November First Half Developments

Overview

The Volcker rule was published in the Federal Register this month. It is possible that this rule is the proverbial “straw” that broke whatever you want to insert next. I think our fine and sophisticated banking agencies are being run ragged by a legislative branch that requires too much of them. The agencies also are pressed to cover every conceivable eventuality by rules that overwhelm the governed by their complexity and sheer volume. Let’s remember that the now-hallowed Glass-Steagall Act was four provisions that with small type would easily fit on one page of paper. There were a few implementing regulations scattered here and there, but mainly these simple laws kept banks and investment banks apart for about half a century. I will bet that the horrendous Volcker rule will not do nearly as well. And while we are in a betting mood, I will bet that Paul Volcker himself has not attempted to read this regulation fully and he is probably wondering whether a bridge over the Potomac would have been a better item to tie his name to.

Resolution Plans Required by Fed and FDIC

On November 1, 2011, the Fed and FDIC published their final rules requiring each nonbank company selected by the FSOC and each BHC with over $50 billion in assets to report periodically to these agencies a plan for the rapid and orderly resolution of the company in the event of material financial distress. This rule implements section 165 of the Dodd-Frank Act. See the final rules at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-01/html/2011-27377.htm>

Treasury List of Countries Requiring a Boycott

On November 2, 2011, the Treasury published a list of countries requiring compliance with a boycott of Israel. Iraq is not on this list, but Libya is and so is Kuwait for that matter. See the list at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-02/html/2011-28310.htm>

Reserve Requirements

On November 3, 2011, the Fed published its final rule to set the reserve requirement exemption amount at $11.5 million (up from $10.7 million). In addition, the low reserve tranche, the amount of net transaction accounts at each depository institution that is subject to a three percent reserve requirement is now set at $71.0 million (up from $58.8 million in 2011). See the Fed’s final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-03/html/2011-28048.htm>

Volcker Rule

The banking agencies have published on November 7, 2011, the proposed rule to restrict proprietary trading and investments in and ownership of hedge funds and private equity funds. This rule would implement Section 619 of the Dodd-Frank Act which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund. Please see the proposed rule at:

<http://www.gpo.gov:80/fdsys/pkg/FR-2011-11-07/html/2011-27184.htm>

Derivatives Clearing Organizations General Provisions

On November 8, 2011, the CFTC adopted a final rule applicable to derivatives clearing organizations related to certain general principles and the adoption of certain core principles of operation. Specifically, the regulations establish the regulatory standards for compliance with Compliance, Financial Resources, Participant and Product Eligibility, Risk Management, Settlement Procedures, Treatment of Funds, Default Rules and Procedures, Rule Enforcement, System Safeguards, Reporting, Recordkeeping, Public Information, Information Sharing, Antitrust Considerations, and Legal Risk principles set forth in Section 5b of the Commodity Exchange Act. The final rule may be viewed at:

<http://www.gpo.gov:80/fdsys/pkg/FR-2011-11-08/html/2011-27536.htm>

AML Programs for Certain Government Sponsored Enterprises

On November 8, 2011, FinCEN issued a proposed rule defining certain housing government sponsored enterprises as financial institutions for the purpose of requiring them to establish anti-money laundering programs and report suspicious activities pursuant to the Bank Secrecy Act. FinCEN proposes AML program and SAR requirements for the Federal National Mortgage Association (``Fannie Mae''), the Federal Home Loan Mortgage Corporation (``Freddie Mac''), and the Federal Home Loan Banks. AML programs must include, at a minimum: (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee-training program; and (4) an independent audit function to test programs. See the proposed requirements at:

<http://www.gpo.gov:80/fdsys/pkg/FR-2011-11-08/html/2011-28820.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.*