

Financial Services Regulatory Highlights

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Group of Thirty, Government Accountability Office, and Congressional Oversight Panel Release Reports on Regulatory Reform

Three reports have been released in the past two weeks in response to the challenges facing the current financial services regulatory framework. The Group of Thirty (G30), a non-profit organization composed of highly regarded financial services industry professionals and former regulators, released "Financial Reform: A Framework for Financial Stability" on January 15, 2009. The G30 is led by Paul Volcker, former Fed Chairman and head of the Economic Recovery Advisory Board under President Barack Obama. The Report identifies eighteen specific recommendations, with a focus on regulatory supervision for all financial institutions, increased regulation for larger institutions, and the prevention of institutions from becoming "too big to fail" because that often also seems to make them "too big to manage." The G30's report can be accessed at: < http://www.group30.org/pubs/pub_1460.htm>.

The United States Government Accountability Office (GAO) released "A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System" on January 21, 2009. The GAO is an independent and nonpartisan investigative arm of Congress charged with the analysis of legislation and the implementation of laws. The GAO report's focus is not on proposing a new regulatory system, but on providing a framework for analyzing proposed financial services sector reforms.

The GAO's report can be downloaded at:
<http://www.gao.gov/new.items/d09216.pdf>.

Finally, the Congressional Oversight Panel (COP) released its "Special Report on Regulatory Reform" on January 29, 2009. The COP was established by Congress following the initiation of the Troubled Asset Relief Program (TARP) to "review the current state of financial markets and the regulatory system." The COP is composed of five members, three of whom are Democrats and two, Republicans. The COP Special Report, as charged by Congress, analyzes "the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and

protecting consumers." It reviews the impact of regulation after the reforms of the 1930's and comments on the trend of deregulation over the past twenty-five years. The COP also endorses the creation of a systemic risk regulator; receivership process for nonbank institutions; supervision of hedge funds and private equity firms; and a single federal consumer credit regulator. The COP Special Report can be downloaded at: <http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf>.

The Financial Services Regulatory Practice will be releasing an FS Regulatory Brief later this month to further discuss these important developments.

Treasury Releases Guidelines for Targeted Investment Program

On January 2, 2009, the U.S. Department of Treasury released a program description for the Targeted Investment Program. The first recipient of an investment under this program was Citigroup, Inc. on November 23, 2008. The program description is required by Section 101(d) of the Emergency Economic Stabilization Act (EESA). The program seeks to foster financial market stability and protect other financially sound businesses by investing in the troubled assets of those institutions that have significant importance to the nation's financial and economic system. The Treasury will determine eligibility of participants and allocation of resources on a case-by-case basis. There is no deadline for participation in this program.

In making eligibility determinations, Treasury will acquire and consider information from a number of sources,

such as the institution's primary regulators, if applicable, other regulatory bodies or private parties that may provide insight into the potential consequences if confidence in the particular institution deteriorated.

The Targeted Investment Program, pursuant to considerations mandated in EESA, allows the Treasury to invest in any financial instrument, including debt, equity, or warrants, that the Secretary of the Treasury determines to be a troubled asset, after consultation with the appropriate parties, including the Chairman of the Board of Governors of the Federal Reserve System and a notice to Congress. Participating institutions will be required to provide Treasury with warrants or alternative consideration, as necessary, as well as adhere to rigorous executive compensation standards.

Treasury Announces TARP Investments in Chrysler Financial

On January 16, 2009, the Treasury Department announced that it will lend \$1.5 billion to a special purpose entity created by Chrysler Financial to finance the extension of new consumer auto loans as part of a broader program to assist the domestic automotive industry.

The five-year loan occurred on the following terms: a rate of one month LIBOR + 100 basis points for the first year; and one month LIBOR + 150 basis points for years two to five. Treasury's loan will be secured by a senior secured interest in a pool of newly originated consumer automotive loans, and Chrysler Holding will guarantee certain covenants of Chrysler Financial.

Under the agreement, Chrysler Financial must comply with the executive compensation and corporate governance requirements of Section 111 of the Emergency Economic Stabilization Act (EESA), as well as enhanced restrictions on executive compensation.

The special purpose entity created by Chrysler Financial will issue warrants to Treasury in the form of additional notes in an amount equal to 5 percent of the total size of the loan. The additional notes will vest 20 percent on the

closing date and 20 percent on each anniversary of the closing date and will have other terms similar to the loan.

Treasury exercised this funding authority under the EESA's Troubled Asset Relief Program (TARP). The investment was made under the Automotive Industry Financing Program.

Treasury Issues Additional Executive Compensation Rule under TARP

On January 16, 2009, the U.S. Department of the Treasury issued additional rules for reporting and recordkeeping requirements under the executive compensation standards of the Troubled Asset Relief Program's (TARP) Capital Purchase Program (CPP). The new rules require Chief Executive Officers (CEOs) to annually certify, within 135 days of the financial institution's fiscal year end, that its compensation committee has complied with the executive compensation standards. In addition, within 120 days of the closing date of the Securities Purchase Agreement between the Treasury and the financial institution, the CEO must certify that the compensation committee has reviewed the senior executives' incentive compensation

arrangements with the senior risk officers to ensure that such arrangements do not encourage senior executives to take unnecessary and excessive risks that could threaten the value of the financial institution.

Participating financial institutions also must keep records of certifications for at least six years following each certification and provide these records to the TARP Chief Compliance Officer upon request.

Treasury has also issued Frequently Asked Questions on its website relating to the executive compensation standards to assist financial institutions' compliance with these standards.

Treasury, Federal Reserve, and the Federal Deposit Insurance Corporation (FDIC) Provide Assistance to Bank of America

On January 16, 2009, the U.S. government entered into an agreement with Bank of America to provide a package of guarantees, liquidity access, and capital as part of its commitment to support financial market stability.

Treasury and the FDIC will provide protection against the possibility of large losses on an asset pool of approximately \$118 billion of loans, securities backed by residential and commercial real estate loans and other such assets, all of which have been marked to current

value. Bank of America assumed the majority of these assets based on its acquisition of Merrill Lynch. In return for these protections, Bank of America will issue preferred shares to the Treasury and FDIC. If necessary, the Federal Reserve is ready to backstop residual risk through a non-recourse loan.

In addition, Treasury will invest \$20 billion in Bank of America from the Troubled Asset Relief Program in exchange for preferred stock with an 8 percent dividend to the Treasury.

Federal Reserve to Begin Purchase of Mortgage Backed Securities (MBS) backed by Fannie Mae, Ginnie Mae, and Freddie Mac

On December 30, 2008, the Federal Reserve announced that it would begin operations in early January to purchase up to \$500 billion in mortgage-backed securities backed by Fannie Mae, Ginnie Mae, and Freddie Mac. The purchases will be funded through the creation of additional bank reserves. The goal of the MBS purchase program is to support the mortgage and housing markets and to foster improved conditions in financial markets.

Eligible purchases under the program include, but are not limited to, fixed rate, 30, 20, and 15 year MBS guaranteed by the government sponsored entities (GSEs). The purchase program is managed at the direction of the Federal Open Market Committee by the

Federal Reserve Bank of New York. Due to the complexity of these investments, the New York Fed has chosen BlackRock Inc., Goldman Sachs Asset Management, PIMCO, and Wellington Management Company, LLP as asset managers. These managers are authorized to trade only with primary dealers who are eligible to transact directly with the New York Fed, and they will implement ethical walls to prohibit unfair dealing in their proprietary accounts and advisory services.

The Fed's exposure to credit and interest rate risk is minimal as the purchases are fully backed by the GSEs and the Fed will be implementing a buy and hold strategy for the securities.

Final Rule on Unfair Credit Card Acts or Practices

The Office of Thrift Supervision issued a final rule on Unfair or Deceptive Acts or Credit Card Practices (UDAPs) on December 18, 2008. The final UDAP rule addresses credit card practices that have raised concern about fairness and transparency. The Federal Reserve and NCUA also approved similar rules on the same date.

The rule prohibits unfair practices to ensure that consumers have the ability to make informed decisions about the use of credit card accounts. The final rule consists of five provisions.

First, savings associations are prohibited from treating a payment as late for any purpose unless consumers have been provided a reasonable amount of time to make that payment. The rule creates a safe harbor for associations that adopt reasonable procedures to ensure periodic statements providing payment information are mailed or delivered at least 21 days before the payment due date.

Second, when an account has balances with different annual percentage rates, associations are required to

allocate amounts paid in excess of the minimum payment using one of two methods: 1) applying the entire amount first to the balance with the highest annual percentage rate; or 2) splitting the amount pro rata among the balances. Under the final rule, payments will be allocated to promotional rate balances in the same manner as other balances.

Third, associations must disclose at account opening the annual percentage rates that will apply and may not increase these rates unless expressly permitted. Associations may increase a rate disclosed at account opening at the expiration of a specified period, provided that the potential increased rate was also disclosed at account opening. Once an account has been open for one year, an association may increase the rate for new transactions by providing the 45-day advance notice required by Regulation Z. For both existing and future balances, associations may increase a variable rate due to the operation of an index. In addition, they may increase a rate when the consumer is more than 30 days delinquent. Finally, associations may offer interest free promotional plans which waive interest at the end of the

plan period, if the principal balance is paid in full. However, they may not offer deferred interest plans in which interest is retroactively applied to an account.

Fourth, associations are prohibited from using the practice sometimes referred to as two-cycle billing, in which, as a result of the loss of a grace period, an association imposes finance charges based on balances for days in billing cycles that precede the most recent billing cycle.

Fifth, to address concerns regarding subprime credit cards with high fees and low available credit limits,

associations are prohibited from charging fees for the issuance of credit to the account in the first year that constitute a majority of the initial credit limit. In addition, if such fees exceed 25 percent of the initial credit limit, their repayment must be charged over the first six months after account opening. The final rule does not limit issuers' ability to offer secured credit cards. In fact, by restricting the financing of fees, the final rule may encourage issuers to expand secured credit card offerings.

These rules are effective July 1, 2010.

OCC Addresses Rate Spread Reporting Threshold under Regulation C

On January 5, 2009, the Office of the Comptroller of the Currency (OCC) released Bulletin OCC 2009-2, which details the Rate Spread Reporting Threshold under Regulation C. The Bulletin notes that, on October 20, 2008, the Board of Governors of the Federal Reserve System (Board) approved final amendments to Regulation C (Home Mortgage Disclosure Act) to revise the rules for reporting price information on higher priced mortgage loans. The rules are being conformed to the definition of "higher-priced mortgage loan" adopted by the Board under Regulation Z (Truth in Lending) in July of 2008. Under the final rule, a lender will report the spread between the loan's annual percentage rate (APR) and a survey-based estimate of APRs currently offered on prime mortgage loans of a comparable type if

the spread is equal to or greater than 1.5 percentage points for a first-lien loan or 3.5 percentage points for a subordinate-lien loan.

The Bulletin states that the survey that the Board will rely on for the foreseeable future is the Primary Mortgage Market Survey (PMMS) conducted by Freddie Mac. The Board will conduct its own survey if it becomes appropriate or necessary to do so. Information on the average prime offer rate will be published on the FFIEC's Web site at: www.ffiec.gov/hmda.

The final rule becomes effective October 1, 2009. Compliance is mandatory for loan applications taken on or after that date and for loans that close on and after January 1, 2010 (regardless of their application dates).

FFIEC Releases Guidance on Risk Management of Remote Deposit Capture

On January 14, 2009, the Federal Financial Institutions Examination Council (FFIEC) issued guidance for examiners, financial institutions, and technology service providers to identify risks, evaluate controls, and assess risk management practices related to remote deposit capture (RDC) systems.

RDC enables customers to make deposits from their homes or businesses instead of taking the deposits to their financial institutions. Digital information captured at the home or business is transmitted to the financial institution or its service provider for clearing and settlement. Financial institutions might also use RDC in

their branches and automated teller machines (ATMs) to facilitate deposit processing.

When properly managed, RDC can reduce processing costs, support new and existing products by financial institutions, and accelerate the availability of customers' funds. However, RDC also introduces new risks and increases existing risks in processing deposits originated by an institution's commercial or retail customers, or by customers of other financial institutions domestically and abroad.

The guidance, *Risk Management of Remote Deposit Capture*, addresses the essential elements of RDC risk management: identifying, assessing, and mitigating risk, as well as measuring and monitoring residual risk exposure. The guidance also discusses the responsibilities of senior managers in overseeing the development, implementation, and operation of RDC in their financial institutions. Interagency RDC examination procedures will be published in an updated FFIEC Retail Payment Systems booklet scheduled for release in early 2009.

Issuance of Final Interagency Questions and Answers on Community Reinvestment

On January 6, 2009, the federal financial institution regulatory agencies announced the publication of the final interagency questions and answers on the Community Reinvestment Act (CRA). The Questions and Answers encourage financial institution participation in foreclosure prevention programs aimed at providing affordable, sustainable, long-term loan restructuring or modification for homeowners facing foreclosure on their primary residence. They also highlight the activities financial institutions with minority-owned financial institutions or low-income credit unions.

The following revisions occurred in response to the comments received on the proposed:

- One revision related to the investment in nationwide community development funds mentions that these funds are an important sources of investments for low- and moderate-income and underserved

communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. It further states that agencies will consider whether the purpose, mandate, or function of the fund includes serving geographies or individuals that include the institution's assessment area.

- The agencies withdrew proposed revisions to the legally binding commitments to invest in funds with the primary purpose of community development.

The agencies are also submitting for public comment new and revised questions. One allows pro rata consideration in certain circumstances for an activity that provides affordable housing to low- and moderate-income individuals, and the other provides examples of how financial institutions can determine that community service is targeted to low- and moderate-income individuals.

Community Reinvestment Act: Small Bank Asset Thresholds and Related Regulatory Revision

On December 22, 2008, the Office of the Comptroller of the Currency (OCC) published in the Federal Register revisions to its Community Reinvestment Act (CRA) regulation that are effective January 1, 2009. The revisions adjust the asset-size thresholds to be used to define “small bank” and “intermediate small bank” based on the annual percentage change in the Consumer Price Index.

The OCC’s CRA regulation, as revised on December 21, 2007, provides that national banks that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.061 billion are “small banks.” Small banks with assets of at least \$265 million as of December 31 of both of the prior two calendar years, and less than \$1.061 billion as of December 31 of either of the prior two calendar years, are “intermediate small

banks.” The regulation provides that the OCC will publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

During the period ending November 2008, the CPIW increased by 4.49 percent. Beginning January 1, 2009, banks that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion are “small banks.” Small banks with assets of at least \$277 million as of December 31 of both of the prior two calendar years, and less than \$1.109 billion as of December 31 of either of the prior two calendar years, are “intermediate small banks.”

Deduction of Goodwill Net of Associated Deferred Tax Liability

Under the OCC’s existing regulatory capital rules, a national bank (bank) must deduct certain assets from tier 1 capital, which is used to determine the bank’s leverage and risk-based capital ratios. A bank is permitted to net any associated deferred tax liability against some of those assets prior to deduction from tier 1 capital.

Included among those assets that a bank may deduct net of associated deferred tax liabilities are certain intangible assets arising from a nontaxable business combination. Such netting generally is not permitted for goodwill and other intangible assets arising from a taxable business combination. For those assets, the full or gross carrying amount of the asset must be deducted from tier 1 capital.

The final rule amends the existing rules to permit the amount of goodwill arising from a taxable business combination that must be deducted from tier 1 capital to be reduced by any associated deferred tax liability. This change permits a bank to effectively reduce its regulatory capital deduction for goodwill to an amount

equal to the maximum regulatory capital deduction that could occur as a result of the goodwill becoming completely impaired or derecognized. However, a bank that reduces the amount of goodwill deducted from tier 1 capital by the amount of the associated deferred tax liability would not be permitted to net this deferred tax liability against deferred tax assets when determining regulatory capital limitations on deferred tax assets. The agencies believe that this treatment would reflect appropriately a banking organization’s maximum exposure to loss if the goodwill becomes impaired or is derecognized under GAAP.

The final rule was published in the Federal Register on December 30, 2008, with an effective date of January 29, 2009. However, the rule permits a bank to elect to apply the rule for purposes of the regulatory reporting period ending on December 31, 2008.

Interim Final Rule Amending the HOPE for Homeowners Program Regulations to Provide Additional Flexibility and Options to Lenders as Authorized by Amendment to Section 257 of the National Housing Act

This interim final rule amends the HOPE for Homeowners Program regulations established by the Board of Directors of the HOPE for Homeowners program and published on October 6, 2008. The regulations are being amended to provide additional flexibility and options to lenders as authorized by amendments to section 257 of the National Housing Act made by the Emergency Economic Stabilization Act, which was signed into law on October 3, 2008 and to make additional changes designed to improve the program.

Specifically, the amendments expand the Program to include 2-to-4 unit properties as eligible Program properties, which is consistent with the definition of single-family residence under the National Housing Act. The amendments provide for the option of an upfront payment in lieu of a future appreciation payment from the Secretary of Housing and Urban Development to a holder of an existing subordinate mortgage. The upfront payment would be offered by the Secretary as an incentive to facilitate agreement by all mortgage lien

holders to release their liens on the mortgage to be refinanced under the program.

The amendments made by this rule also include increasing the maximum term of Program mortgages from 30 to 40 years, as well as increasing or modifying the allowable loan-to-value and debt-to-income ratios for new mortgages under the Program. The revisions modify the equity sharing provision of the Program for borrowers who may have equity in their homes at the time they are accepted into the Program and to make the timeframe for lenders to obtain endorsements for Program loans consistent with other FHA programs.

These amendments seek to expand the number of eligible borrowers and participating lenders and servicers and improve the Program's operations consistent with the requirements and purposes of the Program. In addition, the revisions clarify the provisions regarding mortgagor eligibility, total monthly mortgage payment and shared appreciation in the value of the refinanced property.

FTC Publishes Notice on Proposed Rule Regarding Depository Institution Disclosure Requirements

The Federal Trade Commission has approved the publication of a Federal Register notice seeking comments on proposed disclosure requirements for depository institutions that lack federal deposit insurance. The Federal Deposit Insurance Corporation Improvement Act, as amended by the Financial Services Regulatory Relief Act, requires those institutions to make

disclosures to consumers about the lack of federal deposit insurance. The proposed rule would codify such requirements in the Commission's regulations. The notice of proposed rulemaking can be found on the Commission's Web site at:

<http://www.ftc.gov/os/2009/01/R411014fdiciafrn.pdf>

Final Rule on Currency Transaction Reporting Exemptions

On January 15, 2009, the Office of the Comptroller of the Currency (OCC) issued Bulletin OCC 2009-5 regarding currency transaction reporting exemptions. The Bulletin states that the Financial Crimes Enforcement Network (FinCEN) recently announced the December 5, 2008, publication in the Federal Register of the final rule on Currency Transaction Reporting (CTR) that simplifies the current requirements for depository institutions to exempt their eligible customers from currency transaction reporting.

FinCEN is amending the Bank Secrecy Act (BSA) regulation that allows depository institutions to exempt certain persons from the requirement to report transactions in currency in excess of \$10,000. The new rule became effective on January 5, 2009.

The final rule makes the following changes to the current CTR exemption system:

- Depository institutions will no longer be required to review annually or make a designation of exempt

person (DOEP) filing for customers who are other depository institutions, U.S. or state governments, or entities acting with governmental authority.

- Depository institutions will have the ability to exempt an otherwise eligible nonlisted company or a payroll customer after either two months time (previously 12 months) or after conducting a risk-based analysis of the legitimacy of the customer's transactions.
- FinCEN's guidance on the definition of "frequent" transactions will change to five transactions per year from the current eight transactions per year.
- Depository institutions will no longer be required to renew biennially a designation of exempt person filing for otherwise eligible Phase II customers, but an annual review of these customers must still be conducted.
- Depository institutions will no longer be required to record and report a change of control in a designated nonlisted or payroll customer.

CFTC and FinCEN Agree to Share Information

On January 16, 2009, the Commodity Futures Trading Commission (CFTC) and the Financial Crimes Enforcement Network (FinCEN) announced that they have entered into an agreement for the exchange of information in an effort to coordinate efforts and maximize resources in discharging both Agencies' obligations under the Commodity Exchange Act (CEA) and Bank Secrecy Act (BSA). The collective goal of this agreement is to ensure that CFTC-regulated entities, particularly futures commission merchants and introducing brokers, have anti-money laundering (AML) programs in place that comply with the BSA and its implementing regulations as well as to ensure that terrorist financing, money laundering, and other financial crimes are identified and resolved.

Under the agreement, the CFTC will provide FinCEN information regarding the AML examination and

enforcement activities of the CFTC and the futures industry self-regulatory organizations that examine their members for BSA compliance. On the other hand, FinCEN will provide the CFTC with information that will assist the CFTC in carrying out its BSA compliance activities, enforcement activities, and oversight responsibilities with respect to entities subject to the CFTC's jurisdiction.

The CFTC additionally has been delegated authority from FinCEN to examine CFTC-regulated entities for compliance with the BSA. The information sharing agreement will enhance the CFTC's ability to effectively implement its AML examination responsibilities and conduct oversight of the futures self-regulatory organizations.

PWG Private-Sector Committees Finalize Best Practices for Hedge Funds

The two private-sector committees established by the President's Working Group on Financial Markets (PWG) released finalized best practices for asset managers and hedge fund investors in an effort to increase accountability for participants in this industry.

The PWG originally tasked the committees, selected in September 2007 and comprised of well-respected asset managers and investors, with collaborating on industry issues and developing best practices. The committees released their draft best practices in April 2008, and provided a public comment period.

The committees amended the reports in certain respects to further the fundamental goal of the best practices and to clarify parts of the report. The final best practices being released today may be viewed at the committees' website, www.amaicmte.org.

The final best practices for the asset managers call on hedge funds to adopt comprehensive best practices in all aspects of their business, including the critical areas of disclosure, valuation of assets, risk management, business operations, compliance and conflicts of interest.

The final best practices for investors include a Fiduciary's Guide, which provides recommendations to individuals charged with evaluating the appropriateness of hedge funds as a component of an investment portfolio, and an Investor's Guide, which provides recommendations to those charged with executing and administering a hedge fund program if one is added to the investment portfolio.

SEC Releases Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Extend the Pilot Program for NASDAQ Last Sale Data Feeds

On December 24, 2008, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") several proposed rule changes related to the Pilot Program for NASDAQ Last Sale Data Feeds. On December 30, 2008, the Commission announced that it has approved the proposal on an accelerated basis and is extending the operation of the pilot until March 31, 2009, as requested by the NASDAQ. The Commission has published the notice soliciting comments on the proposed rule change from interested persons. It is available at <http://www.sec.gov/rules/sro/nasdaq/2008/34-59186.pdf>.

The pilot created the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee,

enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. The pilot supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the current pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on websites operated by Google, Interactive Data, and Dow Jones, among others. The text of the proposed rule change is available at NASDAQ, the Commission's Public Reference Room, and <http://nasdaq.complinet.com>.

Approval of Proposed Rule Change to Increase the Permissible Aggregate Weight of Underlying Foreign Country Securities

On December 29, 2008, the Securities and Exchange Commission (SEC) approved the proposed rule change amending NYSE Arca Equities Rule relating to the listing of Equity Index-Linked Securities.

The current listing standards limit the permissible aggregate weight of underlying foreign country securities and American Depositary Receipts (ADRs) that can be included in the Equity Reference Asset to 20 percent of the overall index where the primary trading markets of such foreign country securities underlying ADRs are not members of the Intermarket Surveillance Group (ISG) or parties to comprehensive surveillance sharing agreements (CSSA) with the SEC.

The amendment will increase the permissible aggregate weight of such underlying foreign country securities and

ADRs up to 50 percent of the overall index, provided that:

- The securities of any one primary foreign market which is not an ISG member or does not have a CSSA with the Exchange do not represent more than 20 percent of the dollar weight of the index, and
- The securities of any two Non-Reciprocal Foreign Markets do not represent more than 33 percent of the dollar weight of the index.

For additional information, refer to:

<http://www.sec.gov/rules/sro/nysearca/2008/34-59180.pdf>

Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Liquidity Provider Credit on the NYSE Bonds System

On December 22, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission (Commission) the proposed rule change to extend the Pilot Liquidity Provider Credit on the NYSE Bonds System. This change proposes to continue issuing liquidity providers a \$20 credit for certain bond trades executed on the NYSE Bonds system with an execution of less than 20 bonds through December 31, 2009. The exchange also seeks to revise some wording and make technical amendments to the fee schedule.

A liquidity provider is one who posts liquidity to NYSE Bonds. During the course of clearing bond trades, liquidity providers absorb clearing costs. In order to offset these costs, liquidity providers may increase the offer price or decrease the bid price of the bond. As a result, the best execution of a bond order may be compromised as clearing costs increase with smaller

orders. The Exchange believes that the \$20 credit will continue to incentivize liquidity providers to display the best price available on NYSE Bonds.

Due to the fact that the above rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Securities and Exchange Act of 1934 and subparagraph (f)(2) of Rule 19b-4 thereunder. At anytime within 60 days of the filing of the proposed rule change, the Commission may abolish the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest. The public is invited to submit comments, views and arguments concerning the proposed rule to the Commission via email or direct mail.

SEC Extends FINRA's Pilot Period for Use of Multiple Market Participant Identifiers (MPIDs)

On December 29, 2008 FINRA filed a proposal, which became effective immediately, to extend the current rules regarding the use of Multiple Market Participant Identifiers (MPIDs) in FINRA Rules 6160 and 6170 through January 29, 2010. The extension provides additional time to analyze the use of multiple MPIDs on the trade reporting and alternative display facility participants. No other changes to the pilot were made.

FINRA requires that any trade reporting or display facility participant that wishes to use more than one MPID for

purposes of reporting/displaying trades must submit a written request to, and obtain approval from the operations department. Since the use of multiple MPIDs is seen as more of a privilege and not a right, FINRA closely monitors the use of the MPIDs against its stated purpose and will limit or withdraw its grant of additional MPIDs. The advantage of having multiple MPIDs is that it allows a firm to effectively separate and track its order flow.

Trading Ahead: Proposed Rule Change Relating to FINRA Rule 5280

On January 15, 2009, the SEC approved the proposed rule change relating to the adoption of FINRA Rule 5280 (Trading Ahead of Research Reports). FINRA proposed to adopt the NASD's Interpretive Material 2110-4 (Trading Ahead of Research Reports) with modifications as a stand-alone FINRA rule in the consolidated FINRA rulebook.

IM-2110-4 states that it is inconsistent with just and equitable principles of trade for a member to establish or adjust an inventory position in an exchange-listed security traded over-the-counter or a derivative of such security, in anticipation of the issuance of a research report on that security. The rule change amends the IM in three respects:

- The application of the IM is extended to cover inventory positions with respect to any security, including debt or derivative thereof;

- The rule would apply only to circumstances where a member establishes or adjusts its inventory based on non-public advance knowledge of the content or timing of a research report in that security; and
- Elimination of the option to establish internal controls to manage the flow of information between the research and trading departments and instead mandate that firms establish policies and procedures reasonably designed to restrict or limit the information flow between research department personnel and the trading department personnel.

For additional information, refer to <http://www.sec.gov/rules/sro/finra/2009/34-59254.pdf>

FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Information and Data Reporting and Filing Requirements

Currently FINRA-only members and Dual Members (FINRA and NYSE) report and file information using separate forms via different electronic filing platforms. FINRA is creating a single electronic filing platform and standard annual form to report critical business information. In addition, this form will request updates to business activities that were not reported on the firms' current Form BD, additional contact information beyond that currently requested, and additional information regarding clearing operations.

As part of developing the new consolidated FINRA Rulebook, FINRA is requesting comment on Proposed Rule 4540. This proposed rule:

Establishes a new annual form reporting requirements and additional contact information requirements

Proposed FINRA Rule 4540(a)(1) requires each firm to report, update and review, in such format, time frame and manner as FINRA may require, all specified data or information. Additionally, firms would report and update all applicable contact person information that is not currently required by a regulatory rule. The proposed rule also allows FINRA the flexibility to require member firms to report additional specified data and information, as necessary.

Updates mandatory filing requirements

The proposed Rule requires each firm to file with (or otherwise submit to) FINRA, in such electronic format as FINRA may require, all regulatory notices or other documents required to be filed (or otherwise submitted) to FINRA, as specified by FINRA. Proposed FINRA Rule 4540(a)(2), however, permits FINRA to specify both the format and manner of the filing or submission and does not limit the format only to an electronic format.

Updates contact information reporting requirements

The proposed rule provision requires each firm to report to FINRA the required information in the current Rule 1160 and any additional contact information applicable to the firm, via the Firm Gateway or such other means as FINRA may specify. The supplementary material to Rule 4540 also retains, but extends to all contact information, NASD Rule 1160's requirement that each firm comply promptly with any FINRA request for such information.

Updates clearing member reporting requirements

The proposed Rule requires that each clearing firm (both self-clearing and those that clear for other firms) electronically report to FINRA on a daily basis prescribed data pertaining to the firm and any firm for which it clears. Additionally, it requires that each clearing firm report the prescribed data in a manner that enables FINRA to distinguish between data belonging to an introducing firm and data belonging to an introducing firm that acts as an intermediary in obtaining clearing services.

FINRA is also proposing to relocate Rule 3150's provisions as supplementary material to Proposed Rule 4540 and to delete IM-3150.

Adoption of this rule would eliminate NASD IM-3150, Rules 1160, 3150, and 3170 and NYSE Rule 416A.

Additional Information

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