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July First Half Developments

Overview

The CFTC has published its proposed guidance on how the entire world will have to comply with its rules on swaps. This is the guidance that is intended to help non U.S. based swaps parties determine whether they need to register as a swaps counterparty in the U.S. and whether their swaps activities will be subject to U.S. regulation. This guidance has been more than a year in the making and not even all the CFTC's commissioners are fully behind it. The commissioners recognize that this rule will potentially raise costs for the industry and impose substantial burdens on certain companies. It remains to be seen how this guidance will be received by other jurisdictions. Certain statements already indicate a level of disappointment with the lack of cooperation between the U.S. and other regulators.

Cross-Border Application of U.S. Swaps Rules

On July 12, 2012, the CFTC published its proposed guidance on how its swap rules will apply to the rest of the world. This is the most significant proposal in terms of the extraterritorial reach of the Dodd-Frank Act. The guidance covers the general manner in which the Commission will consider whether a person's swap dealing activities or swap positions may require registration as a swap dealer or major swap participant, respectively, and the application of the related requirements under the CEA to swaps involving such persons; and the application of the clearing, trade execution, and certain reporting and recordkeeping provisions under the CEA, to cross-border swaps involving one or more counterparties that are not swap dealers or major swap participants. This proposed interpretive guidance and policy statement also generally describes the policy and procedural framework under which the Commission may permit compliance with a comparable regulatory requirement of a foreign jurisdiction to substitute for compliance with the requirements of the CEA. The dissents to this proposal make better reading than the proposal itself. See the proposed guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/html/2012-16496.htm>

Reverse Mortgages

On July 2, 2012, the BCFP issued a request for information on consumer use of reverse mortgages. The Bureau has authority to implement regulations on reverse mortgage transactions. The Bureau is seeking detailed information from the public on the factors that influence reverse mortgage consumers' decision-making, consumers' use of reverse mortgage loan proceeds, longer-term consumer outcomes of a decision to obtain a reverse mortgage, and differences in market dynamics and business practices among the broker, correspondent, and retail channels for reverse mortgages. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-02/html/2012-16078.htm>

Confidential Treatment of Privileged Information by the BCFP

On July 5, 2012, the BCFP published its final rules on how it will treat privileged information by providing that the submission by any person of any information to the Bureau in the course of the Bureau's supervisory or regulatory processes will not waive or otherwise affect any privilege such person may claim with respect to such information under Federal or State law as to any other person or entity. In addition, the Bureau has amended its regulations to provide that the Bureau's provision of privileged information to another Federal or State agency does not waive any applicable privilege, whether the privilege belongs to the Bureau or any other person. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-05/html/2012-16247.htm>

The proposed rule may be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/html/2012-6254.htm>

Electronic Funds Transfers and Remittances

On July 10, 2012, the BCFP published its final corrected rules and model disclosures. The Final Rule inadvertently did not reflect certain technical and conforming changes made by the interim final rule published on December 27, 2011. The Final Rule also contained a technical error in the formatting of certain model forms. This document corrects the error and the formatting of the model forms. See the changes at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-10/html/2012-16245.htm>

Exemptions for Non-US Swap dealers and participants

On July 12, 2012, the CFTC issued a proposed order that would provide exemptions for non-U.S. parties on their foreign activities. The relief would allow non-U.S. swap dealers and non-U.S. major swap participants, as well as foreign branches of U.S. swap dealers and major swap participants, to comply only with those requirements as may be required in the home jurisdiction of such non-U.S. swap dealers and non-U.S. major swap participants (or in the case of foreign branches of a U.S. swap dealer or U.S. major swap participant, the foreign location of the

branch) for swaps with non-U.S. counterparties. See the CFTC's proposed exemptive order at: <http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/html/2012-16498.htm>

Margin Requirements for Uncleared Swaps

On July 12, 2012, the CFTC extended the comment period on these margin requirements in view of a Basel Commission paper on a similar subject. Comments will be accepted until September 14, 2012. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/html/2012-16983.htm>

CFTC Order on Exemptive Relief for Swaps Transactions

On July 13, 2012, the CFTC published its final order extending the exemptive relief it granted on May 16, 2012, from July until December 31, 2012. Until the final rules to define swap are finalized, the exemptive order provides relief from the effective dates of certain Dodd-Frank provisions. The exemptive order allows agricultural swaps cleared through a derivatives clearing organization or traded on a designated contract market to be transacted and cleared as any other swap. See the final order at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-13/html/2012-16987.htm>

Hearings on Enhanced Customer Due Diligence

On July 13, 2012, FinCEN published an announcement of hearings to be held on July 31, 2012, to discuss the issues created by the proposal to require enhanced due diligence on customers. FinCEN wants to discuss: the specific procedures financial institutions currently use to obtain beneficial ownership information; the circumstances in which financial institutions obtain beneficial ownership information; how financial institutions currently verify beneficial ownership information obtained from their customers; information as to the costs; how financial institutions would expect to assess risk in determining whether to obtain beneficial ownership information; how financial institutions currently conduct due diligence on trust accounts; and how financial institutions identify whether legal entity customers are "shell companies." See the notice of the hearing at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-13/html/2012-17065.htm>

Blocking Persons Threatening Peace in Burma

On July 13, 2012, the President published an Executive Order regarding the peace process in Burma and blocked any property in the US of persons who are undermining the peace process in Burma, including by obtaining arms from North Korea. The Treasury and State Departments have to figure out who is covered by this order. See the order at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-13/html/2012-17264.htm>

Security-based Swaps Process for Submission to Clearing Agencies

On July 13, 2012, the SEC published its final rules for the process to submit securities-based swaps to clearing agencies. A registered clearing agency must submit for review any security-based swap, or any group of security-based swaps, that the clearing agency plans to accept for clearing. The rule specifies the manner of notice the clearing agency must provide to its members of such submission and the procedure by which the Commission may stay the requirement that a security-based swap is subject to mandatory clearing while the clearing of the security-based swap is reviewed. The Commission also is adopting a rule to specify that when a security-based swap is required to be cleared, the submission of the security-based swap for clearing must be for central clearing to a clearing agency that functions as a central counterparty. See the SEC's final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-13/html/2012-16233.htm>

The proposed rule was issued on December 10, 2010 and may be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2010-12-30/pdf/2010-32085.pdf>

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.