Year-End Regulatory Reflections

And a look ahead to 2023 challenges

Year-End Reflections

With the end of 2022 financial services regulators continue into 2023 with broad and ambitious regulatory agendas and expanded supervision and enforcement.

Reflections on the regulation in Q4 2022

Regulatory actions over the fourth quarter highlight many of the KPMG *Key Ten Regulatory Challenges for 2023*, including:

Scrutiny & Divergence	Climate & Sustainability	Fairness & Inclusion
Multiple regulators produced reports near year-end that collectively highlight a broad swath of recent and upcoming areas of supervisory priority and focus, including: – The role of nonbank financial/fintech companies (and the regulatory perimeter) – Third party oversight (including in sanctions compliance) – Expansion of large bank resolution – Data collection, protection, retention, and privacy – Cybersecurity and resilience – Inflation/interest rates/cessation of LIBOR – Payments (real time, peer-to-peer) and crypto assets – Climate-related financial risk – Fairness and competition.	Climate-related regulations and risk principles advance amidst political and jurisdictional discord. FSOC and federal and state regulators remain active. Notable developments in Q4 2022 include: – FRB proposed principles for climate-related financial risk management – FRB planned launch of a pilot climate scenario analysis – FSOC recommendations for agencies to coordinate and improve the availability of climate-related data needed to assess risk – NY DFS proposed guidance on climate-related financial risk management – DOL final rule under ERISA permitting consideration of ESG factors in selecting retirement investments	Several significant and public enforcement actions indicate regulatory focus on "fairness", particularly in the areas of UDAAP, fair lending/housing and fair marketing/advertising. Such actions address: – Focus on UDAAP across products and processes – Failure to follow policies and practices conveyed to customers/investors ("say what you do, do what you say") – Failure to timely respond to customer/investor complaints Recent actions highlight fee practices (releases from SEC, CFPB, and FTC); CFPB releases on consumer data access rights, peer-to-peer transactions, and nonbank supervision; and an FTC statement expanding "unfair competition."

Year-End Reflections (continued)

Transparency & Reporting	Crypto & Digital Assets
Following through from a June 2022 speech on potential changes to the national market system (NMS), the SEC took unprecedented action in Q4 2022 by promulgating a series of proposed and final rules that could significantly change the retail investor market structure, including: – Expanding Best Execution standards – Increasing transparency in pricing and order execution – Driving "quality" in order competition, such as in fractional shares and odd-lots – Amending insider trading rules and adding disclosures to strengthen confidence in the securities markets Additional areas of interest include shortened settlement times (T+1, T+0) and short selling disclosures. Regulators also raised transparency concerns with regard to market composition changes from M&A activity, "customer voice" in proxy voting disclosure, fee practices, and impacts of AI applications.	In light of Q4 2022 financial distress and disruption within the crypto asset market and growing pressure from policymakers, multiple regulators took action to identify potential concerns related to: – Financial exposures based on the interconnectedness of the crypto markets via counterparties, third parties, and collateral (so-called "contagion risk") – The strength of risk management, safeguards, and controls (under existing authorities) Crypto-related actions in Q4 2022 include an SEC sample letter on exposure disclosures; a FINRA exam on retail communications; new activities guidance from NY DFS; a CFPB complaints report; and FSOC support for strong regulatory guardrails and legislative action on regulatory gaps.

Regulatory Insights: 4Q 2022

Click the links below to read more.

October

Treasury – RFI on catastrophic cyber incidents

FRB – Pilot climate scenario analysis

White House – AI Bill of Rights

FRB, FDIC – LBO Resolution: Joint ANPR

FDIC – 2 final rules impacting deposit insurance assessments

Treasury FIO – Insurance climate data collection

FHFA – Policy changes impacting credit and appraisals

CFPB – Guidance on "surprise" deposit account fees

FTC – ANPR on UDAP fee practices

SEC – Crypto: Reports on Financial Stability Implications

FSOC, NYFRB – Reopens Comment Periods for Key Proposals

CFPB, FTC – Enforcement actions on fees and UDAAP/UDAP

OFAC/FinCEN – Individual settlements with a virtual currency exchange for sanctions violations

SEC – Modernization of B/D Electronic Recordkeeping Requirements

NY DFS – CRA regulation to elevate MWOB lending

SEC – Final rule changes to investment company fee advertising

CFPB – Outline of Proposals for Section 1033, Personal Financial Data Rights

November

White House – Fact sheet on ransomware summit

FinCEN – Trend analysis of ransomware

SEC – Third party risk management: SEC Investment Adviser Proposal

CFPB – Complaint bulletin on crypto

NYDFS – Proposed amendments to Cybersecurity regulation

FRB – Semiannual Financial Stability Report

FRB – Semiannual Supervision and Regulation Report

SEC – FY22 Enforcements Report

US Banks – Participating platform banks collaborating reimbursement to "scam victims"

SEC – Strategic plan for FY22-26

SEC – Proposed enhancements to open-end fund liquidity framework

SEC – Speech on "effective administration" of securities law

CFTC – Approved rule on reporting and information requirements for DCOs

FRB – Loan Officer Opinion Survey on Bank Lending Practices

White House – Fact Sheet: New Initiatives at COP27

FINRA – Exams on retail communications concerning crypto products and services

SEC – Risk Alert on Reg NMS

FTC – Policy Statement on Unfair Competition

DOJ – Speech on FCPA enforcement

DOJ – Sanctions compliance focus shift to service providers

DOL – Final rule for ERISA fiduciaries to consider ESG factors while maintaining fiduciary standards

December

FRB – Proposed Principles for climate-related financial risk management

CFPB – Notice of intent to make state preemption determinations under TILA

SEC – Final amendments to insider trading arrangements, related disclosures

SEC – Proposals on retail investor market structure

FRB – Final rule implementing LIBOR Act

OCC – Semiannual risk perspective

FinCEN – Proposes rule on access to and protection of beneficial ownership information

NYDFS – Proposed guidance on climate-related financial risk

NYDFS – Proposed new rule on virtual currency assessment regulation

SEC – Issues crypto exposure sample letter

CFPB – Proposes registry of nonbank covered persons subject to agency/court orders

Congress – Report on fraud and payment platforms

DOJ – Settles lawsuit ending "Crime-Free" rental housing program

Treasury – FSOC Annual Report

Legend

Fairness and Inclusion	Cybersecurity
Climate and Sustainability	Financial Crime
Crypto and Digital Assets	Valuation Vulnerabilities
Investor Protections	Other

A view to the year ahead

The regulators are relentlessly pursuing what they perceive to be "weak links" within risk programs and coverage. We expect increases across supervision, enforcement, and investigations under both old and new regulations — even with a dramatic risk in public policy and judicial challenges to regulatory authority.

KPMG Regulatory Insights' *Key Ten Regulatory Challenges for 2023* features client perspectives, key regulatory recaps, and actionable steps to help mitigate risk in ten key challenge areas:

1. Scrutiny & Divergence
2. Climate & Sustainability
3. Transparency & Reporting
4. Data & Cybersecurity
5. Tech & Resiliency
6. Capital & Credit Risk
7. Fairness & Inclusion
8. Fraud & Financial Crime
9. Payments & Crypto
10. Risk & Governance

Our 2023 key insights consider:

- The broad and ambitious regulatory agendas that will be challenged by political divergence and questions around judicial authority.
- A renewed focus on key foundational elements of risk management and governance.
- A new focus on the intensity of regulatory scrutiny and divergence, and proposals to increase transparency and reporting.
- Expanded supervision and enforcement in areas of continued risk focus including regulatory scrutiny and communication, accountability, and data governance and protections.

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