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The Future of Financial Regulation Post-Mortem CFPB and Its Impact on M&A

Michael Lamm
Corporate Advisory Solutions

Joann Needleman & Aryeh D. Derman
Clark Hill

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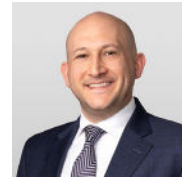


Joann Needleman, Member

Clark Hill

Joann Needleman leads Clark Hill's financial services regulatory and compliance practice group. She advises banks, financial institutions, and financial services entities on regulatory compliance matters as well as serves on the firm's Administrative Law Action Team. Joann prepares and represents these same financial institutions during state and federal supervisory examinations and regulatory investigations before agencies such as the Consumer Financial Protection Bureau (CFPB), Federal Trade Commission (FTC) and the Office of the Comptroller of Currency (OCC) as well as state financial services regulators and attorneys general.

A former member of the Consumer Financial Protection Bureau's (CFPB) Consumer Advisory Board, Joann provides her clients with useful strategies and common-sense solutions in order to prepare for areas of regulatory scrutiny.



Aryeh D. Derman, Senior Counsel

Clark Hill

Aryeh D. Derman supports the development and growth of the regulatory and compliance group's consulting and advisory services, focusing on financial institutions and fintech companies entering the financial services sector.

He leads and coordinates examinations by state and federal financial regulators and has extensive expertise in consumer protection laws, including the FDCPA, FCRA, TCPA, GLBA, and HIPAA. Aryeh is a subject matter expert in compliance, risk management, and corporate governance.



Michael Lamm, Managing Partner

Corporate Advisory Solutions

Michael is a Managing Partner at CAS, overseeing M&A engagements, investment opportunities, compliance assessments, strategic consulting, valuation, and expert witness litigation. He is actively involved in industry associations, including ACA (Council of Delegates), ICL (Board Advisor), RMA, ACG Philadelphia (membership committee), the American University Alumni Association (chapter leader), and HFMA.

Before co-founding CAS, Michael spent over a decade as a Director at Kaulkin Ginsberg. He holds Series 79, 63, and SIE registrations with Finalis Securities LLC and serves as a FINRA arbitrator.

Agenda

- I. Current Status & Future Trajectory of the CFPB**
- II. Impact of CFPB Changes on Financial Services M&A Activity**
- III. Potential Regulatory Risks & Opportunities in Financial Institution Transactions**
- IV. Strategies for Mitigating Uncertainty in Deal Structuring & Due Diligence**

Current Status & Future Trajectory of the CFPB

Current Status of CFPB

The CFPB is largely inactive, with halted supervision, minimal staff, and dismissed enforcement actions, while key regulatory rules face potential repeal and state-level oversight gains prominence.

- The CFPB is largely inactive, with minimal staff, halted supervision, limited consumer complaint processing, and an online but outdated website.
- Many enforcement actions dismissed, including cases involving Solo Funds, Capital One, Rocket Mortgage, TransUnion, and Zelle.
- Pending cases: Money Lion & First Cash, Strategic Financial (debt settlement).
- Key rules under Congressional Review Act (CRA) repeal efforts:
 - ❑ Large Market Participant Rule (Google, Apple, Venmo) – Senate passed CRA resolution.
 - ❑ Overdraft Rule – Passed House Financial Services Committee, moving to full House & Senate.
 - ❑ Medical Debt Rule – CRA resolution introduced in both chambers.
- Regulatory comment periods extended:
 - ❑ April 7 – FCRA ANPR on ID Theft & Coerced Debt.
 - ❑ April 2 – FCRA NPRM on CRA definition & permissible purpose.

Future Trajectory of the CFPB and What Takes Its Place

As the CFPB's authority weakens, state regulators are expanding their oversight, federal agencies are encouraging state-level enforcement, and private litigation is expected to rise in response to regulatory shifts.

- **State-Level Oversight Expanding**

- ❑ States have been increasing their regulatory roles for years.

- **Chopra's Strategic Shift**

- ❑ CFPB Director Rohit Chopra anticipated the potential weakening or elimination of the CFPB under a future Republican administration and has shifted authority to state regulators.

- **Federal Financial Institutions Examination Council (FFIEC) Trends**

- ❑ Recent meetings suggest a push for states to adopt federal regulatory principles and oversee compliance at the state level.

- **State Enforcement Authority**

- ❑ States already have concurrent authority to enforce key federal laws, including UDAAP, TILA, and FDCPA.

- **Rise in Private Litigation**

- ❑ Expect an increase in private enforcement actions as courts reduce deference to agency interpretations following the Loper Bright decision.

Impact of CFPB Changes on Financial Services M&A Activity

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The weakening of CFPB oversight is expected to drive increased M&A activity in financial services, shifting due diligence focus to state-level regulations, and prompting deal structuring adjustments to mitigate evolving compliance risks.

- **Expected Increase in M&A Activity**

- Reduced federal oversight lowers regulatory barriers, making financial services acquisitions more attractive.
- Larger strategic buyers may acquire smaller firms struggling with state-level compliance, making strong compliance infrastructures more valuable.

- **Shift in Due Diligence & Risk Assessment**

- Buyers must now focus on state-level regulatory risks as federal supervision declines.
- Heightened attention to private litigation and evolving consumer protection laws.

- **Deal Structuring Adaptations**

- Greater use of indemnifications, escrow arrangements, and earn-outs to mitigate regulatory uncertainty.
- Sellers need to demonstrate compliance readiness to maintain deal value.

Potential Regulatory Risks & Opportunities in Financial Institution Transactions

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The evolving regulatory landscape presents both risks, such as legal uncertainty and increased litigation, and opportunities, including reduced compliance burdens and greater M&A and technology investment potential.

- **Regulatory Risks**

- ❑ The shifting oversight landscape may leave institutions navigating unclear compliance expectations, increasing transaction complexity.
- ❑ Weakened federal enforcement could lead to more state-driven and private legal actions, elevating liability concerns.
- ❑ A change in political leadership or court rulings could reinstate stricter regulations, impacting deal structures and valuations.

- **Regulatory Opportunities**

- ❑ Reduced federal regulatory scrutiny may encourage new entrants and facilitate cross-border acquisitions.
- ❑ A less burdensome regulatory environment could enhance profitability and drive greater M&A activity.
- ❑ With fewer regulatory roadblocks, financial institutions may prioritize fintech integrations, AI-driven compliance solutions, and alternative lending models to capture market share.

Strategies for Mitigating Uncertainty in Deal Structuring & Due Diligence

Buyers and sellers can mitigate regulatory uncertainty by enhancing due diligence, adopting flexible compliance frameworks, incorporating protective deal structures, and proactively engaging with state regulators.

- **Mitigation Strategies for Buyers**

- ❑ Conduct comprehensive due diligence on state regulatory compliance, focusing on evolving enforcement trends and jurisdictional differences.
- ❑ Plan for potential policy shifts and regulatory reversals by incorporating flexible deal terms that account for future compliance changes.
- ❑ Develop adaptable compliance frameworks that allow for seamless adjustments to varying state and federal regulations, reducing post-acquisition risk.

- **Mitigation Strategies for Sellers**

- ❑ Strengthen compliance infrastructure to enhance deal attractiveness, ensuring that financial and operational records align with emerging regulatory expectations.
- ❑ Incorporate protective mechanisms in deal structures, such as indemnifications, escrow arrangements, and earn-outs, to mitigate potential regulatory liabilities.
- ❑ Engage proactively with state-level regulatory bodies to demonstrate a strong compliance track record and position the company as a lower-risk acquisition target.

Strategies for Mitigating Uncertainty in Deal Structuring & Due Diligence

Closing Thoughts & Key Takeaways

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The financial services regulatory landscape is rapidly evolving, and those who adapt to regulatory changes with strategic foresight will be best positioned for success.

- **CFPB's Decline & State-Level Oversight**

- Federal regulatory oversight is diminishing, shifting enforcement power to states and increasing compliance complexity.

- **Expected M&A Acceleration**

- Reduced regulatory barriers are expected to fuel more deals, but buyers must assess new risks related to state enforcement and private litigation.

- **Shifting Due Diligence & Valuation Factors**

- Regulatory uncertainty requires heightened due diligence and deal structuring mechanisms to manage potential risks.

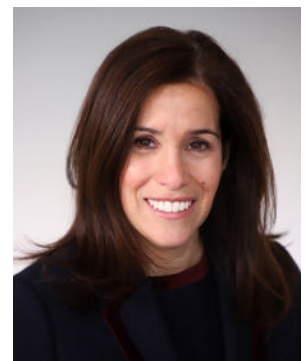
- **Opportunities Amidst Uncertainty**

- While regulatory changes present challenges, they also open the door for increased investment, market expansion, and technological advancements in financial services.

- **Proactive Strategies Are Essential**

- Buyers and sellers must navigate evolving regulations with flexible compliance frameworks, protective deal structures, and active engagement with regulators.

Q&A



Joann Needleman, Member
Clark Hill
Email: jneedleman@clarkhill.com



Aryeh D. Derman, Senior Counsel
Clark Hill
Email: aderman@clarkhill.com



Michael Lamm, Managing Partner
Corporate Advisory Solutions
Email: MLamm@corpadvisorysolutions.com