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January First Half Developments

Overview

It was a bad two weeks for the $50 billion asset banking companies. The regulators proposed two rules that apply just to the big banks. In the wake of this week's disclosures of how clueless the Fed was in 2006 about how potentially damaging the housing crash could be, the big banks are being asked to fund new federal bureaus to hopefully forestall future financial meltdowns. Unfortunately, this bureaucracy will have everything except a crystal ball and that is what they will need to see the next financial storm coming. But at least the new FSOC and the OFR will have plenty of funds and best of all we have created plenty of new government jobs, jobs that might otherwise have been at the top 50 banks in the U.S. May-be the government doesn't want big banks anymore, but then who would pay for all these agencies? Bankers have passed lawyers on the low esteem chart, but I can recall times when the NY Fed would ask JP Morgan to put some of its brain power to work on ideas on how to regulate banking activities. This might be shocking to current sensibilities on how to regulate, but it didn't require a new federal agency, just a phone call. And in any event, in most of the regulatory proposals these days, the agencies are posing dozens of questions to the public on what the regulators should do. For example, in the enhanced supervision proposed rule below, the Fed has asked almost 100 questions of the public. It would be interesting to see if these big banks--using the same budget they are turning over to the government--could cooperatively come up with a better set of self-regulatory ideas.

<u>Volcker Rule Comment Period Extended</u>

Disappointing to those who worked over Christmas to prepare comments, but bowing to the complexity of the issues involved, the Agencies have determined to extend the comment period on the Volcker Rule until February 13, 2012.
http://edocket.access.gpo.gov/2012/2011-33623.htm

<u>Assessments on Large Banks to Fund the Office of Financial Research & FSOC</u>

The Treasury published a proposed rule on January 3, 2012, to establish an assessment schedule for bank holding companies with total consolidated assets over $50 billion and nonbank financial companies supervised by the Fed to collect assessments equal to the total expenses of the OFR, the FSOC and some of the expenses of the FDIC. These assessments are scheduled to begin on July 20, 2012. For a foreign company, the assessment fee would be based on the total consolidated assets of the foreign company's combined U.S. operations. Foreign banking organizations with less than $50 billion in U.S.-based assets would not be assessed. The Treasury estimates that forty-eight bank holding companies would be assessed companies. For every $100 million collected, the range of assessments would be $280,000 for the smallest assessed company (with just over $50 billion in assets) to $12.5 million for the largest assessed company (with approximately $2.3 trillion in assets). Without a trace of humor, the proposed rule also notes that the 50 affected institution will also incur the cost of filling out an application form and submitting it to the Treasury Department and this will take 15 minutes per institution at an aggregate total cost for all 50 companies of $600. See the proposed rule at: http://edocket.access.gpo.gov/2012/2011-33659.htm

Enhanced Prudential Standards and Early Remediation

On January 5, 2012, the Fed published a proposed rule (Reg YY) that would implement the enhanced prudential standards required by Dodd-Frank and the early remediation requirements. The enhanced standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), single-counterparty credit limits, stress test requirements, and a debt-to-equity limit for companies that the FSOC has determined pose a grave threat to financial stability. See the proposed rule at: http://www.gpo.gov/fdsys/pkg/FR-2012-01-05/html/2011-33364.htm

Public Reporting of Swap Data

On January 9, 2012, the CFTC published its final rule in accordance with the Dodd-Frank Act, for the real-time public reporting of swap transaction and pricing data for all swap transactions. It is intended that this rule will increase public transparency to the entire swaps market for both cleared and uncleared swaps. This rule will give information on the pricing of transactions--similar to the securities and futures markets. Real-time reporting introduces post-trade transparency to the swaps market. The final rule provides for the phasing in of compliance dates and time delays based on market participant, place of execution and underlying asset. The proposed rule was published December 7, 2010, and may be viewed at:
http://edocket.access.gpo.gov/2010/2010-29994.htm
The final rule is at:
http://www.gpo.gov/fdsys/pkg/FR-2012-01-09/html/2011-33173.htm

OFAC Blocking Property of Criminal Organizations

On January 12, 2012, OFAC published its final rule blocking the property of certain criminal organizations; namely, THE BROTHERS' CIRCLE (f.k.a. FAMILY OF ELEVEN; f.k.a. THE TWENTY); CAMORRA; YAKUZA (a.k.a. BORYOKUDAN a.k.a. GOKUDO) and LOS ZETAS. The President has determined that such organizations are becoming increasingly sophisticated and dangerous thereby weakening democratic institutions and degrading the rule of law, and thus constitute an unusual and extraordinary threat to the national security of the United

States, and therefore the President has declared a national emergency to deal with these threats. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2012-01-12/html/2012-156.htm

Recordkeeping and Reporting of Swap Data

On January 13, 2012, the CFTC published its final rule relating to swap data recordkeeping and reporting. The rules being adopted apply to swap data recordkeeping and reporting requirements for swap data repositories, derivatives clearing organizations, designated contract markets, swap execution facilities, swap dealers, major swap participants, and swap counterparties who are neither swap dealers nor major swap participants.
The proposed rule was published December 8, 2010, and may be found at:
http://edocket.access.gpo.gov/2010/2010-30476.htm
The final rule may be viewed at:
http://www.gpo.gov/fdsys/pkg/FR-2012-01-13/html/2011-33199.htm