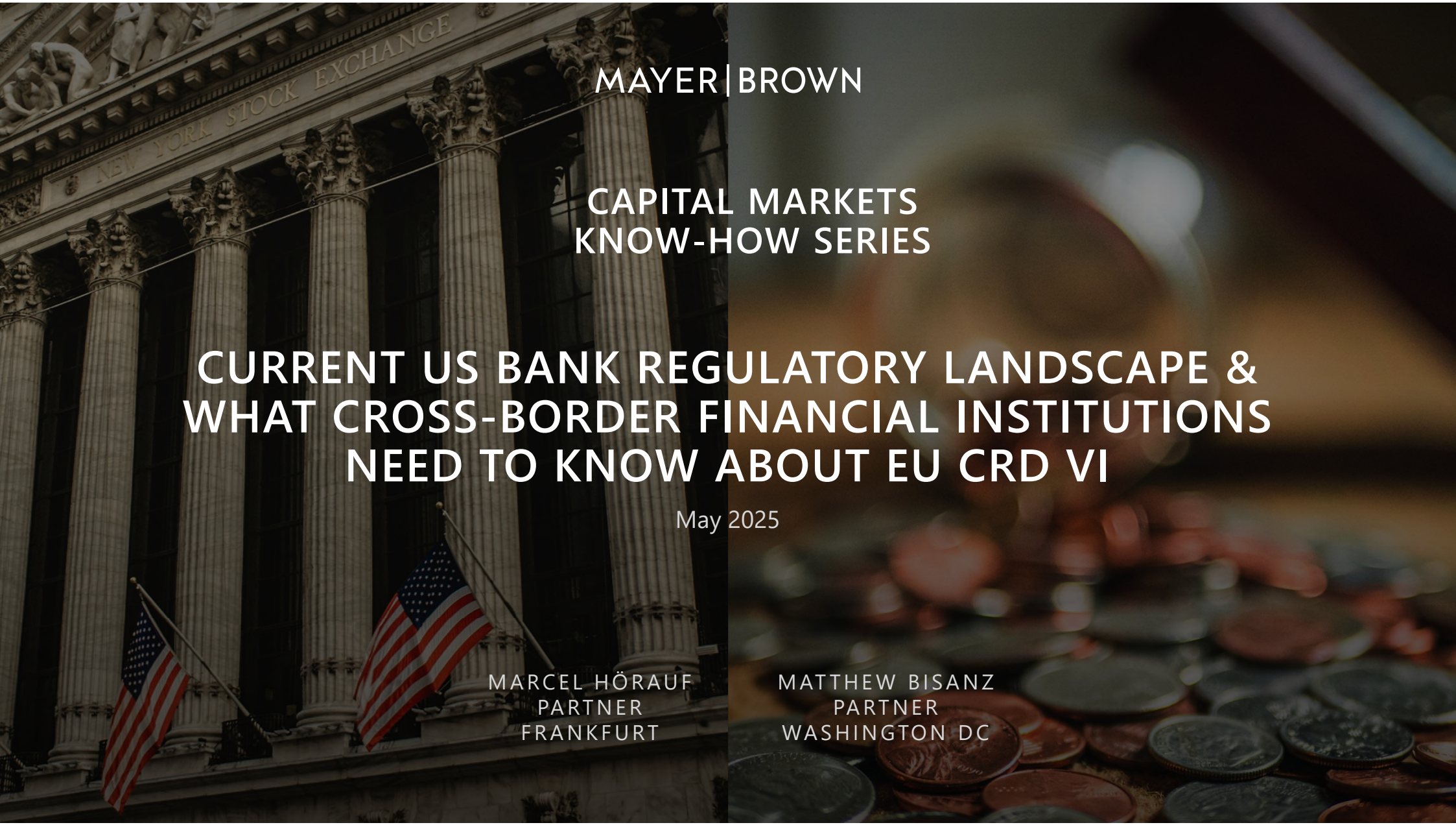


MAYER|BROWN

CAPITAL MARKETS
KNOW-HOW SERIES

CURRENT US BANK REGULATORY LANDSCAPE & WHAT CROSS-BORDER FINANCIAL INSTITUTIONS NEED TO KNOW ABOUT EU CRD VI

May 2025

MARCEL HÖRAUF
PARTNER
FRANKFURT

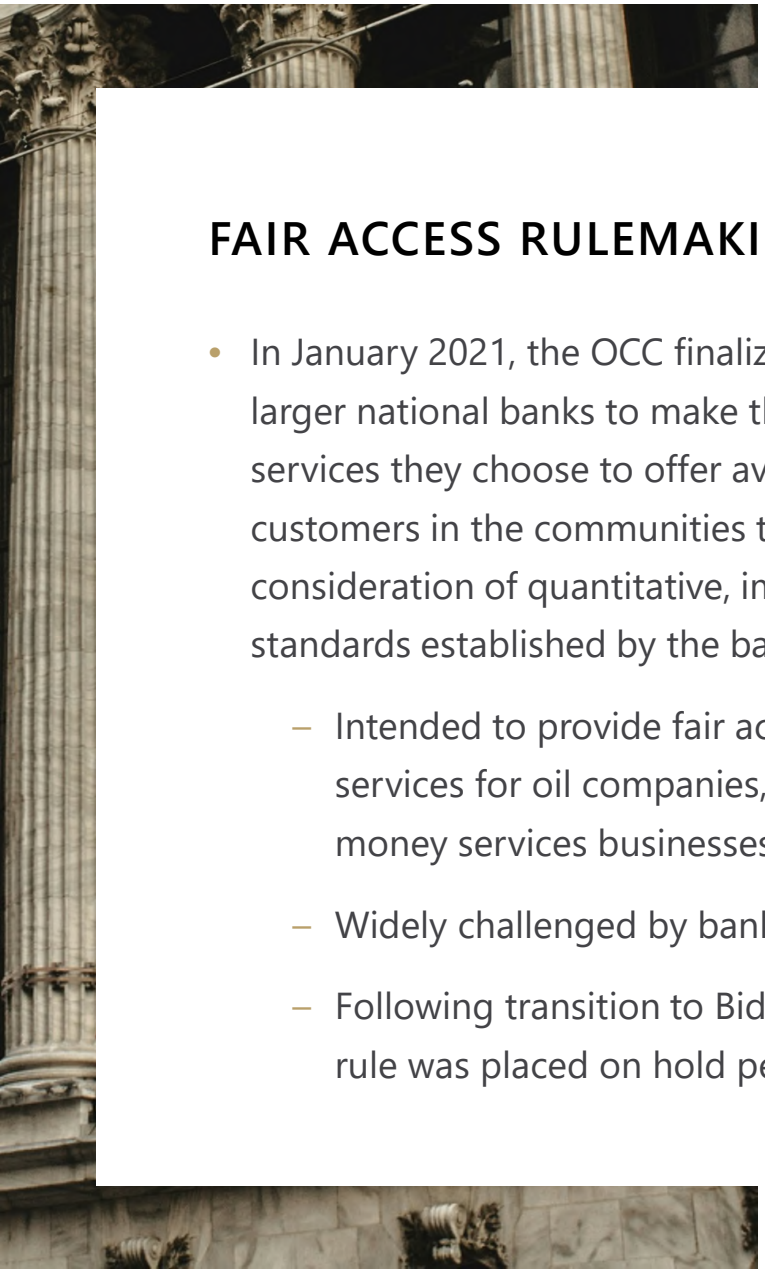
MATTHEW BISANZ
PARTNER
WASHINGTON DC

AGENDA

A. U.S. Developments
   1. New leadership
   2. Fair access
   3. Digital asset activities
   4. Bank charters for fintechs
   5. Bank merger and competition policy
   6. Regulatory capital and long-term debt
   7. Consumer Financial Protection Bureau
   8. Bank partnerships and banking-as-a-service
   9. Financial Data Transparency Act
   10. Other regulatory priorities

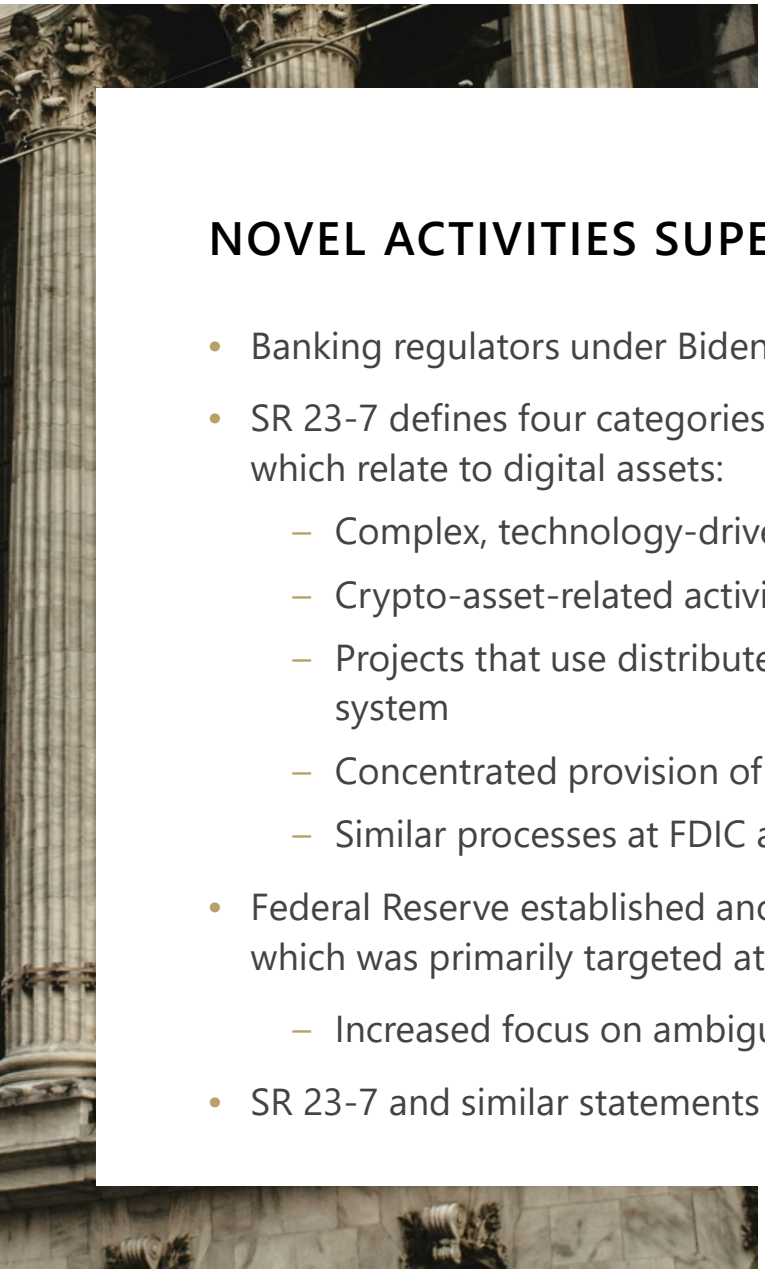
A. EU CRD VI – Cross-Border Aspects
   1. Branch Requirement
   2. Reverse Solicitation Exemption

U.S. DEVELOPMENTS



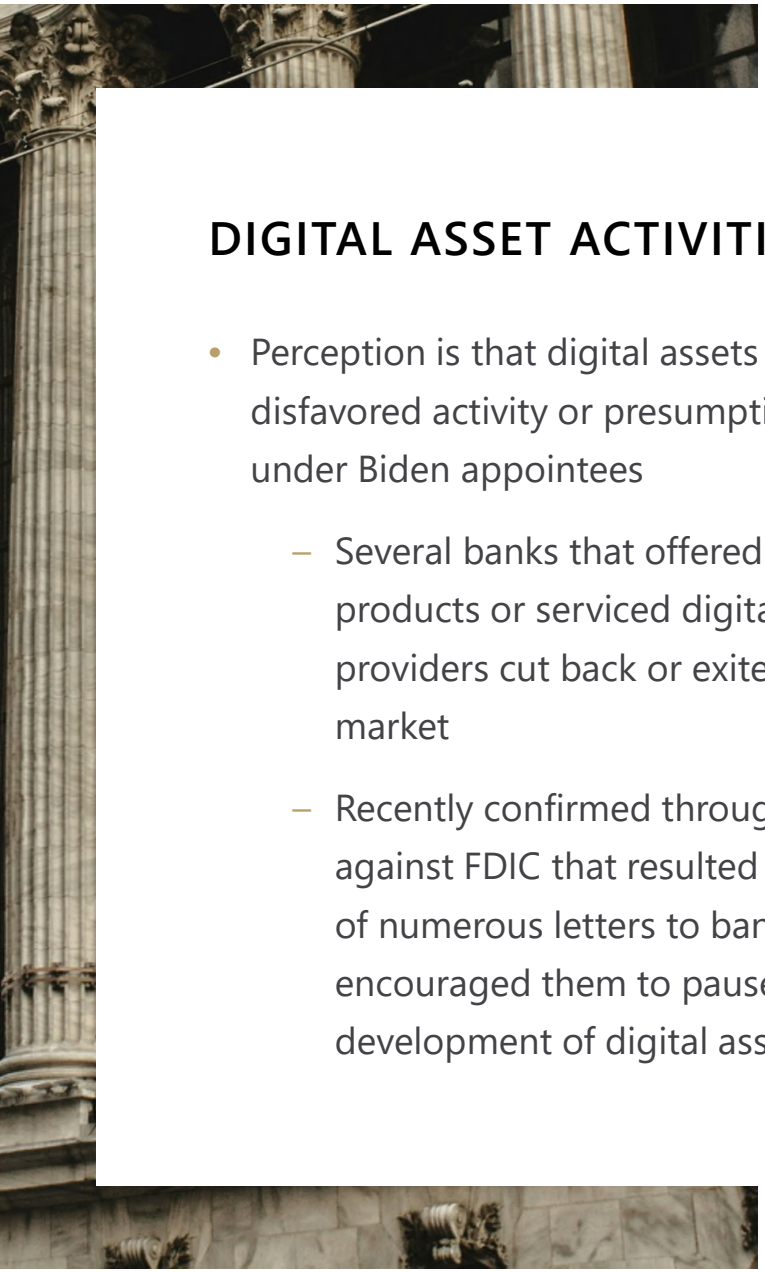
FAIR ACCESS RULEMAKING

- In January 2021, the OCC finalized a rule to require larger national banks to make the products and services they choose to offer available to all customers in the communities they serve, based on consideration of quantitative, impartial, risk-based standards established by the bank
  - Intended to provide fair access to banking services for oil companies, gun manufacturers, money services businesses, abortion clinics
  - Widely challenged by banking industry
  - Following transition to Biden administration, rule was placed on hold permanently
- Unclear if Trump administration will resurrect rule; depends on inclinations of the Comptroller (Jonathan Gould has been nominated)
  - Vice President Vance, Chair French Hill, and Andy Barr co-sponsored a similar law when in Congress; reproposed in current session
  - Senate Banking Committee hearing entitled "Investigating the Real Impacts of Debanking in America" on February 5, 2025
  - Likely to be challenged in court by banks if finalized as a rule



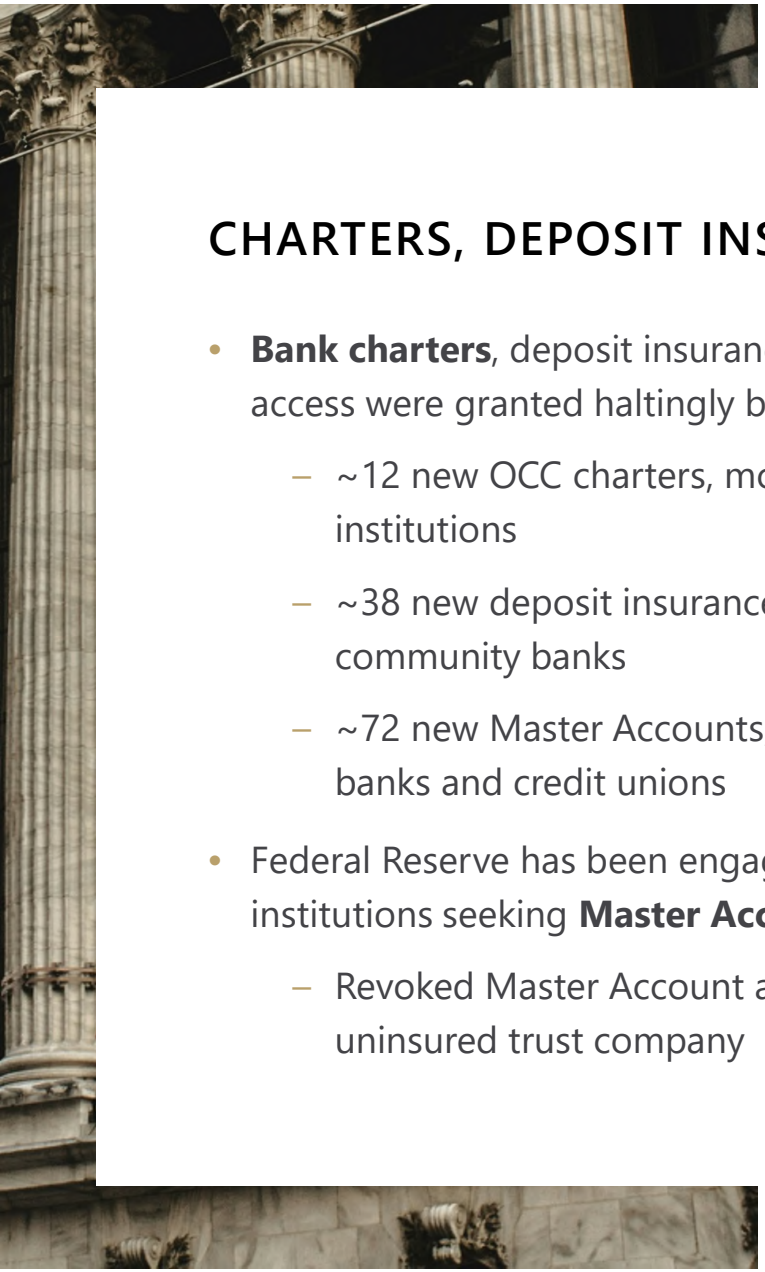
NOVEL ACTIVITIES SUPERVISION

- Banking regulators under Biden hesitated on bank involvement with **digital assets**
- SR 23-7 defines four categories of "novel" activities subject to enhanced scrutiny by Federal Reserve, three of which relate to digital assets:
  - Complex, technology-driven partnerships with non-banks to provide banking services
  - Crypto-asset-related activities
  - Projects that use distributed ledger technology with the potential for significant impact on the financial system
  - Concentrated provision of banking services to crypto-asset-related entities and fintechs
  - Similar processes at FDIC and OCC
- Federal Reserve established another hurdle with its January 2023 policy statement for state member banks, which was primarily targeted at digital asset activities
  - Increased focus on ambiguous "change in the general character of the bank" approval requirement
- SR 23-7 and similar statements have been or are likely to be rescinded by Trump appointees



DIGITAL ASSET ACTIVITIES

- Perception is that digital assets were a disfavored activity or presumptively suspect under Biden appointees
  - Several banks that offered digital asset products or serviced digital asset providers cut back or exited the market
  - Recently confirmed through litigation against FDIC that resulted in disclosure of numerous letters to banks that encouraged them to pause development of digital asset activities
- Process for obtaining approval to engage in digital activities remains slow, but is expected to greatly accelerate under Trump appointees
  - May result in approval of new digital asset activities, particularly related to cryptocurrency and distributed ledger technology
  - OCC already has removed supervisory nonobjection requirement for previously authorized digital asset activities by the banks it regulates
- Legislation for a framework for **payment stablecoins** is at an advanced stage in Congress



CHARTERS, DEPOSIT INSURANCE, & PAYMENT SYSTEMS

- **Bank charters**, deposit insurance, and payment systems access were granted haltingly by the Biden administration
  - ~12 new OCC charters, mostly to established institutions
  - ~38 new deposit insurance approvals, mostly to community banks
  - ~72 new Master Accounts, mostly to preexisting banks and credit unions
- Federal Reserve has been engaged in litigation with institutions seeking **Master Account** access
  - Revoked Master Account access for a Colorado uninsured trust company
- Connecticut granted new uninsured bank charters, including one to an uninsured bank that obtained a Master Account
- Georgia approved a merchant acquirer limited purpose bank to obtain membership in payment card networks without a sponsoring bank
  - Unclear if payment card networks will recognize new bank's eligibility
  - Of limited value to digital asset institutions

“

Fiserv will have more wherewithal to undercut competitors on price after the payments processing giant obtained a special bank charter in Georgia earlier this month, consultants who follow the payments industry say.

– PAYMENTS DIVE, OCT. 21, 2024

Payment companies could cut out the rent-a-bank model by getting their own bank licenses or buying firms that have one. Payment firm **Adyen**, for example, acquired a U.S. banking licensing in 2021. Before that, it had worked with Wells Fargo and Deutsche Bank to accept credit card payments in the U.S.

– THE INFORMATION, OCT. 21, 2024

Ripple’s acquisition plan to grab a company with a New York trust charter will expand the business it's allowed to conduct in the U.S., potentially letting it move beyond its well-known role as a payments network.

– COINDESK, FEB. 13, 2024

CHARTERS (CONT.)

- Expect federal regulators and most states to strongly support new bank charters
  - Likely to focus on digital asset service providers, payment services companies, and some types of consumer lenders
  - Likely to focus on options that do not require deposit insurance
  - May result in a national payments charter
- Federal Reserve likely to grant some Master Accounts, but not a free-for-all for digital asset institutions
  - May be forced to grant access to Wyoming or Idaho digital asset institutions because of reduced deference under ***Loper Bright***

BANK MERGER AND COMPETITION POLICY

- FDIC Statement of Policy on Bank Merger Transactions (2023)
- OCC Policy Statement on Bank Mergers (2023)
- DOJ withdrawal of 1995 Bank Merger Guidelines (2023)
- DOJ 2023 Merger Guidelines
- Trump Administration is expected to be more friendly to mergers involving sub-$50 billion banks
  - Unclear how favorable they will be for larger deals

REGULATORY CAPITAL REQUIREMENTS

- Basel Committee intended for national governments to implement most of the Basel Endgame revisions by January 1, 2022, although this deadline was extended until January 1, 2023, due to the COVID-19 pandemic
  - US banking regulators did not propose rules to implement Basel Endgame until **July 2023**
- Unprecedented negative response from industry
  - Super Bowl commercials, subway ads, etc.
  - Extensive comment letter campaign, including from customers of banks
  - Retention of litigation counsel
- Regulators performed a quantitative impact study on the proposal's likely effect, but did not release results
- Michael Barr outlined expected changes in a re-proposal in a speech in September 2024

RESPONSE TO BASEL ENDGAME PROPOSAL (CONT.)

PROSPECTS FOR BASEL ENDGAME RE-PROPOSAL

- Despite Barr's speech, it is unclear if and when a re-proposal will be issued
  - Barr recently resigned and signaled that Fed will not be addressed before new Fed, OCC and FDIC leadership is in place in 2025, if ever
  - Jerome Powell would like to pursue a more neutral re-proposal, but does not appear to be a priority at the FDIC or OCC
- More likely will be a rulemaking that addresses the negative impact of **SLR** (and eSLR) on **Treasury market liquidity**
  - May also address cross-product netting and interaction with clearing requirements

PROSPECTS FOR LTD AND OTHER CAPITAL PROPOSALS

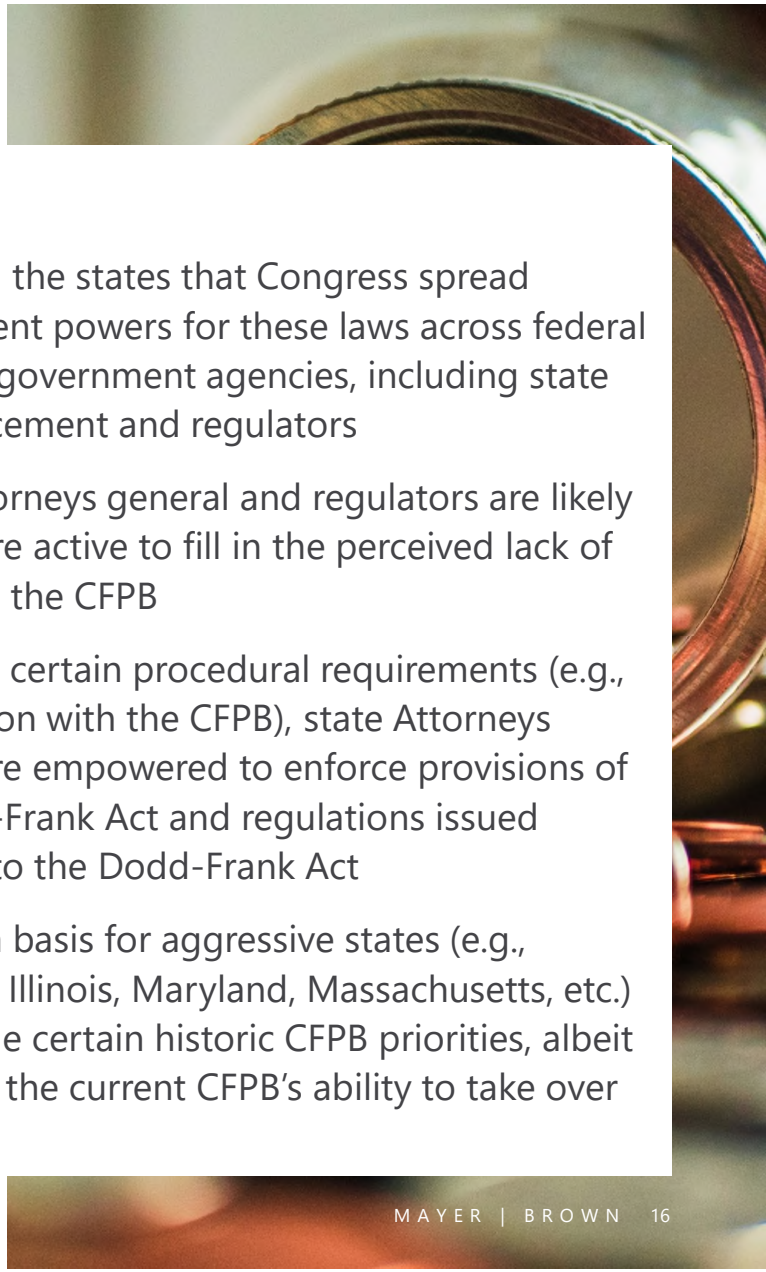
- **Long-Term Debt (LTD) Proposal**
  - Unlikely to be re-proposed; unclear if/when it will be finalized
  - Final rule might include some changes (e.g., removal of minimum denomination requirement), but would not be as extensive as Basel Endgame re-proposal
- **G-SIB Surcharge Calculation Proposal**
  - May be expanded to recalibrate **eSLR** for impact on Treasury market
  - Abandoning proposed changes related to inclusion of cleared derivatives in surcharge calculation is likely in all cases
  - Likely adjustment to the measurement thresholds in Method 2 surcharge factors to reflect effects of inflation and economic growth
  - Should reduce expected impact on US operations of foreign banking organizations

CONSUMER FINANCIAL PROTECTION BUREAU

- Leadership turnover (Russ Vought acting; Jonathan McKernan permanent nominee)
- Reduction in existing staff and current freeze on litigation, enforcement and examination, contrasting with aggressive growth – particularly in the supervision and enforcement functions – during the Biden Administration
- Recent statements by the President indicated that the agency is not being eliminated
- Anticipated reversion in priorities to issues typically garnering more bi-partisan support, such as "plain vanilla" compliance regarding:
  - Collection practices
  - Credit information furnishing and dispute resolution
  - "Traditional" UDAAP (e.g., deceptive marketing) and fraud
- Bottom line: General uncertainty, expected to continue for at least the short-term

CFPB AND STATE ENFORCEMENT

- In the waning days of the Biden administration, on January 14, 2025, the CFPB released a report entitled "Strengthening State-Level Consumer Protections" describing how the states can be more active in legislation and enforcement of consumer protection issues
  - The report includes recommendations to states on how they can update their laws and regulations to meet evolving consumer financial risks, such as junk fees, handling of sensitive personal data, obfuscation of product features and exploitation of market power
  - The Bureau also release a compendium of guidance documents (e.g., Circulars, Bulletins, Advisory Opinions, Interpretive Rules) regarding federal consumer financial protection laws that the CFPB has released in the last several years – reminding the states that Congress spread enforcement powers for these laws across federal and state government agencies, including state law enforcement and regulators
- Some state attorneys general and regulators are likely to become more active to fill in the perceived lack of enforcement at the CFPB
  - Subject to certain procedural requirements (e.g., consultation with the CFPB), state Attorneys General are empowered to enforce provisions of the Dodd-Frank Act and regulations issued pursuant to the Dodd-Frank Act
  - Provides a basis for aggressive states (e.g., California, Illinois, Maryland, Massachusetts, etc.) to continue certain historic CFPB priorities, albeit subject to the current CFPB's ability to take over matters

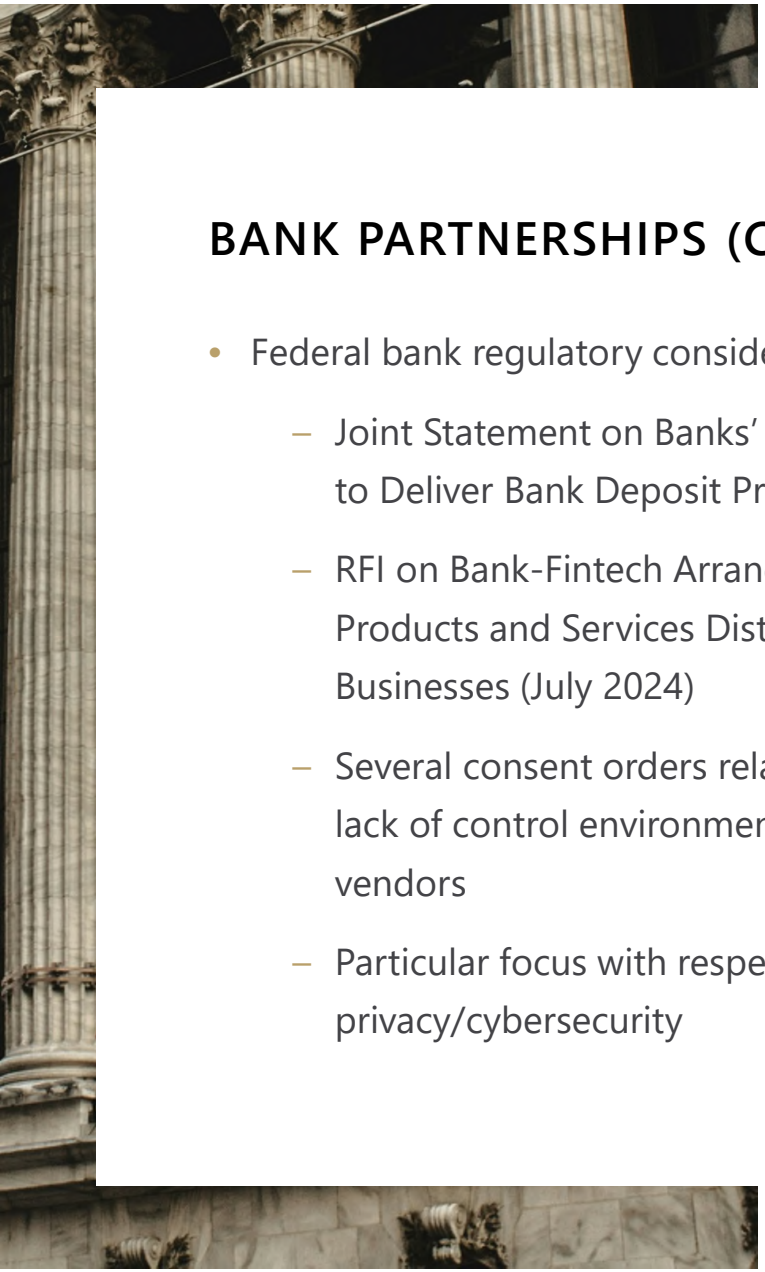


CFPB OPEN BANKING RULE

- Section 1033 of the Dodd-Frank Act: Subject to rules prescribed by the CFPB, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data
- Finalized in October 2024 but immediately challenged in court by BPI and Kentucky Bankers Association as to its validity
- What is outlook in 2025?

BANK PARTNERSHIPS AND BANKING-AS-A-SERVICE

- As with 2024, developments will be primarily at the state level – other than ongoing federal push for service provider oversight
- True lender litigation and bank partner lending programs
  - Continued pressure from regulators in California, Massachusetts, and Maryland
  - Class action bar still active, particularly in Pennsylvania and California
- True lender anti-evasion provisions and licensing expansion (now at 10+ states)
- DIDMCA opt-outs
  - Colorado litigation resolved favorably for now – leading to a slowdown in other states' efforts – but issue continues to warrant tracking



BANK PARTNERSHIPS (CONT.)

- Federal bank regulatory considerations
  - Joint Statement on Banks' Arrangements with Third Parties to Deliver Bank Deposit Products and Services (July 2024)
  - RFI on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses (July 2024)
  - Several consent orders relating, at least in material part, to lack of control environments for bank partners and key vendors
  - Particular focus with respect to AML, deposit insurance, and privacy/cybersecurity
- Some fintechs may consider bank charters or acquisition of existing banks abandoning the bank partnership model
  - During first Trump administration several fintechs filed applications for bank charters, but not all were processed by the end of it
  - *De novo* charter application process was onerous and untimely so some pivoted to acquisitions

OTHER FINANCIAL REGULATOR PRIORITIES

Banking regulators – FDIC, OCC, Treasury

- Bank supervision and examination
- Federal preemption
- Community Reinvestment Act rule
- Various FDIC initiatives

Federal Trade Commission

- Robust antitrust enforcement and merger review
- Stricter 2023 Merger Guidelines remain in place
- DEI, ESG collusion
- Big Tech
- Consumer protection
- Censorship

Department of Labor

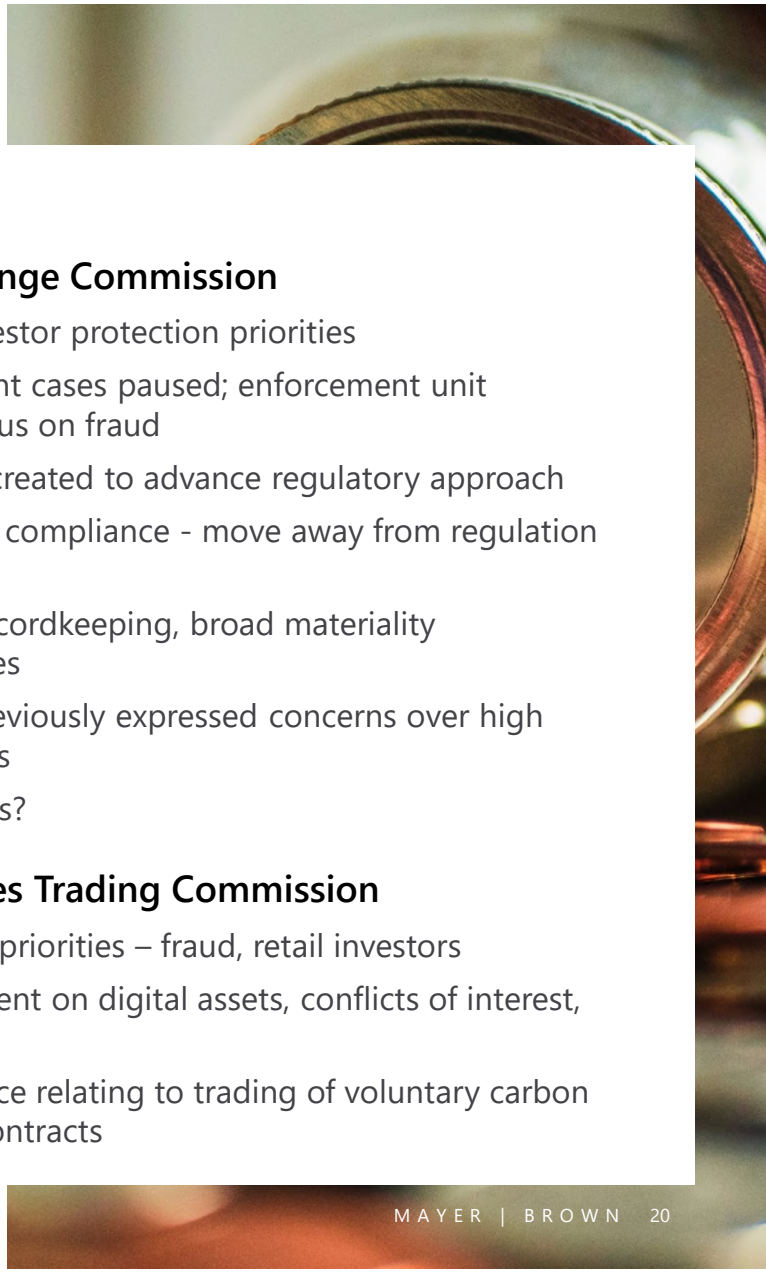
- Issues rules and interpretations regarding fiduciary duties for private-sector pension plans
- Potential for anti-ESG actions relating to plan investments

Securities & Exchange Commission

- Return to core investor protection priorities
- Crypto enforcement cases paused; enforcement unit reorganized to focus on fraud
- Crypto task force created to advance regulatory approach
- Renewed focus on compliance - move away from regulation by enforcement
- Shift away from recordkeeping, broad materiality determination cases
- Incoming Chair previously expressed concerns over high corporate penalties
- FCPA investigations?

Commodity Futures Trading Commission

- New enforcement priorities – fraud, retail investors
- Industry engagement on digital assets, conflicts of interest, prediction markets
- Scrutiny of guidance relating to trading of voluntary carbon credit derivative contracts



OCC PREEMPTION ACTIVITY

- *Cantero v. Bank of America (US Supreme Court)*
  - Review of whether a New York state law imposing an obligation to pay interest on escrow accounts could be applied against a national bank
  - More broadly, a review of the scope of the Barnett standard, under which a state law is preempted in application against a national bank if it "significantly interferes" with the bank's full exercise of its powers under Federal banking law
- *Illinois Bankers Association v. Kwame Raoul (N.D. Illinois)*
  - Review of whether the Illinois Interchange Prohibition Act prohibiting interchange fees on certain transactions was preempted by federal law including the National Bank Act

COMMUNITY REINVESTMENT ACT

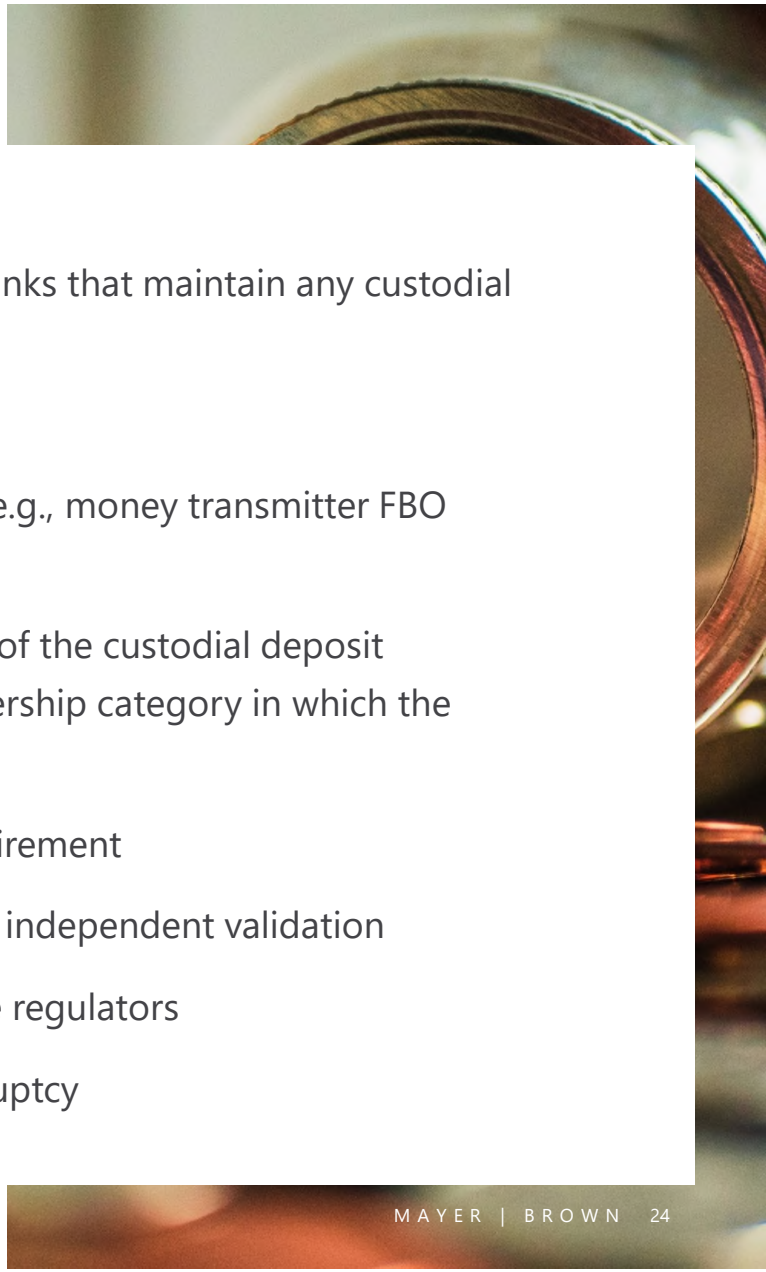
- Final rule was scheduled to take effect on April 1, 2024, but banks would not become subject to most of requirements, including new assessment area requirements and performance tests, until January 1, 2026. Data reporting requirements would not apply until 2027
- In February 2024, several industry organizations filed a lawsuit in the Northern District of Texas against FRB, FDIC and OCC asking the court to vacate the final rule
- In April 2024, the District Court for the Northern District of Texas granted the motion by industry organization for a preliminary injunction
- Regulators have signaled that they will withdraw the final rule and revert to the prior rule (from 1996)

BROKERED DEPOSITS PROPOSAL

- In 2020, the FDIC modernized its brokered deposits regulations
  - Generally narrowed the scope of what is a brokered deposit
  - Was largely self-executing
  - Finalized over the objection of Gruenberg
- In July 2024, the FDIC proposed revisions to the brokered deposits regulations
- Proposal would have largely reversed 2020 rulemaking
  - Expanded definition of "brokered deposit"
  - Eliminated exclusive placement exclusion
  - Eliminated enabling transactions designated business arrangement as an exception
  - Required banks to file notices and applications that previously could have been filed by third-parties
- ***Will not move forward***

DEPOSIT RECORDKEEPING PROPOSAL

- In September 2024, the FDIC proposed new recordkeeping requirements for banks that maintain any custodial deposit accounts with transactional features
  - Intended to address fall-out from Synapse bankruptcy
  - Broadly addresses accounts held for the benefit of multiple third-parties (e.g., money transmitter FBO accounts)
- Banks would be required to keep records that identify (i) the beneficial owners of the custodial deposit account, (ii) the balance attributable to each beneficial owner, and (iii) the ownership category in which the beneficial owner holds the deposited funds
  - Third-party could maintain the records subject to daily reconciliation requirement
  - Third-party recordkeeper would be subject to extensive requirements and independent validation
  - Bank would be required to make an annual compliance certification to the regulators
- Potential for modified adoption based on bipartisan support post-Synse bankruptcy



RESOLUTION AND RECOVERY PLANNING

- In August 2024, the FRB and the FDIC issued final guidance for the 2025 and subsequent resolution plan submissions by certain domestic banking organizations
- In June 2024, the FDIC issued a final for insured depository institutions (IDIs) with at least $50 billion in total assets
  - Large banks with total assets of at least $100 billion must submit comprehensive resolution plans to support the FDIC's ability to undertake an efficient and effective resolution if such an institution fails
  - IDIs with total assets of at least $50 billion but less than $100 billion must submit more limited "informational filings" to assist in their potential resolution

FINANCIAL DATA TRANSPARENCY ACT (FDTA)

- Enacted in 2022 to require federal financial agencies to implement uniform data standards for regulatory reporting
  - Affects Treasury, SEC, CFTC, OCC, FRB, FDIC, NCUA, CFPB, FHFA
- **Phase 1.** Interagency rulemaking to adopt common data standards
- **Phase 2.** Agency-by-agency implementation in rules and information collections
- Agencies proposed common data standards in August 2024
  - Would adopt GLEIF's Legal Entity Identifier
  - Would adopt UPI, CFI, FIGI, GENC, and certain ISO Standards
- Proposed replacement of CUSIP with FIGI drew extensive criticism from industry
- Phase 1 rulemaking may be finalized in 2025; Phase 2 will occur as OMB information collection approvals expire

EU CRD VI – CROSS-BORDER ASPECTS

EU CRR AND CRD VI REVISION

- To implement Basel III standards more fully, the European legislator has amended the EU Capital Requirements Regulation ("**CRR**") and the EU Capital Requirements Directive ("**CRD**")
- Most amended CRR provisions ("**CRR III**") are effective since 1 January 2025
- CRD implementation provisions ("**CRD VI**") are to be transposed into national law by EU Member States as of 11 January 2026

OBJECTIVES OF CRR / CRD VI REVISION

- CRR changes have two general objectives:
  - Contributing to financial stability and
  - Contributing to steady financing in the context of post-COVID-19 crisis recovery
- The general objectives can be broken down into four more specific objectives:
  - Strengthening risk-based capital framework, without significant increases in capital requirements overall
  - Enhancing focus on ESG risks in prudential framework
  - Further harmonizing supervisory powers and tools and
  - Reducing institutions' administrative costs related to public disclosures and improving access to institutions' prudential data

THIRD-COUNTRY BRANCHES

- New minimum requirements for prudential supervision of third-country branches ("**TCBs**") – *these are key repercussions for non-EU entities*
- Undertaking established in third country active in an EU Member State falls under new TCB regime if:
  - It would qualify as a credit institution or would fulfil the criteria set out in Article 4(1) point (1)(b) of the CRR if it were established in the EU and its activities include
    - Lending (including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting));
    - Financial leasing;
    - Payment services (as defined in point (3) of Article 4 of the EU Payment Services Directive 2 (PSD2 - Directive (EU) 2015/2366);
    - Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by the payment services above;
    - Guarantees and commitments
  - It is taking deposits and other repayable funds.
- However: Exemptions (in particular: **reverse solicitation exemption**)

EXEMPTIONS FROM TCB REGIME

'Article 21c

Requirement to establish a branch for the provision of banking services by third-country undertakings

1. Member States shall require undertakings established in a third country as referred to in Article 47 to establish a branch in their territory and apply for authorisation in accordance with Title VI to commence or continue carrying out the activities referred to in Article 47(1) in the relevant Member State.

2. The requirement laid down in paragraph 1 of this Article shall not apply where the undertaking established in a third country provides a service or activity to a client or counterparty established or situated in the Union that is:

(a) a retail client, an eligible counterparty, or a professional client within the meaning of Annex II, Sections I and II, to Directive 2014/65/EU established or situated in the Union where such client or counterparty approaches an undertaking established in a third country at its own exclusive initiative for the provision of any service or activity referred to in Article 47(1) of this Directive;

(b) a credit institution;

(c) an undertaking of the same group as that of the undertaking established in a third country.

Without prejudice to the first subparagraph, point (c), where a third-country undertaking solicits a client or counterparty, or a potential client or counterparty, referred to in point (a) of that subparagraph, through an entity acting on its own behalf or having close links with such third-country undertaking or through any other person acting on behalf of such undertaking, it shall not be deemed to be a service provided at the own exclusive initiative of the client or counterparty, or of the potential client or counterparty.

Member States shall ensure that competent authorities have the power to require credit institutions and branches established in their territory to provide them with the information they require to monitor the services provided at the own exclusive initiative of the client or counterparty established or situated in their territory where such services are provided by undertakings established in third countries that are part of the same *group*.

3. An initiative by a client or counterparty as referred to in paragraph 2 shall not entitle the third-country undertaking to market other categories of products, activities or services than those that the client or counterparty had solicited, other than through a third-country branch established in a Member State. However, the establishment of a third-country branch shall not be required for any services, activities or products necessary for, or closely related to the provision of the service, product or activity originally solicited by the client or counterparty, including where such closely related services, activities or products are provided subsequently to those originally solicited.

4. The requirement laid down in paragraph 1 of this Article shall not apply to services or activities listed in Annex I, Section A, to Directive 2014/65/EU, including any accommodating ancillary services, such as related deposit taking or the granting of credit or loans the purpose of which is to provide services under that Directive.

5. In order to preserve clients' acquired rights under existing contracts, the requirement laid down in paragraph 1 shall be without prejudice to existing contracts that were entered into before 11 July 2026.

The team consists of experienced lawyers as well as young, ambitious and inquisitive talents. This also makes it clear to the clients how important it is to the partners to provide well founded training for the up and coming talent. In addition, all team members are incredibly friendly, so working together is a lot of fun, even beyond the technical side

THE LEGAL 500 DEUTSCHLAND (Client)

THE SPEAKERS

PARTNER

MARCEL HÖRAUF

FRANKFURT +49 69 7941 2236

MHOERAUF@MAYERBROWN.COM

PARTNER

MATTEW BISANZ

WASHINGTON DC +1 202 263 3434

MBISANZ@MAYERBROWN.COM