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**August First Half Developments**

**Overview**

The Fed has published its final rule on Financial Market Utilities and the required risk management regimes of such entities. This period highlighted Iran with the President's executive order making foreign banks potentially subject to losing their access to the U.S. markets for financing and facilitating transactions with Iran and Standard Chartered's quick settlement with NY on allegations that it violated NY law on its dealings with Iran. NY may have won this battle but may lose the war to retain its preeminent role as the banking capital of the world; shouldn't the State of New York be supporting banks instead of appointing muckrakers as lead bank regulators. Iran is toxic, but the use of banking as a substitute for diplomacy or war is neither effective nor good for the banking industry.

**Financial Market Utilities Risk Management & Fed Regulation**

The Fed published its final rule on FMUs on August 2, 2012. Under section 805(a)(1) of the Dodd-Frank Act, the Fed is required to promulgate risk-management standards governing the operations related to the payment, clearing, and settlement ("PCS") activities of certain FMUs that are designated as systemically important by the Council. The Fed's proposed rule borrows heavily from the Bank for International Settlements and IOSCO. This rule governs risk management at FMUs and standards for determining whether changes in FMU procedures require notice to the Fed. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-02/html/2012-18762.htm>

The Fed's proposed rule is found at:

<http://edocket.access.gpo.gov/2011/2011-7812.htm>

**Requests for Information on Consumer Financial Education**

On August 2, 2012, the CFPB's OFE sought public comment on effective financial education approaches--including tools, topics and dissemination strategies--that will help improve consumers' financial decision-making capabilities. The request may be seen at:

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<http://www.gpo.gov/fdsys/pkg/FR-2012-08-02/html/2012-18830.htm>

### Quality Control on Information Published by the BCFP

On August 2, 2012, the BCFP published notice of its guidelines to insure that consumer information published by the BCFP meets high standards of quality and usefulness. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-02/html/2012-18828.htm>

### Additional Sanctions Against Iran

On August 2, 2012, President Obama published his Executive Order that took additional steps against Iran. The Order authorized Treasury to take steps against a foreign financial institution of certain sanctions if the foreign institution knowingly conducted or facilitated any significant transaction with the national Iranian oil companies, or for the purchase of oil products from Iran or the purchase of petrochemical products from Iran. If a foreign financial institution violates these conditions, the Treasury may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution. See the Order at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-02/html/2012-19055.htm>

### Debit Card Interchange Fee and Fraud Surcharge

On August 3, 2012, the Fed published its final rules on debit cards. The amendments permit an issuer to receive or charge an amount of no more than 1 cent per transaction (the same amount currently permitted) in addition to its interchange transaction fee if the issuer develops and implements policies and procedures that are reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions. The amendments set forth fraud-prevention aspects that an issuer's policies and procedures must address and require an issuer to review its policies and procedures at least annually. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-03/html/2012-18726.htm>

The proposed rule may be found at:

<http://edocket.access.gpo.gov/2010/2010-32061.htm>

### Swaps Clearing Requirements

On August 7, 2012, the CFTC published a proposed rule that would establish a clearing requirement under the new CEA as amended by Dodd-Frank. The regulations would require that certain classes of credit default swaps (CDS) and interest rate swaps (IRS), described herein, be cleared by a derivatives clearing organization (DCO) registered with the Commission. The Commission also is proposing regulations to prevent evasion of the clearing requirement and

related provisions. The proposal also (1) includes a more reasoned cost-benefit analysis that is based on an appropriate pre-Dodd-Frank baseline, (2) discusses a variety of alternatives based on public comments, and (3) asks a series of questions in the absence of available data. See the proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-07/html/2012-18382.htm>

### General Licenses to do Business in Burma

On August 10, 2012, OFAC published two general licenses for doing business with Burma. The first license permits US persons to provide financial services to Burma except to the Burma military, to blocked parties or for debits to blocked accounts. See the Licenses at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/html/2012-19660.htm>

### Swap Reporting Correction Regarding Swaps with Affiliates

On August 13, 2012, the CFTC published a correction to the preamble to its final rule on real-time swaps reporting. The correction was to make it clear that certain, and not all, covered transactions as described in Sections 23A and 23B of the Federal Reserve Act may be considered "publicly-reportable swap transactions." See the corrected language at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-13/html/2012-19664.htm>

### Further Swap definitions

On August 13, 2012, the CFTC and the SEC published a joint final rule to further define the terms "swap," "security-based swap," and "security-based swap agreement" (collectively, "Product Definitions"); regarding "mixed swaps;" and governing books and records with respect to "security-based swap agreements." This is a far reaching rule and it covers such other topics as: (i) the regulatory treatment of insurance products; (ii) the exclusion of forward contracts from the swap and security-based swap definitions; (iii) the regulatory treatment of certain consumer and commercial contracts; (iv) the regulatory treatment of certain foreign-exchange related and other instruments; (v) swaps and security-based swaps involving interest rates (or other rates) and yields; (vi) total return swaps ("TRS"); (vii) the application of the definition of "narrow-based security index" in distinguishing between certain swaps and security-based swaps, including credit default swaps ("CDS") and index CDS; and (viii) the specification of certain swaps and security-based swaps that are, and are not, mixed swaps. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-13/html/2012-18003.htm>

The proposal may be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-05-23/html/2011-11008.htm>

### Home Mortgage Counseling under Regulation Z

On August 15, 2012, the BCFP has published its proposed rules regarding Dodd-Frank's changes

to high interest and high fee mortgage loans and potential borrowers in some circumstances would be required to receive counseling before obtaining a loan. The rule would ban certain mortgage lending practices: balloon payments would be banned; late fees would be limited; prepayment penalties would be limited and a lender could not make certain mortgage loans until the lender received certification that the borrower has received counseling from a federally certified counselor. See the Bureau's proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-15/html/2012-17059.htm>

#### Conditions on the Import or Export of Diamonds

On August 15, 2012, the Treasury published a proposed rule that would place conditions on the import and export of rough diamonds under the Clean Diamond Trade Act and other OFAC rules related to the diamond trade. The rules require US persons to maintain records and keep certain process shipment documents for inspection by Customs. The rules are to clarify the requirements for the diamond trade and harmonize the various rules adopted by OFAC, State Department ICE and Customs. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-15/html/2012-20001.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.*