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December First Half Developments

Overview

The CFTC has finalized its rules on requiring that credit default swaps and certain major interest rate swap contracts be cleared through Designated Clearing Organizations. This is a major component of the Dodd Frank Act passed seemingly so many years ago. The CFTC managed to agree unanimously on these rules and that is an achievement for them. The clearing rules become effective of February 13, 2013, but there are a number of specific compliance dates throughout the rules. Swap dealers and the largest hedge funds will be required to clear these swaps in March. Compliance would be phased in for other market participants through the summer of 2013.

Cuba Payments for Diplomatic Purposes and for Services on US Planes

On December 3, 2012, OFAC published a final rule to authorize the processing of funds transfers for the operating expenses or other official business of third-country diplomatic or consular missions in Cuba. OFAC also is amending the Cuban Assets Control Regulations to authorize certain payments for services rendered by Cuba to United States aircraft as part of over flights or emergency landings. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-03/html/2012-29100.htm>

New Treasury Floating Rate Security

On December 5, 2012, the Treasury issued an Advance Notice of Proposed Rulemaking on a proposed new security with a floating rate. Treasury is currently considering two Index Rates for this purpose, a Treasury bill rate and a Treasury general collateral repurchase agreement rate. Treasury would structure the floating rate security with daily resets. The floating rate securities would have a Minimum Interest Rate of zero. A negative Interest Rate could lead to an interest payment by the investor to Treasury. See the proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-05/html/2012-29307.htm>

FinCEN definitions of Funds Transfer & Transmittal

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On December 6, 2012, FinCEN published its notice of proposed rules on amendments to the regulatory definitions of "funds transfer" and "transmittal of funds" under the regulations implementing the Bank Secrecy Act. The proposed changes are intended to maintain the current scope of the definitions and are necessary in light of changes to the Electronic Fund Transfer Act that will result in certain currently covered transactions being excluded from Bank Secrecy Act requirements. Because the new section 919 of the EFTA defines "remittance transfers" broadly, most electronic transfers of funds sent by consumers in the United States to recipients in other countries will be subject to the new protections. See the NPRM at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-06/html/2012-29233.htm>

Clearing Requirements for Credit Default and Interest Rate Swaps

On December 13, 2012, the CFTC published its final rules establishing a clearing requirement. The regulations require that certain classes of credit default swaps (CDS) and interest rate swaps, described therein, be cleared by a derivatives clearing organization (DCO) registered with the Commission. Central clearing is one of the three major building blocks of Dodd-Frank swaps market reform--in addition to promoting market transparency and bringing swap dealers under comprehensive oversight--and this rule completes the clearing building block. The final rule may be seen at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-13/html/2012-29211.htm>

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

Credit Union use of Credit Ratings

On December 13, 2012, the NCUA published its final rule on references to credit ratings in NCUA regulations or replaces them with other appropriate standards of creditworthiness as required by the Dodd-Frank Act. The proposed rule was published in March 2011. The other banking agencies have already adopted rules in this area. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-13/html/2012-30076.htm>

Credit Union Fidelity Bonds

On December 13, 2012, the NCUA published its final rules to determine what kind of deductible a Credit Union could carry on its fidelity bonds. Under the final rule a CU may have up to a \$1 million deductible for CUs with assets of \$1 billion if it has a strong CAMEL rating and is "well capitalized." See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-13/html/2012-30075.htm>

The Interim rule: <http://www.gpo.gov/fdsys/pkg/FR-2012-05-31/html/2012-13212.htm>

Information collected under 314(a) Programs

Surprisingly, Government Agencies are required to make an effort to reduce paperwork and ease the burdens of compliance. This is news to the regulated industries. On December 13, 2012, FinCEN published a request for comments on the 314(a) information collection programs. Subsection 314(a) of the Act states in part that: [t]he Secretary shall * * * adopt regulations... with the specific purpose of encouraging regulatory authorities ... to share with financial institutions information regarding [parties suspected of engaging in money laundering]. Of course, the Treasury's regulations under 314(a) 67 FR 60,579 (Sept. 26, 2002) require banks to search their records upon receiving a proper request. The paperwork reduction act does not apply to law enforcement requests so these are only the requests from non law enforcement agencies—FinCEN thinks there will be 90 such requests per year, 10 from FinCEN, 30 from Europe and 50 from the states, each request will average 9 names and aliases and all 20,000+ banks, credit unions MSBs etc. will have to respond. FinCEN thinks it will take 4 minutes to search each name (what?) so each search will take 36 minutes so the annual burden on the industry will be a million hours. I don't believe that this comes even close to what it actually takes to comply with these requests but even these low estimates show the burdens. See the FinCEN notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-13/html/2012-30121.htm>

Charges for Supervision of Contract Markets

The CFTC sent out its schedule of fees for 2012 for their charges in the oversight of the rule enforcement programs. The CFTC charges direct labor costs and overhead, good business if you can get it. See the amounts paid by the various contract markets at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-14/html/2012-30224.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.