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Legal Updates & News

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Operations Report

May 2007

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Standing By

Launch the bottle rockets! The new rules for commercial letters of credit will become effective July 1, 2007.

The UCP 600 will replace the former ICC rules, designated UCP 500, adopted in 1993. The UCP 600, like UCP 500, is not self-executing. It applies only to credits that invoke it. Letters of credit generally are subject to Article 5 of the Uniform Commercial Code and, if incorporated in the credit, subject also to other sources of law. (*See e.g.* ISP 98 (ICC Publication 590—standby letters of credit; UNCITRAL Convention on Independent Bank Guarantees and Standby Letters of Credit; SWIFT rules and regulations.) Like UCP 500, the focus of UCP 600 is on commercial rather than standby letters of credit. The UCP 600 contains a number of changes that will require review and modification of policies and procedures for banks that issue commercial letters of credit. For example, UCP 600 changes the time limit for examination of documents by an issuing bank to an absolute period of five calendar days. The former rule was a reasonable period of time.

For more information, contact Donna Zenor at dzenor@mofo.com.

No New Surges

The Defense Department just published its proposed rule to implement the much-criticized and ill-named Talent Amendment, and it surprised everyone. Recall, the Talent Amendment sought to limit the cost and terms of certain types of consumer credit offered or extended to service members and their dependents, as well as require disclosures in connection with transactions involving such credit. The DOD's proposal clears up a lot of the uncertainty concerning the scope of the Talent Amendment. The proposal would not apply to credit cards or any other open-end credit, as defined by Regulation Z. And it would define "consumer credit" to limit the applicability of the rule to the following three types of closed-end credit offered to covered service members or their dependents: (1) payday loans; (2) vehicle title loans; and (3) tax refund anticipation loans.

For more information, contact Joe Gabai at jgabai@mofo.com.

MiFID Outsourcing

MiFID (the Markets in Financial Instruments Directive) is intended to promote a single EU market for wholesale and retail transactions in financial instruments. It is considered one of the most wide-ranging and important pieces of financial services legislation introduced in Europe over recent years.

For anyone working in the European financial services sector, MiFID has been big news for some time, given the impact that MiFID will have on the way investment firms conduct business in Europe. But how much focus has your organization put on the impact MiFID will have on its outsourcing operations?

The rules imposed by MiFID on regulated firms' outsourcing and third-party contracts may have

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important consequences for financial services organizations that are increasingly outsourcing more of their functions to third-party providers. In particular, given that MiFID contains no “grandfathering” provisions, affected firms should be aware that they do not have much time to ensure that their existing contracts comply with MiFID’s requirements, and to re-negotiate or amend them if they do not, and should review and revise all of their standard templates/precedents to ensure that they will be compliant going forward.

For more information, contact Alistair Maughan at amaughan@mofo.com.

The NACHA Enchilada

For many, reading NACHA rules is about as entertaining as tuning into a PBS pledge drive. But the pocket-protector types will need to listen up.

On March 12, 2007, NACHA published its Back Office Conversion (“BOC”) guide. If you know anything about the NACHA rules, you know that you will need this guide and much more to understand complex NACHA rules. The guide addresses the newest form of check conversion, which allows retailers and billers that accept checks at the point of sale or at manned bill payment locations to convert eligible checks to ACH debits in the back office.

Several requirements of the BOC rules are intended to ensure that customers are properly notified that their checks may be converted, that customer service contact information is provided, and that customers have the ability to opt-out. The notification requirements are consistent with those required by the Federal Reserve Board under its Regulation E.

For more information, contact Mark Gillet mgillet@mofo.com.

CRA Recrafted

The Office of Thrift Supervision (“OTS”) is publishing a final rule effective July 1, 2007 revising four areas of its Community Reinvestment Act (“CRA”) regulations to reestablish uniformity between its rules and those of the other federal banking agencies. The OTS rule aligns with that of the other agencies by eliminating the option of alternative weights for lending, investment, and service under the large, retail savings association test; defining institutions with assets between $250 million and $1 billion as “intermediate small savings associations” subject to a new community development test; indexing the asset threshold for “small” and “intermediate small” savings associations annually based on changes to the Consumer Price Index; and clarifying the adverse impact on a savings association’s CRA rating where the OTS finds evidence of discrimination or other illegal credit practices.

The new rule changes will be applicable to OTS examinations beginning in the third quarter of 2007.

For further information, contact Andrew Smith at asmith@mofo.com.

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