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April Second Half Developments

Overview

The Fed has published a proposal to start charging large banks to pay for their supervision. Overall, we don't favor payment plans that don't have an element of fiscal discipline that can be provided by elected representatives. The Fed, a largely and efficient regulator, will lose some of this discipline when it can just continue to increase the amounts that it charges the industry. The Fed earns billions of dollars by doing business with banks and these amounts have historically been used to cover supervisory costs. FinCEN imposed special measures on two Lebanese money transmitters and determined these entities were of primary money laundering concern. This is a seldom-used step by FinCEN and requires special action by compliance departments to follow these requirements and avoid criticism. So-called payday loans are the subject of OCC and FDIC guidance designed to curb the availability of such loans at banks.

Assessments of Large Banks to Pay for Fed Supervision

On April 18, 2013, the Fed published a proposed rule required by the Dodd-Frank Act to collect assessments, fees, or other charges equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board for bank holding companies and savings and loan holding companies with total consolidated assets of \$50 billion or more and nonbank financial companies designated for Board supervision by the Financial Stability Oversight Council. See the Fed proposal at: <http://www.gpo.gov/fdsys/pkg/FR-2013-04-18/html/2013-09061.htm>

Development and Review of FDIC Regulations and Policies

On April 17, 2013, the FDIC published an updated statement of policy entitled "Development and Review of FDIC Regulations and Policies" to outline the FDIC's principles that guide its promulgation of new regulations. The new policy revisions highlight important rulemaking processes and procedures, such as the FDIC's open and transparent rulemaking process, robust interagency coordination, evaluation of regulatory costs and benefits (including consideration of alternatives), and periodic review of existing regulations. See the final policy at: <http://www.gpo.gov/fdsys/pkg/FR-2013-04-17/html/2013-08986.htm>

### Amendments to Final Escrow Rules on High Price Mortgages

On April 18, 2013, the BCFP published a proposed rule. This rule proposes clarifying and technical amendments to a final rule issued by the Bureau of Consumer Financial Protection on January 10, 2013. The amendments clarify the determination method for the ``rural" and ``underserved" designations and keep in place certain existing protections for higher cost mortgages until other similar provisions take effect in January 2014. See the proposed rules at: <http://www.gpo.gov/fdsys/pkg/FR-2013-04-18/html/2013-09058.htm>

### Identity Theft Red Flags at Brokers and FCMs

On April 19, 2013, the CFTC and the SEC published final rules and guidelines to require certain regulated entities to establish programs to address risks of identity theft. The rules require financial institutions and creditors to develop and implement a written identity theft prevention program designed to detect, prevent, and mitigate identity theft in connection with certain existing accounts or the opening of new accounts. The rules include guidelines to assist entities in the formulation and maintenance of programs that would satisfy the requirements of the rules. Second, the rules establish special requirements for any credit and debit card issuers that are subject to the Commissions' respective enforcement authorities, to assess the validity of notifications of changes of address under certain circumstances. See the final rules at: <http://www.gpo.gov/fdsys/pkg/FR-2013-04-19/html/2013-08830.htm>  
Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-06/html/2012-5157.htm>

### Property Blocked under the Magnitsky Act

On April 22, 2013, OFAC published notice that it was blocking property of 18 persons under the Sergei Magnitsky Act. On December 14, 2012, the President signed the Magnitsky Act. The Magnitsky Act requires the President to submit to certain congressional committees a list of each person the President has determined meet certain criteria set forth in the Magnitsky Act. The President is required to block, with certain exceptions, all property and interests in property of a person who is on the list required by section 404(a) of the Magnitsky Act that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons. See the blocking notice at: <http://www.gpo.gov/fdsys/pkg/FR-2013-04-22/html/2013-09369.htm>

### Preemption of State Laws on Gift Cards

The BCFP on April 25, 2013, determined that it has no basis for concluding that the provisions at issue in Maine's unclaimed property law relating to gift cards are inconsistent with, or therefore preempted by, Federal law. The Bureau has determined that one provision in Tennessee's unclaimed property law relating to gift cards is inconsistent with, and therefore preempted by,

Federal law. See the BCFP's determinations at:  
<http://www.gpo.gov/fdsys/pkg/FR-2013-04-25/html/2013-09751.htm>

### Imposition of Special Measures Against Lebanese Money Transmitters

On April 25, 2013, FinCEN published two determinations that it would impose special measures against two Lebanese money transmitters that had been determined to be of primary money laundering concern. Section 311 of the USA PATRIOT Act grants FinCEN the authority to require domestic financial institutions to take certain "special measures" to address money laundering concerns. The first special measure imposed by order and sought to be finalized through notice and comment rulemaking requires domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to the money transmitters. The fifth special measure sought to be imposed by this rulemaking would prohibit covered financial institutions from opening and maintaining correspondent accounts for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving the money transmitters after the effective date of the final rule implementing the fifth special measure. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used to provide services to the money transmitters. See the two decisions at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-25/html/2013-09784.htm>

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-25/html/2013-09782.htm>

### Lebanese Money Transmitters found to be of Primary Money Laundering Concern

On April 25, 2013, FinCEN published two determinations that two Lebanese money transmitters were of primary money laundering concern. These orders have an extensive discussion of Lebanon and how used car transactions are used to launder money. In addition it makes it clear that Hizballah is laundering money and dealing in drugs. See the orders at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-25/html/2013-09785.htm>

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-25/html/2013-09783.htm>

### Recordkeeping and Reporting Obligations on Lebanese Money Transmitters

On April 25, 2013, FinCEN published two orders requiring immediate reporting of proposed transactions with two Lebanese Money Transmitters. A financial institution subject to this Order is required to use its existing anti-money laundering programs and processes to identify transactions or attempted transactions involving the Lebanese Money Transmitters. A financial institution subject to this Order is required to take reasonable steps to collect and report to FinCEN on the following information with respect to any transaction or attempted transaction involving the Lebanese Money Transmitters:

- (i) The identity and address of the participants in the transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer;
- (ii) the legal capacity in which the Lebanese Money Transmitters are acting with respect to the

transaction or attempted transaction and, to the extent to which the Lebanese Money Transmitters are not acting on their own behalf, the customer or other person on whose behalf the Lebanese Money Transmitters are acting; and

(iii) a description of the transaction or attempted transaction and its purpose.

See the orders at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-25/html/2013-09786.htm>

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-25/html/2013-09779.htm>

### Guidance on Deposit Advance Products for National Banks

On April 30, 2013, the OCC published proposed guidance for national banks on deposit advance products and is withdrawing its proposed guidance on deposit-related consumer credit products that was issued on June 8, 2011. A deposit advance product is a small-dollar, short-term loan that a depository institution (bank) makes available to a customer whose deposit account reflects recurring direct deposits. The customer is allowed to take out a loan, which is to be repaid from the proceeds of the next direct deposit. The traditional use of such products has previously been noted to be an element of predatory lending. See the proposed guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-30/html/2013-10094.htm>

### Guidance on Deposit Advance Products for Insured Banks

On April 30, 2013, the FDIC published proposed guidance for state non-member insured banks on deposit advance products. A deposit advance product is a small-dollar, short-term loan that a depository institution (bank) makes available to a customer whose deposit account reflects recurring direct deposits. The customer is allowed to take out a loan, which is to be repaid from the proceeds of the next direct deposit. The FDIC guidance is largely the same as the OCC guidance discussed above. See the proposed guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-04-30/html/2013-10101.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.*