

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

August Second Half Developments

Overview

The banking agencies have published their proposed capital rules for banks that incorporate the Basel III requirements. These rules contain a number of new provisions for banks in terms of calculating risk-weighted assets and the items that make up capital instruments. There are three separate proposed rules, each of which is lengthy and detailed. The BCFP has published perhaps the longest rule ever promulgated for banking institutions regarding mortgage disclosures. It will try to improve on the disaster that is mortgage lending in this country. The BCFP has published a new Regulation E that governs remittance transfers and provides for a number of protections for consumers, including a right to cancel transfers that could create difficulties for remittance service providers

Market Risk Capital Rules

On August 30, 2012, the banking agencies published their final rule on market risk capital requirements. This rule revises the market risk capital rules to modify their scope to better capture positions for which the market risk capital rules are appropriate and enhance the rules' sensitivity to risks that are not adequately captured under the current regulatory measurement methodologies. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/html/2012-16759.htm>

See the proposed rule at:

<http://edocket.access.gpo.gov/2011/2010-32189.htm>

The proposed rule was supplemented with the Basle adjustments; see these at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-21/html/2011-32073.htm>

Advanced Approaches to the Risk-Based Capital Rule

On August 30, 2012, the banking agencies published their proposed rule on the advanced approaches to the risk-based capital requirements to incorporate the Basel III changes. The OCC and FDIC are proposing that the market risk capital rule be applicable to federal and state

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savings associations, and the Board is proposing that the advanced approaches and market risk capital rules apply to top-tier savings and loan holding companies. Comments are requested before October 22, 2012. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/html/2012-16761.htm>

Regulatory Capital Rule

On August 30, 2012, the banking agencies published their proposed rule to revise their risk-based and leverage capital requirements consistent with agreements reached by the Basel Committee on Banking Supervision (BCBS) in "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems" (Basel III). The proposed revisions would include implementation of a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for banking organizations subject to the advanced approaches capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator measure. The agencies are proposing to apply limits on a banking organization's capital distributions and certain discretionary bonus payments if the banking organization does not hold a specified amount of common equity tier 1 capital in addition to the amount necessary to meet its minimum risk-based capital requirements. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/html/2012-16757.htm>

Standardized Approach for Risk-Weighted Assets

On August 30, 2012, the banking agencies published their proposed rule to revise and harmonize the agencies' rules for calculating risk-weighted assets to enhance risk-sensitivity and address weaknesses identified over recent years, including by incorporating certain international capital standards of the Basel Committee. The revisions include methodologies for determining risk-weighted assets for residential mortgages, securitization exposures, and counterparty credit risk. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/html/2012-17010.htm>

Stress Test Reporting for National Banks

On August 16, 2012, the OCC published information about the reports it plans to require from the large banks i.e. over \$50 billion in assets on the results of the stress tests. The OCC will require a number of worksheets from covered institutions. Only 20 banks are subject to such reporting and the annual burden will be about 500 hours per bank. See the description of the reporting requirements at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-16/html/2012-20083.htm>

Treasury List of Boycotting Countries

On August 17, 2012, the Treasury published its list of countries requiring or cooperating with an

international boycott. The list includes: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen. See the list at:
<http://www.gpo.gov/fdsys/pkg/FR-2012-08-17/html/2012-20182.htm>

Remittance Transfers

On August 20, 2012, the BCFP published a final rule implementing the Dodd-Frank Act regarding remittance transfers. This rule amends a prior final rule published by the BCFP on February 7, 2012. The Fed issued a Notice of Proposed Rulemaking in May 2011 76 FR 29902 (May 23, 2011). The final rule provides new protections, including disclosures and error resolution and cancellation rights, to consumers who send remittance transfers to other consumers or businesses in a foreign country. See the final version of the rule at:
<http://www.gpo.gov/fdsys/pkg/FR-2012-08-20/html/2012-19702.htm>

The prior version of the rule may be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-02-07/html/2012-1728.htm>

Unclaimed Gift Cards Preemption of State Laws

On August 21, 2012, the Bureau of Consumer Financial Protection published notice of its intent to consider and address requests received to determine whether certain provisions in the laws of Maine and Tennessee relating to unclaimed gift cards are inconsistent with and preempted by the requirements of the Electronic Fund Transfer Act and Regulation E. See the BCFP's proposal at:
<http://www.gpo.gov/fdsys/pkg/FR-2012-08-21/html/2012-20531.htm>

Appraisals for Mortgage Loans and Copies for Consumers

On August 21, 2012, the BCFP published its proposed rule to amend Regulation B, which implements the Equal Credit Opportunity Act. In general, the proposed revisions to Regulation B would require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost. Please see the BCFP's proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-21/html/2012-20422.htm>

Clearing Exemption for Swaps Between Affiliated Entities

On August 21, 2012, the CFTC published its proposed rule to exempt swaps between certain affiliated entities within a corporate group from the clearing requirement. The Commission also is proposing rules that detail specific conditions counterparties must satisfy to elect the proposed inter-affiliate clearing exemption, as well as reporting requirements for affiliated entities that avail themselves of the proposed exemption. See the proposed rule at:

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

Mortgage Disclosures under RESPA & Regulation Z

On August 23, 2012, the BCFP published proposed rules regarding mortgages. This rule is over 300 pages long. The Bureau is proposing to amend Regulation X (Real Estate Settlement Procedures Act) and Regulation Z (Truth in Lending) to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer credit transactions secured by real property. In addition to combining the existing disclosure requirements and implementing new requirements in the Dodd-Frank Act, the proposed rule provides extensive guidance regarding compliance with those requirements. See the proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-23/html/2012-17663.htm>

Registration of Intermediaries

On August 28, 2012, the CFTC published its final rule regarding the registration of intermediaries. This rule will result in the registration of a greater number of registrants such as swap dealers and major swap participants. One commissioner dissented from the rule because it did not provide enough background on the disciplinary history of the registrants. . Of importance to foreign banks is a change that would exempt them from registration if they have provided certain capital to an intermediary. See the proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-28/html/2012-20962.htm>

See the proposed rule at:

<http://edocket.access.gpo.gov/2011/2011-4799.htm>

Advice on Economic Inclusion

The FDIC has an advisory committee on methods to serve unbanked and under banked communities. On September 12th the committee will discuss mobile financial services and accounts for underserved populations. See the following for more details:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-28/html/2012-21124.htm>

Appraisals

On August 30, 2012, the FFIEC subcommittee on Appraisals published a proposed policy statement to insure that state appraisal standards continue to comply with Title XI of FIRREA. See the proposed policy statement at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/html/2012-21452.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.