

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

December Second Half Developments

Overview

OFAC has published new rules to tighten the noose on doing business with Iran if any institutions are contemplated that line of business. Because of certain ambiguities on the activities of foreign organizations and US-owned foreign organizations, OFAC continues to strengthen the restrictions on direct and indirect activities by widening the parties with which it is not permitted to do business. The BCFP has extended the time for remittances transfer providers to comply with the new rules on transfer disclosures. It is interesting to note in the Bureau's new rules, that they are aware that certain money transfer providers are either leaving the business or reducing the options available to consumers in regard to money transfers. It is no surprise that a host of complicated rules will ultimately drive the small players from a market. In a little bit of a surprise, there are evidently so many former crooks applying for exemptions to own or work at banks that the FDIC is raising the automatic exemptions for criminal activity that won't disqualify a person from working at a bank. Sentences of less than 3 days in jail or paying criminal penalties of less than \$2500—No problem, you don't even have to tell anyone.

Consumer Products Disclosure Testing

On December 17, 2012, the CFPB published a notice encouraging banks to consider applying for exemptions from the mandated disclosure requirements of the Bureau's rule to test alternative disclosure regimes. The CFPB noted that Congress empowered the Bureau to provide a legal "safe harbor" to companies testing revised disclosures. For disclosure trials it approves, therefore, the Bureau will "deem" a participating company "to be in compliance with" or "exempt from" otherwise applicable federal disclosure requirements for a defined period. The Bureau believes that there may be significant opportunities to enhance consumer protection by facilitating innovation in financial products and services and by enabling responsible companies to research informative, cost-effective disclosures in test programs. See the CFPB notice at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-17/html/2012-30159.htm>

Federal Deposit Insurance Fund Reserve Ratio for 2013

On December 17, 2012, the FDIC published a notice that it would designate the reserve ratio for the Deposit Insurance Fund at 2% for 2013, the same as 2012. See the notice at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-17/html/2012-30253.htm>

Maximum Charges for Credit Reporting

On December 18, 2012, the BCFP published notice that the maximum charge under the Fair Credit Reporting Act for 2013 will be \$11.50. The Fair Credit Reporting Act (the FCRA) provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to Section 609 of the FCRA. See the Bureau's notice at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-18/html/2012-30373.htm>

Criminals Involved with Banking Organizations

On December 18, 2013, the FDIC published its Statement of Policy on persons who have been convicted of certain offenses being involved with banks. Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829, prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party (IAP), owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. The FDIC evidently receives a lot of waiver requests and so is allowing people who serve 3 days or less in jail or pay fines of less than \$2,500 to benefit from a blanket approval. See the FDIC's policy statement at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-18/html/2012-30351.htm>

Differences in Accounting or Capital Standards Among Federal Banking Agencies

On December 19, 2012, the banking agencies published a report highlighting the differences in capital and accounting treatment at the respective agencies. See the report at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-19/html/2012-30608.htm>

Information Requested about Credit Cards

On December 20, 2013, the BCFP requested that the public provide information on credit card usage, particularly: The Terms of Credit Card Agreements; Effectiveness of Disclosure of Terms; Adequacy of Protections Against Unfair or Deceptive Acts; Whether implementation of the CARD Act has affected the cost and availability of credit. The BCFP's request may be viewed at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-20/html/2012-30609.htm>

Swap Recordkeeping Requirements

On December 21, 2012, the CFTC published its final rules on recording oral communications and recordkeeping. This final rulemaking requires covered parties to record all oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a transaction in a commodity interest, whether communicated by telephone, voicemail, mobile device, or other digital or electronic media, and to keep those records for one year. In addition, these parties must record and keep all written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a transaction in a commodity interest or related cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media, and to keep those written records for five years. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-21/html/2012-30691.htm>

See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-06-07/html/2011-12270.htm>

CRA Technical Changes

On December 21, 2012, the banking agencies published technical changes to their CRA regulations to adjust the definitions of “small bank.” This now applies to banks with assets of less than \$1.186 billion. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-21/html/2012-30775.htm>

OFAC Iranian Sanctions

On December 26, 2012, OFAC published its final new rules on the Iranian sanctions. These amendments, inter alia, add a new section to the ITSR to prohibit certain transactions by entities owned or controlled by a U.S. person and established or maintained outside the United States. They also expand the categories of persons whose property and interests in property are blocked to include any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have provided material support for certain Government of Iran-related entities or certain activities by the Government of Iran. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-26/html/2012-30680.htm>

Privacy of Consumer Information at the CFTC

On December 28, 2012, the CFTC published model forms to be used for privacy notifications to consumers. The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as permitted by the CFTC. See the forms at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-28/html/2012-31273.htm>

Electronic Funds Transfers & Remittances

On December 31, 2012, the BCFP published a proposed rule regarding Reg E and the remittances of financial institutions. The proposal addresses three narrow issues. First, the proposal would provide additional flexibility regarding the disclosure of foreign taxes, as well as fees imposed by a designated recipient's institution for receiving a remittance transfer in an account. Second, the proposal would limit a remittance transfer provider's obligation to disclose foreign taxes to those imposed by a country's central government. Third, the proposal would revise the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information, and, in particular, when a sender provides an incorrect account number and that incorrect account number results in the funds being deposited in the wrong account. See the proposed rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-31/html/2012-31170.htm>

Exemptions from Collecting Home Mortgage Information

On December 31, 2012, the BCFP published a final rule exempting banks, S&Ls and Credit Unions with assets of less than \$42 billion from collecting data on Home Mortgage Disclosure requirements. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-31/html/2012-31311.htm>

Lending Limits On Derivatives or Securities Financing

On December 31, 2012, the OCC published a final rule amending its lending limits rule to extend the rule's temporary exception for credit exposures arising from a derivative transaction or securities financing transaction from January 1, 2013 to July 1, 2013. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-31/html/2012-31267.htm>

Corrections to National bank Minimum Capital Ratios

On December 31, 2012, the OCC published some corrections to an appendix that applies certain capital requirements to banks with assets in excess of \$250 billion. See the OCC's corrected Appendix C at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-31/html/2012-31485.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.