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Acting Comptroller Hsu Compares FTX to BCCI Rather than Other Failures



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This week, Acting Comptroller of the Currency Michael Hsu delivered remarks, titled “[Trust and Global Banking: Lessons for Crypto,](#)” at the [Institute of International Bankers’](#) (“IIB”) Annual Washington Conference in which he discussed the lack of consolidated supervision and coordination among regulators as part of the problem with the failure of crypto exchange FTX. He also offered lessons that can be learned from how bank supervision responded to the failure of the Bank of Credit and Commerce International (“BCCI”) 30 years ago.

Acting Comptroller Hsu noted that in some press accounts, the bankruptcy of FTX is compared to the bankruptcy and failure of Lehman Brothers in the 2008 global financial crisis, but he thinks a better comparison is the failure of BCCI. In his view, BCCI took advantage of two inherent risks when a financial institution is operating in multiple jurisdictions in our global banking system. The first is an unlevel playing field, with rules differing by jurisdiction. The second is the risk that supervisors may have limited visibility and possibly authority over a financial institution. He went on to note that the first risk can be mitigated by coordination among regulatory authorities, and the second by collaboration among home and host country supervisors.

Acting Comptroller Hsu noted that, in the United States, part of the response to the BCCI failure was a requirement for foreign banking organizations doing business in the U.S. to show that they were subject to comprehensive consolidated supervision by their home country supervisors. He pointed out that international bodies like the Financial Stability Board, International Monetary Fund and others are working on ways to collaborate and coordinate regulation and supervision of the crypto world. He said, however, that “[u]ntil that is done, crypto firms with subsidiaries and operations in multiple jurisdictions will be able to arbitrage local regulations and potentially play shell-games using inter-affiliate transactions to obfuscate and mask their true risk profiles.”

As we were going to press, Federal Reserve Board Vice-Chair for Supervision Michael S. Barr gave a [speech on crypto-related activities to the Peterson Institute](#), which we will cover in our next edition. But it is important to emphasize that Vice Chair Barr and Acting Comptroller Hsu are singing from the same songbook. In today's speech, Vice Chair Barr said: "Moreover, while crypto-assets are hyped as 'decentralized,' there has been an emergence of new, quite centralized intermediaries that are either not subject to or not compliant with appropriate regulation and supervision ... And the lack of consolidated home country supervision and coordination with host country supervisors rekindles the kind of abuses that bank regulators long ago quashed. While such cross jurisdictional regulatory arbitrage is not new, the digital nature of these activities provides for greater opportunity to expand the reach of such entities to customers around the world."

Acting Comptroller Hsu and Vice Chair Barr could possibly be engaging in some of the coordination they are preaching or their speeches this week could just be serendipitous coincidence. Clearly, though, the coordination of regulation of crypto-related firms is something on both of their minds.
