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June Second Half Developments

Overview

The SEC has issued its proposals to amend the rules on money market funds, including the controversial rule with regard to “breaking the buck” and having funds pay back holders at the actual net asset value of the funds instead of trying to maintain the fiction that the funds have a NAV of \$1. Of course, from the consumer’s prospective, the \$1 NAV fund was one of the comforting investments that could have been made over the last decades and such funds were the linchpin for such investment ideas as the Cash Management Account at Merrill Lynch, among other innovations. The simplicity of such an innovation was a key to its success. The OCC has published a final rule on lending limits. For most foreign banks, lending limits issues are academic because of the ability to use a parent bank’s capital for lending limits purposes, but the OCC rule will require that bank’s use lending limits tests across a broader spectrum of asset classes than previously.

Money Market Fund Reform

On June 19, 2013, the SEC published two alternative proposed rules for changes to the regulation of money market mutual funds. The first alternative proposal would require money market funds to sell and redeem shares based on the current market-based value of the securities in their underlying portfolios, rounded to the fourth decimal place (e.g., \$1.0000), i.e., transact at a “floating” net asset value per share (“NAV”). The second alternative proposal would require money market funds to impose a liquidity fee (unless the fund’s board determines that it is not in the best interest of the fund) if a fund’s liquidity levels fell below a specified threshold and would permit the funds to suspend redemptions temporarily. The SEC stated it could adopt either alternative by itself or a combination of the two alternatives. See the proposed rules at: <http://www.gpo.gov/fdsys/pkg/FR-2013-06-19/html/2013-13687.htm>

Lending Limits on Derivatives and Securities Lending Transactions

On June 25, 2013, the OCC published its final rule to amend its rules regarding lending limits. The OCC had published an interim final rule that it is now finalizing along with a variety of changes. The most difficult element to the new rules deals with financing of derivatives

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transactions. Section 610 of the Dodd-Frank Act amends section 5200 of the Revised Statutes to provide that the definition of "loans and extensions of credit" includes any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a national bank and that person. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-25/html/2013-15174.htm>

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

General OFAC License for Syria Transactions

On June 25, 2013, OFAC published a General License relating to the Syrian Sanctions programs. The License among other things allows: U.S. depository institutions are authorized to process transfers of funds on behalf of U.S. or third-country non-governmental organizations to or from Syria in support of activities that are to benefit Syrians through humanitarian projects, build democracy, support education, support health and preserve cultural sites, provided generally that, the transfer is not by, to, or through the Government of Syria or any other person whose property and interests in property are blocked. See the license at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-25/html/2013-15048.htm>

Loan Participations for Credit Unions

On June 25, 2013, the NCUA published a final rule regarding Credit Union use of loan participations. The amendments reorganize the loan participation rule and focus on the purchase side of loan participation transactions. The amendments make it easier to understand NCUA's regulatory requirements for loan participations. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-25/html/2013-15178.htm>

Technical Amendments to OFAC's Counter Terrorism rules

On June 27, 2013, OFAC published amendments to its counter terrorism rules to clarify the scope of prohibitions on the making of donations contained in the underlying Executive orders and that a person whose property and interests in property are blocked pursuant to those programs has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. See the final rules at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-27/html/2013-15424.htm>

Swap Recordkeeping Legal Entity Identifiers

The CFTC on June 28, 2013, published an order that expanded the list of Legal Entity Identifiers (LEIs) that can be used by registered entities and swap counterparties in complying with CFTC's swap data reporting regulations. A number of international agencies are now issuing legal entity identifiers for use by swap parties. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-28/html/2013-15477.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.