Buckley Sandler LLP

InfoBytes

FINANCIAL SERVICE HEADLINES & DEADLINES FOR OUR CLIENTS AND FRIENDS

February 11, 2011

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Federal Issues

Federal Reserve Board Announces Approval of Final Rule to Implement Volcker Rule's Conformance Period Provisions. On February 9, the Federal Reserve Board of Governors (Board) announced its approval of a final rule that will implement the conformance period provisions of section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Volcker Rule. The Volcker Rule generally prohibits banking entities from engaging in proprietary trading in securities, derivatives, or certain other financial instruments and from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund. Pursuant to the conformance period provisions of the Volcker Rule, banking entities or nonbank financial companies under the Board's supervision have a period of time after the Volcker Rule's effective date to conform to the Rule's prohibitions and restrictions. The Board's final rule (i) provides a general conformance period of two years after the effective date of the Volcker Rule, (ii) allows the Board to extend that two-year period by up to three one-year periods, (iii) implements a special five-year extended transition period available for certain qualifying investments in hedge funds and private equity funds that are "illiquid funds," (iv) defines certain terms related to the conformance period, (v) specifies how an application or request for an extension should be submitted, and (vi) identifies the factors the Board may consider when evaluating such a request. The Board's final rule is similar to the proposed rule issued in November 2010. The Board incorporated a number of changes to the final rule to address issues raised by public comments, to reduce potential regulatory burdens, and to clarify application of the final rule, which will become effective on April 1, 2011. For a copy of the Board's press release, please see http://www.federalreserve.gov/newsevents/press/bcreg/20110209a.htm.

HUD Sends Final SAFE Rulemaking to OMB. On February 8, Teresa Payne, Associate Deputy Assistant Secretary for Regulatory Affairs with the Department of Housing and Urban Affairs (HUD) announced that HUD had just sent its final rulemaking under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) to the Office of Management and Budget (OMB) for approval. Ms. Payne confirmed that the final SAFE Act rules were sent to OMB during her remarks at the 2011 Nationwide Mortgage Licensing System User Conference. Ms. Payne indicated that HUD expected a response from OMB within the next ninety days. While Ms. Payne did not offer any clues about the final rule's contents, this announcement does resolve the open question of whether HUD would proceed with issuing final rules given that its authority under the SAFE Act will transition to the newly-

created Consumer Financial Protection Bureau on July 21, 2011. HUD issued a proposed rule in December 2009 (as reported in *InfoBytes*, Dec. 11, 2009), which received over 5,100 comments. Click here for more on Ms. Payne's remarks.

Federal Reserve Board Requests Comment on Proposed Dodd-Frank Rule. On February 8, the Federal Reserve Board (Board) requested comments on terms that are relevant to various provisions of Title I of the Dodd-Frank Act, including section 113, which authorizes the Financial Stability Oversight Council (Council) to designate a nonbank financial company for supervision by the Board if the Council determines that the company could pose a threat to the financial stability of the United States. Specifically, the proposed rulemaking, which seeks to amend Regulation Y, (i) establishes requirements for determining whether a company is "predominantly engaged in financial activities" and (ii) defines the terms "significant nonbank financial company" and "significant bank holding company." Comments should be received on or before March 30, 2011. Click here for a copy of the press release.

FDIC Seeks Comment on Interagency Rule to Implement Dodd-Frank Act's Incentive-Based Compensation Requirement. On February 7, the Federal Deposit Insurance Corporation (FDIC) approved a joint proposed rulemaking to implement Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rule prohibits incentive-based compensation arrangements that encourage inappropriate risk-taking and are excessive or may lead to material losses. The proposed rule does not apply to banks with less than $1 billion in assets, but contains heightened standards for institutions with $50 billion or more in assets. For those larger institutions, (i) at least half of incentive-based payments must be deferred for at least three years for certain executives, and (ii) boards of directors must identify employees who have the ability to expose the institution to substantial risk, and must determine according to set standards that incentive compensation for such employees balances risk and rewards. The rule also requires policies and procedures for incentive-based compensation that are commensurate with the size and complexity of the institution, as well as annual reports submitted to the applicable federal regulator. Comments on the proposed rule will be accepted for 45 days after publication in the *Federal Register*. Click here for a copy of the press release.

FDIC Approves Final Rule on Assessments and Large Bank Pricing. On February 7, the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) approved a final rule on assessments, dividends, assessment base, and large bank pricing to implement changes to the deposit insurance assessment system required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The rule encompasses rules proposed in October and November of 2010 (as reported in *InfoBytes* Oct. 22, 2010, and Nov. 12, 2010). The final rule changes the assessment base used for calculating deposit insurance assessments from one based on adjusted domestic deposits to one based on average adjusted consolidated total assets minus tangible equity. Because this change increases the assessment base, the final rule revises the assessment rate schedules so that the overall amount of assessments collected from insured depository institutions will not change materially. The rule also modifies the long-term unsecured debt adjustment, the secured liability adjustment, and the brokered deposit adjustment and adds an adjustment for long-term debt held by a depository institution where the debt is issued by another depository institution. With respect to the large bank pricing system, the

rule eliminates risk categories and the use of long-term debt issuer ratings and instead adopts scorecards that combine CAMELS ratings and certain forward-looking measures to assess risk posed by an institution to the insurance fund. In addition, the final rule suspends dividends indefinitely whenever the fund reserve ratio exceeds 1.5%. The final rule is effective April 1, 2011, and will be reflected in the June 30, 2011 fund balance and the invoices for assessments are due September 30, 2011. For a copy of the FDIC's press release and the final rule, please see http://1.usa.gov/r1jcqQ.

FDIC Board Proposes Rule to Improve Public Awareness of Deposit Insurance Limits. On February 7, in response to feedback from bank customers about the inadequacies in information they receive from their financial institutions, the Federal Deposit Insurance Corporation (FDIC) Board of Directors proposed a new rule in an ongoing efforts to raise public awareness about federal deposit insurance. The new rule would require certain bank staff to receive annual training on the basic principles of federal deposit insurance. To minimize the regulatory burden on insured institutions, the FDIC would provide the computer-based training materials, and the training would be limited to bank employees who open accounts or are authorized to answer questions about deposit insurance, and no recordkeeping would be required of the bank. New employees would be required to complete the training within 30 days of beginning employment, and current employees would be required to complete training within 60 days of the rule's effective date. The training would be required on an annual basis thereafter. The proposed rule would also require bank employees opening a new account to inquire whether the customer has other accounts at the bank and whether the aggregate deposits may exceed the deposit insurance limit. In cases where deposits exceed $250,000, the rule would require banks to provide deposit coverage literature to the customer. The FDIC welcomes comment on the proposed rule for 60 days. For the FDIC press release announcing the proposed rule, click here. For the proposed rule, click here.

HUD Issues New Standards on Waiver of HECM Counseling Fees. On February 4, the U.S. Department of Housing and Urban Development (HUD) issued Mortgagee Letter (ML) 2011-09, providing new guidance on when counselors and lenders can waive counseling fees under the Home Equity Conversion Mortgage (HECM) program, the only federally-backed reverse mortgage product. The HECM program, which requires borrower counseling, allows HECM-approved lenders and counselors to charge a "reasonable and customary" fee for the counseling session. The new guidance bars counseling agencies charging an HECM fee from collecting fees at the time of the counseling session from a client whose income is below 200 percent of the federal poverty level. The lenders and counselors may collect fees at closing if they advise a client during the counseling session of the amount of the fee. Agencies charging such fees are required to describe their compliance efforts in their housing counseling work plan. In addition, ML 2011-09 clarifies that time recorded on Form HUD 92902, Certificate of HECM, should be limited to actual time spent with the client. Click here for more information.

Treasury Department Launches Consumer Financial Protection Bureau Website. On February 3, the U.S. Department of the Treasury announced the launch of the Consumer Financial Protection Bureau (CFPB) website, www.ConsumerFinance.gov. The "beta" website's primary goal is to reach out to and encourage the public to participate in the creation and priorities of the CFPB, with an emphasis on utilizing social media outlets. The website also provides information about the CFPB

and the origins of the financial crisis, an interactive display of the calendar of Elizabeth Warren, Assistant to the President and Special Advisor to the Secretary of the Treasury, and will be used to recruit staff for the CFPB. The public is encouraged to submit suggestions and feedback pertaining to the ongoing work of the CFPB. For a copy of the announcement, please see http://www.treasury.gov/press-center/press-releases/Pages/tg1050.aspx.

Agencies Propose Changes in Reporting Requirements for Savings Associations and Savings and Loan Holding Companies. On February 3, the federal bank and thrift regulatory agencies announced proposed changes to reporting requirements for savings associations and savings and loan holding companies regulated by the Office of Thrift Supervision (OTS). The agencies - OTS, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board (Board) - proposed the changes pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act requires the transfer on July 21, 2011 of OTS functions to the OCC, the FDIC, the Board and the Bureau of Consumer Financial Protection. The proposed changes include (i) beginning with the March 31, 2012 report date savings associations would file quarterly Consolidated Reports of Condition and Income and would cease to file quarterly Thrift Financial Reports; (ii) beginning with the June 30, 2011 report date savings associations would file data through the Summary of Deposits with the FDIC; on the same date the OTS's Branch Office Survey would be eliminated; (iii) effective January 31, 2012, collection of monthly median cost of funds data from savings associations would end; and, (iv) beginning with the March 31, 2012 report date, would require savings and loan holding companies to file with the Board the same reports that bank holding companies file. The agencies are requesting comment on the proposed changes within 60 days of their publication in the *Federal Register*, which is expected soon. Click here for a copy of the press release.

Firm News

Andrew Sandler will be speaking at the 2011 ABA National Conference for Community Bankers on February 22 in San Diego. Mr. Sandler's session is entitled "The Federal Bank Regulatory and Enforcement Environment Post-Dodd-Frank." Speaking with Mr. Sandler is Mark W. Olson, Co-Chairman, Treliant Risk Advisors LLC.

James Parkinson will speak on the Foreign Corrupt Practices Act as a Visiting Lecturer at Universidad Panamericana, Mexico (via videoconference), on March 16.

Margo Tank will be speaking at the E-Signature Summit for Banking Executives in New York on April 8.

James Parkinson will participate on a panel entitled "The Role of the Lawyer in Preventing Corruption," at the International Bar Association's Bar Leaders Conference in Miami on May 4.

James Parkinson will be speaking at the ACI's "FCPA Compliance in Emerging Markets" program in Washington, D.C. on June 15-16.

Miscellany

New York Federal Court Sentences Mortgage Broker to 30 Months in Prison For Fraud. On February 7, David Ramnauth was sentenced to 30 months in prison, followed by three years of supervised release, after pleading guilty to conspiracy to commit bank and wire fraud in connection with a broad scheme to file fraudulent home loan applications and collect hundreds of thousands of dollars in commissions. Ramnauth, formerly the president of the Queens, New York mortgage brokerage GuyAmerican Funding Corp., admitted that he allowed loan officers to use his mortgage brokerage license to submit dozens of false loan applications on behalf of straw buyers who purchased homes from distressed home sellers. Ramnauth also admitted that he submitted fraudulent loan applications on his own behalf, including for the purchase of a property by his wife. In total, the scheme involved over $23 million in fraudulent loans on more than 44 properties. Eleven defendants were originally charged in the scheme; in addition to Ramnauth, two have been sentenced to prison and six await sentencing. The U.S. Attorney for the Southern District of New York brought the case in coordination with the federal interagency Financial Fraud Enforcement Task Force. For a copy of the press release, please click here.

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We welcome reader comments and suggestions regarding issues or items of interest to be covered in future editions of InfoBytes.
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