

CONNELL & ANDERSEN LLP
545 FIFTH AVENUE
NEW YORK, NEW YORK 10017

WILLIAM F. CONNELL
ROY C. ANDERSEN

TELEPHONE: (212) 687-6900
FACSIMILE: (212) 687-6999
randersen@connellandersen.com

OF COUNSEL
GEORGE A. SCHNEIDER
LUCA CANTELLI

June First Half Developments

Overview

The Fed has issued an interim final rule that grants the long expected relief to the uninsured branches and agencies of foreign banks from the possibility of losing access to the discount window and to other federal support because of swaps activities. The Fed will treat such foreign bank offices in the same manner as other insured depository institutions. The CFTC finalized two rules dealing with swap execution requirements and the process that swap facilities will have to undertake in order to clear and process certain swap transactions. The noose was tightened on foreign banks that have continued to do business with Iran and in particular in trading in its currency.

Fed Prohibition on Federal Assistance to Swaps Entities

On June 10, 2013, the Fed published an interim final rule (Regulation KK) 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 and 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 section 716. See the interim final rule at:

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

Presidential Executive Order re Iranian Sanctions on Rial and other transactions

On June 5, 2013, the President published an order imposing additional sanctions on Iran including sanctions on a foreign bank that has knowingly conducted or facilitated any significant transaction related to the purchase or sale of Iranian rials or a derivative, swap, future, forward, or other similar contract whose value is based on the exchange rate of the Iranian rial; or (ii) maintained significant funds or accounts outside the territory of Iran denominated in the Iranian rial. The sanctions may include: prohibiting a US correspondent account or blocking property in the US. These sanctions may be imposed on foreign banks or other persons that do business with persons on the SDN list. See the Order at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-05/html/2013-13523.htm>

C:\Users\WFC\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\0QPXCKBY\June First Half Developments (6-20-13).docx

Swap Execution Facilities Core Principles

On June 4, 2013, the CFTC published its final rule to apply to the registration and operation of a new type of regulated entity named a swap execution facility ("SEFs") and add anew section 2(h)(8) to the CEA concerning the execution of swaps on SEFs. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/html/2013-12242.htm>

Proposed: <http://edocket.access.gpo.gov/2011/2010-32358.htm>

Swap Process for Trade Execution Requirements

On June 4, 2013, the CFTC published its final rule to establish a process for a designated contract market ("DCM") or swap execution facility ("SEF") to make a swap subject to the trade execution requirement pursuant to the Commodity Exchange Act ("CEA"). The Commission is also adopting regulations to establish a schedule to phase in compliance with the trade execution requirement. This proposal will bring transparency to the process for making a swap available to trade. It also will provide appropriate oversight of the process through Commodity Futures Trading Commission review. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/html/2013-12250.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-14/html/2011-31646.htm>

Continuation of Information Collection regarding Banco Delta Asia

On June 5, 2013, FinCEN published notice that it intends to continue the special measures imposed on Banco Delta Asia and its affiliates in 2007. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-05/html/2013-13323.htm>

FinCEN Special Measures against Liberty Reserve

On June 6, 2013, FinCEN published proposed rules and a notice that would determine that Liberty Reserve is a financial institution operating outside of the United States that is of primary money laundering concern. FinCEN is issuing this notice of proposed rulemaking (NPRM) to propose the imposition of a special measure against Liberty Reserve. See FinCEN's notice and proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-06/html/2013-12945.htm>

Notice of Findings: <http://www.gpo.gov/fdsys/pkg/FR-2013-06-06/html/2013-12944.htm>

FDIC Definition of Activities that are Financial in Nature or Incidental

On June 10, 2013, the FDIC published its final rule that establishes criteria for determining if a company is predominantly engaged in "activities that are financial in nature or incidental thereto" for purposes of Title II of the Dodd-Frank Act. A company that is predominantly

engaged in such activities is a "financial company" for purposes of Title II of the Act ("Title II") unless it is one of the few entities specifically excepted by the Act. A financial company, other than an insured depository institution, may be subject to Title II's orderly liquidation authority if, among other things, it is determined that the failure of the company and its resolution under otherwise applicable law would have serious adverse effects on financial stability in the United States. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-10/html/2013-13595.htm>

Proposed: <http://edocket.access.gpo.gov/2011/2011-6705.htm>

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

Truth in Lending Ability to Repay Mortgage Loans and Qualified Mortgages

On June 12, 2013, the BCFP published its final rule under Regulation Z with regard to a borrower's ability to repay and the criterion for determining what constitutes a qualified mortgage. Regulation Z generally prohibits a creditor from making a mortgage loan unless the creditor determines that the consumer will have the ability to repay the loan. The final rule provides an exemption to these requirements for creditors with certain designations, loans pursuant to certain programs, certain nonprofit creditors, and mortgage loans made in connection with certain Federal emergency economic stabilization programs. The final rule also provides an additional definition of a qualified mortgage for certain loans made and held in portfolio by small creditors and a temporary definition of a qualified mortgage for balloon loans. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-12/html/2013-13173.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-01-30/html/2013-00739.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.