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August Second Half Developments

Overview

The Wall Street Journal of August 30, 2013, had an editorial opinion on the debt ceiling that noted in passing that a certain federal agencies were outside the traditional Congressional funding mechanisms and thus had a "blank check" to grow without funding constraints. The author cited the CFPB as Exhibit A and noted that the CFPB has grown 80% from 2012 to 2013 and its unionized employees will double by 2014 to 1500 persons. This is related to the assessment plan that the Fed is imposing on domestic bank holding companies to fund the costs of Fed regulation. This was historically done as part of the Fed's Congressionally provided funding, but this will now be an additional, and certainly growing, cost that will not be subject to any oversight. Where there are no incentives to manage costs, it is unlikely that costs will be carefully managed.

Derivatives Clearing Organization Core Principles

On August 16, 2013, the CFTC published its proposed rule to establish additional standards for compliance with the derivatives clearing organization core principles for systemically important derivatives clearing organizations. The proposed amendments include: Procedural requirements for opting in to the regulatory regime as well as substantive requirements relating to governance, financial resources, system safeguards, special default rules and procedures for uncovered losses or shortfalls, risk management, additional disclosure requirements, efficiency, and recovery and wind-down procedures. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-16/html/2013-19845.htm

Interagency Proposed rule on Capital for Ultra Large Banks

On August 20, 2013, the Banking Agencies published their proposed rule to strengthen the agencies' leverage ratio standards for large, interconnected U.S. banking organizations. The proposal would apply to any U.S. top-tier bank holding company (BHC) with at least $700 billion in total consolidated assets. The agencies are proposing to establish a ``well capitalized'' threshold of 6 percent for the supplementary leverage ratio for any IDI that is a subsidiary of a

covered BHC, under the agencies' prompt corrective action (PCA) framework. The Board also proposes to establish a new leverage buffer for covered BHCs above the minimum supplementary leverage ratio requirement of 3 percent (leverage buffer). The leverage buffer would function like the capital conservation buffer for the risk-based capital ratios in the 2013 revised capital approaches. A covered BHC that maintains a leverage buffer of tier 1 capital in an amount greater than 2 percent of its total leverage exposure would not be subject to limitations on distributions and discretionary bonus payments. The proposal would take effect beginning on January 1, 2018. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-20/html/2013-20143.htm

Broker-Dealer Reports

On August 21, 2013, the SEC published its final rule to amend certain Broker reporting, audit and notification requirements. The amendments include a requirement that broker-dealer audits be conducted in accordance with standards of the Public Company Accounting Oversight Board. In addition the rule would allow representatives of the Commission to review the documentation associated with certain reports of the broker-dealer's independent public accountant. See the final rules at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-21/html/2013-18738.htm

Broker-Dealer Financial Responsibility

On August 21, 2013, the SEC published its final rule to amend its net capital, customer protection, books and records, and notification rules for broker-dealers. These rules were originally proposed in 2007. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-21/html/2013-18734.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2012-05-09/html/2012-11133.htm

Swaps Clearing Exemption for Cooperatives

On August 22, 2013, the CFTC published its final rules allowing cooperatives meeting certain conditions to elect not to submit for clearing certain swaps that such cooperatives would otherwise be required to submit for clearing. As amended by the Dodd-Frank Act, the commodities laws require a swap to be submitted for clearing through a derivatives clearing organization if the Commission has determined that the swap is required to be cleared, unless an exception to the clearing requirement applies. The fact that cooperatives act on behalf of members that are non-financial entities or small financial institutions justified an extension of the end-user exception to the cooperatives. Because a cooperative acts in place of its members when facing the larger financial markets on behalf of the members, the end-user exception that would be available to a cooperative's members should pass through to the cooperative. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-22/html/2013-19945.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2012-07-17/html/2012-17357.htm

Investment Advisers Registering as Commodity Pool Operators

On August 22, 2013, the CFTC published its final rule with respect to certain compliance obligations for commodity pool operators of investment companies registered under the Investment Company Act of 1940. The regulations will require, among other things, that investment advisors of certain registered investment companies register as CPOs and operate under a dual SEC/CFTC regulatory regime. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-22/html/2013-19894.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2012-02-24/html/2012-3388.htm

CFTC definition of "Actual Delivery"

On August 23, 2013, the CFTC published an interpretation to clarify what constitutes actual delivery as that term is used in the commodities laws. Back in December 2011, the CFTC issued a similar interpretation and this further clarifies the definition. This definition is complicated in the oil and energy commodities businesses. See the interpretation at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-23/html/2013-20617.htm

Fed Assessments for Supervising Banks over $50 billion

On August 23, 2013, the Fed published its final rule 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 final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-23/html/2013-20306.htm

CFTC Fees for Rule Enforcement

On August 27, 2013, the CFTC published the fees it will charge to certain markets to recover costs to operate its rule enforcement programs. This amounts to only a few million dollars per year. See the listing and the methodology at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-27/html/2013-20772.htm

Treasury Community Development Financial Institutions Funds

The mission of the CDFI Fund is to expand the capacity of financial institutions to provide credit, capital and financial services to underserved populations and communities in the United States. The CDFI collects information from the parties it supports to evaluate the effectiveness of its

programs. See the description of the information gathered at:
http://www.gpo.gov/fdsys/pkg/FR-2013-08-27/html/2013-20891.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.