TRUCKING IN REGULATION

by Steve Brown

There is an interesting economic index out there that measures the flow of goods throughout the country based on diesel fuel consumption. By tracking diesel consumption, the index captures the movement of raw materials and finished goods to factories and retailers shipped by trucks. In Sept, this index fell for the 2nd straight month. While this is admittedly just a single measure and it should be reviewed in context with other analysis, it does show that truckers (who carry 70% of all domestic freight), are seeing a slowdown in the economy. As the Fed deals with quantitative easing to try and keep things on track, they and other regulators are also dealing with writing some 200 to 300 new bank regulations related to the Dodd-Frank Act that are now beginning to be delivered to the industry. To help keep you informed as to the changes, here are some of the most recent.

Golden Parachute Payments - This new guidance was released to address the large increase in the number of institutions seeking permission to make such payments, that is directly related to an increased number of "troubled" (CAMELS rated 4 or 5) institutions. The guidance addresses prohibitions and exceptions around making so called "golden parachute payments" to parties associated with the institution. In general, the rules prohibit such payments, but exceptions can be granted with regulatory approval. To get approval, banks must provide information about the person's performance, influence and involvement over major corporate initiatives and policy decisions. This is required so regulators can be sure the person in question is not "substantially responsible" for the insolvency or troubled condition of the institution. The three exceptions include payments made with regulatory concurrence; those related to an agreement to hire a "white knight" to prevent the institution from imminently becoming troubled and reasonable payments not to exceed 12 months' salary in the event of a change in control (that does not result from an assisted transaction or from being placed in conservatorship or receivership).

Municipal Advisors - Dodd-Frank makes it unlawful for municipal advisors to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person without previously registering with the SEC. The Act defines a municipal advisor as any person (who is not a municipal entity or an employee of a municipal entity) (1) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products (defined to mean municipal derivatives, guaranteed investment contracts and investment strategies) or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (2) that undertakes a solicitation of a municipal entity. The definition specifically includes ''financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors. Since so many community banks do business with municipalities through brokers and other intermediaries (as well as directly), policies, procedures and processes should be reviewed and tightened in this area as needed to ensure business is not disrupted.

Noninterest-bearing Transaction Accounts - The Act provides that all funds held in noninterest-bearing transaction accounts are fully insured, without limit, from 12/31/2010 through 12/31/2012 (but defines noninterest-bearing transaction accounts as only traditional accounts and does not include low-interest NOW accounts or Interest on Lawyer Trust Accounts).

These are but a few of the most recent spate of rules to be delivered and more are on the way. Be careful out there as you try not to get run over by all of the regulatory trucks running around and look for more deliveries as the months roll by.

BANK NEWS

Earnings

BB&T raked in $210mm in profits, a 38% rise from the same period last year and largely attributed to a rise in revenue. Loan loss provisions, rose $120mm from the 2Q, while net chargeoffs jumped from 2.48% to 3.31% and nonperforming loans fell from 2.90% to 2.81%. Comerica reported $59mm in earnings, as lending activity slowed and the loan portfolio shrank $40B in the 3Q. M&I took a $169mm net loss in the 3Q, largely due to chargeoffs. M&T posted a 5th consecutive quarter of rising profits, totaling $192mm. SunTrust reported net profits of $153mm, which includes an $81mm loss from mark to market debt, compared to a $317mm loss the year prior. Revenue rose 19% as loan loss provisions dropped to $615mm; net chargeoffs fell to 2.52% and nonperforming loans declining to 3.80%.

Stress Testing

The Conference of State Bank Supervisors issued a white paper (click below) urging banks to conduct and integrate results from stress testing to better manage risk.
http://www.csbs.org/news/csbswhitepapers/Documents/CaseforStressTestingCommunityBanks.pdf

GSEs

The FHFA released estimates based on a recent stress test that taxpayers will most likely take a $154B loss on FNMA and FHLMC in most scenarios and the amount could reach $260B if housing further deteriorates.