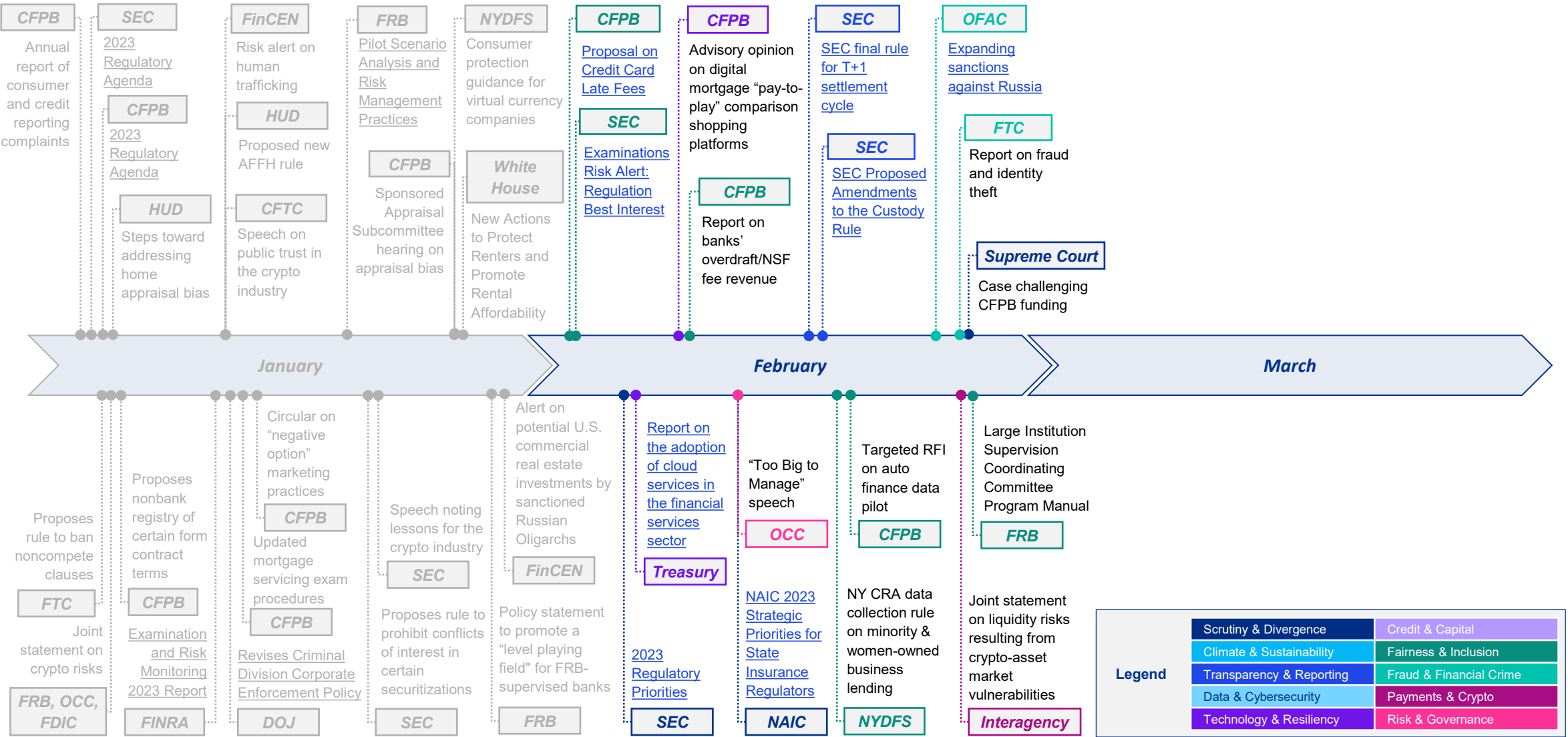




Regulatory Recap

February 2023 at a glance

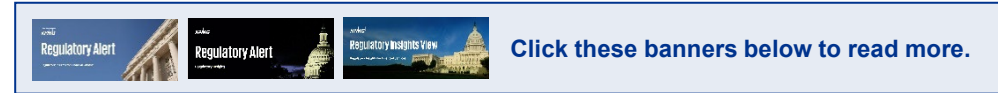
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Legend	
Scrutiny & Divergence	Credit & Capital
Climate & Sustainability	Fairness & Inclusion
Transparency & Reporting	Fraud & Financial Crime
Data & Cybersecurity	Payments & Crypto
Technology & Resiliency	Risk & Governance



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SEC Examinations Risk Alert: Regulation Best Interest



The SEC’s Division of Examinations (Exams) issued a risk alert that is intended to assist broker-dealers in reviewing and enhancing their compliance programs relating to Regulation Best Interest (Reg BI). The risk alert highlights observed compliance deficiencies noted during examinations conducted after Reg BI’s June 30, 2020, compliance date, as well as weak practices Exams staff believes could lead to deficiencies. The Exams Division indicates that, going forward, it will incorporate compliance with Reg BI into “retail-focused” examinations of broker-dealers, with particular focus on “those that include sales practices within the scope of the examination.”

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Reg BI and Form CRS are key areas of supervisory focus for both the SEC and FINRA. Broker-dealers are encouraged to review their policies, procedures, and practices under each of the Reg BI obligations (disclosure, care, conflicts of interest, and compliance) and consider updates in light of the SEC and FINRA findings and identified effective practices.

Consumer Fees: CFPB Proposal on Credit Card Late Fees



The Consumer Financial Protection Bureau (CFPB) has continued to focus on consumer fees – part of the initiative on “junk fees” - with its issuance of a proposed rule that would amend Regulation Z, which implements the Truth-in-Lending Act (TILA), to “better ensure” that credit card late fees are “reasonable and proportional” to the late payment. The rule would lower the late fee amount, eliminate a higher late fee for subsequent same type violations, eliminate the annual inflation adjustment for late fees, and limit late fees to 25 percent of the required minimum monthly payment.

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Similar to the CFPB focus on overdraft and NSF practices, it is possible that the focus to fee practices in this space may result in individual provider product or other changes. Fee income practices, earnings from fees and complaint, claim or dispute practices related to fees will continue to be a regulatory focal area for examinations, supervision and/or investigations.

Examinations: SEC 2023 Priorities



The SEC’s Division of Examinations (Division) issued its annual list of examination priorities focusing on products, practices, and services that it believes present significant areas of heightened risk to investors and U.S. capital markets, including compliance with new rules (e.g., Marketing Rule, Derivatives Rule, and Fair Valuation Rule) and other examination focal areas (e.g., RIAs to private funds; retail investor “best interest” and fiduciary duty; ESG-related service and fund offerings, fund labeling and retail investor “best interest”; and crypto or “crypto-related” asset trading).

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The priorities list is a helpful “roadmap” to regulatory expectations in 2023. Companies should quickly assess and conduct “gap assessment” of their practices relative to such regulatory insight in order to prioritize actions, seek investments (as needed), and swiftly ‘remediate’ known gaps.

Focus on Tech: Cloud, AI, Personal Data

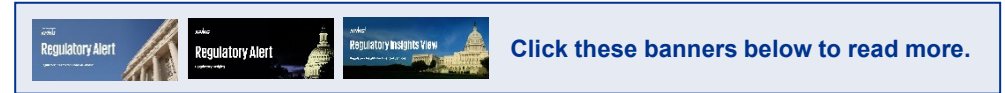


While recognizing the many benefits to be derived from new technologies, the Administration is looking to address the challenges across sectors and the potential harms to consumers that may be realized from rapid technology development and innovation. Key issues include transparency, accountability, and privacy—as recently featured in the: Calls for bi-partisan legislation outlined in the State of the Union Address, a Treasury report on the Financial Services Sector’s Adoption of Cloud Services, and the White House Blueprint for an “AI Bill of Rights.”

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- Regulators will increasingly scrutinize technology innovations (e.g., cloud, AI) against a company’s sound risk management policies and the principle of “protecting the consumer/customer.”
- Companies should expect heightened expectations, and look to enhance, in areas such as: modern technology risk management, technology resiliency and operational resiliency and risk management and governance, data collection and privacy (see 2023 Regulatory Challenges: [Technology and Resiliency](#); [Data and Cybersecurity](#))

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SEC final rule for T+1 settlement cycle



The Securities and Exchange Commission (SEC) adopted a final rule to shorten the standard settlement cycle for most broker-dealer transactions from two business days (T+2) to one (T+1) after the trade date. In addition, the new rule impacts the processing of institutional trades by broker-dealers and certain clearing agencies and amends certain recordkeeping requirements for registered investment advisers (RIAs).

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Operational challenges may include shifts from manual to automated systems, organizational changes, and changes in the relationships with market participants; operational risks may include less time to address process errors or potential fraud. The SEC will continue to evaluate operational and technical challenges to shift toward a T+0 settlement standard cycle in the future.

SEC Proposed Amendments to the Custody Rule



The Securities and Exchange Commission (SEC) proposed to amend Rule 206(4)-2 under the Advisers Act (currently known as the Custody Rule) and redesignate it as the Safeguarding Rule (new rule 223-1 under the Advisers Act). Amendments to the current rule are intended to strengthen investor protections related to advisory client assets and to “expand the scope of the current Custody Rule beyond client funds and securities to include any client assets for which an adviser has custody.”

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The issuance explicitly states that the protections apply to “all assets, including crypto assets”—thus the SEC continues to look to apply existing regulations and authorities to the digital asset market.

In issuing, the SEC chair denotes the proposal will “help ensure that advisers **don’t inappropriately use, lose, or abuse investor’s assets**”. “Use”, “lose” or “abuse” are important words aligned to key principles of customer/investor protection, fiduciary duty, best interest, and data privacy.

NAIC 2023 Strategic Priorities for State Insurance Regulators



The National Association of Insurance Commissioners (NAIC) announced its strategic priorities for 2023. The priorities, which are set by the NAIC members, aim to “advance state-based solutions on current challenging issues” through “close collaboration” and “coordinated action” among the state insurance regulators.

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- The NAIC’s 2023 strategic priorities provide a helpful “roadmap” for companies to gain insight into areas of upcoming insurance-related regulatory risk and attention.
- The NAIC’s priorities notably reflect quite a few of the 2023 regulatory priorities set by other financial service regulators, including climate risk, AI/algorithmic models, cybersecurity, fair advertising, and consumer/investor protections (see examples in KPMG Regulatory Alerts [here](#), [here](#), and [here](#)).
- Differing states laws and regulations impacting insurance-related activities introduce operational and compliance complexities. See KPMG Regulatory Insights latest article, The Empowerment of State Law and Regulation, [here](#).

Russia-Ukraine War: Expanded U.S. Sanctions, FATF Action



The U.S., G7, and other countries announced Russia sanctions and other actions, including:

- New “expanded and intensified” sanctions aimed at the metals and mining sector in addition to numerous financial institutions, individuals, and other companies.
 - A price cap on certain petroleum products beginning February 5, 2023.
 - Suspension of Russia’s FATF membership.
- KPMG Insights**
- These most recent regulatory issuances re-confirm that Russian designations are complex, particularly given typical multi-tier ownership.
 - Given such complexities (including the potential for cross-border routing), companies should consider both entity-level and activity-level sanctions standards and practices.
 - Companies must strive to ensure compliance with the 50 percent rule (which often necessitates updates to screening tools and teams to handle alert review volumes).

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The 'Empowerment' of State Law and Regulation



Feeling the growing “empowerment” of state and local regulatory activity?

Many states have been proactively setting legal and regulatory standards and requirements in a variety of areas, oftentimes ahead of federal regulatory action. Increasingly, however, the myriad individual state requirements diverge from one another, introducing complexities that may necessitate a strategic reconsideration of a company’s products, channels, and processes.

Our newest article, The ‘Empowerment’ of State Law and Regulation, walks through what companies must consider as they continue to enhance their state law and regulation risk and compliance programs across regulatory divergence; inventory; complexity; scrutiny; and enforcement. Be prepared.

ICYMI: “Too Big To Manage” – OCC’s Bank Merger Framework

In January 2023, the Acting Comptroller of the Currency (OCC) gave a [speech](#) on policy issues related to bank mergers, particularly focusing on the limits of large bank manageability or the “**Too Big to Manage**” (TBTM) problem. The OCC stated that robust approaches to detecting, preventing, and addressing TBTM risks are imperative for banks and their regulators to protect consumers, counterparties, and the financial system. Five signs that a bank may be at risk of becoming TBTM, include:

- How materiality of risks and problems are determined and managed
- Treatment of isolated incidents or “bad apples”
- External teams identifying risks and problems before internal risk and control functions
- Hubris, contempt, and indifference of senior leadership to risks and problems
- Rushed integrations and diseconomies of scale during bank mergers (see subsequent [speech](#) in February)

The OCC recommends companies have a robust escalation framework to address deficiencies and TBTM risks and also outlined its supervisory escalation framework for remediation of deficiencies, including a final step to simply via divestiture or “breaking up the bank”.



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