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January First Half Developments

Overview

The OCC and the CFTC are granting some leeway in terms of compliance with the rules that have been put into place to govern swap activities. As the CFTC has noted, in the two years since its enactment, the Commission has finalized 41 rules to implement the swaps provisions of the Dodd-Frank Act. In addition, the CFTC has recognized that the cross-border application of the swap rules creates interpretive issues for the entities that are trying to comply. The CFTC commissioners continue to publish their own concurring and dissenting views of the regulations and their own actions in a manner that resembles the United States Supreme Court.

Swap Dealers Extension of Time to Comply with Certain Rules

On January 2, 2013, the CFTC extended the time for swap dealers and major swap participants to comply with certain rules governing business conduct standards for swap dealers and major swap participants, and certain rules requiring SDs and MSPs to engage in portfolio reconciliation and to have certain documentation with their swap counterparties. The Commission is extending the compliance date for certain rules by four months, and up to six months for others. See the extension of time at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/html/2012-30885.htm>

Proposed Guidance on Compliance with Cross-border Swap Rules

On January 7, 2013, the CFTC published proposed further guidance for compliance with certain swap rules. The CFTC has previously published guidance on the cross-border application of its swap rules. The proposed guidance focuses largely on whether multi-national swaps dealers would have to aggregate their foreign swaps activities to determine whether they meet the standards that have been established under the US swaps rules. See the CFTC's proposed guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-07/html/2012-31734.htm>

Final Order on Compliance with Cross-Border rules for Swaps

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On January 7, 2013, the CFTC published its final order regarding the application of the swaps rules to cross-border situations. Under this final order, a non-U.S. person that registers as a swap dealer or major swap participant may delay compliance with certain entity-level requirements of the CEA, and may delay compliance with certain transaction-level requirements of the CEA, subject to specified conditions. The relief period provides time for the Commission to work with foreign regulators as they implement comparable requirements and as the Commission develops a substituted compliance program. Four of the Commissioners published their own concurring or dissenting views of this Order. See the final order at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-07/html/2012-31736.htm>

OCC requests comments on Suspicious Activity Report forms

This gives a nice history of the SAR forms. FinCEN released guidance titled, "Filing FinCEN's New Currency Transaction Report and Suspicious Activity Report" (FIN-2012-G002). The guidance notes that FinCEN is making available additional and more specific data elements (that is, characterizations of suspicious activity and types of financial services). See the request at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-07/html/2013-00043.htm>

BCFP Semiannual Regulatory Agenda

On January 8, 2013, the BCFP published its semiannual agenda. The CFPB is working on a wide range of initiatives to address issues in markets for consumer financial products and services that are not reflected in this notice. It has also conducted research and outreach on a variety of consumer financial products and services, including payday lending and deposit advance loans, bank overdraft programs, private student loans, prepaid cards, and reverse mortgages. See the BCFP's agenda at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-08/html/2012-31512.htm>

National Bank Exemptions for Swap Compliance

On January 8, 2013, the OCC published notice of guidance that it was going to provide a transition period for national banks to comply with the swap rules. The OCC has concluded that transition periods should be provided to insured Federal depository institutions to provide sufficient opportunity for institutions to conform their swaps activities in an orderly manner. The OCC believes that implementation of section 716 without transition periods would cause unwanted adverse consequences and that transition periods therefore are appropriate.

Accordingly, an insured Federal depository institution that is or will be a swaps entity and that seeks a transition period for its nonconforming swaps activities should formally request a transition period from the OCC. Each request must be written and specify the transition period appropriate to the institution, up to a two-year transition period commencing from July 16, 2013. See the guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-08/html/2013-00093.htm>

FDIC Semiannual Regulatory Agenda

On January 8, 2013, the FDIC published its regulatory agenda covering its plans for the near future including: Margin and Capital Requirements for Covered Swap Entities; Regulatory Capital Rules; Regulatory Capital Rules; Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds; Incentive-Based Compensation Arrangements and Assessments, Large Bank Pricing. See the FDIC's regulatory agenda at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-08/html/2012-31515.htm>

Fed Semiannual Regulatory Agenda

On January 8, 2013, the Fed published its regulatory agenda covering its plans for the near future including: proposed amendments to Regulation CC to facilitate the banking industry's ongoing transition to fully electronic interbank check collection and return; a regulation to permit banking organizations under its supervision to engage in off-exchange transactions in foreign currency with retail customers; revise their risk-based and leverage capital requirements consistent with agreements reached by the Basel Committee; a proposal to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator. See the Fed's agenda at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-08/html/2012-31517.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.