THINK BENJAMIN TWAIN TO AVOID REGULATORY PAIN

by Steve Brown

We are still enjoying quotable quotes today, as we fondly recall one by Benjamin Franklin who said, "We are all born ignorant, but one must work hard to remain stupid." If that one alone doesn't put a smile on your face, then how about one from Mark Twain who said, "Get your facts first, then you can distort them as you please." Whether you enjoy the Benjamin's or would rather whitewash a fence, these gents were nothing if not entertaining.

Speaking of entertaining, what is more fun for a banker than getting an examination from a regulatory team? As you ponder that (we know we stumped many bankers with that one this morning), we give you a little more information to help you better prepare for this inevitable event the next time it comes around.

So far this year, regulators have already released about 21 major regulatory rules or updates that bankers should know. Of those, about 4 are associated with regulatory relief due to storms and another 3 are miscellaneous updates, we would deem perfunctory or administrative in nature. That whittles things down to a list of about 14 items of significance or about 3 to 4 released every month, so far this year. Working backwards from the most recent, here is how some of them stack up. Sections in italics are our comments and suggestions related to each one.

April 13, Dodd-Frank Act (DFA) - Sections 731 and 764 of DFA instruct regulators to establish minimum margin requirements for initial and variation margin for un-cleared swaps and security-based swaps entered into by certain registered swap dealers and major swap participants. While this sounds like something community banks can ignore, given that 14% of banks use swaps and about 80% of those are banks under $1B in assets, we need to be sure. This rule contains language that indicates most community banks would not be required to post collateral "unless their activity exceeds substantial thresholds" (not clearly defined that we could find) or "the risk limits of the entity with which they are transacting" (not sure how this would be calculated). Since this is still murky, we will be watching closely and report back. While not obviously meant to impact community banks, we remain concerned that since the next rate move is most likely higher, we hope swaps do not get swept into the "unintended consequences of DFA" bucket, just when banks need them most.

April 12, proposed guidelines describe the process that the FDIC would follow to determine whether to make an adjustment to a bank's score used to calculate the assessment rate for a large or highly complex institution. Institutions with total assets of < $1B are exempt from this, so that is a good thing.

March 15, FDIC reiterates that on Nov 24, 2010, final Overdraft Payment Program Supervisory Guidance was issued. It reaffirms supervisory expectations with respect to overdraft payment programs and provides specific guidance about automated overdraft payment programs. Banks have until July 1, to review, consider and respond to the expectations and mitigate any risk. Teleconferences have been held and community banks should stay on top of this, as this is usually the single largest fee source. Banks need to be sure they follow all rules and interpretations.

March 3, FDIC announces it will conduct 10 telephone seminars on deposit insurance coverage rules and regulations beginning Mar 23 through Dec 7, 2011. Participation is voluntary, but community banks should make sure enough people attend to spread the word through the bank. This process is designed to help employees understand deposit insurance rules, so they can assist depositors in determining coverage.

February 9, proposed guidelines on incentive compensation (for banks with total consolidated assets of $1B+). Under the rules, compensation programs: cannot encourage inappropriate risks by allowing employees to receive "excessive" compensation; should not encourage inappropriate risk taking; must have disclosures that allow examiners to determine compliance with the rule; and require banks to have policies and procedures to ensure compliance. While the rules only apply right now to banks above $1B, stay on top of this one, as it is likely to trickle down and become best practice for all rather quickly.

Finally, since the banking industry is rough right now, recall it was also Mark Twain who said, "A man who carries a cat by the tail learns something he can learn in no other way."

BANK NEWS

Costs

Wells Fargo launches "Project Compass," its firm wide initiative to cut costs and streamline operations.

Twitter Help

The Electronic Payments Coalition is conducting its "Save My Debit Card" Twitter campaign today in order to raise awareness of the interchange debate. The effort asks for consumers to Tweet positive stories on the ease of debit usage to "#savemydebitcard".

CU Switch

Har-Co Federal CU ($188mm, MD) applied to the OTS for a savings bank charter.

ID Protection

The National Strategy for Trusted Identities in Cyberspace (NSTIC) was launched by the White House that was designed to coordinate both private and public interest to come up with a single ID and verification system for all of electronic commerce and interaction.

FHA Direct Lenders

The FHA gave notice that it will start to temporarily waive (until next year) its financial reporting audit requirements for eligible banks in good standing under $500mm in assets with the submission of Call Report data.