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February Second Half Developments

Overview

The President issued an Executive Order to curb cyber threats. While the order does not mention banks per se, we should expect that the banking industry would have to be an active part of this process since the banking system is certainly to be defined as part of the nation's "critical infrastructure." The FDIC has proposed a new rule to clarify that deposits at foreign branches of US banks will not get deposit insurance even if those deposits are payable by contract both abroad and at the US bank. We sent out a client briefing on this rule and pointed out some interesting information to the effect that holders of such foreign deposits may be treated as general creditors. The Fed is granting foreign banks more time to comment on their new rule on supervision of foreign banks. Even small foreign banks will be swept up in this new supervisory system.

Deposit Insurance at Foreign Branches of U.S. Banks

The FDIC is proposing to amend its deposit insurance regulations, with respect to deposits payable in branches of United States insured depository institutions outside of the United States. The proposed rule would clarify that deposits in these foreign branches of United States banks are not FDIC-insured deposits. This would be the case whether or not they are dually payable both at the branch outside the United States and at an office within the United States. As discussed further below, a recent proposal by the United Kingdom's Financial Services Authority makes it very likely that large United States banks will be changing their United Kingdom foreign branch deposit agreements to make them payable both in the United Kingdom and the United States. See the proposed rule at:
<http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/html/2013-03578.htm>

Proceedings Before the CFTC

The CFTC has finalized its rules on reparation proceedings, disciplinary actions, membership denials to simplify service of process issues, particularly as regards electronic filings and service of process as well as clarifying the authority of its hearing officers. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-26/html/2013-04252.htm>

No proposed rule.

Cybersecurity

On February 19, 2013, the President published an Executive Order regarding improving critical infrastructure to guard against cyber threats. The order gives the Secretary of Homeland Security 120 days to issue procedures to define “critical infrastructure” for access to the government’s enhanced Cybersecurity Services. The Secretary shall expand the use of programs that bring private sector subject-matter experts into Federal service on a temporary basis. The Secretary shall establish a consultative process to coordinate improvements to the cybersecurity of critical infrastructure and to lead the development of a framework to reduce cyber risks to critical infrastructure (the “Cybersecurity Framework”). The Cybersecurity Framework shall include a set of standards, methodologies, procedures, and processes that align policy, business, and technological approaches to address cyber risks. Within 150 days of the date of this order, the Secretary shall use a risk-based approach to identify critical infrastructure where a cybersecurity incident could reasonably result in catastrophic regional or national effects. See the Order at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/html/2013-03915.htm>

Student Loan Affordability

On February 27, 2013, the BCFP published a request for information from the public on ideas to make student loans more affordable. The Ombudsman in this area has recommended that Congress spur refinancings and loan modifications in this market. There are more than 38 million student loan borrowers with over \$1.1 trillion in outstanding debt. As of the end of 2011, there were more than \$8 billion in defaulted private student loan balances, with even more in delinquency. See the request for information at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-27/html/2013-04419.htm>

Extended Comment Period for Regulation YY for Foreign Banks

The Fed on February 27, 2013, published notice of its decision to extend the comment period on this complex new rule until April 30, 2013. Due to the range and complexity of the issues addressed in the rulemaking, the Board believes that the additional period for comment will facilitate public comment. The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, risk management and risk committee requirements, single-counterparty credit limits, and stress test requirements, and a debt-to-equity limit for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability. See the extension notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-27/html/2013-04497.htm>

Credit Unions may invest in Treasury Inflation Protected Securities

On February 27, 2013, the NCUA published a final rule to allow federal credit unions (FCUs) to purchase Treasury Inflation Protected Securities (TIPS). This final rule adds TIPS to the list of permissible investments for FCUs. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-27/html/2013-04619.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-09-26/html/2012-23644.htm>

Credit Unions have Larger Rural Districts

On February 28, 2013, the NCUA published its final rule amending the definition of “rural district” to up the population from 200,000 to 250,000. This will allow more credit unions to qualify as “community credit unions.” See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-28/html/2013-04647.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-09-26/html/2012-23643.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.