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January Second Half Developments

Overview

The Fed has finalized the Volcker rule and published it in the Federal Register. The Fed has also been active in putting out an ANPR for an eventual rule on physical commodities activities. This rule has been prompted by the well-publicized and surprisingly active participation of some bank holding companies in warehousing physical commodities and perhaps affecting the market pricing of such commodities through storage policies. In addition, the Fed and the other agencies granted their first relief under the Volcker rules for certain CDO securities that had been used widely and were potentially made impermissible for trading under the new Volcker regime. The BCFP is considering regulating the non-bank providers of international remittance services. They believe that about 23 large US providers will fall under their proposed regulation of this industry. Large national banks will also be subject to new proposed risk management requirements that cover numerous areas and impose new requirements such as education for directors.

The Volcker Rule

The banking agencies published the final version of the Volcker rule on January 31, 2014. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-31/html/2013-31511.htm
Proposed: http://www.gpo.gov:80/fdsys/pkg/FR-2011-11-07/html/2011-27184.htm

Fed Policy on Payments Systems Risk

On January 16, 2014 the Fed published revisions to its Policy on Payment System Risk (PSR policy), which sets forth the Board's views, and related principles and minimum standards, regarding the management of risk in payment, clearing, and settlement systems. These changes are to update risk structures in view of the international risk-management standards for financial market infrastructures published in 2012. See the Policy at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-16/html/2014-00681.htm

Physical Commodities Activities

On January 21, 2014, the Fed published its advance notice of proposed rulemaking to gauge the public's response to issues relating to physical commodities activities. The activities under review include physical commodities activities that have been found to be ``complementary to a financial activity'' under section 4(k)(1)(B) of the Bank Holding Company Act (BHC Act), investment activity under section 4(k)(4)(H) of the BHC Act, and physical commodity activities grandfathered under section 4(o) of the BHC Act. The Fed is concerned about the unique and significant risks that physical commodities activities may pose to financial holding companies, their insured depository institution affiliates, and U.S. financial stability. The Fed has posed 24 specific questions and invites comments on the risks and benefits of allowing FHCs to conduct these activities. See the ANPR at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-21/html/2014-00996.htm

Financial Market Utilities and Risk Management

On January 22, 2014, the Fed published its proposed rule to prescribe new risk management standards for certain FMUs. The Fed is proposing to amend the risk-management standards currently in the Board's Regulation HH by replacing the current risk-management standards with a common set of risk-management standards applicable to all types of designated FMUs. These new risk-management standards are based on the Principles for Financial Market Infrastructures (PFMI), which were developed by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) and published in April 2012. See the Fed's proposal at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-22/html/2014-00682.htm

CFTC to Review Automated Trading Systems and seeks additional comments

On January 24, 2014, the CFTC published its intention to reopen its comments on Automated Trading Systems. The CFTC is reviewing the evolution from human-centered to automated trading environments and seeks comment on a series of pre-trade risk controls, post-trade measures, system safeguards and other protections applicable to trading platforms and other categories of market participants. See the new comment period and background discussion at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-24/html/2014-01372.htm

Guidelines for National Banks on Risk Governance

On January 27, 2014, the OCC published proposed guidelines establishing minimum standards for the design and implementation of a risk governance framework for large insured national banks, insured Federal savings associations, and insured Federal branches of foreign banks with average total consolidated assets of $50 billion or more and minimum standards for a board of directors in overseeing the framework's design and implementation. These are proposed and comments are requested. See the proposal at:

http://www.gpo.gov/fdsys/pkg/FR-2014-01-27/html/2014-00639.htm

OFAC guidance on Iranian Sanctions

On January 30, 2014, OFAC published its guidance on how to deal with the sanctions relief that has been agreed to for the six-month period starting on January 20, 2014. As noted in this guidance, none of the sanctions relief may involve a U.S. person, or, as applicable, a foreign entity owned or controlled by a U.S. person, if otherwise prohibited under any sanctions program. Exclusively foreign banks will not be subject to correspondent or payable-through account sanctions for transactions that are initiated and completed entirely within the six-month period by non-U.S. persons. See the Guidance at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-30/html/2014-01939.htm

International Money Transfer Regulation

On January 31, 2014 the BCFP published a proposed rule to define larger participants of a market for international money transfers. The Bureau proposes this rule pursuant to its authority, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. This Proposed Rule, if adopted, would be the fourth in a series of rulemakings to define larger participants of markets for other consumer financial products or services. The first three rules defined larger participants of markets for consumer reporting, consumer debt collection, and student loan servicing. The Bureau identified 23 entities among the California, New York, and Ohio licensees that it believes would be larger participants under the Proposed Rule. 9 of these entities had less than $19 million in receipts according to information from the NMLS and confidential licensing data from New York. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-31/html/2014-01606.htm

Volcker Rule treatment of CDOs backed by Trust Preferred Securities

On January 31, 2014, the banking agencies published their interim final rule to permit banking entities to retain investments in certain pooled investment vehicles that invested their offering proceeds primarily in certain securities issued by community banking organizations of the type grandfathered under section 171 of the Dodd-Frank Act. The Agencies will continue to solicit comments on this rule. See the interim final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-31/html/2014-02019.htm

Credit Unions and Derivatives

On January 31, 2014, the NCUA published its final rule that allows Credit Unions to engage in limited derivatives activities for the purpose of mitigating interest rate risk. The final rule

addresses permissible derivatives and characteristics, limits on derivatives, operational requirements, counterparty and margining requirements, and the procedures a credit union must follow to apply for derivatives authority. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2014-01-31/html/2014-01703.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2013-05-29/html/2013-12638.htm