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January First Half Developments

Overview

The Fed has finalized its rule to treat uninsured branches of foreign banks as insured banks for the purposes of applying the swap rules. This was an oversight in the law that took almost three years to correct by rule. As the Fed diplomatically notes, the Dodd-Frank Act created an “ambiguity” whether branches of foreign banks could qualify for the relief given to banks under the swap rules. It would have been more accurate to say that Congress made a mistake, but since the Fed fixed the problem, why throw stones. The Fed’s final rule resolved the so-called ambiguity by providing that the term “insured depository institution” included uninsured U.S. branches and agencies of foreign banks for purposes of section 716 of the Dodd-Frank Act. Accordingly, uninsured branches and agencies of foreign banks are provided the same exceptions and transition period relief as provided to insured depository institutions. Just as with the Affordable Care Act, Congress had to pass the Dodd-Frank Act to find out what was in it.

Mortgage Closing Issues

On January 3, 2014, the CFPB published a notice and request for information regarding how the public perceives the mortgage closing process. The CFPB seeks to encourage the development of a more streamlined, efficient, and educational closing process as the mortgage industry increases its usage of technology, electronic signatures, and paperless processes. The next phase of CFPB's Know Before You Owe initiative aims to identify ways to improve the mortgage closing process for consumers. This project will encourage interventions that increase consumer knowledge, understanding, and confidence at closing. See the request for comments at: <http://www.gpo.gov/fdsys/pkg/FR-2014-01-03/html/2013-31436.htm>

Branches of Foreign Banks and the Swap Rules

On January 3, 2014, the Fed published its final rule that treats an uninsured U.S. branch or agency of a foreign bank as an insured depository institution for purposes of section 716 of the Dodd-Frank Act. The rule establishes a process by which a state member bank or uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities to the requirements of Dodd-Frank. See the final rule at:

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<http://www.gpo.gov/fdsys/pkg/FR-2014-01-03/html/2013-31204.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-06-10/html/2013-13670.htm>

Emergency Lending by Federal Reserve Banks

On January 6, 2014, the Fed published its proposed rule to amend its Regulation A to establish by regulation certain policies and procedures with respect to emergency lending under that section. The revisions made to section 13(3) by the Dodd-Frank Act focus this emergency lending authority on programs and facilities that relieve liquidity pressures in financial markets through broad-based liquidity facilities. The Dodd-Frank Act did not change the requirements already contained in section 13(3) that the Board authorize lending under that section only in unusual and exigent circumstances and upon a vote of at least five of its members, the Reserve Bank be secured to its satisfaction, and the Reserve Bank obtain evidence that other bank credit accommodations are not generally available. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-01-06/html/2013-31025.htm>

Extraterritorial Effect of Swap Rules

The CFTC is requesting comment on an advisory issued by Commission staff on November 14, 2013, regarding the applicability of certain Commission regulations to the activity in the United States of swap dealers and major swap participants registered with the Commission that are located in foreign countries. The Staff Advisory stated that, for transactions arranged, executed, or negotiated by personnel or agents located in the United States of non-U.S. SDs regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute swaps with non-U.S. persons, the non-U.S. SD generally would be required to comply with the transactional requirements. See the request at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-01-08/html/2014-00080.htm>

Removal of References to Credit Ratings in the Investment Company Act

On January 8, 2014, the SEC published its final rule to remove references to credit ratings in certain rules and one form under the Investment Company Act. This action implements a provision of the Dodd-Frank Act. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-01-08/html/2013-31425.htm>

Removal of References to Credit Ratings in Securities Laws

On January 8, 2014, the SEC published its final rule to remove references to credit ratings in certain rules and one form under the Securities Exchange Act of 1934. This action implements a provision of the Dodd-Frank Act. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-01-08/html/2013-31426.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2011-05-06/html/2011-10619.htm>

Anti-Money Laundering Rules Incorporated by the CFTC

On January 14, 2014, the CFTC adopted a final rule to correct its cross-references to the AML rules implemented by FinCEN. FCMs and IBs are required to establish AML programs under section 5318(h) of the BSA. FinCEN regulations also require FCMs and IBs to establish customer identification programs, establish special due diligence programs for certain foreign accounts, detect and report suspicious activity on suspicious activity reports, and file currency transaction reports on certain cash transactions, among other obligations. See the final CFTC rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-01-14/html/2014-00406.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.