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

March Second Half Developments

Overview

The banking agencies have published new guidance on conducting leveraged lending activities. Because such "guidance" does not take the form of a regulation that has the effect of law, the regulators add muscle by threatening the accusation of unsafe or unsound practices at those banks that do not follow the guidance. One of the problems with such guidance is how does it apply to institutions that are not the leaders in this industry but do engage in leveraged lending. The answer is unfortunately a vague standard that the rules need to be "tailored" to the size and scope of a particular institution's activities. Just as in the fashion industry, "tailoring" is in the eye of the beholder and in this case it is the regulatory authorities who by observing standards at leading banks will soon "up the ante" at the smaller banks. This continuing trend to supply "guidance" whether needed or not and then require compliance with the guidance greatly increases the cost and complexity of being in the banking business with fewer benefits to the regulated entities and of course less money to lend and use productively. The agencies believe that only 75 institutions will be affected by these new requirements—if so, maybe the question to ask is: why bother? The OCC thinks that banks will have to spend 3000 hours in the first year to comply and 1700 hours per year thereafter—basically a new hire to comply with this "guidance."

Guidance on Leveraged Lending

On March 22, 2013, the banking agencies published their final guidance on leveraged lending. This guidance outlines for agency-supervised institutions high-level principles related to safe-and-sound leveraged lending activities, including underwriting considerations, assessing and documenting enterprise value, risk management expectations for credits awaiting distribution, stress-testing expectations, pipeline portfolio management, and risk management expectations for exposures held by the institution. See the final guidance at:
http://www.gpo.gov/fdsys/pkg/FR-2013-03-22/html/2013-06567.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2012-03-30/html/2012-7620.htm

Community Reinvestment Act Q&A

On March 18, 2013, the banking agencies published proposed new answers to certain questions under the Community Reinvestment Act. The Agencies propose to revise five questions and

answers, which address (i) community development activities outside institutions' assessment areas, both in the broader statewide or regional area and in nationwide funds; (ii) additional ways to determine whether recipients of community services are low- or moderate-income; and (iii) providing a community development service by serving on the board of directors of a community development organization. See the new answers at:
http://www.gpo.gov/fdsys/pkg/FR-2013-03-18/html/2013-06075.htm

Credit Unions Ownership of Fixed Assets

On March 20, 2013, the NCUA published a proposed rule to update and clarify and simplify its proposed rules on ownership of fixed assets. In general, an FCU may only invest in property it intends to use to transact credit union business or in property that supports its internal operations or serves its members. NCUA's fixed assets rule: (1) Limits FCU investments in fixed assets; (2) establishes occupancy, planning, and disposal requirements for acquired and abandoned premises; and (3) prohibits certain transactions. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-03-20/html/2013-06352.htm

SEC Regulation SCI for Clearing Agencies

On March 25, 2013, the SEC published its proposed rule to require certain trading and clearing agencies to operate their automated systems pursuant to SEC rules. This would apply to certain self-regulatory organizations (including registered clearing agencies), alternative trading systems plan processors, and exempt clearing agencies subject to the Commission's Automation Review Policy (collectively, ``SCI entities''). This rule would replace the SEC's Automation Review Policy established by the Commission's two policy statements, each titled ``Automated Systems of Self-Regulatory Organizations,'' issued in 1989 and 1991. Regulation SCI would require SCI entities to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in the manner intended. It would also require SCI entities to mandate participation by designated members or participants in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-03-25/html/2013-05888.htm

Disclosures at ATMs

On March 26, 2013, the BCFP published its final rule regarding disclosures at ATMs. In December, 2012, new legislation was enacted that eliminated the requirement that a fee notice be posted at an ATM, but leaving the requirement that the notice of such fee appear on the screen. The BCFP is issuing a final rule reflecting this change in legislation. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-03-26/html/2013-06861.htm

Credit Card Fees

On March 28, 2013, the BCFP published its final rule on limits on the fees that credit card issuers may charge to cardholders. This final rule limits such fees to 25% of the credit limit of the applicable card but only for the first year after account opening. The Fed's prior rule had extended this fee limit to include fees payable prior to the opening of the account. First Premier Bank sued the Fed and obtained an injunction on the effectiveness of the Fed's rule. In part to end the uncertainty caused by the litigation, the BCFP proposed returning the fee limits to the first year after account opening. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-03-28/html/2013-07066.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2012-04-12/html/2012-8534.htm

Proposed Regulation of Large Student Loan Servicers

On March 28, 2013, the BCFP published its proposed rule on defining larger student loan servicers for the purpose of regulating such servicers. The BCFP has the authority under Dodd-Frank to regulate the larger participants in markets for certain consumer financial products. On December 17, 2012, the Bureau released procedures specific to education lending and servicing for use in the Bureau's examinations. If this Proposed Rule is adopted, the Bureau also plans to use those examination procedures in supervising nonbank larger participants of the student loan servicing market. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-03-28/html/2013-06291.htm