

CONNELL & ANDERSEN LLP

545 FIFTH AVENUE

NEW YORK, NEW YORK 10017

WILLIAM F. CONNELL
ROY C. ANDERSEN

TELEPHONE: (212) 687-6900
FACSIMILE: (212) 687-6999
randersen@connellandersen.com

OF COUNSEL
GEORGE A. SCHNEIDER
LUCA CANTELLI

April First Half Developments

Overview

The Fed has adopted two final rules. In one the definition of “predominately engaged” in financial activities could be the start of subjecting certain companies to Fed regulation. The second rule brings the Fed into conformity with the other agencies on retail FX transactions. The CFTC has issued its final rule on swaps clearing between affiliated entities. This should promote simplicity at certain financial institutions and allow centralization of swap activities.

Predominantly Engaged in Financial Activities and Significant Activities

On April 5, 2013, the Fed published its final rule establishing the requirements for determining if a company is “predominantly engaged in financial activities”; and definitions of the terms “significant nonbank financial company” and “significant bank holding company.” These terms are relevant to various provisions of Title I of the Dodd-Frank Act, including section 113, which authorizes the FSOC to designate a nonbank financial company for supervision by the Board if the Council determines that the nonbank financial company could pose a threat to the financial stability of the United States. The final rule will become effective on May 6, 2013. See the Fed’s new rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-05/html/2013-07688.htm>

Proposed: <http://edocket.access.gpo.gov/2011/2011-2978.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-04-10/html/2012-8515.htm>

Swap Dealer Associated Persons & Dual Employment

On April 8, 2013, the CFTC published its final rule on the requirement of a swap dealer to supervise its APs and would be jointly and severally responsible for the activities of the AP with respect to customers common to it and any other SD, MSP or other Commission registrant. Associated persons of swap dealers are not required to register as such. However, a swap dealer is prohibited from permitting any person associated with it to effect or be involved in effecting swaps on its behalf if such person is subject to a statutory disqualification. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-08/html/2013-07755.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-06-15/html/2012-14654.htm>

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Swap Dealer Clerical or Ministerial Functions

On April 8, 2013, the CFTC published a proposed rule that would clarify certain responsibilities of a swap dealer (SD) or major swap participant (MSP) regarding its employees who solicit, accept or effect swaps in a clerical or ministerial capacity. The NFA has recommended that the Commission provide this clarification. See the proposed rule at:
<http://www.gpo.gov/fdsys/pkg/FR-2013-04-08/html/2013-07538.htm>

Retail Foreign Exchange Transactions

On April 9, 2013, the Fed published its final rule to permit banking organizations under its supervision to engage in off-exchange transactions in foreign currency with retail customers. The final rule also describes various requirements with which banking organizations must comply to conduct such transactions. This follows the actions of the other federal banking agencies. See the final rule at:
<http://www.gpo.gov/fdsys/pkg/FR-2013-04-09/html/2013-08163.htm>
Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2011-08-03/html/2011-19535.htm>

Rule Changes for Registered Clearing Agencies

On April 9, 2013, the SEC published its final rule regarding the process for rule changes at clearing agencies. This adopts in final form with only a few changes the interim final rule that was adopted on July 7, 2011. See the final rule at:
<http://www.gpo.gov/fdsys/pkg/FR-2013-04-09/html/2013-08141.htm>

Disclosure of Consumer Complaint Data

On April 10, 2013, the BCFP published a final policy statement regarding how the Bureau plans to exercise its discretion to publicly disclose certain consumer complaint data that do not include personally identifiable information. The Bureau receives complaints from consumers under the terms of Title X of the Dodd-Frank Act. See the final policy at:
<http://www.gpo.gov/fdsys/pkg/FR-2013-04-10/html/2013-07569.htm>

OFAC General Licenses for Burma

On April 10, 2013, OFAC published two general licenses under the Burma sanctions program. One license authorizes certain transactions with Asia Green Development Bank, Ayeyarwady Bank, Myanmar Economic Bank, and Myanmar Investment and Commercial Bank, subject to certain limitations. See the final licenses at:
<http://www.gpo.gov/fdsys/pkg/FR-2013-04-10/html/2013-08361.htm>

Clearing Exemptions for Swaps Between Affiliates

On April 11, 2013, the CFTC published its final rule to exempt swaps between certain affiliated entities within a corporate group from the clearing requirement under the Commodity Exchange Act (CEA or Act), enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The regulations include specific conditions, as well as reporting requirements, that affiliated entities must satisfy in order to elect the inter-affiliate exemption from required clearing. Counterparties to a swap may elect an inter-affiliate exemption from the clearing requirement if: (1) The financial statements of both counterparties are reported on a consolidated basis, and either one counterparty directly or indirectly holds a majority ownership interest in the other, or a third party directly or indirectly holds a majority ownership interest in both counterparties; (2) both counterparties comply with the conditions set forth in the proposed rule; and (3) one of the counterparties provides certain information on behalf of both affiliated counterparties to either a registered swap data repository (SDR) or the Commission if a registered SDR does not accept the information. The final rulemaking provides for two time-limited alternative compliance frameworks for swaps entered into with unaffiliated counterparties in jurisdictions outside of the United States. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-11/html/2013-07970.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-21/html/2012-20508.htm>

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