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November First Half Developments

Overview

The CFTC has finalized broad new customer protection requirements just as the trustee in the MF Global failure has announced that all the customers will be made whole. These rules increase the regulatory requirements for futures commission merchants to new degree that will require new systems and additional staffing for most FCMs. The detail contained in this rule leaves room for flexibility in compliance efforts and one commissioner published a scathing dissent from the rule. The dry issue of when to aggregate trades of counterparty for purposes of applying position limits did contain one interesting fact and that is that Lehman had 3,300 subsidiaries doing business at the time it failed. It demonstrates the complexity of doing business with such sprawling giant entities. The BCFP is finally tackling an industry outside of banking that will have few supporters-bill collectors. The Bureau is asking the public for their experiences with the debt collection industry and one wonders if any of these experiences have been positive.

Customer Protection at Commodities Firms

On November 14, 2013, the CFTC published its final rule 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. The final rules will afford greater assurances to market participants that: Customer segregated funds, secured amount funds, and cleared swaps funds are protected. In a typically entertaining dissent, one Commissioner called the rule “broad and ambiguous”, a “radical reinterpretation” and “nonsensical.” See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-14/html/2013-26665.htm>

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

Credit Union Stress Tests

On November 1, 2013 the NCUA published its proposed rule to conduct annual stress tests of federally insured credit unions with assets of \$10 billion or more. See the proposed rule at:

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<http://www.gpo.gov/fdsys/pkg/FR-2013-11-01/html/2013-25713.htm>

Remittances

On November 5, 2013, the BCFP published its list of countries that qualify for a safe harbor exemption from certain disclosure requirements. This list is the same as previously published and consists of just 5 countries: Aruba, Brazil, China, Ethiopia and Libya. See the notification from the BCFP at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-05/html/2013-25754.htm>

Reserve Requirements

On November 5, 2013, the Fed published its final rule setting the reserve exemption amount for 2014 at \$13.3 million and the demand deposit low reserve tranche at \$89 million. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-05/html/2013-26404.htm>

Failed Nonbank Asset Sales to Insiders

On November 6, 2013 the FDIC published its proposed rule to restrict the ability of parties that may have contributed to the failure of a nonbank financial company from participating in the sale of the failed entity's assets. A similar restriction applicable to sales of assets of insured banks in conservatorship or receivership is found in section 11(p) the Federal Deposit Insurance Act.

Although the existing rule and the proposed rule are similar in many ways, the proposed rule is distinct because it applies to sales of covered financial company assets by the FDIC and does not apply to sales of failed insured depository institution assets. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-06/html/2013-26544.htm>

Mandatory Membership in a Registered Futures Exchange

On November 8, 2013, the CFTC published its proposed rule to require all persons registered with the Commission as introducing brokers, commodity pool operators, and commodity trading advisors must become and remain members of at least one registered futures association. The Commission preliminarily believes that the proposed rule is necessary or appropriate to facilitate comprehensive and effective market oversight. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-08/html/2013-26790.htm>

Debt Collection

On November 12, 2013, the BCFP published an advance notice of proposed rulemaking to obtain information on the debt collecting industry. The Fair Debt Collection Practices Act was passed

in 1977 and the Bureau is the first Federal agency to possess the authority to issue substantive rules for debt collection under this statute. The Bureau may also address concerns related to debt collection using its authority under the Dodd-Frank Act to issue regulations concerning unfair, deceptive, and abusive acts or practices and to establish disclosures to assist consumers in understanding the costs, benefits, and risks associated with consumer financial products and services. See the ANPR at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-12/html/2013-26875.htm>

Weapons of Mass Destruction

On November 7, 2013, the President continued the national emergency caused by the proliferation of nuclear, biological, and chemical weapons (WMD) and the means of delivering such weapons. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-12/html/2013-27166.htm>

SEC Registration of Municipal Advisors

On November 12, 2013, the SEC published its final rule under Dodd-Frank to require municipal advisors to register with the Securities and Exchange Commission. The SEC had previously adopted an interim final temporary rule in 2010 to allow parties to register. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-12/html/2013-23524.htm>

Proposed: <http://edocket.access.gpo.gov/2011/2010-32445.htm>

National Emergency Related to Iran

On November 12, 2013, the President continued the national emergency caused by the situation in Iran. This emergency was first declared in 1979 and will continue for another year. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-13/html/2013-27376.htm>

Homeownership Counseling

As required by Dodd-Frank, on November 12, 2013, the BCFP published its final rule for lenders making certain high cost mortgage loans have to give applicants a ``reasonably complete or updated list of homeownership counselors. This rule describes how lenders obtain such a list and how this list is created. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-14/html/2013-27300.htm>

Aggregation of Positions in Agricultural Swaps

On November 15, 2013, the CFTC published its proposed rule to establish speculative position limits for futures and option contracts on nine agricultural commodities and 28 exempt and agricultural commodity futures and options contracts and physical commodity swaps.

Aggregation is important because as noted in discussion on the rule when Lehman Brothers failed, it had 3,300 legal entities within its corporate family. The CFTC had proposed a rule on May 30, 2012, to accomplish this same purpose but in an Order dated September 28, 2012, the District Court for the District of Columbia vacated part 151 of the Commission's regulations. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-15/html/2013-27339.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.