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May First Half Developments

Overview

The governmental hue and cry over the \$2 billion plus loss at J.P. Morgan makes the case for allowing certain institutions to take deposits from the public without also having to have federal deposit insurance. The fact that banks must obtain deposit insurance to go into business and then have that be the rationale for subjecting them to all manner of regulatory requirements perhaps should be reexamined. For all the disclosure we have today, should it not be possible to let risk lovers deposit their money with uninsured banks. Most of the big deposits are uninsured anyway given the \$250,000 cap. One of the few things this country does better than the rest of the world is banking. Our banks are disproportionately smarter and more sophisticated than their peers despite our government's best efforts to drive people out of the business. It is a great country we live in when an anonymous banker (to me at least) can rake in \$15 million a year, which was well earned given the hundreds of millions she added to the bottom line for many years. If we did not have the insurance nexus and now the federal safety net perhaps banks could go back to taking risks and minting money, at least for their employees.

Presidential Order on Transactions with Evaders of Iran Sanctions

On May 3, 2012, President Obama published an executive order directed at parties that intend to evade the sanctions that the U.S. has imposed on doing business with Iran and Syria. Thus, with regard to any party that the Treasury finds has violated or conspired to violate certain Executive Orders about Iran or Syria or has facilitated any deceptive transactions, the Treasury may prohibit all transactions with such person including trading or financing any goods for sale to U.S. persons. See the Order at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-03/html/2012-10884.htm>

Confidentiality of Swap Data Repository ("SDR") Information

On May 7, 2012, the CFTC published a proposed interpretation to explain the new confidentiality and indemnification provisions added by the Dodd-Frank Act. The proposed interpretative statement clarifies that the Dodd-Frank Act should not operate to inhibit or prevent

foreign regulatory authorities from accessing data in which they have an independent and sufficient regulatory interest, even if that data also has been reported pursuant to the CFTC regulations. The proposed guidance states that foreign regulators will not be subject to the indemnification provisions in the Dodd-Frank Act if the SDR is registered, recognized or otherwise authorized by foreign law and the data to be accessed is reported to the SDR pursuant to foreign law. See the proposed guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-07/html/2012-10918.htm>

Broker Financial Requirements

On May 9, 2012 the SEC published notice that it was reopening comments on a proposed rule that has sat since 2007. The SEC is now reconsidering that rule which would address several areas of concern regarding the financial requirements for broker-dealers by proposing amendments to the Commission's net capital, customer protection, books and records, and notification rules for broker-dealers under the Exchange Act. See the SEC's notice on comments at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-09/html/2012-11133.htm>

Effective Date for Prohibiting Federal Help to Swaps Entity

On May 10, 2012, the banking agencies published joint guidance on when the Dodd-Frank provisions that prohibit the provision of Federal assistance to any entity defined to be a swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity "Federal assistance" is defined for these purposes as the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program with broad-based eligibility. These restrictions will become effective on July 16, 2013. There still might be a transition period for banking organizations. See the guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-10/html/2012-11326.htm>

Extended Comment Period on Enhanced Customer Due Diligence

On May 10, 2012, FinCEN published notice that it will accept comments on its concept for enhanced due diligence on customers until June 11, 2012. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-10/html/2012-11227.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.