

Trends in 2024: American Bar Association Banking Law Committee Insights

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From January 18th to 20th, the American Bar Association's Banking Law Committee of the Business Law Section held its winter meeting in Washington, DC. This meeting not only provides an excellent retrospective of the previous year's regulatory developments, but also tends to be a harbinger of what is on deck for the year to come.

The opening address was given by the former General Counsel of the Federal Reserve Board ("Fed"), Scott Alvarez, and was focused on the issues he saw as being meaningful for 2024. Among those issues, he identified concerns regarding the state of deposit insurance, in light of the large bank failures in 2023 and the use of the systemic risk exception to insure all deposits of those large failed banks. He also discussed the impact an open banking system and real time payments functionality could have on depository institutions. And, finally, a big topic for all regulatory agencies and regulatory lawyers, the possibility that the Chevron standard of deference for agency decisions could be eroded by the Supreme Court's decision in [Chevron v. Natural Resources Defense Council](#).

A panel of regulators from the agencies discussed enforcement priorities and happenings, during which the following observations were made regarding trends that are developing:

- BSA/AML concerns are trending up, which tends to go in cycles, and we seem to be in an era of increasing issues;
- Problem banks are also trending up;
- Increased focus upon institutions that are "repeat offenders"; and
- Continued focus upon third party management risk by financial institutions, especially those third parties that manage critical functions, including human resources.

The Fed, Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC") and the National Credit Union Association ("NCUA") all discussed their [Rules of Practice updates](#), effective in April, indicating that practitioners should be prepared to adjust to those changes. And, the Consumer Financial Protection Bureau ("CFPB") identified that in addition to a focus on repeat offenders, they expected their enforcement activities to focus on junk fees, predatory lending and addressing the "surveillance economy" of big data being used to guide financial decisions by institutions.

The centerpiece of the winter meeting of the Banking Law Committee is the opportunity to hear thoughts from the General Counsel of the agencies. These discussions tend to be frank and informative, and to that end, these thoughts on the biggest challenges in our current environment, which were touched upon by each panelist, are useful to reflect upon as we proceed into 2024:

- The speed of change in terms of technology, in the economy and in regulation is extremely challenging just now and requires an extremely informed and engaged bar;
- Administrative law courts are under a great deal of pressure, due to various lawsuits that have been filed, which could dramatically slow the agencies' ability to address harms in the marketplace;
- The rise of non-bank financial institutions, in the form of fintechs, shadow-banks, licensed lenders and money transmitters is providing a great deal of opportunity and flexibility in the financial services marketplace, but also is challenging to guide and properly risk-weight and control; and
- The specter of partisanship has begun to darken the doors of agencies more so than in years past, which can lead to uneven enforcement and regulatory guidance.

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