



Ten Key Regulatory Challenges of 2023: Mid-year Look Forward

The links that bind



Introduction

As we reflect on the regulatory year that was and that is coming, key questions arise from our clients:

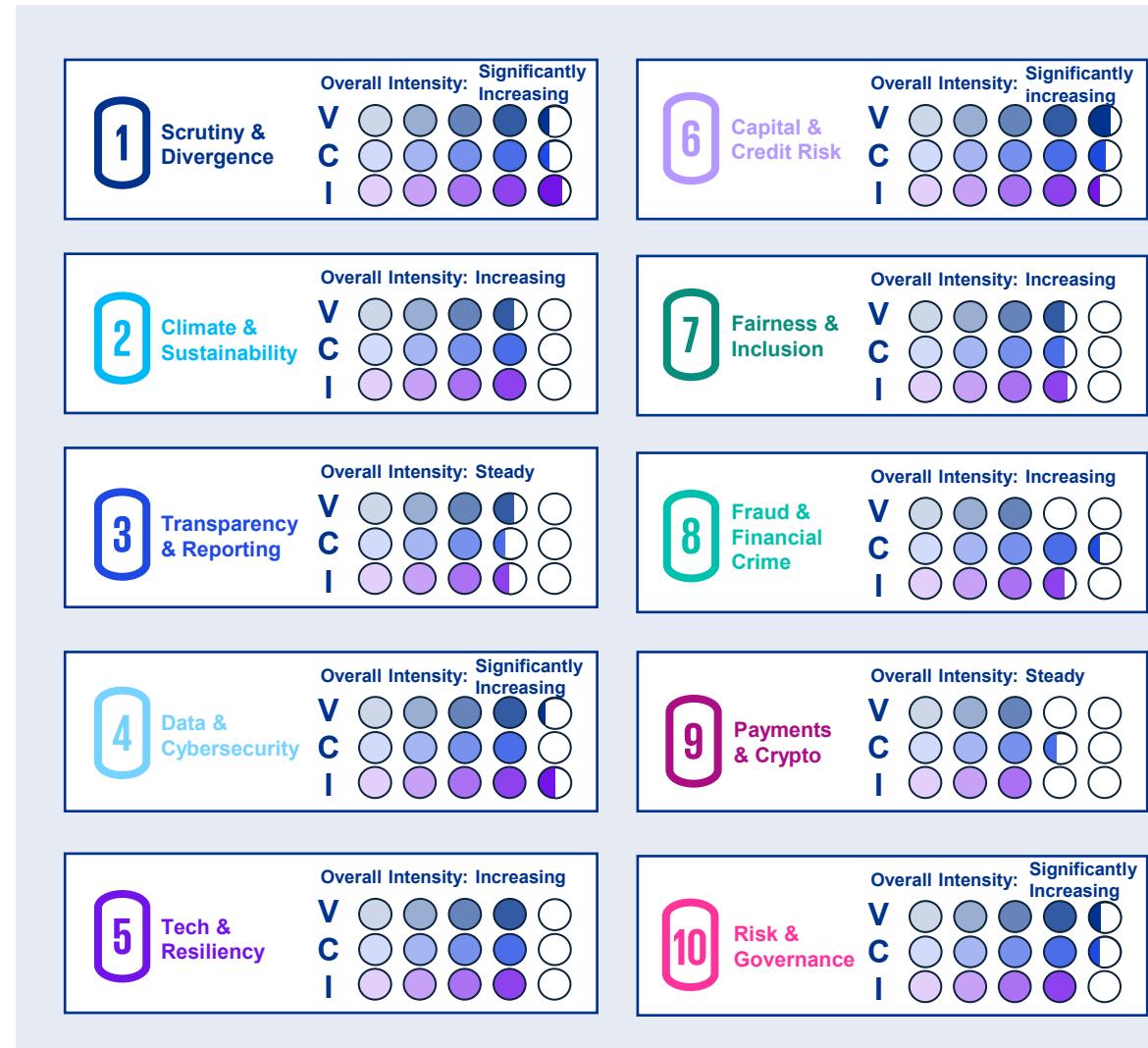
- Where do we see the regulators going?
- What are the regulatory risks we are not thinking about today?
- What should we be watching and building into our planning?

KPMG Regulatory Insights offers a unique view across the KPMG Ten Key Regulatory Challenges to help answer these questions through:

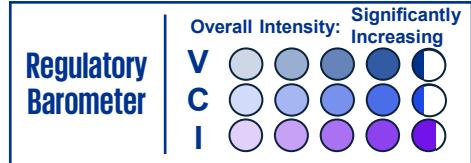
- A reflection of “what’s happened” from the regulators
- A proactive view on “what to watch,” driven by current banking environment events, public policy discord, and new advances in ‘automated systems’
- A KPMG Regulatory Barometer, considering factors of regulatory:
 - Volume (V)
 - Complexity (C)
 - Impact (I)

Amy Matsuo

Principal and National Leader
Regulatory Insights
amatsuo@kpmg.com



01 Scrutiny & Divergence



Insights

- In the current banking environment, all financial services regulators will increase supervisory intensity (scope, exam findings, resolution times)
- Expect increased attention to include risk management and controls, data quality and processes and management/Board accountability
- Continued expanded regulatory coordination (US, global) on principles but continued separate supervision (given jurisdictional authorities)



Increased Supervision & Enforcement

- Bank regulatory change / FSOC
- SEC Regulatory Agenda
- CFPB Regulatory Agenda
- FINRA Examination and Risk Monitoring Report
- NAIC Strategic Priorities for State Insurance Regulators



Regulatory Democratization

- FDIC options on insurance coverage
- Regulatory RFC to consumers (e.g., CFPB on automated systems, Commerce on AI)
- FSOC proposal on nonbank regulation/supervision; FRB policy statement on “level playing field” for supervised institutions



Regulatory Divergence

- White House announcements on National Cybersecurity Strategy, Environmental Justice
- Diverging regulations across states (e.g., vehicle emissions, fossil fuel investment “boycott”, data privacy)
- Global coordination (e.g., Sanctions, Basel, FSB cyber, FSB TCFD)



Across the 3 Lines

- Regulatory and enforcement focus on risk management and Board “accountability” for compliance oversight and related remediation/resolution
- Rule proposals identifying risk management roles (e.g., SEC cyber, FSOC framework)

Key regulatory activity

What to watch

- Regulatory intensity in terms of reporting, examination scope, supervisory findings, time to respond to/ resolve issues, challenge
- Focus on financial risks and broad risk management practices (e.g., leverage ratios, liquidity risk and maturity, operational risks, interconnections, concentrations, certain activities)
- Re-assessment of risk tiering practices (e.g., data, models, processes)

- Continued value on “voice of the consumer”, including regulatory focus on complaint/claims (responsiveness/timeliness)
- Considerations for FDIC insurance expanded coverage for consumers/payroll accounts
- Protection of consumers in “automated systems” (inclusive of AI development and use)

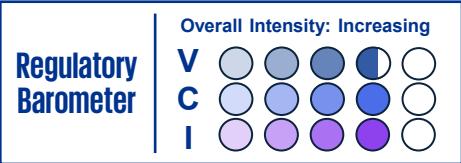
- U.S. participation with global regulatory counterparts but with more localized supervisory focus areas
- Expanded agency coordination (e.g., Administration “fact sheets”) for “all of government” approach
- Divergence of federal to state and across states (e.g., “ESG”, cyber, privacy)

- Management/Board accountability
- Regulatory intensity of risk management and governance controls, practices and evidentiary documentation across business, control functions and Internal Audit
- Supervisory and enforcement findings with expanded breadth across the enterprise

02 Climate & Sustainability

Insights

- The long-anticipated SEC climate disclosure rule was delayed in early 2023 amid growing social/public policy discord tied to “ESG”.
- Amidst the discord, some large firms are now less vocal regarding their public climate/sustainability statements/commitments and progress.
- Debate in Congress is intense; Prudential bank regulators are actively assessing climate-related risk management practices.



Social & Political Discord

- Delayed release of SEC climate disclosure rule
- Ongoing global divergence (e.g., EU final CSRD)
- Ongoing divergence with and between adopted state rules (e.g., CA, TX, NY)



Risk Management & Governance

- FRB proposed principles for bank climate risk management
- NYDFS proposed guidance for climate-related financial risk management
- Prudential regulators questioning risk management during supervisory exams



Scenario/Stress Test Analysis

- Identified as a key principle of bank climate-related risk management (FRB, OCC, FDIC)
- FRB's climate scenario analysis pilot exercise; approach sets expectations for all financial institutions' quantitative analysis



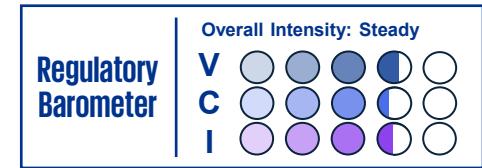
Investment/Strategic Markets

- DOL final rule on ERISA fiduciary duty and ESG factors
- SEC enforcements on misleading disclosures
- EO on Environmental Justice
- Inflation Reduction Act and Infrastructure Investment and Jobs Act funding programs

Key regulatory activity

What to watch

03 Transparency & Reporting



Insights

- Economic uncertainty combined with the current banking environment has regulators looking more closely at supervision and regulation for bank and nonbank financial services entities of all sizes and levels of complexity
- Trend to regulations with more reporting (frequency, detail) alongside increased supervisory expectations for information not explicitly required



Reporting (& More Reporting)

- Calls for more (frequency, detail) bank reporting
- SEC final rules on insider trading Rule 10b5-1; Private fund reporting (Form PF); Share Repurchase disclosures
- CFPB 1071 rule (small business lending)
- FINRA final changes to TRACE reporting
- CFTC proposal on daily DCO reporting



Market Structure

- Heightened attention to “triggers” for regulatory action (quantitative/qualitative)
- SEC final rule on T+1 settlement cycle
- SEC proposals on: Best Execution regulatory framework; Regulation NMS (e.g., order execution, tick sizes, order competition); conflicts of interest in certain securitizations.



Protections & Controls

- Attention to the role of nonbanks (e.g., FSOC SIFI determinations; CFPB proposed registries, final rule on supervisory authority)
- DOC RFC re: explainability and accountability for AI models
- Cross-agency issuances focused on consumer protections and controls (“whole of government” approach)

Key regulatory activity

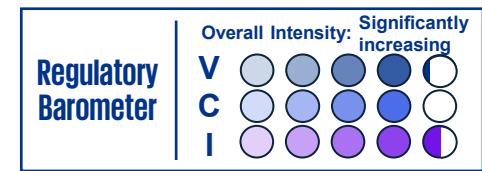
- Supervisory demands for information to support analytic framework/financial stability/financial risk
- Forthcoming SEC rules on climate, cyber, ESG investments, human capital
- Escalation & governance:
 - Demonstrable reporting timeliness, quality, escalation, challenge, and remediation
 - Accuracy of, and consistency among, public statements, non-financial reports and financial reports

- EPS rules for SIFIs (bank, nonbank)
- Heightened supervisory expectations across key risk areas (e.g., liquidity, concentrations)
- Forthcoming SEC rules on money market fund reforms; short selling disclosures
- Scrutiny of changes to market composition:
 - M&A policies/review re: competition
 - Growth through on-prem build and acquisitions
 - New products/services (EFTs, BNPL, AI)

- Regulatory focus on:
 - Clarity, consistency, transparency of consumer communications
 - Controls to surveil and analyze communications
- Evolving expectations for “assurances” regarding model reliability

What to watch

04 Data & Cybersecurity



Insights

- Higher expectations for reporting, data-driven rulemakings to bring regulatory intensity to data quality, testing, models, analysis, & technology
- Supervisory findings around data risk management will continue and expand
- Cybersecurity remains a top supervisory and national security concern



Risk Management & Governance

- Attention to digital devices (SEC, DOJ)
- National Cyber Security Strategy
- FFIEC Cyber Security Resource Guide
- SEC proposed cyber rules for market entities, funds and advisers, Reg SCI
- State regs (NYDFS) proposed cyber rules
- NIST draft update Cybersecurity Framework



Data Collection & Use

- Interagency statement on “automated systems”
- RFIs on service providers’ data practices, experience with data brokers (FTC, CFPB)
- SBREFA Report on CFPB’s Open Banking (1033) outline of proposals
- White House Blueprint for AI Bill of Rights
- Interagency/CFPB proposal on automated valuation models (AVMs)



Privacy

- FTC Safeguards Rule – effective
- SEC proposal to amend Reg S-P; identified area of examination focus for 2023 to include Reg S-P and S-ID
- State laws/regulations (e.g., CA CPRA)

Key regulatory activity

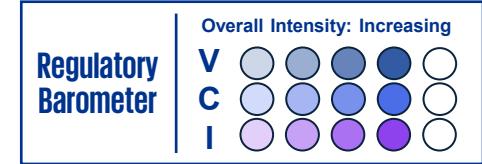
What to watch

- Continuing and expanded supervisory focus on data risk management/standards, including data quality, lineage, ownership
- Data-driven rules and expectations (e.g., CFPB 1071) will focus attention beyond data to analysis, technology, models, operations, training, compliance
- Forthcoming SEC cyber rules for public companies including disclosures regarding board and management oversight and related expertise

- Regulatory/supervisory focus on:
 - Accountability and potential limitations for data stewards (e.g., collection, protection, storage, retention, use)
 - Model inputs and outputs, including “automated systems” (data sets, opacity, design, results)
- SEC proposal on digital engagement practices (DEPs)

- Regulatory/supervisory focus on:
 - Identifying safeguarding and disposal of consumer/customer data, including third parties, decommissioned devices (i.e., purpose limitation; data minimization, data subject rights)
 - Prompt notice and disclosure of breach impacting customer data
 - Access authorization and controls
- Renewed effort to pass an overarching federal data privacy law

05 Technology & Resiliency



Insights

- Increasing applications of new and innovative technologies and models are heightening public policy and regulatory scrutiny around model risk management, including development, implementation, and use; validation and efficacy; governance, policies, and controls; and “trustworthiness”.



Modern Technology Risk Management

- Congressional interest in AI and related risks
- Interagency statement on “automated systems” to protect against harmful outcomes
- NIST Framework on AI Risk Management (voluntary)
- DOC RFC on AI accountability measures and policies
- Enforcement related to IT asset management, end of life, governance
- Interagency/CFPB proposal on quality control standards automated valuation models (AVMs)

- Evolving global and industry regulations around technology and system assurance/attestation
- Regulatory focus on **robust risk management programs**, including:
 - Model development, risk tiering, testing, controls
 - Connection between risk assessments/risk monitoring and Board-approved risk appetite/tolerances, threat intelligence
 - Monitoring/adjustment of controls across domains (malware, identity, vulnerability management)
 - Third-party and service provider management
 - Testing, controls to mitigate disparate treatment
- Focus on “trustworthiness” – safety, efficacy, fairness, privacy, explainability, accountability



Technology Resiliency

- Treasury report on cloud service adoption
- FTC RFI on business practices of cloud service providers, impacts to competition, data security
- Calls to strengthen antitrust enforcement and regulation of large online platforms

- Scrutiny of both **cloud and legacy systems**, including:
 - Coverage of threat intelligence
 - Governance, strategy and inventory across environments for all data
 - Coverage for all divisions, processes
 - Interaction with “automated systems”
 - Identification/notification of security risks (e.g., design, configuration)
 - Competitive environment
- Focus on **development lifecycle**:
 - Testing in production environments
 - Obfuscation of data
 - Controls over system acquisition



Operational Resiliency

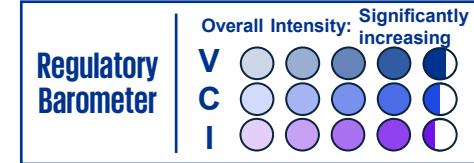
- SEC proposal to establish oversight requirements for investment advisers retaining service providers to perform “covered functions”
- SEC cyber proposals for market entities, funds and advisers, Reg S-P
- NYDFS proposal to amend cyber rules

- Regulatory focus on:
 - Third-party risk, including ransomware and resiliency
 - Identification of critical operations, core business lines, material entities, critical risks
 - Mapping of interconnections and interdependencies of critical operations
 - Effective controls and resilient information systems to maintain critical operations (e.g., impact of digitalization on flow of funds, payments)
 - Testing and ongoing updates, including scenario testing related to cyber resiliency
 - Coordination with business continuity management and disaster recovery teams

Key regulatory activity

What to watch

06 Credit & Capital



Insights

- Economic uncertainties, changing interest rates, and banking system stress focus regulatory attention on risk management and supervision
- Supervisory focus will consider multiple factors including leverage, liquidity, operational risk, interconnections, prudential standards and resolvability



Capital/Liquidity Shifts

- Stresses in banking system; related Congressional hearings on regulatory oversight, agency reports on supervisory shortcomings/ recommendations
- Expanded focus on flow of funds and runs, interconnections and spillovers, “contagion” (see [Payments & Crypto](#))
- FSOC framework on financial stability risks
- FRB, OCC, FDIC commitment to implementing “Basel IV”, consideration of EPS “Tailoring Rule”
- **“Holistic Review”/proposals for capital & liquidity :**
 - “Basel IV” reforms; EPS requirements
 - Supplementary leverage ratio, countercyclical capital buffer, LTD requirements, stress testing and forward-looking analytics
- **Supervisory focus** on financial risk, including:

• Leverage ratios	• Complexity, “opacity”
• Considerations about liquidity risk and maturity	• “Inadequate” risk management
• Interconnections	• Concentration risks
• Operational risk	• “Destabilizing activities”



Credit Risk Sizing/Concentration

- Supervisory focus on credit and interest rate risk management, including stress testing and scenario analysis, amid credit tightening and quality and concentration risks
- OCC reports highlighted rising risks related to interest rates and inflation impacting credit quality, investment portfolios, deposit stability, operational challenges
- Allowances for credit losses – interagency policy statement, ongoing CECL adoption



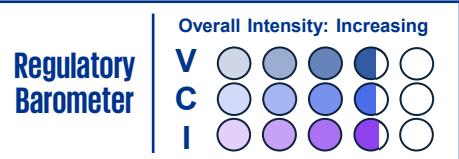
“Crisis Continuum”

- FRB/FDIC review and challenge of merger related activity leading to requirements for interim updates to resolution planning
- FRB/FDIC joint ANPR on large bank resolutions, including considerations of LTD - extended comment period
- FRB inquiries into deposit outflows related to stress conditions observed in the market
- OCC heightened examination scrutiny surrounding operational effectiveness of Recovery Planning
- Heightened regulatory focus on **liquidity and capital**, including the adequacy and reporting of:
 - Capital and liquidity prepositioning
 - Early warning indications
 - Liquidity stress testing
 - Recovery and contingency options
- **Resolution Plans (“Living Wills”)**
 - 2024 Category II/III Full Plan Submission prep
 - Enhanced supervisory expectations (FRB,FDIC)
 - Functionality and Capabilities Testing
 - Governance Mechanism Triggers
 - Resolution Strategic Planning

Key regulatory activity

What to watch

07 Fairness & Inclusion



Insights

- Regulatory focus on “fairness” continues to expand across consumer and investor products and services.
- Likewise, regulators are looking to “modernize” existing and implement new rules and programs to promote equitable impacts and “justice” across consumer and investor products, services, and populations.



Expanded “Fairness”

- Interagency statement on enforcement against discrimination and bias in “automated systems”
- CFPB Policy Statement on abusive acts or practices;
- CFPB final rule on 1071 small business lending data
- SEC Risk Alert on Reg BI
- Focus on fees (e.g., CFPB “Supervisory Highlights”, credit card late fees proposal; FTC “negative option” proposal; proposed legislation)



Impact and “Justice”

- FRB, OCC speeches on access and inclusion
- NYDFS final rule updating NY CRA regulations for data collection on minority- and women-owned business lending
- HUD final rule restoring “Discriminatory Effects” standard
- Executive Order on Environmental Justice



Human Capital & DEI

- FTC proposal to ban noncompete clauses for workers as an unfair method of competition
- NY State law imposing “bias audit” when using AI tools in employment decisions became effective
- DOJ initiated pilot on compensation incentives and clawbacks tied to compliance

Key regulatory activity

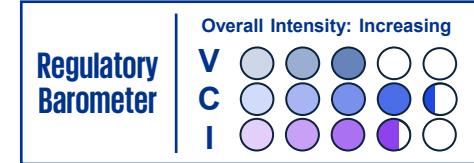
What to watch

- **Further expansion of existing regulations through examination and enforcement**, in areas such as:
 - UDAAP, including identification of discriminatory practices (e.g., redlining, “reverse redlining”) across consumer products and services (e.g., mortgages, auto, deposits)
 - Automated systems, models, and programs, including tiering, testing, and controls to mitigate disparate impacts to vulnerable populations.
 - Marketing/advertising statements (“fair and balanced”)
 - **Ongoing focus on fees** (e.g., overdraft, late, servicing, “junk”)

- Federal banking regulators’ joint final rule on CRA
- SEC final disclosure rules on ESG investments, climate
- **Regulatory and examination focus on:**
 - M&A activities (competitive impacts)
 - Account/transaction holds/freezes; APSN processes, including application of payments and credits to accounts
 - Fraud, identity theft, other “scams” and loss modeling
 - Processing and treatment of consumer complaints, claims and disputes

- SEC proposal on human capital disclosures
- **Regulatory scrutiny** around:
 - Transparency of organizational commitment to DEI
 - Policies, practices, metrics
 - Customer and supplier outreach/diversity
 - Access and inclusivity
 - Compensation incentives and support for compliance culture; accountability for misconduct, including clawbacks

08 Fraud & Financial Crime



Insights

- Increasing regulations, supervision & enforcement in areas such as Sanctions, BOI, and BSA compliance, as regulators look to ensure both national security and consumer protections
- New/innovative technologies, including "automated systems" like AI, introduce a heightened risk of fraud/financial crime



Regulatory Focus

- Expanded Sanctions use by Administration; joint statement (Treasury, DOJ, DOC) on Sanctions evasion and export controls
- FinCEN proposal on access to/protection of beneficial ownership information (BOI)
- SEC Insider Trading and Share Repurchase Disclosure rules
- DOJ voluntary self-disclosures policy; pilot program on compensation/clawbacks

Areas of heightened focus:

- AML/CFT frameworks and risk mitigants

- Fraud models, operations and investigation processes

- Cybercrime, cybersecurity, ransomware

- Accountability for BSA compliance

New areas of expanded requirements:

- Digital assets/crypto, including focus on AML for NFT/DeFi

- Sanctions and price cap compliance

- CTA effective date (1/2024); Forthcoming BOI rulemakings; reporting requirements; and other BOI/CTA rules



Interplay with Consumer Protection

- FTC report highlighting the increasing frequency of fraud, identity theft, and other scams
- Interagency statement on monitoring the development and use of "automated systems" and AI (CFPB, DOJ, EEOC, FTC)
- FinCEN alert on check fraud, money laundering, and red flags

Scrutiny around claims and investigations:

- Account holds/freezes and application of UDAAP, Reg E, EFTA, etc.

- Development and risk management of automated systems and models, including testing and controls to mitigate fraud/scams
- Payments authentication (e.g., P2P)
- Synthetic identity fraud

- Regulatory focus on impacts to vulnerable populations; risk programs to identify/mitigate fraud/scams and analysis of outcomes and models across consumer segments



Evolving Risks

- Treasury publication of initial AML/CFT "De-risking" Strategy and recommendations
- FinCEN focus on real estate sector (e.g., trend analysis, renewed and expanded geographic targeting orders)
- FinCEN alert on human trafficking
- Multiple OFAC Sanctions designations

Regulatory focus on FinCEN AML/CFT priorities, including:

- Terrorist financing (including Sanctions)

- Corruption

- Fraud

- Cybercrime (including virtual currencies)

- Transnational criminal organizations

- Drug/human trafficking, smuggling

- Proliferation financing

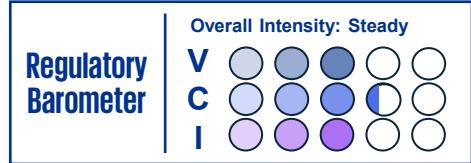
- Regulatory expectation of enhanced risk and compliance frameworks in areas such as anti-bribery and corruption, competitive behavior, lobbying/political involvement

Key regulatory activity

What to watch



09 Payments & Crypto



Insights

- Regulatory attentions have expanded beyond instant payments networks (e.g., P2P) to broader aspects of the flow of funds, including instant withdrawals/transfers and the role of instant messaging through social media.
- Volatility in the crypto markets has refocused public policies and supervisory activities on regulatory authorities and consumer protections.



Regulatory Authority & Guardrails

- FSOC proposed framework for determining nonbank regulation and supervision
- CFPB proposed reporting, public registries for nonbanks
- Banking regulators' joint statements on crypto risks, and related liquidity risks
- FRB speech on CBDC design considerations
- NYDFS rule on crypto company assessments; consumer protections (e.g., custody, disclosures)



Instant Payments & Controls

- Expanded regulatory focus to include flow of funds and runs, interconnections and "contagion" (see also [Capital & Credit](#))
- FRB speeches on financial innovation, including tokenization, automation, AI
- FRB 2022 Payments Study highlighting increase in noncash payments
- FedNow launch set for July



Disputes, Complaints, and Claims

- Congressional leaders urged regulators to use supervisory authority to promote customer protections and BSA/AML practices in private payments networks prompting industry action
- FTC 2022 report on fraud, identity theft, and other scams, highlighting:
 - Bank transfers and payments scams accounted for the highest reported losses, followed closely by cryptocurrency investment scams

Key regulatory activity

What to watch

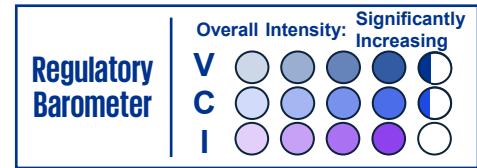


- Regulatory Authority:**
 - Congressional action to grant federal regulators crypto-related authorities (CBDCs, digital assets; stablecoins); Banking and Agriculture Committees working jointly to fill "gaps" (e.g., support for CFTC crypto authority through 2023 Farm Bill)
 - FRB issuance of CBDC
 - Continued application of existing authorities – FRB, OCC, FDIC, CFPB, FinCEN, SEC
- Key Risk Areas:** data privacy/security, payments, consumer/investor protections, financial crimes, stability of stablecoin structure, national security

Scrutiny and enforcement around both:

- Procedures and governance:**
 - Account holds/freezes; APSN processes, (incl. payment applications and account credits)
 - Payment sender/receiver authentication
 - Synthetic identity fraud
 - Communication protocols (outreach, follow-up, customer resolution)
- Analytics and reporting:**
 - Root cause, resolution, disparity analysis, trends
 - Timeliness to remediate
 - Evidence of analysis to implemented changes in process, controls, procedures

10 Risk & Governance



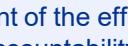
Insights

- Expect increased attention to include risk management and controls, data quality and processes and management/Board accountability
- Anticipate need for a re-assessment of and action plans for enhancements to risk practices (including models, escalation, skills/talent, etc.)



Board Importance

- Public policy and regulatory focus on Board “accountability”:
 - “Ultimate responsibility” for proper and sound management, including compliance (noted in enforcement actions)
- Disclosure of board expertise, reporting (content, frequency), oversight/challenge specified in rule proposals
- Tied to push for “individual accountability”



Risk Management – Mission Critical

- Public policy and regulatory focus on importance of risk management to the enterprise (evidenced in self-identification, timely resolution, resource levels, etc.)
- SEC proposals – risk management and governance of cybersecurity, climate risks
- OCC enforcement policy to address “persistent weaknesses”; “Too Big to Manage” speech
- FSOC proposed analytical framework



Mitigating Misconduct

- DOJ’s Incentives and deterrents - voluntary self-disclosure policy; compensation/clawbacks pilot; corporate criminal enforcement policies; “individual accountability a top priority”
- SEC final rule on Insider Trading restrictions
- SEC/CFTC statements on crypto company registration and regulation
- Interagency statement on “automated systems”

Key regulatory activity

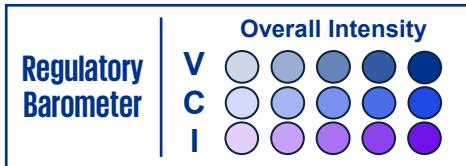
What to watch

- Re-assessment of the effectiveness of risk governance/accountability models and escalation processes
- Skills and training practices of board members including areas of high risk (e.g., risk management, cyber, etc.) but event-driven learnings
- Demonstration of continual improvement of board member processes (e.g., Board composition, onboarding)

- Focus on risks management effectiveness in light of changing/emerging risks
- Increased regulatory expectations, including focus on OCC Heightened Standards
- Need to demonstrate issues management governance (including self-identification, commitment, and resolution)
- Investment in Risk Management functions overall (across 3LOD) – avoidance of “risk complacency”
- Ability to dynamically and centrally assess critical and evolving risks across all businesses

- Enforcement activity including:
 - Continuing focus on individual accountability as a “pillar of enforcement”; use of deterrents (e.g., compensation clawbacks)
 - Target sweeps; multiple/coordinated actions
 - Increased penalties for repeat violations
 - More/earlier follow-up of identified issues
 - Attention to technology development/use; internal controls oversight; customer protections; data governance/controls/retention; compliance culture; new rules

Methodology



The KPMG Regulatory Insights Barometer assesses areas of upcoming regulatory pressure and direction of change.* The Barometer:

- Is based on a 5-point scale of regulatory intensity that ranges from “significantly decreasing” (1) to “significantly increasing” (5)
- Assesses three attributes for each challenge area:
 - **Volume (V)** – based on a combination of anticipated rulemakings (proposed/final/guidance), coverage in communications (reports/speeches/hearings), and oversight activities (supervision, enforcement)
 - **Complexity (C)** – based on factors such as the intricacies of future requirements versus existing ones, consistency of expectations across jurisdictions, and interactions with other regulations or standards
 - **Impact (I)** – based on factors such as the urgency of action required, potential implementation costs, resourcing challenges, and business risk
- Combines the individual factors for each attribute (V, C, I) to arrive at a single indicator of regulatory pressure and direction of change.

** The KPMG Regulatory Insights Barometer is based on KPMG understanding of industry practices and regulatory expectations; KPMG cannot guarantee that regulatory authorities would agree with our analysis and understanding or that our perspectives would foreclose or limit any potential regulatory action or criticism. Further, our views herein may not identify all issues that may exist or that may become apparent in the future and may be subject to change.*



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[Ten Key Regulatory Challenges of 2023](#)



Contact Us



Amy Matsuo
Principal and US National
Leader Regulatory Insights
amatsuo@kpmg.com



Karin Sancho
Head of Financial Services
karin.sancho@kpmg.se



Andreas Halvarsson
Head of Risk Consulting
andreas.halvarsson@kpmg.se



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