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May First Half Developments

Overview

The banking agencies have published 3 rules that would change somewhat the new leverage ratio calculations and add to the leverage buffers for the huge banks. The rules adopted in final form during 2013 on leverage needed some tweaks to pick up certain exposures that were not thought through on the first go-round. These only apply to the banks that are using the advanced approaches and thus not might apply to many banking organizations. OFAC has issued entirely new rules on Syria and Ukraine—kudos to them for reprinting the entire rule when they make changes for ease of reference for interpreters. The BCFP could take a page out of OFAC's book and do the same thing with the crazy continuous revisions to the mortgage rules. If any bank would ever consider entering that market, the new rules will certainly dissuade them. Soon we will have only a handful of huge banks making first mortgage home loans—once the staple of hometown banks. Even the Fed recently stated that small banks are really the support for small businesses and not for home finance. The BCFP has done at least one thing right by proposing to change the useless exercise of sending consumers annual privacy notices—I save a few to have models—but I guess these notices are among the most unread pieces of junk mail ever distributed.

Regulatory Capital and Enhanced Leverage Ratios

On May 1, 2014, the banking agencies published a final rule to strengthen the agencies' supplementary leverage ratio standards for large, interconnected U.S. banking organizations. This rule is not effective until 2018. The final rule applies to any U.S. top-tier bank holding company (BHC) with more than \$700 billion in total consolidated assets. Under the final rule, an IDI that is a subsidiary of a covered BHC must maintain a supplementary leverage ratio of at least 6 percent to be well capitalized under the agencies' prompt corrective action (PCA) framework. The Board also is adopting in the final rule a supplementary leverage ratio buffer (leverage buffer) for covered BHCs of 2 percent above the minimum supplementary leverage ratio requirement of 3 percent. The leverage buffer functions like the capital conservation buffer for the risk-based capital ratios in the 2013 revised capital rule. See the agencies' final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-01/html/2014-09367.htm>
Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-20/html/2013-20143.htm>

Regulatory Capital and Eligible Guarantees

On May 1, 2014, the banking agencies published a proposed rule to revise the definition of eligible guarantee as incorporated into the agencies' advanced approaches risk-based capital rule, adopted in the agencies' July 2013 regulatory capital rule. The proposed rule would remove the requirement that an eligible guarantee be made by an eligible guarantor for purposes of calculating the risk-weighted assets of an exposure (other than a securitization exposure) under the advanced approaches. The agencies inadvertently limited the recognition of guarantees of wholesale exposures. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-01/html/2014-09452.htm>

Regulatory Capital and Leverage Ratios

On May 1, 2014, the banking agencies published a proposed rule to revise the denominator of the supplementary leverage ratio (total leverage exposure) that the agencies adopted in July 2013 as part of comprehensive revisions to the agencies' regulatory capital rules (2013 revised capital rule). Specifically, the proposed rule would revise the treatment of on- and off-balance sheet exposures for purposes of determining total leverage exposure, and more closely align the agencies' rules on the calculation of total leverage exposure with international leverage ratio standards. The proposed rule would incorporate in total leverage exposure the effective notional principal amount of credit derivatives. The proposed rule would apply to organizations that are subject to the agencies' advanced approaches risk-based capital rules. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-01/html/2014-09357.htm>

Chartering and Common Bond Requirements for Credit Unions

On May 1, 2014, the NCUA published a proposed rule to establish a threshold requirement that an association not be formed primarily for the purpose of expanding credit union membership. The amendments also expand the criteria in the totality of the circumstances test, which is used to determine if an association, which satisfies the threshold requirement, also satisfies the associational common bond requirements. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-01/html/2014-09812.htm>

Syria Sanctions

On May 2, 2014, OFAC published a final rule to amend the Syrian sanctions rules and reissue them completely. OFAC is also incorporating into the Regulations several new general licenses, some of which have, until now, appeared only on OFAC's Web site on the Syria sanctions page. Finally, OFAC is updating certain provisions of the Regulations and making other technical and conforming changes. See the final sanctions rules at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-02/html/2014-09998.htm>

Recordkeeping and Reporting Requirements for Security Based Swaps

On May 2, 2014, the SEC published a proposed rule to require recordkeeping, reporting, and notification requirements applicable to security-based swap dealers and major security-based swap participants, securities count requirements applicable to certain security-based swap dealers, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities. See the proposed rule at: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-02/html/2014-09108.htm>

Mortgage Rules under Truth in Lending

On May 6, 2014, the BCFP published a proposed rule to amend the mortgage rules that they just promulgated in 2013. The proposed rule would provide an alternative small servicer definition for nonprofit entities that meet certain requirements, amend the existing exemption from the ability-to-repay rule for nonprofit entities that meet certain requirements, and provide a limited cure mechanism for the points and fees limit that applies to qualified mortgages. If you are interested in how complicated it is for the industry to understand the mortgage rules here is the BCFP's summary of the rule making process: on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725 (Jan. 22, 2013) (2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6855 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (January 2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the January 2013 ATR Final Rule, which was finalized on May 29, 2013. See 78 FR 6621 (Jan. 30, 2013) (January 2013 ATR Proposal) and 78 FR 35429 (June 12, 2013) (May 2013 ATR Final Rule). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Feb. 14, 2013) (Regulation Z) and 78 FR 10695 (Feb. 14, 2013) (Regulation X) (2013 Mortgage Servicing Final Rules). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z), 78 FR 10367 (Feb. 13, 2013) (2013 Interagency Appraisals Final Rule). On January 20, 2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013) (2013 Loan Originator Final Rule). See the proposed new rules at: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-06/html/2014-10207.htm>

Ukraine Sanctions

On May 8, 2014, OFAC published a final rule to issue regulations to implement the President's order of March 6, 2014 blocking property of certain persons involved with the situation in

Ukraine. OFAC is issuing a new Part 589 that is similar in many respects to the blocking rules applicable to other countries. See the new regulations at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-08/html/2014-10576.htm>

President's Order on Syria

On May 9, 2014, the President published an order continuing the national emergency with respect to Syria. The order makes reference to the use of chemical weapons and support of terrorists. This emergency will be continued for another year. See the President's order at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-09/html/2014-10855.htm>

Protecting Customer Funds at FCMs and Derivatives Companies

On May 12, 2014, the CFTC published corrections to its final rule published on November 14, 2013. These changes only affect the Appendix and the final rule stays untouched. The changes relate to the bankruptcy of the customer of the FCM or clearing organization. See the amendment at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/html/2014-10650.htm>

Privacy Notices for Consumers

On May 13, 2014, the BCFP published a proposed rule that would create an alternative delivery method for this annual disclosure. Banks have complained that the annual disclosure that many banks mail to customers causes information overload for customers and is too costly.

The CFPB is allowing banks to stop sending the annual notice if: stop mailing an annual disclosure if they post the annual notices on their Web sites and meet certain other conditions. Specifically, the proposal would allow financial institutions to use the proposed alternative delivery method for annual privacy notices if: (1) The financial institution does not share the customer's nonpublic personal information with nonaffiliated third parties in a manner that triggers GLBA opt-out rights; (2) the financial institution does not include on its annual privacy notice an opt-out notice under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (FCRA); (3) the financial institution's annual privacy notice is not the only notice provided to satisfy the requirements of section 624 of the FCRA; (4) the information included in the privacy notice has not changed since the customer received the previous notice; and (5) the financial institution uses the model form provided in the GLBA's implementing Regulation P. See the BCFP's proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-13/html/2014-10713.htm>

President's Order on Yemen

On May 14, 2014, the President published an order continuing the national emergency with

respect to Yemen. This emergency will be continued for another year. See the President's order at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-14/html/2014-11261.htm>

Concentration Limits at Large Financial Companies

On May 15, 2014, the Fed published a proposed rule (Regulation XX) to establish a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies as calculated under that section. In addition, the proposal would establish reporting requirements for certain financial companies that are necessary to implement section 622. This implements section 14 of the Bank Holding Company Act that was added by Dodd-Frank. See the Fed's proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-15/html/2014-10956.htm>

President's Order on the Central African Republic

On May 15, 2014, the President published an order blocking property of persons contributing to the conflict in the CAR. This order freezes property in the U.S. of certain named persons and persons identified by the Treasury Secretary and the Secretary of State. See the order at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-15/html/2014-11442.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.