sum of Tier 1 capital and reserves and that are used to determine assessment rates for large and highly complex IDIs. Comments must be received by Feb. 16, 2021.

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Companies: Flagstar Bank, FSB; Lakeview Loan Servicing, LLC; LoanCare, LLC

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