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**June First Half Developments**

**Overview**

The sheer complexity of the Dodd Frank Act was never more apparent than when trying to make sense of the SEC's recent effort to make sense of the compliance dates for the various types of security-based swap rules that the SEC has under consideration and in various states of final and proposed form. The evident difficulty in harmonizing all these requirements is demonstrated by the dozens of questions posed by the staff in the release almost two years after the Dodd-Frank Act was passed. Maybe there will be a half of a dozen security-based swap dealers left after the rest of the industry gives up trying to figure out how these rules apply to their activities. The OCC has revamped somewhat how a bank must determine whether the securities it is investing in are of investment quality and this will require most banks to revisit their policies on investment securities and review procedures on risk and credit when applied to such securities.

**New Standards for Investment Securities**

On June 13, 2012, the OCC published a final rule changing the definition of how a bank determines whether a security is an investment security. Under the Dodd-Frank Act, the agencies are required to remove any references to, or requirements of reliance on, credit ratings and substitute such standard of creditworthiness as each agency determines is appropriate. The agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards. These final rules generally require banks to make assessments of a security's creditworthiness, similar to the assessments currently required for the purchase of unrated securities. A security would be "investment grade" if the issuer of the security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. To meet this new standard, banks must determine that the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-13/html/2012-14169.htm>

The OCC published its proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-29/html/2011-30420.htm>

### Guidance on Evaluating Investment Securities

On June 13, 2012, the OCC published its final guidance for how banks are to determine whether securities are eligible for investment. This guidance is linked to the final rules changing the definition of investment security that was published today as well. This guidance requires banks to make evaluations of securities prior to investment and during the period of time where a bank holds the investment. This has to be part of a bank's risk culture. See the OCC's final guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-13/html/2012-14168.htm>

### Securities Firm Holding Companies

On June 4, 2012, the Fed issued its final rule on supervised securities holding company registration. The Dodd Frank Act permits nonbank companies that own at least one registered securities broker or dealer, and that are required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision, to apply to the Fed and subject themselves to supervision by the Fed. This final rule creates a new Regulation OO and sets forth the requirements for registration. The Fed proposed this rule in September and received only three comments. See the Fed's final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-04/html/2012-13311.htm>

See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/html/2011-22469.htm>

### Consumer Credit Ability to Repay Requirements

On June 5, 2012, the BCFP published a reopening of the comment period on a proposed amendment to Regulation Z that covers new ability-to-repay requirements that were added by the Dodd-Frank Act for transactions that are secured by a dwelling. The BCFP will be accepting additional comments until July 9, 2012. The Fed's original proposal may be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-05-11/html/2011-9766.htm>

The BCFP is interested in comments on potential litigation costs for banks, because a violation of the ability-to-repay requirement can be a defense to foreclosure actions. See the BCFP's request for comments at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-05/html/2012-13608.htm>

### Easing CTR filings for Bank Payroll Customers

On June 7, 2012, FinCEN published a final rule that would ease the requirement that banks file CTRs for customers that are "payroll customers" and use cash to pay employees. By changing one word in its rule, i.e., substituting the term "frequently" for "regularly," FinCEN will allow an exemption if a customer makes five cash payrolls during the course of a year. This will reduce the number of CTR filings that are not useful to law enforcement. There was not a proposed rule

issued in this case. Please see the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-07/html/2012-13781.htm>

### CTR filings by Court Clerks

On June 7, 2012, FinCEN published a final rule that would require Court Clerks to file a CTR whenever they receive over \$10000 in currency as bail for an individual charged with a crime. In the year 2010, FinCEN reports that Court Clerks filed roughly 7600 Tax notifications with the IRS for instances where cash over \$10000 was used for posting bail. No proposed rule was published in this instance. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-07/html/2012-13783.htm>

### Survey of Foreign Ownership of U.S. Securities

On June 7, 2012, the Treasury published a notice of its intent to conduct a survey of ownership of U.S. securities as of June 30, 2012. The New York Fed will contact entities required to report and if an entity is not so contacted, it has no reporting obligation. The report will obtain information on debt and equity securities held by nonresidents. See the notice published by the Treasury at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-07/html/2012-13853.htm>

### Policy on Conformance Period for Volcker Rule

On June 8, 2012, the Fed published a policy statement on how it intended to implement the requirements of the Volcker rule and confirmed that banking entities by statute have two years from July 21, 2012, to conform all of their activities and investments to the Volcker rule, unless that period is extended by the Fed. During the conformance period, banking entities should engage in good-faith planning efforts, appropriate for their activities and investments, to enable them to conform their activities and investments to the requirements of the Volcker Rule. Pursuant to section 13(c)(2) of the BHC Act, the Board may, by rule or order, extend the two-year conformance period provided in the Conformance Rule for not more than one year at a time, with a maximum of three one-year extensions. See the Fed's policy statement at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-08/html/2012-13937.htm>

### Swap Data Recordkeeping for Pre-enactment Swaps

On June 12, 2012, the CFTC published its final rule on swaps recordkeeping and reporting covering pre-enactment and transitional swaps. The Dodd-Frank Act directs that rules shall provide for the reporting of data relating to swaps entered into before the date of enactment of the Dodd-Frank Act, and data relating to swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the compliance date specified in the Commission's final swap data reporting rules. The CFTC had published an interim final rule back in October 2010, to require reporting of pre-enactment swaps. See this rule at:

<http://edocket.access.gpo.gov/2010/2010-25325.htm>

An interim final rule to require reporting of transitional swaps was published at:

<http://edocket.access.gpo.gov/2010/2010-31579.htm>

The new rule achieves the reporting benefits of Dodd-Frank while reducing the costs and burdens associated with recordkeeping for historical swaps. Recordkeeping requirements for these swaps are minimized for counterparties who are not swap dealers or major swap participants. These counterparties are permitted to maintain records in any format they choose, and are allowed five days to retrieve their records. See the CFTC's final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-12/html/2012-12531.htm>

### Complaints from Student Loan Borrowers

On June 14, 2012, the BCFP published a request for information about complaints about private education loans. Dodd-Frank created a Private Education Loan Ombudsman within the BCFP to among other things compile data on complaints on private education loans and make recommendations. The BCFP will accept information on these issues through August. See the detailed questions posed at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-14/html/2012-14588.htm>

### Statement on Compliance Dates for Security Based Swaps

On June 14, 2012, the SEC published a notice of its general policy on when the public has to comply with the welter of rules on security-based swaps. The Statement presents a sequencing of the compliance dates for these final rules by grouping the rules into five categories and describes the interconnectedness of the compliance dates for these rules, both within and among the five categories. This exercise is very confusing and even this effort to simplify things has 189 footnotes and poses dozens of questions for the industry to answer or discuss with the SEC. See the compliance information at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-14/html/2012-14576.htm>

### Making Swap Dealers Responsible for Acts of their Associated Persons

On June 15, 2012, the CFTC published a proposed rule to make it clear that a swap dealer or any other CFTC registrant is responsible for its associated persons and must supervise these APs. Dodd-Frank did not require these APs to register with the CFTC so this rule insures there is some level of oversight. This may be a reaction to the MF Global situation where the CFTC has found that it does not have jurisdiction over some of the senior executives at MF Global because they were not required to be registered with the CFTC. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-15/html/2012-14654.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.*