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October First Half Developments

Overview

The banking agencies have published their final rules on stress testing requirements. All banks over \$10 billion in assets will have to conduct these stress tests. Under the FDIC's supervision there are 25 banks over \$50 billion and the FDIC thinks each bank will have to spend 2000 hours preparing the reports. There are many more banks in the range of \$10 billion to \$50 billion and the burden should be less on these institutions, but still significant. The larger institutions will have to conduct these tests twice per year and will most likely need to augment risk and compliance staffs to meet the requirements. The President has issued additional sanctions that may be imposed on Iran to further restrict the ability to do business directly or indirectly with that country.

Repeal of Special Measures by FinCEN

On October 1, 2012, FinCEN published a final rule repealing the Imposition of Special Measures Against Myanmar Mayflower Bank and Asia Wealth Bank of April 12, 2004, and withdrawing the findings of Myanmar Mayflower Bank and Asia Wealth Bank as Financial Institutions of Primary Money Laundering Concern. Neither bank currently exists and Burma is still a jurisdiction of primary money laundering concern. See the final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-10-01/html/2012-23995.htm>

Stable Value Contracts

The SEC and the CFTC are reopening the comment period to study whether stable value contracts ("SVCs") fall within the definition of a swap. The study is required by Section 719(d) of the Dodd-Frank Act. The original comment period for the study closed on September 26, 2011. See the request for comments at: <http://www.gpo.gov/fdsys/pkg/FR-2012-10-02/html/2012-24179.htm>

### Margin & Capital for Covered Swap Entities

The banking agencies are reopening the comment period for the proposed rule published in the Federal Register on May 11, 2011 (76 FR 27564) to establish minimum margin and capital requirements for uncleared swaps and security-based swaps entered into by swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the agencies is the prudential regulator. See the statement on the reopening of the comment period at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-02/html/2012-24276.htm>

### Stress Tests for National Banks

On October 9, 2012, the OCC published a final rule which requires national banks and Federal savings associations with total consolidated assets over \$10 billion (defined as "covered institutions") to conduct an annual stress test as prescribed by this rule. Under the final rule covered institutions are divided into two categories: covered institutions with total consolidated assets between \$10 and \$50 billion, and covered institutions with total consolidated assets over \$50 billion. Based on these categories, covered institutions are subject to different stress test requirements and deadlines for reporting and disclosures. An over \$50 billion covered institution as of October 9, 2012, must conduct the annual stress test under this final rule beginning this year. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-09/html/2012-24608.htm>

### Short Term Investment Funds

On October 9, 2012, the OCC published its final rule on STIFs. The final rule adds safeguards designed to address the risk of loss to a STIF's principal, including measures governing the nature of a STIF's investments, ongoing monitoring of its mark-to-market value and forecasting of potential changes in its mark-to-market value under adverse market conditions, greater transparency and regulatory reporting about a STIF's holdings, and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event that the STIF loses the ability to maintain a stable net asset value (NAV). See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-09/html/2012-24375.htm>

### Retail Foreign Exchange Transactions

On October 12, 2012, the OCC published a proposed rule to amend its retail foreign exchange rule for transactions with bank common trust funds, bank collective investment funds, and insurance company separate accounts and is making technical corrections to the rule. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-12/html/2012-25123.htm>

### Stress Tests for Bank Holding Companies & Member Banks

On October 12, 2012, the Fed published a final rule (Regulation YY) to require financial companies with total consolidated assets of more than \$10 billion and for which the Board is the primary federal financial regulatory agency to conduct stress tests on an annual basis. The Board is adopting this final rule to implement the company-run stress test requirements in the Dodd-Frank Act regarding company-run stress tests for bank holding companies with total consolidated assets greater than \$10 billion but less than \$50 billion and state member banks and savings and loan holding companies with total consolidated assets greater than \$10 billion. This final rule does not apply to any banking organization with total consolidated assets of less than \$10 billion. See the Fed's final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-12/html/2012-24988.htm>

### Stress Tests for Large BHCs & FSOC companies

On October 12, 2012, the Fed published a final rule (Regulation YY) to require BHCs over \$50 billion and FSOC designated companies to conduct stress tests. Covered companies are required to conduct stress tests semi-annually. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-12/html/2012-24987.htm>

### Additional Sanctions on Iran

On October 12, 2012, the President published his Executive Order of October 9, 2012, authorizing additional sanctions on Iran. See the final order at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-12/html/2012-25236.htm>

### Broker Dealer Principal Trades with Advisory Clients

On October 12, 2012, the SEC published a proposed rule that establishes an alternative means for investment advisers that are registered with the Commission as broker-dealers to meet the requirements of the Investment Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. See the SEC's proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-12/html/2012-25116.htm>

### Stress Tests for State Nonmember Insured Banks

On October 15, 2012, the FDIC published its final rule requiring FDIC-insured state nonmember banks and FDIC-insured state-chartered savings associations with total consolidated assets of more than \$10 billion to conduct annual stress tests, report the results of such stress tests to the Corporation and the Board of Governors of the Federal Reserve System ("Board"), and publish a summary of the results of the stress tests. The final rule requires large covered banks to conduct annual stress tests beginning on the effective date of this final rule. The Corporation, however,

will delay implementation of the annual stress test requirements under the final rule for institutions with total consolidated assets of more than \$10 billion but less than \$50 billion until September 30, 2013. The final rule requirement for public disclosure of a summary of the stress testing results for these institutions will be implemented starting with the 2014 stress test, with the disclosure occurring during the period starting June 15 and ending June 30 of 2015. See the FDIC's final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-15/html/2012-25194.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.*