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February First Half Developments

Overview

The Fed dusted off a proposal from 3 years ago to foster additional electronic check collection activities. The warranties that banks give each other will be updated for electronic instruments. This proposal should increase the availability of funds and further the policy goal of minimizing the shipment of checks and manual review.

Check Collection

On February 4, 2014, the Fed published its proposed rule to speed the collection of checks by fostering electronic presentment of checks. This proposal is based on the proposal of March 2011. The proposed rule that would, among other things, encourage depository banks to receive and paying banks to send returned checks electronically. The Fed is proposing to retain, without change, the regulation's current same-day settlement rule for paper checks. The Fed is also requesting comment on applying Regulation CC's existing check warranties to checks that are collected electronically and on new warranties and indemnities related to checks collected electronically and to electronically-created items. See the Fed's proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-04/html/2013-30024.htm>

Fees and Expenses in Cases against the BCFP

On February 10, 2014, the BCFP published its final rule to finalize the interim final rule published on June 29, 2012, regarding when the BCFP might award fees and expenses to a prevailing party in an adversarial adjudication. The BCFP published its proposed rule on August 23, 2013. The final rule is to be found by looking at the proposed rule.

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-10/html/2014-02115.htm>

Security-based Swaps Exemptions Extension

On February 10, 2014, the BCFP published its extension of its interim final rule to give an exemption for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as "securities" under the Securities Act and the Exchange Act. The

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interim final rules exempt offers and sales of security-based swap agreements that became security-based swaps on the Title VII effective date from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions. Under the amendments, the expiration dates in the interim final rules will be extended to February 11, 2017. See the interim final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-10/html/2014-02833.htm>

Repeal of Fed's Privacy Regulation P

On February 14, 2014, the Fed published notice of its intent to repeal its Regulation P, 12 CFR Part 216, which was issued to implement section 504 of the Gramm-Leach-Bliley Act. Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Fed to the BCFP. See the Fed's proposed rule at: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-14/html/2014-03267.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.