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June Second Half Developments

Overview

The OCC has published new lending limits rules to govern how derivatives, repos and stock lending transactions will be subject to lending limits. The FDIC has developed a very detailed and complicated rule to determine what is a financial company. The FDIC could be appointed as a receiver of such a company so this rule could be significant during a future market melt down. Much to the frustration and disappointment of the credit card industry, the BCFP is planning to publish a database of consumer complaints about credit cards. This project was challenged as not being authorized by law, but this objection was brushed aside and the public flogging of the credit card issuers will proceed. Banks can look forward to a complaint database for all other banking services as well. Most of the helpful data (i.e. how much did the bank pay to solve the complaint) will still be kept confidential.

Lending Limits on Derivatives, Repos and Securities Lending

On June 21, 2012, the OCC published an interim final rule with a request for comments on the amendments to its lending limits rules to include credit exposures arising from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions and securities borrowing transactions. The OCC is amending the lending limit rules to provide a temporary exception until January 1, 2013, in order to allow institutions a sufficient period to make adjustments to assure compliance with the new requirements. See the new rules at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-21/html/2012-15004.htm>

Definition of Predominately Engaged in Financial Activities

On June 18, 2012, the FDIC published a proposed rule to amend the definition of "financial activities" set forth in the FDIC's notice of proposed rulemaking published in the Federal Register on March 23, 2011 titled "Orderly Liquidation Authority." This rule proposed standards for determining if a company is predominantly engaged in financial activities for purposes of Title II of the Dodd-Frank Act. Title II of the Dodd-Frank Act provides for the appointment of

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the FDIC as receiver of a covered financial company following the prescribed recommendation, determination, and, if applicable, judicial review process set forth in the Act. Title II outlines the process for the orderly liquidation of such a covered financial company following the FDIC's appointment as receiver. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-18/html/2012-14701.htm>

Gathering Information on Financial Literacy of Old People

On June 19, 2012 the BCFP published a notice that it is gathering information about how older Americans are protected from fraud and unfair financial services. Within the BCFP there is an Office of Financial Protection of Older Americans to protection against fraudulent and deceptive practices used against old folks. To this end the BCFP is posing a number of questions on how elderly persons are using the financial system and where they may be experiencing fraud or deceit. See the full range of questions at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-19/html/2012-14854.htm>

Core Principles for Designated Contract Markets

On June 19, 2012 the CFTC published its final rule on changes mandated by the Dodd-Frank Act. The final rules, guidance and acceptable practices, which apply to the designation and operation of contract markets, implement the Dodd-Frank Act's new statutory framework that, among other things, covers the designation and operation of contract markets, and mandates the listing, trading and execution of certain swaps on designated contract markets. A critical element is pre-trade transparency--requiring standardized swaps between financial firms--those that are cleared, made available for trading and not blocks--to be traded on exchanges. This is one of the CFTC's major rules and can be seen at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-19/html/2012-12746.htm>

This rule was the subject of a number of proposed rules that can be found at:

<http://edocket.access.gpo.gov/2010/2010-31458.htm>; <http://edocket.access.gpo.gov/2011/2010-32358.htm> and <http://www.gpo.gov/fdsys/pkg/FR-2011-12-14/html/2011-31646.htm>

Publication of Consumer Complaints about Credit Cards

On June 22, 2012, the BCFP published its final rules on publishing complaints about credit cards. These disclosures are intended to help provide consumers with "timely and understandable information to make responsible decisions about financial transactions" and to enhance the credit card market's ability to "operate transparently and efficiently." Several trade associations commented that the Dodd-Frank Act does not authorize the Bureau to create the proposed public consumer complaint database. The final policy statement may be seen at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-22/html/2012-15163.htm>

Publication of Consumer Complaints about Financial Services

On June 22, 2012, the BCFP published a proposed policy statement on the disclosure of data about consumer complaints about financial services, other than credit cards. The BCFP has a complaint system in place to cover loans, mortgages, check cashing and remittance services. By the end of 2012 they expect to cover everything within their jurisdiction. The BCFP intends to use the same system for publishing credit card complaints for these other financial products. See the proposed notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-22/html/2012-15161.htm>

FDIC Maximum Obligation Limit for Failed Non-bank Companies

On June 22, 2012 the FDIC published its final rules governing the calculation of the maximum obligation limitation that limits the aggregate amount of outstanding obligations that the FDIC may issue or incur in connection with the orderly liquidation of a covered financial company. Under the Dodd-Frank Act, the FDIC may be appointed a receiver for a financial company under a limited exception to the bankruptcy laws in order to protect the U.S. economy. As part of this duty, the FDIC may borrow funds from the Treasury and this rule sets forth the amounts that the FDIC may borrow. The FDIC may not issue obligations in connection with the orderly liquidation of a financial company if such obligations would exceed 10% of the total consolidated assets of the financial company or 90% of the fair value assets available for repayment. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-22/html/2012-15310.htm>

The proposed rule was published at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-25/html/2011-29993.htm>

OFAC Report on Closed Correspondent Accounts

On June 26, 2012, OFAC published a notice and request for comments on its requirement that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution whose name is added to the Part 561 List on OFAC's Web site as subject to a prohibition on the maintaining of such accounts must file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. OFAC wants to receive comments on the efficacy of this reporting requirement. The notice may be viewed in its entirety at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-26/html/2012-15495.htm>

Government Sponsored Contest to Develop Banking Apps

In a world where millions of apps are developed through the efforts of private industry, the U.S. government announced on June 26, 2012, that it is sponsoring a contest to develop banking apps for mobile devices that will increase financial access. The grand prize? \$1000. See the convoluted rules for this contest at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-26/html/2012-15583.htm>

Block Trading Rules

On June 27, 2012, the CFTC published proposed rules that would prohibit the aggregation of orders for different trading accounts in order to satisfy the minimum block size or cap size requirements; provide that parties to a block trade must individually qualify as eligible contract participants and require that persons transacting block trades on behalf of customers must receive prior written instructions. See the CFTC's proposed rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-06-27/html/2012-15481.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.