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May Second Half Developments

Overview

The SEC has published its proposed rules for cross border security-based swaps. These rules have an important element for foreign banks that should also find its way into the rules of the CFTC which would allow foreign companies to abide by their home country rules so long as the US finds those rules to be comprehensive enough. The BCFP published its final rule on remittances under Regulation E. The welter of proposals and amendments to these rules makes it important to have a restatement of the rule in one place.

Electronic Funds Transfers and Remittances

On May 22, 2013, the BCFP published its final rule on remittance transfers. The rule is effective on October 28, 2013. This Rule modifies the 2012 Final Rule to make optional, in certain circumstances, the requirement to disclose fees imposed by a designated recipient's institution. The Rule also makes optional the requirement to disclose taxes collected by a person other than the remittance transfer provider. In place of these two former requirements, the Rule requires disclaimers to be added to the rule's disclosures indicating that the recipient may receive less than the disclosed total due to the fees and taxes for which disclosure is now optional. Finally, the Rule revises the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information, and, in particular, when a sender provides an incorrect account number or recipient institution identifier that results in the transferred funds being deposited in the wrong account.

See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-22/html/2013-10604.htm>

Continuation of National Emergency with Iraq

On May 21, 2013, the President published notice that the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Thus, the President is continuing for 1 year the national emergency with respect to the stabilization of Iraq declared in Executive Order 13303. See the notice at:

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<http://www.gpo.gov/fdsys/pkg/FR-2013-05-21/html/2013-12261.htm>

Amendments to the Escrows for High Priced Mortgages in Regulation Z

On May 23, 2013, the BCFP published its final rules to amend its final rules that were published on January 10, 2013, to lengthen the time for which a mandatory escrow account established for a higher-priced mortgage loan (HPML) must be maintained. The rule also established an exemption from the escrow requirement for certain creditors that operate predominantly in ``rural" or ``underserved" areas. The Bureau is posting on its public Web site a final list of rural and underserved counties. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-23/html/2013-12125.htm>

Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR

On May 23, 2013, the SEC published its Cross-Border Security-Based Swap Activities in its Regulation SBSR. The proposed rules and interpretive guidance address the application of Subtitle B of Title VII of the Dodd-Frank Act with respect to each of the major registration categories covered by Title VII relating to market intermediaries, participants, and infrastructures for security-based swaps, and certain transaction-related requirements under Title VII in connection with reporting and dissemination, clearing, and trade execution for security-based swaps. The proposal also contains a proposed rule providing an exception from the aggregation requirement, in the context of the security-based swap dealer definition, for affiliated groups with a registered security-based swap dealer. The Commission is proposing rules and interpretive guidance addressing the policy and procedural framework under which the Commission would consider permitting compliance with comparable regulatory requirements in a foreign jurisdiction to substitute for compliance with requirements of the Exchange Act, and the rules and regulations thereunder, relating to security-based swaps (i.e., ``substituted compliance"). See the proposed items at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-23/html/2013-10835.htm>

New Comment Period for SEC Rule SCI

On May 23, 2013, the SEC published a new comment period for its Regulation SCI. Proposed Regulation SCI would apply to certain self-regulatory organizations (including registered clearing agencies), alternative trading systems (``ATs"), plan processors, and exempt clearing agencies subject to the Commission's Automation Review Policy (collectively, ``SCI entities"), and would require these SCI entities to comply with requirements with respect to their automated systems that support the performance of their regulated activities. See the notice of the extended comment period at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-23/html/2013-12289.htm>

New Comment Periods for Security-based Swaps

On May 23, 2013, the SEC published reopened comments periods for a variety of rulemakings that concern security-based swaps and SB swap market participants. The reopening of these comment periods is intended to allow interested persons additional time to analyze and comment upon the Proposed Rules and the Policy Statement in light of the Commission's proposal of substantially all of the rules required to be adopted by Title VII of the Dodd-Frank Act. At least 12 proposed rules have been opened for comments again. See the list of rules that comments may be submitted on at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-23/html/2013-10836.htm>

CFTC Disruptive Trading Practices Guidance and Policy

On May 28, 2013, the CFTC published its new guidance and policy on its authority to prevent certain trading activities. The Dodd-Frank Act prohibits certain disruptive trading, practices, or conduct as set forth in new section 4c(a)(5) of the Commodity Exchange Act. This interpretive statement will provide market participants and the public with guidance on the scope and application of the statutory prohibitions set forth in CEA section 4c(a)(5). Prohibited trading: (A) violates bids or offers; (B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or (C) is, is of the character of, or is commonly known to the trade as, ``spoofing" (bidding or offering with the intent to cancel the bid or offer before execution). See the guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-28/html/2013-12365.htm>

Proposed: <http://edocket.access.gpo.gov/2011/2011-6398.htm>

FFIEC Policy Statements on Appraisers Activities

On May 28, 2013, the FFIEC published new policy statements to govern appraiser regulatory programs. The a subcommittee of the FFIEC monitors requirements established by the States for certification and licensing of individuals qualified to perform appraisals in connection with federally related transactions, including codes of professional responsibility, and also maintains the National Registry of State certified and licensed appraisers. These policies are largely for states to use in creating their appraiser regulatory schemes. See the extensive new policies at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-28/html/2013-12551.htm>

Treasury List of Countries Requiring Cooperation with a Boycott

On May 28, 2013, the Treasury published its list of Countries Requiring Cooperation with a Boycott. These countries are: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen. See the list at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-28/html/2013-12415.htm>

Credit Unions Derivatives for Hedging Interest Rate Risk

On May 29, 2013, the NCUA published a proposed rule to allow CUs to engage in limited derivatives activities for the purpose of mitigating interest rate risk. This proposed rule applies to federal credit unions and any federally insured, state-chartered credit unions that are permitted under applicable state law to engage in derivatives transactions. It requires any credit union seeking derivatives authority to submit an application for one of two levels of authority. Level I and Level II authority differ on the permissible levels of transactions as well as the application, expertise, and systems requirements associated with operating a derivatives program. See the proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-29/html/2013-12638.htm>

Delay in Effect of Financing Credit Insurance Premiums under Regulation Z

On May 31, 2013, the BCFP published its final rule under the Loan Originator compensation requirements. The BCFP is issuing a final rule delaying the June 1, 2013, effective date of a prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling. The Bureau is delaying the effective date until January 10, 2014. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-31/html/2013-13023.htm>

Procedures for Minimum Block Sizes for Certain Off-facility Swaps & Confidentiality

On May 31, 2013, the CFTC published its final rules that define the criteria for grouping swaps into separate swap categories and establish methodologies for setting appropriate minimum block sizes for each swap category. In addition, the Commission is adopting further measures under the Commission's regulations to prevent the public disclosure of the identities, business transactions and market positions of swaps market participants. See the final rules at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-31/html/2013-12133.htm>

Proposed: <http://edocket.access.gpo.gov/2010/2010-29994.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.