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December First Half Developments

Overview

The agencies have finally agreed on the Volcker rule and it breaks the bank in terms of complexity and verbosity. Remittances are still an issue as FinCEN has spotted a potential loophole in reporting on certain international funds transfers. The BCFP has expanded its universe of covered industries to now include the student loan servicing business and the Bureau has defined the largest players in that business for supervision.

Derivatives Clearing Organizations Core Principles

On December 2, 2013, the CFTC published its final rules on derivatives clearing organizations compliance with the core principles set forth in the Commodity Exchange Act. The new rule also adds some additional requirements. The new regulations include provisions concerning: 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 final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-02/html/2013-27849.htm>
Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-16/html/2013-19845.htm>

Policy Statement on Principles for Developing Stress Test Scenarios

On December 3, 2013, the FDIC published a policy statement on its annual stress tests. These tests have been mandated for certain midsize banks since the end of 2012. Under the Stress Test Rule covered banks are required to conduct annual stress tests using a minimum of three stress test scenarios (baseline, adverse, and severely adverse) provided by the FDIC. The FDIC has given guidance to the industry on how it will prepare these stress tests and this rule formalizes that guidance. See the final guidance at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-03/html/2013-28608.htm>

Credit Union Service Organization

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On December 3, 2013, the NCUA published its final rule to address how state chartered Credit Unions deal with their service organizations. The final rule also includes limits on the ability of "less than adequately capitalized" FISCUs to recapitalize their CUSOs and to address accounting, financial statements, and audits. CUSOs engaging in certain complex or high-risk activities are required to additionally report more detailed information, including audited financial statements and general customer information. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-03/html/2013-28479.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2011-07-27/html/2011-18906.htm>

FinCEN definitions of "Funds Transfer" and "Transmittal of Funds" for Remittances

On December 4, 2013, FinCEN published its final rule to regulatory definitions of "funds transfer" and "transmittal of funds" under the regulations implementing the Bank Secrecy Act ("BSA"). The reason that the rule was needed is that certain international funds transfers sent by consumers through banks and cash- or account-based transmittals of funds sent by consumers through money transmitters, would fall outside the BSA rules and these are currently covered. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-04/html/2013-28951.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-06/html/2012-29233.htm>

Student Loan Servicing

On December 6, 2013, the BCFP published its final rule to define larger participants of a market for student loan servicing. This now brings these companies under the supervision of the BCFP. The Bureau has the authority to supervise nonbank "larger participant[s]" of markets for other consumer financial products or services, as the Bureau defines by rule. See the BCFP's final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-06/html/2013-29145.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-28/html/2013-06291.htm>

Collection of Checks by Reserve Banks and Daylight Overdrafts

On December 10, 2013, the Fed published its proposed rule regarding Regulation J. The proposed rule would permit the Federal Reserve Banks to require paying banks that receive presentment of checks from the Reserve Banks to make the proceeds of settlement for those checks available to the Reserve Banks as soon as one half-hour after receipt of the checks. These proposed amendments to Regulation J are necessary to implement the proposed method for posting debits and credits to banks' Federal Reserve accounts to measure daylight overdrafts. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-10/html/2013-28747.htm>

Fed Policy on Payments Systems Risk—Daylight Overdrafts

On December 10, 2013, the Fed published proposed changes to its Policy on Payments Systems Risk related to the procedures for measuring balances intraday in institutions' accounts at the Federal Reserve Banks. The proposed changes relate to the Board's procedures for posting debit and credit entries to institutions' Federal Reserve accounts for automated clearing house (ACH) debit and commercial check transactions. See the proposed changes at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-10/html/2013-28745.htm>

Position Limits for Derivatives

On December 12, 2013, the CFTC published its proposed rule regarding concerning speculative position limits. The Commission proposes to establish speculative position limits for 28 exempt and agricultural commodity futures and option contracts, and physical commodity swaps that are "economically equivalent" to such contracts. The Commission proposes appendices that would provide guidance on risk management exemptions for commodity derivative contracts in excluded commodities permitted under the proposed definition of bona fide hedging position. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-12/html/2013-27200.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.