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September First Half Developments

Overview

The FDIC has published its interim final rules on capital requirements as tweaked by the Basel III pronouncements. Most notable is the once derided leverage tests are now taking center stage among a variety of new tests and requirements. Blessedly, smaller banks have some protection from implementing the new rules. Given that so many countries have state-owned banks, it seems that these new capital requirements are creating in essence state captive financial institutions without expressly labeling them as such. When combined with the overwhelming regulatory burdens—witness last week's announcements by Chase on the thousands on new risk and compliance positions—the future of privately owned banks seems dim. Perhaps turning over the keys to the government will make sense at some point. While not all banks are engaged in electronic derivatives trading, the CFTC's concept release on this subject is a good collection of history and background on this subject that is informative reading for all in financial services. The FDIC has finalized its insurance rules to make certain that it will not have to pay deposit insurance claims on deposits at foreign branches.

OFAC Licensing of Food and Medicine Shipments to Sudan and Iran

On September 3, 2013, OFAC published a request for comments on how effective its licensing procedures are working in connection with the exportation of agricultural commodities, medicine, and medical devices to Sudan and Iran. OFAC is required to submit a biennial report to the Congress on the operation of licensing procedures for such exports. See the request for comments at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-03/html/2013-21363.htm

FDIC Recordkeeping for Failed Banks

On September 4, 2013, the FDIC published its final rule on how long it will keep records of failed banks. The data and volume of information generated by such failures has reached monumental proportions. To illustrate, a ``terabyte'' of electronically stored information (``ESI'') is the equivalent of 77 million printed pages. A typical failed insured depository institution has on its systems between 3 and 9 terabytes of ESI, or the equivalent of between 231 million and

693 million pages of material. Currently, the FDIC is housing on its recordkeeping systems 775 terabytes of data from failed insured depository institutions for which the FDIC has been appointed receiver since 2007--the equivalent of 59.675 billion pages. The term ``records'' is not defined in the FDI Act and the legislative history does not provide any guidance on how the term should be interpreted. In general this information will be destroyed in six years. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-04/html/2013-21389.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2013-01-22/html/2013-01080.htm

FDIC Recordkeeping Rules for Securities Transactions

On September 4, 2013, the FDIC published a proposed rule to remove certain OTS rules on recordkeeping requirements for securities transactions. The FDIC also proposes to amend part 344 to increase the number of transactions that all FDIC-supervised institutions may effect on behalf of customers under the small transaction exception from certain of the recordkeeping requirements (``Small Transaction Exception''). The recordkeeping and confirmation requirements for securities transactions for customers effected by all insured depository institutions for which the FDIC has been designated the appropriate federal banking agency will be found at part 344. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-04/html/2013-21357.htm

FDIC Restrictions on Post-Employment of Senior Examiners

On September 4, 2013, the FDIC published a proposed rule to remove certain OTS rules on restrictions for post-employment activities of senior examiners. The restrictions will now be found at 12 CFR part 336, subpart C, entitled One-Year Restriction on Post-employment Activities of Senior Examiners. The proposed rule would not change 12 CFR part 336, subpart C. See the proposed rule change at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-04/html/2013-21356.htm

OFAC listing of Basic Medical Supplies for Iranian Sanctions

On September 5, 2013, OFAC published an updated list of items defined as basic medical supplies under the Iranian Transactions and Sanctions Regulations. See the list at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-05/html/2013-21590.htm

Capital Rules & Basel III

On September 10, 2013, the FDIC published its interim final rule on its risk-based and leverage capital requirements for FDIC-supervised institutions. This interim final rule is substantially identical to a joint final rule issued by the OCC and the Fed. The interim final rule implements a revised definition of regulatory capital, a new common equity tier 1 minimum capital

requirement, a higher minimum tier 1 capital requirement, and, for FDIC-supervised institutions subject to the advanced approaches risk-based capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator. The interim final rule also codifies the FDIC's regulatory capital rules, which have previously resided in various appendices to their respective regulations, into a harmonized integrated regulatory framework. The interim final rule also codifies the FDIC's regulatory capital rules, which have previously resided in various appendices to their respective regulations, into a harmonized integrated regulatory framework. See the interim final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-10/html/2013-20536.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/html/2012-16761.
http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/html/2012-16757.htm
http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/html/2012-17010.htm

FATCA Corrections

On September 10, 2013, the IRS published a number of corrections to its final rules on information reporting by foreign financial institutions. There are dozens of changes that are reported here and parties interested in FATCA should insure they are using an up to date version of the final rules. See the changes at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-10/html/2013-22004.htm

Risk Controls on Automated Trading

On September 12, 2013, the CFTC published a concept release on how the CFTC proposes to address automated trading systems for derivatives. The CFTC recognizes that electronic trading has outpaced traditional risk controls and safeguards that relied on human judgment and speeds, and which were appropriate to manual and/or floor-based trading environments, and thus must be reevaluated in light of new market structures. The release is interesting reading on the background of electronic trading and how the trading world has changed in a few years. See the release at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-12/html/2013-22185.htm

Deposits in Foreign Branches of US Banks

On September 13, 2013, the FDIC published its final rule that clarifies that deposits in branches of U.S. banks located outside the United States are not FDIC-insured deposits. This would be the case even if they were also payable at an office within the United States. Because of a rule change in the U.K. it is likely that large U.S. banks will change their U.K. foreign branch deposit agreements to make their U.K. deposits payable both in the United Kingdom and the United States. This has the potential to increase the exposure of the FDIC and cause it to become a global deposit insurer of sorts and this was never intended under the law. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-13/html/2013-22340.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/html/2013-03578.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.