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## September First Half Developments

### Overview

The Bureau of Consumer Financial Protection has published a variety of proposed rules affecting mortgages. These new rules are some of the most detailed and lengthy that have ever been proposed for the banking industry. While the end result may be a clearer and more streamlined mortgage application process, the banks will have a substantial learning curve to overcome. In addition, the BCFP has proposed new rules for mortgage brokers and mortgage loan originators that will curb some of the abusive practices on those areas. The CFTC has published a final rule detailing the requirements for swap documentation and confirmations.

#### Swap Legal Entity Identifiers

On September 4, 2012, the CFTC published its July 23, 2012, order designating DTCC-SWIFT as the provider of the legal entity identifiers (LEIs) which will be used by registered entities and swap counterparties in complying with the CFTC's swap data reporting regulations. See the order at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-04/html/2012-21612.htm>

#### Appraisals for High Risk Mortgages

On September 5, 2012, the banking agencies published their proposed rule to amend Regulation Z to implement a new TILA provision requiring appraisals for "higher-risk mortgages" that was added to TILA as part of the Dodd-Frank Act. For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the proposed rule would require creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-05/html/2012-20432.htm>

#### Commodity Pool Operators & Trading Advisors

On September 5, 2012 the CFTC published its final rules governing the operations and activities of commodity pool operators and commodity trading advisors in order to have those regulations reflect changes made by the Dodd-Frank Act. The final amendments require swaps information to be included in the disclosure, reporting and recordkeeping obligations that currently exist for CPOs and CTAs. Such information is intended to enhance customer protections by increasing the transparency of CPO and CTA swap activities to their pool participants and clients. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-05/html/2012-21606.htm>

See the proposed rule at:

<http://edocket.access.gpo.gov/2011/2011-4657.htm>

#### Extension of Comment Period on Changes to Definition of Finance Charge

The BCFP has determined that an extension of the comment period until November 6, 2012 solely as to the proposed changes to the definition of the finance charge is appropriate. See the notice of extension at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-06/html/2012-22000.htm>

#### Comment Period on Home Ownership Equity Protection

The BCFP has determined that an extension of the comment period until November 6, 2012 for the portion of the HOEPA Proposal regarding whether and how to account for the implications of a more inclusive finance charge on the scope of HOEPA coverage is appropriate. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-06/html/2012-21998.htm>

#### Loan Originator Compensation

On September 7, 2012, the BCFP published a proposed rule to implement statutory changes made by the Dodd-Frank Act to Regulation Z's current loan originator compensation provisions, including a new additional restriction on the imposition of any upfront discount points, origination points, or fees on consumers under certain circumstances. In addition, the proposal implements additional requirements imposed by the Dodd-Frank Act concerning proper qualification and registration or licensing for loan originators. See the proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-07/html/2012-20808.htm>

#### Swap Dealer Confirms, Documentation & Netting

On September 11, 2012, the CFTC published its final rule regarding standards for swap dealers (SDs) and major swap participants (MSPs) related to the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps. These regulations set forth requirements for swap confirmation, portfolio reconciliation, portfolio compression, and swap

trading relationship documentation. The rules establish procedures to promote legal certainty by requiring timely confirmation of all swap transactions, setting forth documentation requirements for bilateral swap transactions, and requiring timely resolutions of valuation disputes. In addition, the rules enhance understanding of counterparty risk exposure, and promote sound risk management through regular reconciliation and compression of swap portfolios. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-11/html/2012-21414.htm>

The final rule is a combination of three proposed rules:

<http://edocket.access.gpo.gov/2010/2010-32264.htm>

<http://edocket.access.gpo.gov/2011/2011-2642.htm>

<http://edocket.access.gpo.gov/2011/2011-2643.htm>

### Conflict Minerals Disclosure

The Dodd-Frank Act requires the Commission to promulgate rules requiring issuers with conflict minerals that are necessary to the functionality or production of a product manufactured by such person to disclose annually whether any of those minerals originated in the Democratic Republic of the Congo or an adjoining country. If an issuer's conflict minerals originated in those countries, the issuer must submit a report to the Commission that includes a description of the measures it took to exercise due diligence on the conflict minerals' source and chain of custody. The SEC rule implements these requirements. See the final rules at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-12/html/2012-21153.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.*