

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

The banking agencies have recognized that banks are using social media for advertising as well as for mobile banking applications. The agencies have published guidelines that they expect banks to use to give their customers proper notice and protections when the customers obtain bank services through social media. There is not much flexibility for banks in complying with these guidelines. The FDIC has published a new way to resolve large systemically important banks that get into financial trouble. This demonstrates some new thinking at the FDIC with regard to how to deal with large banks. The Fed has published its market risk elements for use with the Fed's new risk capital rules. Market risk will be integrated into the assessment of capital adequacy in certain respects.

Truth in Lending Adjustment of Thresholds for Consumer Disclosures

On December 16, 2013, the BCFP published its final rule regarding certain reporting and disclosure thresholds to use for public and consumer advisories. These amounts are adjusted, where appropriate, based on the annual percentage change reflected in the Consumer Price Index. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-16/html/2013-29844.htm>

Use of Social Media and Consumer Compliance Issues

On December 17, 2013, the FFIEC published its final guidance on the consumer rules applicable to bank use of social media. Financial institutions are expected to use the Guidance in their efforts to ensure that their policies and procedures provide oversight and controls commensurate with the risks posed by their involvement with social media. See the final guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-17/html/2013-30004.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-01-23/html/2013-01255.htm>

FDIC resolution of SIFIs; the Single Point of Entry

On December 18, 2013, the FDIC published its proposed notice of how it will employ the single point of entry strategy for resolving SIFIs. This notice describes in greater detail the Single Point of Entry strategy, highlights some of the issues identified in connection with the strategy, and requests public comment on various aspects of the strategy. See the FDIC notice at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-18/html/2013-30057.htm>

Market Risk Aspects of the Risk Based Capital Rules

On December 18, 2013, the Fed published its final rule that revises its market risk capital rule to address recent changes to the Country Risk Classifications published by the OECD. These changes conform the Board's current market risk rule to the requirements in the Board's new capital framework. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-18/html/2013-29785.htm>
Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-07-22/html/2013-16434.htm>

Interagency Policy Statement on Tax Allocations

On December 19, 2013, the banking agencies published their proposed joint guidance to ensure that insured depository institutions (IDIs) in a consolidated group maintain an appropriate relationship regarding the payment of taxes and treatment of tax refunds. The Proposed Addendum would instruct IDIs and their holding companies to review their tax allocation agreements to ensure that the agreements expressly acknowledge that the holding company receives a tax refund from a taxing authority as agent for the IDI and are consistent with certain of the requirements of sections 23A and 23B of the Federal Reserve Act. See the proposal at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-19/html/2013-30130.htm>

FDIC removal of OTS regulations related to Securities Transactions

On December 19, 2013, the FDIC published its final rule to rescind and remove a regulation entitled "Recordkeeping and Confirmation Requirements for Securities Transactions," and to amend another regulation also entitled "Recordkeeping and Confirmation Requirements for Securities Transactions." The rescinded regulation was one of several rules transferred to the FDIC following dissolution of the former Office of Thrift Supervision. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-19/html/2013-29786.htm>
Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-04/html/2013-21357.htm>

FDIC removal of OTS regulations related to CRA

On December 19, 2013, the FDIC published its proposed rule to rescind and remove a regulation entitled "Disclosure and Reporting of CRA-Related Agreements." This regulation was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision on July 21, 2011. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-19/html/2013-29787.htm>

Credit Union Charitable Deductions

On December 19, 2013, the NCUA published its final rule to clarify that federal credit unions are authorized to create and fund a charitable donation account, a hybrid charitable and investment vehicle, as an activity incidental to the business for which the credit union is chartered, provided the account is primarily charitable in nature and meets other regulatory conditions to ensure safety and soundness. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-19/html/2013-30103.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-19/html/2013-22734.htm>

Fed Services for Financial Market Utilities

On December 20, 2013, the Fed published its final rule to authorize a Federal Reserve Bank to establish and maintain an account for, and through the account provide certain financial services to, financial market utilities ("FMUs") that are designated as systemically important. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-20/html/2013-29711.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-04/html/2013-04841.htm>

Diversity Guidelines Comment Period Extended

On December 24, 2013, the banking agencies extended the comment period on the standards for assessing the diversity policies of banking organizations. Comments will be accepted until February 7, 2014. See the extension at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-24/html/2013-30629.htm>

Contacts with Credit Union Regulators

On December 24, 2013, the NCUA published a proposed rule to require examinations and other contacts between NCUA staff and staff or officials of a federal credit union (FCU) occur in an FCU's business offices or other public location. Additionally, the proposal would require all FCUs to obtain and maintain a business office, not located on the premises of a private residence address, no later than two years following the effective date of a final rule. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-24/html/2013-30560.htm>

Appraisals for High Priced Mortgage Loans

On December 26, 2013, the banking agencies published their final rule regarding requiring

appraisals for "higher-risk mortgages." For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the January 2013 Final Rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/html/2013-30108.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-08/html/2013-17086.htm>

CFTC review of Foreign Laws for Comparability rules

On December 27, 2013, the CFTC published an analysis of certain countries' rules and laws to determine whether those laws provide a sufficient basis for an affirmative finding of comparability with respect to the following regulatory obligations applicable to SDs and major swap participants ("MSPs") registered with the Commission: (i) Chief compliance officer; (ii) risk management; and (iii) swap data recordkeeping (collectively, the "Internal Business Conduct Requirements"). See the determination with regard to Canada as a model:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-27/html/2013-30979.htm>

Community Reinvestment Small Banks

On December 30, 2013, the banking agencies published a joint final rule to redefine what is a small bank for CRA purposes. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.202 billion. Intermediate small bank means a small bank with assets of at least \$300 million as of December 31 of both of the prior two calendar years and less than \$1.202 billion as of December 31 of either of the prior two calendar years. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-30/html/2013-30960.htm>

Residential Mortgage Disclosures

On December 31, 2013, the BCFP published its final rule to combine the disclosures that consumers receive in connection with applying for and closing on a mortgage loan. Consistent with this requirement, the Bureau is amending its RESPA rules and Regulation Z to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer credit transactions secured by real property. In addition to combining the existing disclosure requirements and implementing new requirements imposed by the Dodd-Frank Act, the final rule provides extensive guidance regarding compliance with those requirements. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-31/html/2013-28210.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-23/html/2012-17663.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.