Cadwalader Cabinet: FSOC Can Protect Us (!) (?) (.)

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CRS Examines Systemic Risk Reforms in Financial Regulation

In a new report, the Congressional Research Service ("CRS") analyzed the 2007 market crash and the 2020 pandemic crash, the steps that Congress took after each of these crises, and the authorities that the regulators relied upon to reduce systemic risk and avert market crashes.

The authors describe various post-Dodd-Frank measures and the extent to which they have been implemented, and whether, or to what extent, they succeeded. For example, the CRS provides a description of the activities of FSOC, the various recommentations that it has made and where FSOC was successful or not in obtaining the implementation of those recommendations. CRS asserts that financial stability-related reforms enacted after the crises were successful in preventing the failure of large financial firms, which would have otherwise required bailouts. The authors contend that the responses were less successful overall in creating a more resilient financial system that would withstand sudden shocks without resorting to large-scale government intervention. CRS explained that sectors that saw substantial reforms, such as banks and derivatives, proved to be resilient during the onset of the pandemic, while other reformed areas, such as money market funds, repo markets and other short-term borrowing markets, broke down and relied on federal emergency programs.

Further, CRS found that the restorative programs resulted in financial stability and set off a large increase in asset values after the spring of 2020. CRS concluded that this outcome raises questions about whether government intervention was a success or was unnecessary, since markets may have stabilized without assistance. CRS concluded that the COVID-19 pandemic gave us a real-life test of the systemic risk reforms and demonstrated that financial regulators are facing several challenges, which stem from political restraints, limits on regulatory powers, and innovation in financial markets.

> "While this report is well written, it reflects a political bias towards over-reliance on regulatory authorities in times of financial crises. With regard to the designation by FSOC of firms as being "systemically significant," the authors complain that firms were de-designated after reducing their systemic significance, as if downsizing of the relevant firms were somehow an evasion of the regulation, or as if FSOC ought to have continued to regulate the firms even after they stopped being significant. Likewise, the authors suggest that there should be an agency to approve new financial products (as there is to approve new pharmaceuticals (page 42)). This may seem a clever analogy, but it is not really one that works. Further, the authors bemoan the fact that the regulators are slow to adopt new regulations, as in the area of digital

assets. However, they say nothing of the fact that the regulators are also slow to modify their regulations to permit new product innovations, as in the area of digital assets. The report tends overmuch to advocacy. Though an interesting read, one may reasonably disagree with many of the implications," said Steven Loftchie.

FinCEN Extends Comment Deadline for ANPR on Real Estate Transactions

FinCEN extended the comment period for a proposed rulemaking concerning potential Bank Secrecy Act information collection and reporting requirements "on certain persons participating in transactions involving non-financed purchases of real estate."

As previously covered, the Advance Notice of Proposed Rulemaking ("ANPR") addresses "the systemic money laundering vulnerabilities presented by the U.S. real estate sector," specifically, "the ability of illicit actors to launder criminal proceeds through the purchase of real estate."

Comments are now due by February 21, 2022.

FINRA to Remove Trade Reporting Query Transaction Fee for Non-Retail Participants

FINRA proposed removing the $0.50 fee applicable to transaction queries performed by non-retail participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago.

The proposal would amend FINRA Rule 7620A ("FINRA/Nasdaq Trade Reporting Facility Reporting Fees") to remove the fee applicable to (FINRA/Nasdaq TRF transaction queries performed through WebLink, Workstation and WorkX.

FINRA filed the proposed rule change for immediate effectiveness and established an operative date of February 1, 2022.

Primary Sources

1. CRS Report: Financial Regulation - Systemic Risk
2. FinCEN Press Release: FinCEN Announces Extension of the Comment Period for Its Real Estate Advance Notice of Proposed Rulemaking
3. SR-FINRA-2022-002: Proposed Rule Change to Amend FINRA Rule 7620A ("FINRA/NasdaqTrade Reporting Facility Reporting Fees")

National Law Review, Volume XII, Number 35