Banking and Finance Law Daily Wrap Up, DIRECTORS, OFFICERS AND EMPLOYERS—Senator Warren criticizes Fed Chair for not reforming bank executive compensation, (Jul. 26, 2024)

Banking and Finance Law Daily Wrap Up

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By Thomas G. Wolfe, J.D.

In her letter, Elizabeth Warren asserts, “Your unwillingness to act to reform the role of risky CEO pay structures … can only be explained as a refusal to hold bank executives accountable.”

United States Senator Elizabeth Warren (D-Mass.), a member of the Senate Committee on Banking, Housing, and Urban Affairs, has sent a letter to Federal Reserve Board Chair Jerome Powell, expressing her “deep concern” about Powell’s alleged “defiance of the law via your ongoing refusal” to implement Section 956 of the Dodd-Frank Act (12 U.S.C. §5641), which “directs financial regulators to jointly adopt regulations prohibiting incentive-based compensation arrangements that encourage inappropriate risk-taking by CEOs and other top executives.”

Backdrop. In May 2024, various federal banking and housing regulators communicated their intent to set forth a notice of proposed rulemaking (NPRM) and to seek public comment about curbing incentive-based compensation arrangements that may encourage executives at financial firms to take potentially harmful risks. At that time, the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Federal Housing Finance Agency issued a proposal that revived a prior June 2016 NPRM. Meanwhile, the FDIC Board approved the NPRM on May 3, 2024, while the National Credit Union Administration and the Securities and Exchange Commission were planning similar rules on their respective agendas. Also, Acting Comptroller Michael Hsu remarked that the 2016 proposal “was the closest the six agencies have come to agreeing on a joint final rule” and was therefore “a natural place to start” (see *Banking and Finance Law Daily*, May 7, 2024).

Additional letter highlights. Against this backdrop, Sen. Warren pointed out that the federal financial regulators were directed by the Dodd-Frank Act to establish executive compensation guidelines much earlier—within nine months after the enactment of the Dodd-Frank Act. In her letter to the Fed Chair, Warren asserted, “But 14 years after Dodd-Frank’s passage, you appear to be solely responsible for blocking Section 956’s implementation.”

Moreover, Warren noted other instances over the course of the last several years when Powell and the Fed had purportedly “ignored [the] Congressional directive on Section 956 rulemaking.” For example, she maintained that, in 2018, the Fed Chair “told Congress that regulators could not achieve consensus and that you ‘expect’ banks to reform executive compensation structure out of the goodness of their hearts.” According to Warren, “Zero out of the top ten largest banks have since made meaningful reforms.”

Noting the bank failures of Silicon Valley Bank, Signature Bank, and First Republic Bank during the spring of 2023, the senator’s letter emphasizes that these bank failures were partly caused by “inappropriate risk-taking.” Indeed, Fed officials acknowledged that the bank executives had “financial incentive to focus on short-term profit over sound risk management.” From the legislator’s perspective, the senior executives of each of those failed financial institutions “ran their banks into the ground, were not properly supervised by Fed officials, got to keep their multi-million-dollar compensation packages, and yet the Fed is still trying to ‘understand the problem.’ The problem today is the same problem that prompted Congress to include this provision in the Dodd Frank Act 14 years ago: senior executives taking excessive risks to pad their bonus pay, even when those risks might tank their banks,” she wrote.

Stating that the Fed’s Vice Chair for Supervision “stands at the ready to bring Section 956 to the Fed Board for a vote,” Warren urged the Fed Chair to take the appropriate actions to facilitate that vote. Along these lines, in

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her concluding remarks, Warren criticized Powell for his lack of action on reforming executive compensation. “Your unwillingness to act to reform the role of risky CEO pay structures that contributed to both the 2008 financial crisis and the 2023 series of bank collapses can only be explained as a refusal to hold bank executives accountable,” she asserted.

Companies: First Republic Bank; Signature Bank; Silicon Valley Bank

LegislativeActivity: BankHolding BankingOperations CFPB DepositInsurance DirectorsOfficersEmployers DoddFrankAct FederalReserveSystem FinancialStability OversightInvestigations PrudentialRegulation Receiverships SecuritiesDerivatives

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