

## Cabinet News and Views

Informed analysis for the financial services industry



## Must Reading

August 25, 2023

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## In This Issue ...

If you were wondering yesterday, “Where is my weekly issue of *Cabinet News and Views*?”, here is the answer: The SEC’s Private Fund Adviser Rule is so significant – must reading, we think – that we decided to hold our issue just one day in order to give our team, led by senior counsel Maurine Bartlett, the opportunity to read, analyze, discuss and interpret the implications of the rule in our lead article this week. Simply put, the adoption of the rules by the SEC adds additional requirements to advisors of private funds. However, as Maurine et al note, the final rule does provide welcome relief to managers and advisors to CLOs and other “securitized asset fund[s].”

Also, in the late-breaking news category, I would recommend to you today’s [Fund Finance Friday](#), which should be out shortly, where our Finance colleagues cover news out the second circuit in the *Kirschner v. JP Morgan Chase* case where the court held that syndicated loans are not securities.

Any thoughts on the new SEC rule or our other articles this week? You can reach out to me [here](#).

### **Daniel Meade**

Partner and Editor, *Cabinet News and Views*

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## SEC Adopts Extensive New Rules for Investment Advisers to 'Private Funds'

In February 2022, the Securities and Exchange Commission proposed sweeping new regulatory requirements under the Investment Advisers Act of 1940, as amended for investment advisers that provide advisory services to “private funds.” At a meeting this past Wednesday, the Commission adopted those rules, with certain key changes, by a three to two vote. Those new regulatory requirements, as adopted, narrow the regulatory differences between SEC-registered investment companies and private funds and significantly increase the Advisers Act regulatory burdens associated with managing a “private fund.” The applicability of the new rules is not linked to the size of an investment adviser’s assets under management.

You can read our Clients & Friends Memo [here](#).

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## FDIC to Meet Next Week on a Number of Proposals



By **Daniel Meade**  
Partner | Financial Regulation

The Federal Deposit Insurance Corporation (“FDIC”) gave [notice](#) that its Board of Directors will meet next week with the following discussion agenda:

- Memorandum and resolution re: Notice of Proposed Rulemaking on Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions.
- Memorandum and resolution re: Resolution Plans Required for Insured Depository Institutions with \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions with At Least \$50 Billion, but Less Than \$100 Billion in Total Assets.
- Memorandum and resolution re: Publication of Proposed Guidance for Dodd-Frank Act Resolution Plan Submissions of Triennial Full Filers.
- Memorandum and resolution re: Conditions to Certain Receivership Delegations of Authority and Procedures.
- Memorandum and resolution re: Board Approval of Midsized and Large Failed Bank Sales.

The headlines for this meeting certainly are the consideration of proposals to require long-term debt for large bank holding companies (“BHCs”), and requiring resolution plans for insured depository institutions (“IDIs”) with \$100 billion or more in assets. As we covered in [last week’s newsletter](#), FDIC Chair Gruenberg said such proposals would be coming “soon” and so, in this case, soon means about two weeks. Expanding the long-term debt requirement to large BHCs will likely be an interagency rule with the Federal Reserve Board and the Office of the Comptroller of the Currency. The expansion of the IDI resolution plans is solely in the FDIC’s jurisdiction.

We will likely have a look at what comes out of the meeting in next week’s newsletter.

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## CFPB Previews Upcoming Proposed Rules Under the FCRA That Will Address Artificial Intelligence



By [Mercedes Kelley Tunstall](#)  
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Last week, Rohit Chopra, the director of the Consumer Financial Protection Bureau (“CFPB”), [shared remarks](#) at a White House roundtable convened to address “harmful data broker practices.” Referring to data brokers as being part of the “surveillance industry,” Chopra announced forthcoming rulemakings that are intended to “ensure that modern-day digital data brokers are not misusing or abusing our sensitive data” by using artificial intelligence and “other predictive decision-making” technologies. The proposed rule(s), which he forecast as being available for public comment sometime in 2024, would be based upon the Fair Credit Reporting Act (“FCRA”), as well as upon information received [in response to the CFPB’s Request For Information](#) (“RFI,” issued in March) requesting information on the data broker industry.

[A letter accompanying Chopra’s written remarks](#) provided additional detail on the forthcoming proposed rules. Initially, the letter asserts that many elements of the FCRA already apply to the data broker industry and then states that the “CFPB plans to propose rules that would ensure that the public is protected from modern-day data brokers.” One of the proposed rules would seek to require all companies using information collected from data brokers to only be able to use that information for purposes that are authorized under the FCRA (*i.e.*, [permissible purposes](#)). Another proposed rule would seek to expand the definition of consumer report under the FCRA to affirmatively include data such as “a consumer’s payment history, income or criminal records.” A third proposed rule would be focused upon so-called “credit header data,” which primarily consists of contact information for consumers and would similarly restrict the use of that data only for purposes that are authorized under the FCRA.

In terms of how these rules would address artificial intelligence, the letter referenced that commenters to the RFI “noted that the availability of highly granular data from data brokers, when combined with advanced technology like AI, can create a risky environment where surgically precise scams and fraud can flourish at scale.” In other words, the responses to the RFI warned that data broker industry use of AI solutions could cause problems going forward, and so the CFPB’s proposed rules seek to curtail some of those problems by applying the FCRA broadly and sharply restricting the situations when data can be used at all.

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