November Second Half Developments

Overview

FinCEN is turning up the heat on Iran by determining that the country is of “primary money laundering concern.” Wasn’t Iran suspected of counterfeiting vast sums of U.S. dollars and this was an important impetus to changing our currency to make it harder to print up reasonable facsimiles? The list of things that Iran is doing wrong is getting so long that adding money laundering to the mix should barely merit a yawn in Tehran. I am reminded of a meeting with Stuart Levey in his extremely impressive office at Treasury a few years ago where he told us that when Paulson became Secretary of the Treasury he thought he could create a boycott of Iran with a few telephone calls. Paulson told Levey, “ I know most of these bankers personally and when I tell them about what Iran is up to, they will voluntarily stop doing business with those maniacs.” Sadly, we are still trying to isolate Iran and slow down their ability to blow up the world.

CFTC & SEC Reporting Requirements for Investment Advisers and CPOs and CTAs

On November 16, 2011, the CFTC and the SEC published a final rule on reporting requirements. The new SEC rule requires investment advisers registered with the SEC that advise one or more private funds and have at least $150 million in private fund assets under management to file Form PF with the SEC. The new CFTC rule requires commodity pool operators (``CPOs'') and commodity trading advisors (``CTAs'') registered with the CFTC to satisfy certain CFTC filing requirements with respect to private funds, should the CFTC adopt such requirements, by filing Form PF with the SEC, but only if those CPOs and CTAs are also registered with the SEC as investment advisers and are required to file Form PF under the Advisers Act. See the new reporting requirements at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/html/2011-28549.htm>

BCFP Request for Information On School Loans

On November 17, 2011 the BCFP published a notice requesting information on student loans as part of its requirement to produce a report on private education loans. The notice contains 11 detailed questions on student loan practices. See the request for information and the questions for the public at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-17/html/2011-29737.htm>

CFTC Position Limits on Futures and Swaps

On November 18, 2011, the CFTC published a final rule that establishes a position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. The Commission received 15,116 comments from a broad range of industry and other interested persons on the proposed rules issued in January. The CFTC approved the rules in a 3 to 2 vote. One Commissioner has written an extensive dissent to the final rule, a somewhat unusual stance. Another has dissented in s short statement. See this controversial rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-18/html/2011-28809.htm>

OFAC Removes 42 Libyan Entities From the SDN List

On November 23, 2011, OFAC published a list of 42 Libyan banks and companies that are being removed from the SDN List effective as of November 18, 2011. See the list of entities that are no longer on the List at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-23/html/2011-30293.htm>

FDIC Limits on Obligations Issued in Bank Failures

On November 25, 2011, the FDIC issued proposed rules to limit how much the FDIC can spend to resolve a large bank or financial company failure. The Dodd-Frank Act establishes an Orderly Liquidation Authority to resolve a large interconnected financial company upon a determination that its failure and resolution under otherwise applicable law would have serious adverse effects on financial stability in the United States. In accordance with the requirements of the Dodd-Frank Act, the proposed rules govern the calculation of the maximum obligation limitation (``MOL''), as specified in section 210(n)(6) of the Dodd-Frank Act. The MOL limits the aggregate amount of outstanding obligations that the FDIC may issue or incur in connection with the orderly liquidation of a covered financial company. The FDIC may not issue obligations in connection with the orderly liquidation of a financial company if such obligations would exceed 10% of the total consolidated assets of the financial company or 90% of the fair value assets available for repayment. See the proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-25/html/2011-29993.htm>

FinCEN Finds Iran is of Primary Money Laundering Concern

On November 25, 2011, FinCEN published its notice that it has reasonable grounds to conclude that Iran is a country of primary money laundering concern. See the FinCEN notice and the basis for its conclusions at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-25/html/2011-30332.htm>

FinCEN Special Measures Against Iran

On November 28, 2011, FinCEN published its proposed rule to impose special measures against Iran. Such special measures are authorized under section 311 of the Patriot Act after FinCEN has determined that a country or group is of primary money laundering concern. FinCEN has determined that reasonable grounds exist for the imposition of the fifth special measure authorized by the BSA. That special measure authorizes a prohibition against the opening or maintaining of correspondent accounts by any domestic financial institution or agency for or on behalf of a foreign banking institution, if the correspondent account involves the targeted jurisdiction. Covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used indirectly to provide services to an Iranian banking institution. There is a minimal burden involved in transmitting a one-time notice to certain correspondent account holders concerning the prohibition on indirectly providing services to Iranian banking institutions. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-28/html/2011-30331.htm>

OCC Alternatives to Credit Ratings in its Regulations

On November 29, 2011, the OCC published its proposed rule to revise its regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency deposits to replace references to credit ratings with alternative standards of creditworthiness. Under the Dodd-Frank Act the OCC was required to remove any references to, or requirements of reliance on, credit ratings and substitute such standard of credit-worthiness as each agency determines is appropriate. The OCC focused on its investment securities rules, the rules for bank securities and the foreign bank capital equivalency deposits. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-29/html/2011-30428.htm>

OCC Guidance on Investment Securities as Investments

On November 29, 2011, the OCC published its proposed guidelines for national banks for evaluating investments to determine if they are investment securities. Under the guidelines, ``investment grade'' securities would be those where the issuer has an adequate capacity to meet the financial commitments under the security for the projected life of the investment. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. Generally, securities with good to very strong credit quality will meet this standard. National banks will have to meet this new standard before purchasing investment securities. See the proposed guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-29/html/2011-30420.htm>

Credit Unions May Make Remittance Transfers

On November 30, 2011, the NCUA published its final rule in the same form as published in July to allow Credit Unions to make remittance transfers, i.e., international wire payments. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-30/html/2011-30365.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.*