

**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

November First Half Developments

Overview

OFAC has published changes to its Iranian Financial Sanctions Regulations by adding new sanctions. The Financial Sanctions make it more difficult to provide banking services to aid certain aspects of Iran's business. The CFTC has published a final rule on the various changes to its regulations that incorporate swaps activities. Most helpfully, the CFTC will publish a redline on its web site that will show all the additions and deletions that have been made to incorporate swap activities; this might be a useful item to keep handy. In addition, the CFTC has proposed rules to protect customers of FCMs and create requirements for supervision and capital for regulated entities. The OCC has published a policy on how it will create stress testing scenarios for banks and a timetable for implementation.

Adaptions of Commodities Regulations to Incorporate Swaps

On November 2, 2012, the CFTC published a final rule to incorporate its numerous new rules into a harmonious whole. The Commission has proposed and finalized numerous rules to satisfy its obligations under the Dodd-Frank Act. This rulemaking makes a number of conforming amendments to integrate the CFTC's regulations more fully with the new framework created by the Dodd-Frank Act. To aid the public in understanding the numerous changes to different parts of the CFTC's regulations adopted by this release, the Commission will also publish on its Web site a ``redline" of the affected regulations. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-02/html/2012-25764.htm>

The proposed rule may be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-06-07/html/2011-12270.htm>

SEC final rule re Clearing Agency Regulation

On November 2, 2012, the SEC published its final rule on the regulation of clearing agencies. The new rule establishes minimum requirements regarding how registered clearing agencies must maintain effective risk management procedures and controls as well as meet the statutory

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requirements under the Exchange Act on an ongoing basis. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-02/html/2012-26407.htm>  
The proposed rule may be found at: 76 FR 14472 (Mar. 16, 2011)

### Reserves Requirements Delay in Simplification

On November 5, 2012, the Fed published notice that it is going to delay the effective date of its final rule on administering the reserves program that would: 1. Create a common two-week maintenance period for all depository institutions; 2. Create a penalty-free band around reserve balance requirements in place of using carryover and routine penalty waivers; 3. Discontinue as-of adjustments related to deposit report revisions and replace all other as-of adjustments with direct compensation; and 4. Eliminate the contractual clearing balance program. The Board is delaying until June 27, 2013, the January 24, 2013, date to allow the Federal Reserve to further develop and test the automated systems necessary to support the common two-week maintenance period, the penalty-free band, and the elimination of carry-over and routine penalty waivers. See the notice for the delayed final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-05/html/2012-26731.htm>

### Truth in Lending Ability to Pay Credit Card balances

On November 7, 2012, the BCFP published a proposed rule that would remove the independent ability-to-pay requirement for consumers who are 21 and older, and permit issuers to consider income to which such consumers have a reasonable expectation of access. The Truth in Lending statute expressly requires consideration of an independent ability to pay only for applicants who are under the age of 21. The BCFP believes that the "independent" ability-to-pay standard was intended to apply only to consumers who are under the age of 21. See the BCFP's proposed rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-07/html/2012-26008.htm>

### Iran Financial Sanctions Regulations

On November 8, 2012, OFAC published its final amendments to the Iranian Financial Sanctions Regulations in order to implement sections 214 through 216 of the Iran Threat Reduction and Syria Human Rights Act of 2012. See the final rule and the new powers at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-08/html/2012-27420.htm>

### Yemen Sanctions Regulations

On November 9, 2012, OFAC published final regulations to implement Executive Order 13611 to block property of certain persons affecting peace in Yemen. OFAC stated that it may publish more complete regulations in the future. See the final regulations at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-09/html/2012-27352.htm>

### Continuation of National Emergency Created by Iran

On November 13, 2012, the President published Notice that the national emergency related to Iran that started in 1979 was continuing and the state of emergency would continue for another year. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-13/html/2012-27742.htm>

### Fair Credit Reporting Corrected Regulation V

On November 14, 2012, the BCFP published corrections to its Regulation V to pick up typographical errors and other technical mistakes. See the corrections at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-14/html/2012-27581.htm>

### Protections for Customers of FCMs

On November 14, 2012, the CFTC published its notice proposing to adopt new regulations and amend existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants ("FCMs"). The proposed rules will afford greater assurances to market participants that: customer segregated funds and secured amounts are protected; customers are provided with appropriate notice of the risks of futures trading and of the FCMs with which they may choose to do business; FCMs are monitoring and managing risks in a robust manner; the capital and liquidity of FCMs are strengthened to safeguard their continued operations; and the auditing and examination programs of the Commission and the self-regulatory organizations ("SROs") are monitoring the activities of FCMs in a prudent and thorough manner. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-14/html/2012-26435.htm>

### Stress Test Development and Distribution of Scenarios

On November 15, 2012, the OCC published its policy statement on the development and distribution of stress tests. On October 9, 2012, the OCC published the final Annual Stress Test rule. Under the Stress Test Rule national banks and Federal savings associations with total consolidated assets of more than \$10 billion (covered institutions) are required to conduct annual stress tests using a minimum of three scenarios (baseline, adverse and severely adverse) provided by the OCC. The OCC policy discusses the timing and process for sending out and developing the various stress test protocols for the covered institutions. See the policy at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-15/html/2012-27660.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.*