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December Second Half Developments

Overview

Clichés are tiresome sometimes, but they are really very good at describing some situations. In a “closing the barn door after the horse is gone” move, the CFTC has adopted a final rule regulating how certain customer funds may be invested, while noting --without irony-- numerous suggestions by MF Global on how the rule could be improved. The “throwing the baby out with the bathwater” requirement of Dodd-Frank to eliminate the use of credit ratings in regulations has reached its most difficult stage in evaluating bank capital requirements. The U.S. regulators are in a difficult spot because the Basel Committee sensibly seems quite content to allow the use of credit ratings as an evaluation tool. The regulators have attempted to give the industry some guidance on how they can self-evaluate their holdings for capital purposes without complete reliance on ratings.

Investment of Customer Funds

In a timely rule making given the MF Global situation, the CFTC on December 19, 2011, published its final rule on investments of customer funds held for foreign futures and foreign options transactions. The amendments address: certain changes to the list of permitted investments (including the elimination of in-house transactions), a clarification of the liquidity requirement, the removal of rating requirements, and an expansion of concentration limits including asset-based, issuer-based, and counterparty concentration restrictions. Somewhat ironically, MF Global submitted a comment letter of this rule generally supportive; however, the Commission avoided discussing the MF Global lesson in the rule analysis. See the rule at: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-19/html/2011-31689.htm>

Disclosures by Non-insured Depositories

On December 16, 2011, the BCFP published its final rule reprinting existing FTC regulations to create a new Regulation I. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau’s Regulation I at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-16/html/2011-31732.htm>

Fair Debt Collection Practices

On December 16, 2011, the BCFP published its final rule reprinting existing interagency regulations to create a new Regulation F. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation F at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-16/html/2011-31733.htm>

Mortgage Advertising and Assistance Relief

On December 16, 2011, the BCFP published its final rules reprinting existing interagency regulations to create new Regulations N & O. According to BCFP, the new versions do not impose any new substantive requirements. This new rules are effective as of December 30, 2011. See the Bureau's Regulations N & O at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-16/html/2011-31731.htm>

Consumer Leasing

On December 19, 2011, the BCFP published its final rule reprinting existing interagency regulations to create a new Regulation M. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation M at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-19/html/2011-31723.htm>

Home Mortgage Disclosure

On December 19, 2011, the BCFP published its final rule reprinting existing interagency regulations to create a new Regulation C. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation C at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-19/html/2011-31712.htm>

Mortgage Licensing

On December 19, 2011, the BCFP published its final rules reprinting existing interagency regulations to create new Regulations G & H. According to BCFP, the new versions do not impose any new substantive requirements. This new rules are effective as of December 30, 2011. See the Bureau's Regulations G & H at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-19/html/2011-31730.htm>

State Department Designation of a Terrorist

On December 19, 2011, the State Department designated a terrorist. This order demonstrates the difficulty of this task given that the individual involved was known by at least 10 different aliases. See notice below for a sense of the enormity of this process:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-19/html/2011-32418.htm>

Real Estate Settlement Procedures

On December 20, the BCFP published its final rule reprinting existing interagency regulations to create a new Regulation X. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation X at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-20/html/2011-31722.htm>

Equal Credit Opportunity

On December 21, the BCFP published its final rule reprinting existing interagency regulations to create a new Regulation B. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation B at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-21/html/2011-31714.htm>

Fair Credit Reporting

On December 21, the BCFP published its final rule reprinting existing interagency regulations to create a new Regulation V. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation V at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-21/html/2011-31728.htm>

Consumer Financial Privacy

On December 21, the BCFP published its final rule reprinting Regulation P of the Fed and the other federal agency's privacy rules. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation P at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-21/html/2011-31729.htm>

Truth in Savings

On December 21, the BCFP published its final rule reprinting Regulation DD of the Fed. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation DD at: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-21/html/2011-31727.htm>

Capital Alternatives to use of Credit Agency Ratings

On December 21, 2011 the banking agencies published proposed capital rules to find alternatives to using the credit agencies ratings. The Dodd Frank Act requires this change. This is complicated because the Basel Committee is using ratings in its worldwide standards for bank capital. You can use whatever cliché you like to describe this situation, I like, "throwing the baby out with the bath water." See the machinations at: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-21/html/2011-32073.htm>

Truth in Lending

On December 22, the BCFP published its final rule reprinting Regulation Z of the Fed. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation Z at: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-22/html/2011-31715.htm>

Small Bank Definition for Community Reinvestment Act

On December 22, 2011, the banking agencies published final rules amending the definition of small bank for CRA purposes to mean a bank with less than \$1.16 billion. See the new definitions at: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-22/html/2011-32727.htm>

CFTC Extension of Exemptive Relief

On December 23, 2011, the CFTC published its final order extending the relief it granted back in July until next July 16, 2012. This relief was granted while the CFTC makes amendments to its rules and to avoid regulatory disruption. See the exemption at: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-23/html/2011-32841.htm>

Registration of Foreign Boards of Trade

On December 23, 2011, the CFTC published its final rule on the registration of foreign boards of

trade that wish to provide US persons with access to electronic trading systems. This final rule is substantively the same as the proposed rule published in November. In the past, the CFTC gave such boards of trade no-action letters to permit them to offer these services into the US. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-23/html/2011-31637.htm>

Electronic Funds Transfers

On December 27, the BCFP published its final rule reprinting Regulation E of the Fed. According to BCFP, the new version does not impose any new substantive requirements. This new rule is effective as of December 30, 2011. See the Bureau's Regulation E at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-27/html/2011-31725.htm>

Credit Unions Extension of Authorities

On December 28, 2011, the NCUA published a proposed rule to expand the ability of all Credit Unions to exercise additional authorities. Under the existing rules, only higher rated CUs could exercise additional powers to make charitable contributions, take nonmember deposits, make certain fixed asset investments buy zero coupon investments, engage in repos and purchase commercial mortgage backed securities. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-28/pdf/2011-33041.pdf>

Definition of Accredited Investor

On December 29, 2011, the SEC published its final rule on the definition of accredited investor to exclude the value of the investor's principal residence for determining the net worth of the investor. The Dodd-Frank Act required this change. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-29/html/2011-33333.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.