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November Second Half Developments

Overview

The FSOC has issued a proposed recommendation to the SEC on how to change the regulation of the money market mutual fund industry. The industry was challenged during the financial crisis when it became known that the fixed dollar asset price was breached and certain funds did not maintain an asset value that corresponded to the stated price. While the need for regulation may be desirable, the legislative method is not. What we have is one government agency or bureau writing recommendations to another. Presumably the SEC is the agency with the expertise and responsibility for supervising the mutual fund business and has over the years issued scores of rulings and regulations dealing with those issues. Now thanks to Dodd-Frank we have interposed another agency that presumes to make recommendations for the SEC in the name of insuring that other bailout or other crisis can be prevented through a wise recommendation. When will there be too many layers of regulatory oversight? The Treasury has exempted foreign exchange swaps and foreign exchange forwards from the definition of "swap" and thus eased the regulatory burden on entities that engage solely in dealing with these instruments most likely to hedge other obligations.

FSOC Recommendations Regarding Money Market Mutual Funds

On November 19, 2012, the FSOC published its proposed recommendations on reforms to the MMMF industry. Section 120 of the Dodd-Frank Act authorizes the FSOC to issue recommendations to a primary financial regulatory agency to apply new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under the agency's jurisdiction. The Council is seeking public comment on proposed recommendations that the Council may make to the SEC to implement structural reforms for money market mutual funds. Proposed Recommendations Regarding Money Market Mutual Fund Reform provides an overview of MMFs, the Council's proposed determination that MMFs' activities and practices create or increase certain risks, three proposed alternatives for reform. See the recommendations at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-19/html/2012-28041.htm>

Foreign Exchange Swaps and FX Forwards Exempted from Regulation

The Dodd-Frank Act authorizes the Secretary of the Treasury to issue a written determination that foreign exchange swaps, foreign exchange forwards, or both, should not be regulated as swaps under the CEA. The Secretary is issuing a determination that exempts both foreign exchange swaps and foreign exchange forwards from the definition of "swap," in accordance with the applicable provisions of the CEA. These transactions will not be subject to some requirements under the CEA, notably the clearing and exchange-trading requirements. However, foreign exchange swaps and forwards and the parties to such transactions will still be subject to trade-reporting requirements, business conduct standards and anti-evasion requirements promulgated by the CFTC. See the determination at:
<http://www.gpo.gov/fdsys/pkg/FR-2012-11-20/html/2012-28319.htm>

FDIC Policy Statement on the Development of Annual Stress Test Scenarios

On November 20, 2012, the FDIC published its guidance for the stress test scenarios that are required by Dodd-Frank. Under the Stress Test Rule FDIC-insured state nonmember banks and FDIC-insured state-chartered savings associations with total consolidated assets of more than \$10 billion are required to conduct annual stress tests using a minimum of three scenarios (baseline, adverse and severely adverse) provided by the FDIC. The Stress Test Rule specified that the FDIC will provide the required scenarios to the covered banks no later than November 15th of each year. See the guidance at:
<http://www.gpo.gov/fdsys/pkg/FR-2012-11-20/html/2012-28104.htm>

Consumer Leasing Exemptions for Consumer Credit Transactions

The Dodd-Frank Act amended the Consumer Leasing Act by increasing the threshold for exempt consumer credit transactions from \$25,000 to \$50,000 and requiring that, on or after December 31, 2011, this threshold be adjusted annually by any annual percentage increase in the Consumer Price Index. On November 21, 2012, the Board and the Bureau published notice that they are adjusting the exemption threshold from \$51,800 to \$53,000, effective January 1, 2013. See the final rule at:
<http://www.gpo.gov/fdsys/pkg/FR-2012-11-21/html/2012-27996.htm>

Countries Requiring Cooperation With an International Boycott

On November 16, 2012, the Treasury published a current list of countries that require or may require participation in, or cooperation with, an international boycott. See the list at:
<http://www.gpo.gov/fdsys/pkg/FR-2012-11-16/html/2012-27737.htm>

Truth in Lending Exemptions for Consumer Credit Transactions

The Dodd-Frank Act amended TILA by increasing the threshold for exempt consumer credit transactions from \$25,000 to \$50,000 and requiring that, on or after December 31, 2011, this threshold be adjusted annually by any annual percentage increase in the Consumer Price Index. On November 21, 2012, the Board and the Bureau published notice that they are adjusting the exemption threshold from \$51,800 to \$53,000, effective January 1, 2013. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-21/html/2012-27993.htm>

Mortgage Fee amount to trigger HOEPA disclosures

The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of \$400 or 8 percent of the total loan amount. In keeping with the statute, the Bureau has adjusted the \$400 amount based on the annual percentage change reflected in the Consumer Price Index as reported on June 1, 2012. The adjusted dollar amount for 2013 is \$625. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-21/html/2012-27997.htm>

Delayed Implementation of Certain New Mortgage Disclosures

On November 23, 2012, the BCFP published a final rule amending Regulation Z to delay implementation of certain new mortgage disclosure requirements that would otherwise take effect on January 21, 2013. Instead, to avoid potential consumer confusion and reduce compliance burden for industry, the Bureau plans to implement these disclosures as part of the integrated mortgage disclosure forms proposed earlier this year, which combine certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-23/html/2012-28341.htm>

Fed Policy Statement on Stress Testing Scenario Design

On November 23, 2012, the Fed published notice that it is requesting public comment on a policy statement on the approach to scenario design for stress testing that would be used in connection with the supervisory and company-run stress tests conducted under the Board's Regulations pursuant to the Dodd-Frank Act and the Board's capital plan rule. See the proposed policy at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-23/html/2012-28207.htm>

SEC Proposed Rule re Capital & Margin for Security-based Swap Dealers

On November 23, 2012, the SEC published its proposed rule on capital and margin requirements for security-based swap dealers and major security-based swap participants, segregation requirements, and notification requirements with respect to segregation. The Commission also is proposing to increase the minimum net capital requirements for certain broker-dealers. The proposals for capital, margin, and segregation requirements are based in large part on existing capital, margin, and segregation requirements for broker-dealers. See the SEC proposed rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-23/html/2012-26164.htm>

FDIC determination of Insufficient Assets in Liquidation

From time to time the FDIC publishes a determination that it has insufficient assets to pay unsecured creditors in a bank receivership situation. On November 27, 2012, it published a determination regarding the Darby bank in Georgia and it was of interest that the FDIC included in its listing of assets any potential liability claims against the officers and directors. This bank had assets of approximately \$125 million but was \$50 million short of its liabilities and thus the unsecured creditor received nothing. See the notice at: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-27/html/2012-28761.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.