

Financial Services Regulatory Highlights

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The Emergency Economic Stabilization Act of 2008

On October 3, 2008, Congress passed and the President signed into law the **Emergency Economic Stabilization Act of 2008** (the "Act" or "EESA"). During its short legislative history, the Act bore a number of descriptions -- from the Troubled Asset bill, to the Economic Rescue bill, to the Bailout bill and worse. It is now secure in its identity as EESA and its overriding legislative purpose "...to restore liquidity and stability to the financial system of the United States."

For additional information on the EESA, please see our FS Regulatory Brief available at:

[http://www.pwc.com/extweb/pwcpublishations.nsf/docid/076E1907448B3F6F852574DD004F0BD3/\\$File/fs_reg_eesa.pdf](http://www.pwc.com/extweb/pwcpublishations.nsf/docid/076E1907448B3F6F852574DD004F0BD3/$File/fs_reg_eesa.pdf).

Treasury Requests Public Input on Guarantee Program for Troubled Assets

On October 14, 2008, the Department of the Treasury released a request for public commentary on the development of a guarantee program for troubled assets, as authorized by the Emergency Economic Stabilization Act of 2008 (EESA).

The program will guarantee the timely payment of principal and interest on troubled assets originated or issued prior to March 14, 2008. It also authorizes the Secretary of the Treasury to set and collect premiums from participating financial institutions, taking into consideration the credit risk characteristics of the insured asset. The structure of the guarantee program may take

any number of forms or may vary by asset class. Therefore, the Treasury Department is soliciting comments related to the structure of this program, including but not limited to, how premiums should be calculated and which institutions and assets should be eligible. The comment period closed on October 28, 2008.

Emergency Economic Stabilization Act of 2008 Temporarily Increases Basic FDIC Insurance Coverage from \$100,000 to \$250,000 Per Depositor

On October 3, 2008, President George W. Bush signed into law, the Emergency Economic Stabilization Act of 2008, which temporarily raises the basic limit on federal deposit insurance coverage from \$100,000 to \$250,000 per depositor. The legislation provides that the basic deposit insurance limit will return to \$100,000 after December 31, 2009.

FDIC insurance covers funds in deposit accounts, including checking and savings accounts, money market deposit accounts and certificates of deposit (CDs). It

does not cover other financial products that insured banks may offer, such as stocks, bonds, mutual fund shares, life insurance policies, annuities or municipal securities.

In a letter dated October 3, 2008 (Financial Institution Letter 102-2008), the FDIC advised insured institutions they should inform depositors that the coverage increase is temporary and effective only until December 31, 2009. The legislation did not increase coverage for retirement accounts; it continues to be \$250,000.

Joint Statement by Treasury, Federal Reserve, and FDIC on the Capital Purchase Program

On October 14, 2008, the Treasury Secretary, the Federal Reserve Chairman, and the FDIC Chairman issued a joint statement announcing several important actions being taken to implement the global strategy of providing liquidity to markets to strengthen financial institutions, prevent failures that pose systemic risk, protect depositors, and enforce investor protections.

First, the Treasury announced a voluntary capital purchase program. A broad array of financial institutions are eligible to participate in this program by selling preferred shares to the U.S. Government on attractive terms that protect the taxpayer.

Second, Secretary Paulson signed the systemic risk exception to the FDIC Act, enabling the FDIC to temporarily guarantee the senior debt of all FDIC-insured institutions and their holding companies, as well as deposits in non-interest bearing deposit transaction accounts. Regulators will implement an enhanced supervisory framework to assure appropriate use of this new guarantee. Nine major financial institutions have already agreed to participate in both the capital purchase program and the FDIC guarantee program. By participating in these programs, it is expected that these institutions will enhance their capacity to perform their vital function of lending to U.S. consumers and businesses and promoting economic growth. They have also committed to continued aggressive actions to

prevent unnecessary foreclosures and preserve homeownership.

Third, to further increase access to funding for businesses in all sectors of our economy, the Federal Reserve has announced further details of its Commercial Paper Funding Facility (CPFF) program, which provides a broad backstop for the commercial paper market.

Beginning October 27, the CPFF will fund purchases of commercial paper of three-month maturity from high-quality issuers.

Additional Guidance on the Capital Purchase Program

On October 20, 2008, the Treasury, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation issued additional guidance, including application guidelines, for the Capital Purchase Program (CPP), which was initially announced on October 14, 2008. Under the CPP, the Treasury plans to funnel up to \$250 billion from the \$700 billion financial rescue plan into banks to encourage U.S. financial institutions to build capital and increase the flow of financing to U.S. businesses and consumers.

Eligible Institutions

The CPP is available to any bank, savings association, bank holding company and savings and loan holding company organized under the laws of the United States. Those institutions controlled by a foreign bank or company will not be eligible for this program. Final approval of eligibility and applicable allocations will be determined by the Treasury, in coordination with the appropriate federal banking agency.

Application Guidelines

All applications must be submitted to the appropriate federal banking agency (FBA) by 5pm, November 14,

2008. If the applicant is unable to meet all terms and conditions of the program, the applicant must provide explanation of the condition(s) that cannot be met and reasons the condition(s) cannot be met. If such applicant receives preliminary approval to participate in the CPP from the Treasury, the applicant will have 30 days from date of notification to submit finalized documentation and investment agreements.

Conditions for Participation in the CPP

For so long as the Treasury holds equity issued under this program, companies participating must adopt the Treasury Department's standards for executive compensation and corporate governance. In addition, for the first three years that the Treasury owns shares in the applicant, the applicant is not able to increase its dividend payments on common shares without the permission of the Treasury.

Currently, nine financial institutions have agreed to participate in this program with many other small and medium sized banks considering joining as well, which will result in an increase of capital and provide the lending that is necessary to support the U.S. economy.

FDIC Technical Briefing on Temporary Liquidity Guarantee Program

The FDIC issued technical guidance on the Temporary Liquidity Guarantee Program in the form of the Frequently Asked Questions (FAQs). The FAQs and applicable responses from the FDIC are listed below.

Eligibility

What is the window for participation?

All eligible entities will automatically be included in the program for the first 30 days and will stay in the program

unless they opt out of the program on or before November 12th.

Opting Out

How do eligible entities opt out?

There will be a form made available on the FDIC Web site (www.fdic.gov/tlqp/) and through FDICconnect soon, which eligible entities can utilize to opt-out of either part of the program.

Can an entity opt out of just one part of this program?

Yes. An entity can opt out of either the senior unsecured debt guarantee part of the program, the transaction account guarantee part of the program, or both.

Can an entity opt out after the initial 30-day period?

No.

Can an entity that has opted out join the program later?

No.

Can one legal entity opt out while an affiliated entity participates in the program (e.g., bank v. holding company)?

Yes.

Coverage

Is the senior unsecured debt limit calculated at the top holding company or by each separate legal entity?

The 125 percent limit on guaranteed debt applies on an eligible entity-by-eligible entity basis, not on a consolidated holding company basis.

What deposits will be insured under the Temporary Liquidity Guarantee Program?

All funds in non-interest bearing transaction deposit accounts held in domestic offices of participating FDIC-insured institutions will be fully insured.

How long will the coverage last?

The coverage will last through December 31, 2009.

For an eligible entity that had little or no senior unsecured debt on September 30th, how will you determine how much you will guarantee?

These entities will be able to issue debt under the program and the amount will be determined by the FDIC on a case-by-case basis in consultation with the eligible entity's primary federal regulator.

Will commercial paper issued into the FRB's new facility effective October 27th qualify under the debt program and be assessed 75 basis points on an annualized basis?

Yes.

How does the guarantee on non-interest bearing transaction deposit accounts affect a customer's insurance coverage for other types of accounts?

The insurance coverage on non-interest bearing transaction deposit accounts is over and above the \$250,000 in coverage provided to a customer already. For example, if a customer has \$500,000 in a noninterest-bearing transaction deposit account and \$250,000 in a certificate of deposit, the FDIC would fully insure the entire \$750,000.

How much senior unsecured debt could be covered?

Based on how much debt was outstanding as of September 30th, 2008, an initial estimate is \$1.4 trillion. The amount of debt that will actually be covered depends upon participation in the program.

How much in non-interest bearing transaction accounts could be covered?

An initial estimate is \$400 to \$500 billion.

Operational

Will eligible entities be required to use the funds to grant loans?

No. There is no express requirement that the funds be used to grant loans. However, eligible entities are encouraged to use these funds to grant new loans since one of the key goals of this program is to increase liquidity in the banking system.

How will fees be assessed for the non-interest bearing transaction account part of the program?

For non-interest bearing transaction deposit accounts, a 10 basis point annual rate surcharge would be applied to non-interest bearing transaction deposit amounts over

\$250,000. This surcharge will be collected through the normal assessment cycle.

How will fees be assessed on non-interest bearing transaction accounts that have pass-through coverage?

Institutions will not be assessed on amounts that are otherwise insured. For example, if a trustee has an account for \$2 million but each beneficiary has a balance that is less than \$250,000, then the institution will not have any noninterest-bearing transaction account amounts to report for this account.

Will participating entities be subject to any additional reporting requirements to participate in this program?

The FDIC will leverage existing reporting mechanisms to the FDIC and other primary federal regulators. The FDIC is pursuing limited changes to the December Call Report, for example, to include the amount and number of noninterest-bearing transaction accounts above the temporary \$250,000 limit. Separate reporting will likely be necessary related to the FDIC guarantee of senior

unsecured debt and we will make those requirements known as soon as they are available.

How will details of the program be shared with potential participants?

The FDIC will communicate to participants, depositors, the industry, and the general public through a number of means, including a dedicated page for the program on the FDIC Website – FDIC.gov. Visit www.fdic.gov/tlgp/ for links to relevant press releases, Financial Institution Letters (FILs), and an archive of technical briefing phone calls where we provide answers to questions from the industry. Any press releases or FILs are also communicated through our free email subscription service.

Visit <http://www.fdic.gov/about/subscriptions/index.html> to sign up to receive updates. There is also a dedicated email address for those wishing to submit questions about the program to the FDIC: tlgp@fdic.gov.

FRB Announces Creation of Commercial Paper Funding Facility

In its continued efforts to increase liquidity in lending markets, the Federal Reserve Board announced on October 7, 2008 the Commercial Paper Funding Facility (CPFF). The CPFF will provide a liquidity backstop to U.S. issuers of commercial paper that will be achieved by establishing a special purpose vehicle (SPV) to purchase three-month unsecured and asset-backed commercial paper directly from eligible issuers. Financing for the SPV will come from the Federal Reserve and will be secured by all of the assets of the SPV. In the case of commercial paper that is not asset-backed commercial paper, financing will be secured by the retention of up front fees paid by the issuers or other forms of security acceptable to the Federal Reserve.

The Federal Reserve will commit to lend to the SPV at the target federal funds rate. Draws on the facility will be

on an overnight basis, with recourse to the SPV, and secured by all the assets of the SPV. The SPV will cease purchasing commercial paper on April 30, 2009 unless extended by the Board.

In order for issuers to access the CPFF, they must register with the New York Federal Reserve and pay a 10 basis point registration fee. The registration period begins on October 20, 2008 and registration materials are located at <http://www.newyorkfed.org/markets/cpff.html>. Upon registration the issuer will be required to certify the maximum amount of U.S. dollar denominated commercial paper it had outstanding on any day between January 1 and August 31, 2008. This facility is intended to improve liquidity in short-term funding markets and thereby increase the overall availability of credit for businesses and households.

Agencies Announce Decision on Regulatory Capital Impact of Emergency Economic Stabilization Act of 2008 on Fannie Mae and Freddie Mac Preferred Stock

On October 17, 2008, the federal banking agencies announced that they will allow banking organizations to recognize the effect of the tax change enacted in the Emergency Economic Stabilization Act of 2008 (EESA) in their third quarter 2008 regulatory capital calculations.

Section 301 of EESA provides tax relief to banking organizations that have suffered losses on certain holdings of Fannie Mae and Freddie Mac preferred stock by changing the character of these losses from capital to ordinary losses for federal income tax purposes. Because the EESA became law on October 3, 2008,

banking organizations originally were not able to recognize the tax effects until the fourth quarter of 2008. This decision allows banking organizations to recognize the economic benefits in the change of tax treatment in the third quarter of 2008 for regulatory capital purposes.

In the near future, the agencies plan to provide banking organizations with further instructions on regulatory reporting which will describe how the effect of the tax change should be reflected in measuring regulatory capital in their regulatory reports for September 30, 2008.

Agencies Seek Comment on Proposed Rulemaking to Lower Risk Weights for Claims on, or Guaranteed by, Fannie Mae and Freddie Mac

On October 7, 2008, the federal bank and thrift regulatory agencies requested public comment on a joint notice of proposed rulemaking to allow a banking organization to assign a 10 percent risk weight to claims on, and portions of claims guaranteed by, Fannie Mae and Freddie Mac. The agencies believe reducing the risk weight from the current 20 percent is appropriate in light of financial support offered by the Treasury last month.

Under the agencies' general risk-based capital rules, claims on, and the portion of claims guaranteed by, U.S. Government sponsored agencies receive a 20 percent risk weight. In light of the additional financial support the Treasury has committed to provide under the agreements, the agencies believe that reduced risk weight is appropriate for claims on, or guaranteed by, Fannie Mae or Freddie Mac.

Specifically, the agencies are proposing to amend their respective risk-based capital rules to permit banks, bank holding companies and savings associations to assign a 10 percent risk weight to claims on, or guaranteed by, Fannie Mae and Freddie Mac. Claims include all credit exposures, such as senior and subordinated debt and counterparty credit risk exposures, but do not include preferred or common stock. This risk weight could be applied to credit exposures created on, before, or after September 7, 2008. The 10 percent risk weight, which would reflect the reduced credit risk of Fannie Mae and Freddie Mac in light of the Agreements, would apply to the exposures so long as an Agreement remains in effect with the respective entity. This proposal would not affect the calculation of the leverage ratio with respect to these exposures.

FDIC Board Adopts Restoration Plan - Proposes Higher Assessment on Insured Banks

On October 7, 2008, the Federal Deposit Insurance Corporation's (FDIC) Board of Directors agreed to adopt a restoration plan accompanied by a notice of proposed rulemaking that, if adopted, would increase the rates banks currently pay for deposit insurance while at the same time making adjustments to the overall system that determines what rate a bank pays the FDIC.

Currently, banks pay 5 to 43 basis points for deposit insurance. With the FDIC proposal, the assessment rate schedule would be increased uniformly by 7 basis points (annualized) beginning on January 1, 2009. In addition, beginning with the second quarter of 2009, the deposit insurance risk-based assessment system would be implemented to make future assessment increases more equitable by requiring institutions that pose greater risks to the Deposit Insurance Fund (DIF) to pay higher insurance premium rates.

Sheila Bair, FDIC Chairman, stated "Like any insurance company, we've identified activities that have increased

or reduced the cost of insurance, and as a result, the FDIC wants to factor them into the determination of assessment rates." Proposed changes to the FDIC assessment system include: (1) assessing higher rates to institutions with a significant reliance on secured liabilities, (2) assessing higher rates for institutions with a significant reliance on brokered deposits for those institutions that are well-managed, well-capitalized and accompanied by rapid asset growth, and (3) providing incentives for institutions to hold long-term unsecured debt by reducing the overall assessment rate.

Overall, the proposed changes would improve the system's differentiation of risk among insured institutions. This proposal seeks to ensure that the reserve ratio returns to at least 1.15% by the end of 2013. The FDIC Board of Directors also voted to maintain the Designated Reserve Ratio at 1.25% as a signal of its long-term target for the fund.

Issuances of U.S. Covered Bonds by National Banks

On October 20, 2008, the Office of the Comptroller of the Currency (OCC) issued a bulletin to describe how national banks are to satisfy the Federal Deposit Insurance Corporation's (FDIC) Federal Bond Policy Statement issued on July 28, 2008.

The FDIC policy statement clarifies how the FDIC will treat certain covered bonds in a receivership or conservatorship involving the issuing insured depository institution. In particular, the policy statement provides for expedited access to pledged covered bond collateral if the covered bond issuance involves eligible mortgages and meets the policy's criteria.

The bulletin provides guidance for national banks intending to issue covered bonds. National banks are

required to follow these steps to comply with the requirements of the Policy Statement:

- Notify the examiner-in-charge (EIC) of the intent to issue these bonds and receive the OCC's no-objection prior to issuing covered bonds; and
- Provide the EIC with information on how their proposed program complies with the FDIC policy statement.

The OCC will review the national banks proposed covered bond programs and provide written supervisory no-objection consent to each bank to ensure that the program complies with the FDIC policy statement.

Federal Reserve Board Announces Initiation of Interest Payment on Depository Institutions' Required and Excess Reserve Balances

On October 6, 2008, the Federal Reserve Board announced that it would begin paying interest on depository institutions' required and excess reserve balances. This rule is an acceleration of The Financial Services Relief Act of 2006, which originally authorized this action on behalf of depository institutions beginning October 1, 2011. The rule is an amendment to Regulation D (Reserve Requirements of Depository Institutions) and requires the Federal Reserve to pay interest on reserve balances which are balances held to comply with reserve requirements, and excess balances which are balances held in excess of required reserve requirements. These changes are aimed at repairing the

deteriorating credit markets while maintaining the federal funds rate close to the Federal Open Market Committee's target.

The Federal Reserve Board also announced a substantial increase in the size of the Term Action Facility (TAF) auctions, with an increase of \$150 billion to both the 28-day and 84-day TAF, effective October 6, 2008. TAF auctions allow depository institutions to borrow from the Federal Reserve for a fixed term against the same collateral that is accepted at the discount window.

New York State Banking Department Permits State-Chartered Banks to Provide Enhanced Temporary Funding Arrangements for Emergencies

On September 26, 2008, the New York State Banking Department announced that the Banking Board had adopted a resolution under its "Wild Card Authority" to address current liquidity conditions. This resolution authorizes New York State-chartered banks, with the approval of the Superintendent of Banks, to enter into loans in emergency situations and for limited periods of time that exceed regular lending limits. National banks have comparable authority.

Under this authority, the Banking Board may provide New York State-chartered banking organizations, as well as licensed foreign bank branches and agencies, enhanced access to powers possessed by federally-chartered banking institutions. Under the enhanced law, "Wild Card" authorization can be adopted by resolution of the Banking Board. Such "Wild Card" authorizations may include any right, power, privilege, benefit, activity, loan, investment or transaction that a federally-chartered banking institution, directly or through a subsidiary or subsidiaries, may lawfully exercise or engage in.

Specifically, the Banking Board adopted two resolutions:

- The first, pursuant to Section 12-a(4) of the Banking Law, authorizes the Superintendent to permit state-chartered banks and trust companies to make loans and extensions of credit to one borrower in addition to those permitted by the normal legal loan limits if the Superintendent determines that such loans and extensions of credit are essential to address an emergency situation, such as critical financial markets instability, will be of short duration, will be reduced in amount in a timeframe and manner acceptable to the Superintendent, and do not present unacceptable risk. In granting such approvals, the Superintendent is to impose supervisory oversight and reporting measures that he determines are appropriate to monitor compliance. These standards and conditions are substantially similar to those imposed by the OCC on the temporary funding authority for national banks.

- The second, pursuant to Section 14(1) (p) of the Banking Law, authorizes a variation from the normal requirement that “Wild Card” resolutions be posted

in the Banking Department’s Weekly Bulletin for at least 30 days before the Banking Board acts on them.

Federal Reserve Issues Guidance on Compliance Risk Management Programs and Oversight at Large Banking Organizations

On October 16, 2008, the Federal Reserve released guidance clarifying supervisory expectations with respect to firm-wide compliance risk management. This guidance is consistent with the principles set forth in the April 2005 paper issued by the Basel Committee on Banking Supervision titled “Compliance and the Compliance Function in Banks”.

As banking organizations have expanded the scope, complexity, and geographic reach of their business activities, the compliance requirements associated with these activities have become more complex. Firm-wide compliance risk management programs and oversight at the largest supervised banking organizations have generally improved; however, the opportunity for improvement remains. SR 08-8 / CA 08-11 provides guidance in four key areas: (1) Types of organizations that should implement a firm-wide approach to compliance risk management and oversight, (2) Independence of compliance staff, (3) Compliance monitoring and testing, and (4) Responsibilities of Boards of Directors and senior management regarding compliance risk management and oversight.

Organizations That Should Have a Firm-wide Compliance Risk Management Process

Typically, foreign banks with a U.S. presence and domestic banks with \$50 billion or more in consolidated total assets should have a firm-wide compliance risk management program. The corporate compliance function at these institutions should play a key role in overseeing and supporting the implementation of the compliance risk management program and controlling the organization's risks. Foreign banking organizations (FBOs) are afforded more flexibility in designing their

compliance oversight programs as long as transparency is maintained.

Independence of Compliance Staff

Maintaining independence is imperative for the corporate compliance staff. No matter how reporting is structured, organizations should ensure that corporate compliance plays a key role in how compliance matters and compliance personnel decisions are handled. Compliance personnel compensation plans should not be linked to the performance of the business line and appropriate controls and oversight should be in place to identify and address issues that may arise from conflicts of interest affecting compliance staff within the line of business.

Monitoring and Testing

While risk assessments remain a crucial part of an effective compliance monitoring program, a number of large, complex banking organizations have yet to fully implement a risk assessment process. The lack of a risk assessment program limits the ability of the compliance function to target its monitoring to those areas that pose the greatest compliance risks. Organizations are encouraged to implement an assessment process and ensure that compliance monitoring and testing are based upon assessment outcomes.

Board and Senior Management Oversight

While the Board can delegate the day-to-day implementation of the compliance risk management program to senior management, they are ultimately responsible for ensuring that an appropriate culture of compliance within the organization. To achieve this goal, the Board should ensure that senior management

of corporate compliance is qualified to manage compliance risks, has the appropriate level of authority within the organization, and keeps the board informed of compliance risks through appropriate reporting. Lastly,

incentive programs for senior management within the lines of business should be tied to the integration of an effective compliance culture within their area(s) of responsibility.

Federal Reserve Issues Guidance on Consolidated Supervision of Bank Holding Companies and Combined U.S. Operations of Foreign Banking Operations

On October 16, 2008, the Federal Reserve released SR 08-09 / CA 08-12 to clarify its approach to consolidated supervision. The objective of this guidance is to provide for consistency among organizations with similar activities and risks and reiterate the importance of coordination with, and reliance on, the work of other relevant primary supervisors and functional regulators.

Increases in the complexity and size of banking organizations make it challenging for a single supervisor to have a complete view of firm-wide risks and controls. To overcome this challenge, it is imperative that the Federal Reserve work with other supervisors to obtain an assessment of those non-bank subsidiaries for which it does not have supervisory oversight. In addition, the Federal Reserve must understand the organization's structure, activities, resources, and risks, as well as address financial, managerial, operational, or other deficiencies before they pose a danger to the BHC's subsidiary depository institutions.

The Federal Reserve uses a risk-based process to understand, supervise and assess Bank Holding Companies (BHCs) and Foreign Banking Organizations (FBOs). This process includes performing continuous monitoring activities, discovery reviews, and testing. The Federal Reserve focuses on the risk management systems and internal controls used by core clearing and settlement organizations or organizations that have a significant presence in key financial markets. These activities pose special legal, reputational, and other risks to the banking organization and its depository subsidiaries as problems in the above mentioned activities could transmit an adverse impact across the banking and financial system.

Through its supervisory portfolios, the Federal Reserve assesses and evaluates practices across groups of organizations with similar characteristics and risk profiles in order to achieve consistency of supervisory practices and identify outlier organizations among established peer groups. Tailored supervisory programs have been developed for each type of the organization within the BHC and FBO portfolios.

The additional guidance on supervising BHCs and FBOs is not new and not intended to describe all elements of an effective supervision program. The information should be viewed as a supplement and continue to be used in conjunction with existing Federal Reserve guidance such as the Bank Holding Company Manual and the Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations.

Federal Reserve Announces Interim Final Rule to Allow Bank Holding Companies to Include Senior Perpetual Preferred Stock Issued to the Treasury Department in Tier 1 Capital

The Federal Reserve Board on October 16, 2008 announced the adoption of an interim final rule that will allow bank holding companies to include in their Tier 1 capital without restriction the senior perpetual preferred stock issued to the Treasury Department under the capital purchase program announced by the Treasury on October 14, 2008. Treasury established the capital purchase program under the Emergency Economic Stabilization Act of 2008, which became law on October 3, 2008.

The Board adopted the rule on an interim final basis to immediately provide guidance to bank holding

companies concerning the regulatory capital treatment of such senior perpetual preferred stock and to support and facilitate the timely provision of capital to bank holding companies under the capital purchase program. The Board continues to work with Treasury, the other federal banking agencies, and other parties on other capital and related matters associated with the capital purchase program.

The interim rule will be effective as of October 17, 2008. The Board is, however, seeking public comment on the interim rule.

FDIC Simplifies Coverage Rules for Mortgage Servicing Accounts

Effective October 10, 2008, the FDIC Board of Directors adopted an interim final rule to simplify insurance rules on mortgage servicing accounts.

The new rule is a response to increasingly complex methods of mortgage securitization which make it difficult to distinguish investors and their individual interests. Under the FDIC's current rules, accounts maintained by a mortgage servicer comprised of principal and interest payments made by borrowers are insured based on the ownership interest of each lender (or investor) in those accounts. Over the past several

years, securitization methods and vehicles for mortgages have become more layered and complex. Thus, it has become much more difficult and time-consuming for a servicer to identify and determine the share of any investor in a securitization and in the principal and interest funds on deposit at an insured depository institution. The new rule determines coverage on a per-mortgagor (or borrower) basis. This new rule will enable the FDIC to make payments of deposit insurance more quickly, because mortgage servicers are able to distinguish borrowers more quickly than investors.

HUD Launches "Hope For Homeowners" Program to Help Families Stay in Homes

On October 1, 2008, the Department of Housing and Urban Development ("HUD") announced a new program that will refinance mortgages for borrowers at risk of foreclosure. Authorized by the Economic and Housing Recovery Act of 2008, this program will refinance mortgages for borrowers who are having difficulty

making their payments, but can afford a new loan insured by HUD's Federal Housing Administration (FHA). The "Hope for Homeowners" program began on October 1, 2008 and will end on September 30, 2011.

Eligibility

The program is available to owner occupants and will offer 30-year fixed rate mortgages. In many cases, to avoid what would be an even costlier foreclosure, banks will have to write down the existing mortgage to 90 percent of the new appraised value of the home. Borrowers may be eligible if, among other factors:

- The home is their primary residence, and they have no ownership interest in any other residential property, such as second homes;
- Their existing mortgage was originated on or before January 1, 2008, and they have made at least six payments;
- They are not able to pay their existing mortgage without help;
- As of March 2008, their total monthly mortgage payments due were more than 31 percent of their gross monthly income; and
- They certify that they have not been convicted of fraud in the past 10 years, intentionally defaulted on debts, and did not knowingly or willingly provide material false information to obtain their existing mortgage(s).

Additional Provisions

The primary way that homeowners will participate in this program is to work with their current lender. The following provisions must also be met:

- The loan amount may not exceed a maximum of \$550,440;
- The new mortgage will be no more than 90 percent of the new appraised value including any financed Upfront Mortgage Insurance Premium (see EESA Amendments section below for additional information on this point);
- The Upfront Mortgage Insurance Premium is 3 percent and the Annual Mortgage Insurance Premium is 1.5 percent;
- The holders of existing mortgage liens must waive all prepayment penalties and late payment fees;

- The existing first mortgage must accept the proceeds of the Hope for Homeowners loan as full settlement of all outstanding indebtedness;
- Existing subordinate lenders must release their outstanding mortgage liens;
- Standard FHA policy regarding closing costs applies, with some specifics;
- The borrower must agree to share with FHA both the equity created at the beginning of this new mortgage and any future appreciation in the value of the home; and
- The borrower cannot take out a second mortgage for the first five years of the loan, except under certain circumstances for emergency repairs.

Roles and Responsibilities

The lender will disclose to the homeowner the benefits of the program and explain the prohibition against junior liens against the property unless directly related to property maintenance. The costs to the homeowner include the upfront and annual insurance premiums, as well as a share of the equity created by the write-down associated with the Hope for Homeowners mortgage and any future appreciation in the value of the home. If the home is sold or refinanced, the homeowner will share the equity with FHA on a sliding scale ranging from a 100 percent FHA share after the first year to a minimum of 50 percent after five years.

Federal Reserve Approves Final Amendments to Regulation C that Revise the Rules for Reporting Price Information on Higher-Priced Mortgage Loans

On October 20, 2008, the Federal Reserve Board approved final amendments to Regulation C that revise the rules for reporting price information on higher-priced mortgage loans. The changes are intended to improve the accuracy and usefulness of data reported under the Home Mortgage Disclosure Act.

Regulation C currently requires lenders to collect and report the spread between the annual percentage rate (APR) on a mortgage loan and the yield on a Treasury security of comparable maturity if the spread is greater than 3.0 percentage points for a first lien loan or greater than 5.0 percentage points for a subordinate lien loan. Under the final rule, a lender will report the spread between the loan's APR and a survey-based estimate of APRs currently offered on prime mortgages of a comparable type ("average prime offer rate") if the spread is equal to, or greater than, 1.5 percentage points for a first lien loan or equal to or greater than 3.5 percentage points for a subordinate-lien loan. The

Board will publish average prime offer rates based on the Primary Mortgage Market Survey currently published by Freddie Mac. The Board will conduct its own survey if it becomes appropriate or necessary to do so.

In setting the rate spread reporting threshold, the Board sought to cover sub prime mortgages and generally avoid covering prime mortgages. Applying the new, market survey-based benchmarks in place of Treasury security yields should better achieve this purpose and ensure more consistent and more useful data.

The changes to Regulation C are being conformed to the threshold for rate spread reporting for the definition of higher-priced mortgage loans adopted by the Board under Regulation Z (Truth in Lending) in July of 2008. By implementing the same pricing threshold test under both regulations, the Board is reducing the overall regulatory burden on mortgage lenders.

The final rule is effective October 1, 2009.

Prepared Remarks of James H. Freis, Jr. Director, Financial Crimes Enforcement Network (FinCEN) -- Promoting Information Sharing in our Global Anti-Money Laundering/Counterterrorism Finance Efforts

On October 9, 2008, James H. Freis, Jr. Director of FinCEN spoke at the 10th Anti-Money Laundering and Financing Terrorism International Seminar. During the conference, he addressed a series of topics related to SAR confidentiality regulations and information sharing.

Suspicious Activity Reporting (SAR) Initiatives

FinCEN is in the process of proposing a rule to update SAR confidentiality regulations. These updates will clarify the scope of the statutory prohibition against the disclosure by a financial institution or by a government

agency of a SAR or any information that would reveal the existence of a SAR. Secondly, to accompany the new rule, FinCEN will issue guidance to clarify that for certain financial institutions the sharing of a SAR with a domestic affiliate is consistent with the purposes of the BSA.

Allowing SAR Sharing Among Affiliates

In order to facilitate greater efficiency, FinCEN desires to open the door to such sharing in every way possible that would not ultimately compromise the confidentiality

afforded SARs. The SAR confidentiality rule proposal, in strengthening the current non-disclosure provisions found in the SAR regulations for all covered industries, will also clarify that a financial institution may share a SAR, and information about a SAR, within its corporate organizational structure for purposes consistent with Title II of the BSA, provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported.

The proposed interpretive guidance on SAR sharing with affiliates, clarifies instances where sharing within a corporate organizational structure is consistent with the purposes of the BSA. The proposal clarifies that affiliates, as defined in the guidance, are within the corporate organizational structure. The guidance also outlines the circumstances under which a SAR filed by one institution may be shared with an affiliate institution that is also subject to BSA SAR requirements.

The guidance also notes that it is not permissible for an affiliate that has received such a SAR to share it with another affiliate. This will ensure that the filing

depository institution will only be sharing with those affiliates it expressly selects.

By limiting sharing to those affiliates with SAR obligations pursuant to regulations issued by FinCEN or the Federal Banking Agencies, FinCEN also intends to prevent SARs, or any information that would reveal the existence of a SAR, shared under this proposed guidance from being subjected to the laws of another jurisdiction.

Surveying the Global Community

A growing number of countries in the world apply the same AML/CFT principles of the FATF 40+9 Recommendations. Implementation, however, remains subject to the laws of each individual jurisdiction. Many financial institutions operating in multiple jurisdictions seek to implement, to the extent possible, an enterprise-wide AML/CFT policy. This is often consistent with the way a financial institution manages other types of risks on an enterprise-wide basis. An enterprise-wide AML/CFT policy can help a financial institution avoid duplication and/or lower costs and allow for the better allocation of resources to the greatest AML/CFT risks.

Rule Change to Temporarily Suspend, through January 16, 2009, the Continued Listing Requirements Related to Bid Price and Market Value of Publicly Held Shares

[Given current market conditions, the NASDAQ Stock Market LLC proposed on October 16, 2008 to provide issuers of common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, and their equivalents temporary relief from the continued inclusion bid price and market value of publicly held shares requirements. The filing was effective immediately and the comment period is open for 21 days from publication in the federal register.](#)

In the past several weeks, U.S. and world financial markets have faced almost unprecedented turmoil, and the Commission has acknowledged in several recent

emergency Orders that this turmoil has resulted in a crisis of investor confidence and concerns about the proper functioning of the securities markets. As a result, the number of securities trading below \$1 has increased dramatically. For example, as of September 30, 2007, there were 64 securities trading below \$1 on Nasdaq. By September 30, 2008, that number had increased to 227 and by October 9, 2008, there were 344 securities trading below \$1 on Nasdaq and over another 300 Nasdaq-listed securities trading between \$1 and \$2. Nasdaq believes that during this time there was no fundamental change in the underlying business model or prospects for many of these companies, but the decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for

continued listing. These same conditions make it difficult for companies to successfully implement a plan to regain compliance with the price or market value of publicly held shares tests. Given these extraordinary market conditions, Nasdaq has determined that the bid price and market value of publicly held shares requirements should be temporarily suspended through January 16, 2009.

Under this proposal, companies would not be cited for new bid price or market value of publicly held shares deficiencies during the suspension period, and the time allowed to companies already in a compliance period or in the hearings process for bid price or market value of publicly held shares deficiencies would be suspended with respect to those requirements. Following the temporary suspension, any new deficiencies with the bid price or market value of publicly held shares requirements would be determined using data starting on January 19, 2009. Companies that were in a

compliance period prior to the suspension would receive the balance of any pending compliance periods in effect at the time of the suspension. Similarly, companies that were in the Hearings process prior to the suspension would resume in that process at the same stage they were in when the suspension went into effect. Nasdaq will continue to monitor securities to determine if they regain compliance during the temporary suspension.

Nasdaq believes that this temporary suspension will permit companies to focus on running their businesses, rather than satisfying market-based requirements that are largely beyond their control in the current environment. Moreover, this temporary suspension would allow investors to buy shares of some of these lower-priced securities without fear that the company will receive a delisting notification or be delisted in the very near term. During the temporary suspension, Nasdaq will consider whether it is appropriate to propose further revisions to these requirements.

Truth in Lending Act - Regulation Z Examination Procedures Update

[On October 6, 2008, the Federal Financial Institutions Examination Council's Task Force on Consumer Compliance revised the interagency consumer compliance examination procedures for Regulation Z.](#)

The revised procedures reflect the simplified requirements regarding e-communication and the relationship of Regulation Z to the Electronic Signatures in Global and National Commerce Act ("the E-Sign Act"). The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or

signatures, it does however, permit institutions to satisfy statutory or regulatory requirements by providing information, such as Regulation Z disclosures, electronically after obtaining the consumer's affirmation consent.

The procedures also contain specific examination steps to assess whether banks provide disclosure information to current and prospective customers as required by Regulation Z.

Additional Information

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