Regulatory Recap

November 2023 at a glance

Regulatory Insights: November 2023 Summary

November 2023 saw several agencies issue annual supervisory reports, providing further insight into 2024 regulatory focal areas, as well as actions to expand regulatory "perimeters", including supervision of nonbanks. Key regulatory activities from November include:

SEC – Final rule for registration and regulation of security-based swap execution facilities

FATF – Initiatives to strengthen global anti-money laundering and counter-terrorist financing standards

DOJ – [Safe Harbor Policy for Voluntary Self-Disclosures in Mergers & Acquisitions]

DOL – Proposed rule to update the definition of investment advice fiduciary in ERISA plans

FRB – [Reports: Supervision and Regulation; Financial Stability]

FSOC – [Financial Stability, Nonbank Supervision: Final Guidance]

CFPB – [Proposal to Supervise Big Tech and Other Wallet/ Payment Provider]

FRBNY – Quarterly report on household debt and credit, showing increased mortgage, credit card, and student loan debt balances

Treasury – FinCEN final rule on use of identifiers in beneficial ownership informati on (BOI) reporting

CFPB – Annual report on fair debt collection practices, highlighting medical debt collections

SEC – FY2023 Enforcements Results

November

FTC – Final amendments to Safeguards Rule to require non-bank financial institutions to report data security breaches

OCC – Policy guidance on commercial lending for "venture loans"

Treasury – FIO notice of data collection and request for comment on climate-related financial risk

PCAOB – [2024 Agenda: Proposed amendments to the auditing standards related to NOCLAR]

FINRA – Report on quantum computing's implications for the securities industry

NYDFS – Final amendments to cybersecurity regulations (including controls, notification requirements, and risk assessments)

FTC – Comment letter to U.S. Copyright Office on competition and consumer protection issues with development/deployment of AI

FTC/DOJ – Statement on digital competition with G7 enforcement partners

Interagency – Working Group progress report on efforts to enhance Treasury market resilience

FDIC – Final rule to impose a special assessment to recover losses in the Deposit Insurance Fund in connection with systemic risk determination

SEC – Final rules to improve clearing agency governance and mitigate conflicts of interest

Legend
Regulatory Intensity
Governance & Risk Management
Financial Risk
Consumer/Investor Protection
Tech & Data Risks

Regulatory Insights: November 2023

[FRB Reports: Supervision and Regulation; Financial Stability]

The Federal Reserve Board has published two semiannual reports: 1) the Supervision and Regulation Report and 2) the Financial Stability Report.

The Supervision and Regulation Report highlights the FRB's assessment of banking system conditions, as well as regulatory and supervisory developments in 2023 and priorities for 2024. The Financial Stability Report presents FRB's current assessment of the stability of the overall U.S. financial system.

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- ***Regulatory Transparency:*** *The FRB issues semi-annual reports on Supervision and Regulation and on Financial Stability in an effort to provide the market and banks continued regulatory transparency*
- ***Heightened Risk Standards:*** *Top supervisory findings include:*
  - *Large bank governance and controls (approximately 2/3 of outstanding issues)*
  - *IT and operational risks at community/regional banks (approximately 1/3 of outstanding issues)*
- ***Financial Risk Management:*** *Liquidity and interest rate management a focus in recent supervisory findings across large banks as well as community and regional banks*

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[CFPB Proposal to Supervise Big Tech and Other Wallet/Payment Providers]

The Consumer Financial Protection Bureau issues a new proposed rule to define a market for "general-use digital consumer payment applications". The market would cover providers of funds transfer and wallet functionalities through digital applications for consumers' general use in making payments to other persons for personal, family, or household purposes. Larger participants of this market would be subject to the CFPB's supervisory authority.

The proposed rule is intended to ensure nonbank covered providers' compliance with federal consumer financial laws (e.g., UDAAP, privacy provisions of GLBA, and EFTA), as well as to promote fair competition between nonbanks and depository institutions (which also provide general-use digital consumer payment applications) and monitor emerging risks in the digital payment sector.

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- ***Expanding Regulatory Perimeter:*** *CFPB proposes to expand its supervisory authority to "large nonbank digital payment providers" – many of which are Big Tech.*
- ***"General Use":*** *Proposal targets "general-use digital consumer payment applications," or those that do not have limitations on the types of transactions they facilitate.*
- ***Rule Application:*** *"Larger participants", as proposed, would cover approximately 88% of all transactions in nonbank digital consumer payment applications.*

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[Financial Stability, Nonbank Supervision: FSOC Final Guidance]

The Financial Stability Oversight Council issues:

- Final interpretive guidance outlining changes to the FSOC's 2019 Interpretive Guidance, the process by which the FSOC determines (or "designates") whether to subject a nonbank financial company to supervision and prudential standards by the Federal Reserve Board.
- An analytic framework for financial stability risks, outlining how the FSOC "expects to" 1) identify, 2) assess, and 3) respond to potential financial stability risks (independent of whether those risks arise from activities, firms, or otherwise), and is intended to decrease the risk of "shocks" arising from within the financial system, improving resilience against "shocks" that could affect the financial system, and mitigating financial vulnerabilities that may increase risks to financial stability.

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- ***Expanding Regulatory Perimeter:*** *The supervisory authority of the FRB will expand to cover designated nonbank financial companies.*
- ***Risk Management Focus:*** *Continued regulatory focus on heightened risk management standards - through both issuances of cross-agency frameworks and guidance.*
- ***Harmonize Supervision:*** *Recognizes the growth of nonbank financial entities (e.g., private funds, asset managers, money market funds, insurance companies) and the commitment of the regulators to harmonize supervision and regulation of financial stability risks posed by banks and nonbanks.*

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DOJ Safe Harbor Policy for Voluntary Self-Disclosures in Mergers & Acquisitions

The Department of Justice announced a new Safe Harbor Policy for voluntary self-disclosures made in connection with mergers and acquisitions. The policy aligns with, and builds upon, previous DOJ actions, including:

- The Deputy Attorney General's September 2022 memorandum (Monaco Memo).
- The DOJ Criminal Division's revision of its Corporate Enforcement Policy.
- DOJ's initiatives on compensation and voluntary self-disclosures.

Like these prior actions, which seek a "mix of incentives and deterrence", the new Safe Harbor Policy is intended to promote and incentivize voluntary self-disclosures from companies, hold individual wrongdoers accountable, and in so doing, prevent "good companies – those that invest in strong compliance programs – from being penalized for lawfully acquiring companies when they do their due diligence and discover and self-disclose misconduct."

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- ***"Compliance Now or Pay Later":*** *Highlights the need to invest in thorough and timely compliance due diligence activities both prior to and following deal closure.*
- ***Avoiding the Recidivist Rap:*** *The voluntary disclosure of identified misconduct within the 6-month Safe Harbor period will lead to a presumption of a declination and will not factor into future recidivist analysis for the acquiring company.*
- ***Considerations for overall M&A Strategy:*** *Companies should factor the Safe Harbor Policy into their overall M&A strategies and ensure sufficient resources are dedicated to assessing compliance controls prior to deal closure and conducting expanded and targeted testing following closure to ensure they benefit from voluntary self-disclosure incentives.*

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Noncompliance with Laws and Regulations, Including Fraud: PCAOB Proposed Amendments

In November 2023, the Public Company Accounting Oversight Board (PCAOB) published its 2024 rulemaking agenda, indicating that the June 2023 proposed amendments to the PCAOB auditing standards related to auditors' responsibilities regarding a company's noncompliance with laws and regulations (NOCLAR), including fraud (PCAOB Release No 2023-003), is a "short-term agenda" item and expected to be adopted in 2024. Once adopted by the PCAOB, final amendments will be submitted to the Securities and Exchange Commission for approval.

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The PCAOB proposed amendments to NOCLAR (if adopted and approved) will require an array of demonstrable risk preparedness, including:

- ***Compliance & Investigation Programs:*** *Need to assess/strengthen all programmatic areas of compliance, investigations, issues management, complaints management, etc.; overall corporate risk programs, as well as within/across "high-impact" regulatory programs; and enhancements related to the identification, sizing, communication (within/outside legal privilege), escalation, and overall control environment of potential noncompliance and fraud.*
- ***Compliance Risk Assessments:*** *Need to assess/strengthen robustness of inherent risk calculations to the law/rule/regulation-level with dynamic assessments made based on data such as complaints, investigations, self-identified issues, and monitoring/testing results, for determination of potential NOCLAR and associated impact/sizing determinations.*
- ***Regulatory Change:*** *Need for full and dynamic applicable inventory of laws, rules and regulations, mapped to business processes and controls, and utilized for ongoing compliance risk assessments (including inherent and residual risk).*
- ***Controls Build/Testing:*** *Need to build and conduct ongoing controls, control mapping, control accountability and control testing for potential noncompliance to laws and regulations processes, in line with (and potentially part of) SOX and/or SOX-like standards.*

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Ten Key Regulatory Challenges of 2024

Strengthen the Cards You Hold

KPMG Regulatory Insights presents our [*Ten Key Regulatory Challenges of 2024*], featuring actions to consider and key "big rock" regulations to watch, as well as our Regulatory Barometer, which quantifies regulatory intensity, giving a predictive indicator of the regulatory landscape across ten critical challenge areas.

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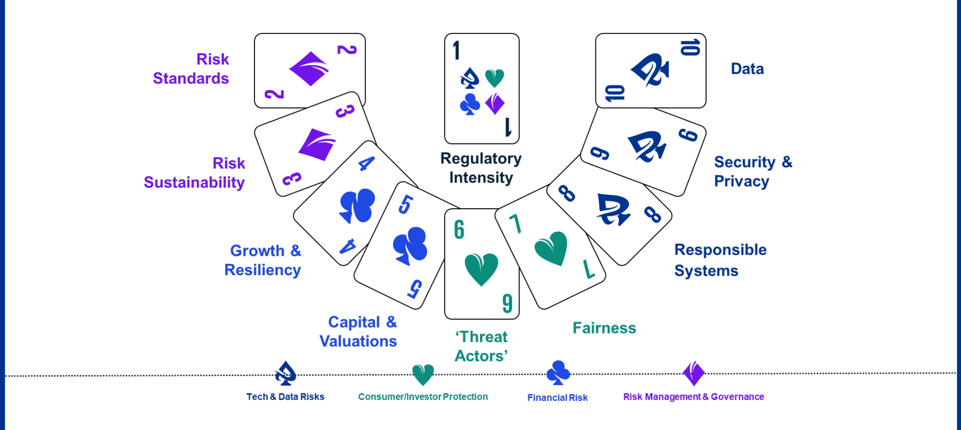

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