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## April Second Half Developments

### Overview

It has been sometime since there has been a new development about SBICs. These are a way for banks to make equity investments in companies that predate the Merchant Banking rules. Many banks formed these vehicles to take equity stakes in qualifying small companies that went beyond warrants or options for additional appreciation if a customer's business flourished because of a bank's support. With focus on the Volcker rule and the intended separation of banks from their investment arms, perhaps SBICs could make a comeback as an additional tool for banks that wish to make equity investments. The rule mentioned herein would allow SBICs to fund pure startups, as has been a gold mine for certain smart and well connected types who are making angel or early stage investments in internet companies. See the movie: The Social Network. I may have missed this in the news, but I thought it was interesting that the Obama administration has blocked property of certain Syrian and Iranian entities for human rights violations stemming from stopping Internet access, disrupting computer communications and monitoring the use of Internet communications. While it is serious business for those who fall into the clutches of the maniacs that control those countries, it is a new and novel form of human rights abuse.

### Payment System Risk Policy Daylight Overdrafts

On April 17, 2012, the Fed published a revision to its policy statement on Payments System Risk to reflect changes in the collection of savings bonds and the elimination of the contractual clearing balance program that the Fed once used to moderate risk exposure, but is ending as of July 12, 2012. Instead, the Fed will reserve the right to require banks to maintain balances with the Fed. See the changes to the Policy at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-17/html/2012-9211.htm>

### Blocking Assets for IT Human Rights Violations

President Obama in a novel blocking Executive Order published on April 24, 2012, has blocked property of certain Iranian and Syrian entities for human rights abuses caused through the use of Information Technology to engage in, among other things, computer and internet disruptions,

tracking and monitoring of its populace. These government actions prevent free communications and facilitate other serious human rights abuses. See the Order at: <http://www.gpo.gov/fdsys/pkg/FR-2012-04-24/html/2012-10034.htm>

### Overdraft Programs and Impact on Consumers

On April 25, 2012, the BCFP published a notice that it is extended the comment period for interested parties to file comments on the effect of overdraft programs on consumers until June 29, 2012. See the extension information and the questions the BCFP is concerned with at: <http://www.gpo.gov/fdsys/pkg/FR-2012-04-25/html/2012-9851.htm>

### Pre-dispute Arbitration Agreements

On April 27, 2012, the BCFP published a request for information from the public concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services. The Bureau is required to do a report to Congress as required by the Dodd-Frank Act. See the questions proposed by the Bureau at: <http://www.gpo.gov/fdsys/pkg/FR-2012-04-27/html/2012-10189.htm>

### Commodity Options

On April 27, 2012, the CFTC published a final and interim rule replacing its current regulations on commodity options. The Commission is also issuing an interim final rule that incorporates a trade option exemption into the final rules for commodity options. For a transaction to be within the trade option exemption, the option itself and the parties must satisfy certain eligibility requirements, including that the option, if exercised, be physically settled, and that the option buyer be a commercial user of the commodity underlying the option. See the CFTC's final and interim rules at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-27/html/2012-9888.htm>

The proposed rule was published on February 3, 2011: <http://edocket.access.gpo.gov/2011/2011-1685.htm>

### Liquidations of Mutual Insurance Companies

The FDIC on April 30, 2012, published its final rule that mutual insurance companies would be liquidated or rehabilitated in the same fashion as a corporate insurance companies. The FDIC paid some deference to the liquidation regimes of the states where the insurance companies were located in order that the liquidations would be handled consistently. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-30/pdf/2012-10146.pdf>

The FDIC's proposal may be found at: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-13/html/2011-31885.htm>

### SBICs—Early Stage Investments

On April 27, 2012, the SBA published a final rule created a new form of SBIC to invest in early stage investments. Given the great success (and some notable failures in the early 2000's) of early stage investments, U.S. Small Business Administration is defining a new sub-category of small business investment companies (SBICs), which will focus on making equity investments in early stage small businesses. This final rule also sets forth regulations applicable to Early Stage SBICs with respect to licensing, capital requirements, non-SBA borrowing, examination fees, leverage eligibility, distributions, and capital impairment. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-04-27/html/2012-10120.htm>

*This advisory is a service of Connell & Andersen LLP for our clients and friends. It is not a full recitation of all developments. The descriptions are summaries of complex and detailed laws and regulations and may be incomplete or misleading. We invite any of our readers to contact us to discuss any items contained herein for further elaboration.*