Financial Services Regulatory Highlights

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Joint Statement by Treasury, Federal Reserve, and the FDIC on Citigroup

On Sunday, November 23, 2008, in efforts to strengthen the financial system and protect U.S. taxpayers, the U.S. government entered into an agreement with Citigroup to provide a package of guarantees, liquidity access, and capital. As part of the agreement, Treasury and Federal Deposit Insurance Corporation (FDIC) will protect Citigroup from losses on $306 billion of troubled U.S. home loans, commercial mortgages, subprime bonds and low-grade corporate loans. As a fee for this arrangement, Citigroup will issue preferred shares to the Treasury and FDIC. If necessary, the Federal Reserve is ready to backstop residual risk in the troubled asset pool through a non-recourse loan.

In addition, Treasury will invest $20 billion in Citigroup from the Troubled Asset Relief Program (TARP) in exchange for preferred stock with an 8% dividend to the Treasury. The government's rescue package also requires Citigroup to comply with enhanced executive compensation restrictions and to implement the FDIC's mortgage modification program.

With the above transactions, the U.S government is taking the necessary steps to strengthen the financial system and preserve the banking institutions by promoting repair, recovery and risk management.

Federal Reserve Will Initiate a Program to Purchase the Direct Obligations of Housing-Related Government-Sponsored Enterprises and Mortgage-Backed Securities Backed By Fannie Mae, Freddie Mac, and Ginnie Mae

On Tuesday, November 25, 2008, in efforts to support the housing market and improve conditions of the financial markets, the Federal Reserve announced that it will initiate a program to purchase direct obligations of housing-related government-sponsored enterprises (GSEs) (Fannie Mae, Freddie Mac, and the Federal Home Loan Banks) and mortgage-backed securities (MBS) backed by Fannie Mae Freddie Mac, and Ginnie Mae. Recently, spreads of rates on GSE debt and on GSE-guaranteed mortgages have significantly widened.

Under the program, purchases of up to $100 billion in (GSE) direct obligations will be conducted with the Federal Reserve's primary dealers through a series of auctions beginning next week. In addition, purchases up to $500 billion in MBS will be conducted by asset managers selected via a competitive process with a goal of beginning purchases before year-end. The purchases of both direct obligations and MBS are expected to take place over several quarters.

With the above transactions, the Federal Reserve is taking the necessary steps to reduce the cost and increase the availability of credit for the purchase of houses, which in turn will foster improved conditions in the housing markets and the overall financial markets. Further information regarding the operational details of this program will be provided after consultation with market participants.

Federal Reserve Announces the Creation of the Term Asset-Backed Securities Loan Facility (TALF)

On November 25, 2008, the Federal Reserve Board announced the creation of the Term Asset-Backed Securities Loan Facility (TALF). The facility is intended to assist market participants meet the credit needs of households and small businesses by supporting the issuance of asset-backed securities (ABS) collateralized by student loans, auto loans, credit card loans, and loans guaranteed by the Small Business Administration (SBA).

Under the TALF, the Federal Reserve Bank of New York (FRBNY) will lend up to $200 billion on a non-recourse basis to holders of certain AAA-rated ABS backed by recently originated consumer or small business loans. In addition, the Treasury, in connection with the Troubled Assets Relief Program (TARP), will provide $20 billion of credit protection to the FRBNY to support the TALF initiative.

In recent months, new issuance of asset-backed securities significantly declined and came to a halt in October. Simultaneously, interest rate spreads on AAA-rated tranches of ABS soared to levels well outside the range of historical experience, creating unusually high-risk premiums. Historically, ABS markets have funded substantial shares of consumer credit and SBA-guaranteed small business loans. Continued disruption of these markets could further limit the availability of credit to households and small businesses, which will further weaken the U.S. economy. The TALF is designed to increase the credit availability by facilitating renewed issuance of consumer and small business ABS at more normal interest rate spreads.

Refer to the TALF Terms and Conditions for further information:

http://www.federalreserve.gov/newsevents/press/monetary/monetary20081125a1.pdf

Federal Reserve Establishes Money Market Investor Funding Facility

On October 21, 2008, The Federal Reserve Board announced the creation of the Money Market Investor Funding Facility (MMIFF), which will support a private-sector initiative designed to provide liquidity to U.S. money market investors.

Under the MMIFF, the Federal Reserve Bank of New York (FRBNY) will provide senior secured funding to a series of special purpose vehicles established by the private sector (Private Sector Special Purpose Vehicles or PSPVs) to finance the purchase of certain money market instruments from eligible investors. Eligible assets will include U.S. dollar-denominated certificates of deposit and commercial paper issued by highly rated financial institutions and having remaining maturities of 90 days or less. Eligible investors will include U.S. money market mutual funds and over time may include other U.S. money market investors.

The FRBNY will begin funding PSPV purchases of eligible money market instruments in connection with the MMIFF on or about November 24, 2008. The PSPVs will be authorized to purchase a maximum amount of $ 600 billion in total eligible assets.

FDIC Finalizes Its Temporary Liquidity Guarantee Program: Opt Out Extended to December 5, 2008

On November 20, the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) approved a final rule to strengthen the agency's Temporary Liquidity Guarantee Program (TLGP). The Program guarantees newly issued senior unsecured debt of banks, thrifts, and certain holding companies, and provide full coverage of non-interest bearing deposit transaction accounts.

The FDIC adopted the Temporary Liquidity Guarantee Program on October 13th because of disruptions in the credit market, particularly the interbank lending market, which reduced banks' liquidity and impaired their ability to lend. The goal of the TLGP is to decrease the cost of bank funding so that bank lending to consumers and businesses will normalize. The industry funded program does not rely on the taxpayer or the deposit insurance fund to achieve its goals.

"We are confident that the changes our Board approved today will create significant investor demand, and dramatically reduce funding costs for eligible banks and bank holding companies," said FDIC Chairman Sheila C. Bair. "I expect that the industry will take full advantage of this guarantee. I'm confident that the program—working in complement with the Treasury's Troubled Assets Relief Program and the Federal Reserve's Commercial Paper Funding Facility—will achieve its intended purpose to help insured banks increase lending—in a responsible way—to consumers and businesses."

Chief among the changes to the interim rule is that the debt guarantee will be triggered by payment default rather than bankruptcy or receivership. This change will add value to the guarantee and help entities obtain lower cost funding. Another change is that short-term debt issued for one month or less will not be included in the TLGP, consistent with the objective of the program to facilitate longer term lending.

Finally, the fees to participate in the debt guarantee component of the TLGP have been changed. Originally the FDIC was going to charge eligible entities 75 basis

points on an annualized basis for guaranteed debt. After reviewing the comments, the FDIC decided to impose a fee structure based on a sliding scale, depending on length of maturity. Shorter-term debt will have a lower fee structure and longer-term debt will have a higher fee. The range will be 50 basis points on debt of 180 days or less, and a maximum of 100 basis points for debt with maturities of one year or longer, on an annualized basis.

Eligible entities will have until December 5, 2008, to opt out of the TLGP. Once in the Program, an entity is in for the duration. Those that choose to opt out will not be able to participate at a later date. Any debt issued on or before June 30, 2009, will be fully protected through the earlier of the maturity of the debt instrument or June 30, 2012.

Under the transaction account guarantee program, a participating institution will be able to provide customers full coverage on non-interest bearing transaction accounts for an annual fee of 10 basis points. The coverage will be in effect for participating institutions until the end of 2009. After that date, these accounts will be subject to the basic insurance amount. The FDIC Board voted to include NOW accounts with interest rates of 0.5 percent or less and IOLTAs (lawyer trust accounts) in the transaction account program.

Change in Capital Treatment of Certain Claims on, or Guaranteed by, Fannie Mae and Freddie Mac: Notice of Proposed Rulemaking and Request for Comment

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision are seeking comment on a Notice of Proposed Rulemaking.

On September 7, 2008, the U.S. Department of the Treasury (Treasury) entered into senior preferred stock purchase agreements with Fannie Mae and Freddie Mac, which effectively provide protection to the holders of senior debt, subordinated debt, and mortgage-backed securities (MBS) issued or guaranteed by these entities. In light of the financial support provided under these agreements, the agencies are proposing to amend their respective general 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 or 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, and after September 7. The 10 percent risk weight would apply to these exposures so long as Treasury’s purchase agreements remain in effect with the respective entity. The comment period closes November 26, 2008.

Agencies Announce Decision on Impact of Tax Change on Indirect Investments in Fannie Mae and Freddie Mac Preferred Stock

On October 31, 2008, the federal banking agencies announced they were extending the applicability of their October 24, 2008 Interagency Statement on direct investments to certain indirect investments in Fannie Mae and Freddie Mac preferred stock.

The change, made in response to a newly issued federal tax revenue procedure, means that banks, bank holding companies, and thrifts (collectively, "banking organizations") are permitted to adjust their September 30, 2008 regulatory capital calculations for the tax effects from losses on direct and indirect investments in

Fannie Mae and Freddie Mac preferred stock. In other words, banking organizations may proceed as if Section 301 of the Emergency Economic Stabilization Act of 2008 (EESA) had been enacted and Revenue Procedure 2008-64 had been issued in the quarter ending September 30, 2008.

The Treasury Department and the Internal Revenue Service issued Rev. Proc. 2008-64 on October 29, 2008, to provide banking organizations the tax benefit of treating gains and losses on certain indirect investments in Fannie Mae and Freddie Mac preferred stock as ordinary income rather than capital. Indirect investments in Fannie Mae and Freddie Mac preferred stock include certain adjustable rate preferred stock programs (such as auction pass-through certificates) and stock held by certain subsidiaries of financial institutions.

Banking organizations should follow the guidance in the appendix of the October 24, 2008 Interagency Statement for reporting the effect of the tax treatment change in the regulatory capital schedule of their September 30, 2008 regulatory reports. Banking organizations that have already filed their regulatory reports for September 30, 2008 may submit amended reports.

Federal Banking Agencies Issue Joint Release on Fannie Mae and Freddie Mac

On September 7, 2008, two days after the announcement by the Federal government that they would be taking control of ailing mortgage finance companies, Fannie Mae and Freddie Mac, the Federal Banking Agencies issued a joint statement regarding bank exposure to Fannie Mae and Freddie Mac.

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Office of Thrift Supervision expressed confidence that while some financial institutions have preferred stock in Fannie Mae and Freddie Mac, it is small compared to their capital holdings. They continued, stating that Federal Banking Agencies will work with financial institutions, under the Federal Deposit Insurance Corporation Improvement Act, to develop corrective action plans to restore capital. Finally, the release reminded institutions that equity security holdings with readily determinable fair value must be reported as available-for-sale equity security holdings and unrealized losses should be deducted from regulatory capital.

President's Working Group Announces Initiatives to Strengthen OTC Derivatives Oversight and Infrastructure

On November 14, 2008, the President's Working Group on Financial Markets (PWG) announced a series of initiatives to strengthen oversight and the infrastructure of the over-the-counter derivatives market. These initiatives include the development of credit default swap (CDS) central counterparties and the establishment of a Memorandum of Understanding (MOU) regarding CDS central counterparties among the Federal Reserve ("FRB"), the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"). The PWG also announced a broad set of policy objectives to guide efforts to address the full range of challenges associated with OTC derivatives and issued a progress summary to provide an overview of the results of ongoing efforts to strengthen the infrastructure of OTC derivatives markets.

OTC derivatives are integral to the smooth functioning of today's complex financial markets and, with appropriate regulatory oversight and prudent management can enhance the ability of market participants to manage risk. The rapid growth of OTC derivatives markets over

the past several years reflects their increasing importance to market participants.

Development of CDS Central Counterparties

The PWG's top near-term OTC derivatives priority is to oversee the successful implementation of central counterparty services for credit default swaps. A well-regulated and prudently managed CDS central counterparty can provide immediate benefits to the market by reducing the systemic risk associated with counterparty credit exposures. It also can help facilitate greater market transparency and be a catalyst for a more competitive trading environment that includes exchange trading of CDS. At the prompting of the PWG, several potential central counterparty providers have accelerated the development of their efforts. The relevant regulatory authorities are assessing these central counterparty proposals by conducting detailed on-site reviews of risk management and other key design elements. After completing the on-site reviews, regulators expect to proceed toward regulatory approvals and/or exemptions expeditiously and anticipate that one or more CDS central counterparties will commence operations before the end of 2008.

MOU among the CFTC, SEC and FRB

To facilitate the regulatory approval process and to promote more consistent regulatory oversight, the FRB, the SEC and the CFTC signed an MOU. The agreement establishes a framework for consultation and information sharing on issues related to CDS central counterparties.

The MOU notes that the central counterparty may be a state-chartered bank that is a member of the Federal Reserve, a derivatives clearing organization or a clearing agency.

The PWG's Policy Objectives for OTC Derivatives

Additionally, the PWG announced a set of additional policy objectives to guide efforts to address challenges associated with OTC derivatives, consistent with the recommendations of the Financial Stability Forum. U.S. and foreign supervisors embarked on an effort in 2005 to improve how market participants manage their OTC derivatives operations, which had not matured sufficiently to support increased trading volumes. These efforts sought to enhance other elements of the market infrastructure, reduce systemic risk and address operational risks that have accompanied the growth of OTC derivatives. In light of recent developments, the PWG is issuing broader objectives than those previously issued. Specifically, the PWG established the following policy objectives: 1) improve the transparency and integrity of the credit default swaps market; 2) enhance risk management of OTC derivatives; 3) further strengthen the OTC derivatives market infrastructure; and 4) strengthen cooperation among regulatory authorities.

The agencies in the PWG will work with other regulators and market participants to achieve these goals over the next several months. Where necessary, they will support legislative change.

OCC and FDIC Take Action to Expand Pool of Bidders for Problem Banks

The OCC and FDIC acted separately, but similarly, to expand the pool of potential bidders on troubled banks and thrifts.

OCC Shelf Charter The OCC announced that it had granted its first conditional preliminary approval of a new type of national bank "shelf-charter," designed to facilitate new equity investments in troubled depository institutions.

The new mechanism involves the granting of preliminary approval to investors for a national bank charter. The charter remains inactive, or "on the shelf" until such time as the investor group is in a position to acquire a troubled institution. By granting the preliminary approval, the OCC expands the pool of potential buyers available to buy troubled institutions, and in particular the new equity capital available to bid on troubled institutions through the Federal Deposit Insurance Corporation’s bid

process. The first such approval was granted Monday to establish the Ford Group Bank, National Association.

The process involves several stages:

In the initial review, the OCC evaluates the qualifications of the proposed management team, the sources and amount of capital that would be available to the bank, and a streamlined business plan that describes how the acquired bank will be operated. At the end of this process, the OCC can grant conditional preliminary approval of a national bank charter, subject to certain conditions and to requirements that more detailed operating plans, satisfactory to the OCC, be submitted if the bank targets a specific institution for acquisition. The investor group is thereby positioned to make proposals to acquire troubled institutions, and, in particular, to be cleared to view the FDIC’s list of failing or troubled institutions and to submit bids for those institutions. Through the conditions imposed in connection with the approval and the operating plan, the OCC retains the ability to oversee how the shelf charter will activate and provide for the new institution to be operated on a safe and sound basis.

In the case of an FDIC resolution of a failing institution, after a bid is submitted, the OCC will evaluate the specific proposal. If it is found to be acceptable, and if the FDIC approves the bid, final charter approval can be granted, together with final approval of deposit insurance by the FDIC. If the bid is not accepted by the FDIC, the charter remains on the shelf for up to 18 months. During that time, the charter can be used for other bids.

FDIC Modified Application Process On November 46, 2008, the FDIC announced it is establishing a modified bidder qualification process to expand the pool of qualified bidders for the deposits and assets of failing depository institutions. The process will allow interested parties that do not currently have a bank charter to participate in the bid process through which failing depository institutions are resolved.

The FDIC is responsible for ensuring that failing institutions are resolved in a manner that will result in the least cost to the Deposit Insurance Fund and minimal disruption to the financial system. In order to achieve this result, the FDIC markets the deposits and assets of a failing institution to known, qualified, and interested potential bidders. The FDIC recognizes that investors not organized as an FDIC insured depository institution or holding company may potentially be interested in bidding to purchase a failing institution.

In light of the time constraints involved with these types of transactions and consistent with the FDIC's Statement of Policy on Applications for Deposit Insurance, the FDIC may apply modified deposit insurance application processes. The FDIC will consider abbreviated information submissions and applications, and may issue conditional approval for Deposit Insurance, in order to qualify interested parties for the FDIC's failing institution bidders list. Investors that are interested in acquiring the deposits of failing institutions must have conditional approval for a charter from the responsible agency and meet the bid criteria established by the FDIC. In certain cases it would also be necessary to obtain conditional approval to establish a bank or thrift holding company. Federal and State agencies are coordinating on specific information needs and timing requirements and ultimately the granting of a charter and Deposit Insurance.

The basic areas of consideration would include a business plan compliant with the Community Reinvestment Act, readily available capital, and an identified management team subject to financial and biographical review.

Federal Reserve and Treasury Department Announce Restructuring of Financial Support to AIG

On November 10, 2008 the Federal Reserve and the U.S. Treasury announced the restructuring of the government's financial support to the American International Group (AIG). The new measures establish a more durable capital structure, resolve liquidity issues, facilitate AIG's execution of its plan to sell certain of its businesses in an orderly manner, promote market stability and protect the interests of the U.S. government and taxpayers.

Equity Purchase

This restructuring will include the purchase of $40 billion of newly issued AIG preferred shares by the U.S. Treasury under the Troubled Asset Relief Program. The program will allow the Federal Reserve to reduce the total amount available under the credit facility established by the Federal Reserve Bank of New York (FRBNY) on September 16, 2008 from $85 billion to $60 billion.

Credit Facility

Terms of the existing FRBNY's credit facility, established on September 16, will be modified to help achieve the objectives described above. In particular, the interest rate on the facility will be reduced to three-month Libor plus 300 basis points from the current rate of three-month Libor plus 850 basis points, and the fee on undrawn funds will be reduced to 75 basis points from the current rate of 850 basis points. The length of the facility will be extended from two years to five years. The other material terms of the facility remain unchanged. The facility will continue to be secured by a lien on many of the assets of AIG and of its subsidiaries.

Additional Lending Facilities

The Federal Reserve has authorized the FRBNY to establish two new lending facilities relating to AIG.

Residential Mortgage-Backed Securities Facility

In one new facility, FRBNY will lend up to $22.5 billion to a newly formed limited liability company (LLC) to fund the LLC's purchase of residential mortgage-backed securities from AIG's U.S. securities lending collateral portfolio. AIG will make a $1 billion subordinated loan to the LLC and bear the risk for the first $1 billion of any losses on the portfolio. The loans will be secured by all of the assets of the LLC and will be repaid from the cash flows produced by these assets as well as proceeds from any sales of these assets. The FRBNY and AIG will share any residual cash flows after the loans are repaid. Proceeds from this facility, together with other AIG internal resources, will be used to return all cash collateral posted for securities loans outstanding under AIG's U.S. securities lending program. As a result, the $37.8 billion securities lending facility established by the FRBNY on October 8, 2008 will be repaid and terminated.

Collateralized Debt Obligations Facility

In the second new facility, FRBNY will lend up to $30 billion to a newly formed LLC to fund the LLC's purchase of multi-sector collateralized debt obligations (CDOs) on which AIG Financial Products has written credit default swap (CDS) contracts. AIG will make a $5 billion subordinated loan to the LLC and bear the risk for the first $5 billion of any losses on the portfolio. In connection with the purchase of the CDOs, the CDS counterparties will concurrently unwind related CDS transactions. The loans will be secured by all of the LLC's assets and will be repaid from cash flows produced by these assets as well as the proceeds from any sales of these assets. FRBNY and AIG will share any residual cash flows after the loans are repaid.

The U.S. government intends to exit its support of AIG over time in a disciplined manner consistent with maximizing the value of its investments and promoting financial stability.

FDIC Publishes Mortgage Loan Modification Toolkit

The Federal Deposit Insurance Corporation (FDIC) announce on November 20, 2008 the availability of a comprehensive package of information to give loan servicers and financial institutions all of the tools necessary to implement a systematic and streamlined approach to modifying loans based on the FDIC Loan Modification Program initiated at IndyMac Federal Bank (IndyMac). The Program is designed to achieve affordable and sustainable mortgage payments for borrowers and increase the value of distressed mortgages by rehabilitating them into performing loans. Under the terms of the Program, borrowers receive a loan modification with a maximum 38% down to 31% housing-to-income ratio through the use of interest rate reduction, amortization term extension, and in some cases, principal deferment. This loan modification process improves the value of the troubled mortgages for investors while helping many borrowers experiencing financial difficulties remain in their homes.

The FDIC implemented this approach to loan modifications on August 20th after IndyMac Bank, FSB failed on July 11, 2008. As of November 20th, 2008 IndyMac has sent out more than 23,000 modification letters to eligible borrowers and has completed more than 5,300 modifications after verifying the borrowers' income. Thousands more are in the pipeline.

Although foreclosures are costly to lenders, borrowers and communities, the number of foreclosures continues to rise while the pace of modifications remains too slow. Currently, 1.6 million total loans are over 60 days delinquent. Through the end of 2009, the FDIC estimates that there will an additional 3.8 million new loans over 60 days past due. Today's release of the FDIC's "Mod in a Box" guide will provide the industry with the necessary tools to facilitate streamlined and systematic loan modifications to help stem foreclosures, halt the decline in home prices and provide needed stability to the broader economy.

The FDIC Loan Modification Program guide is available at:
http://www.fdic.gov/consumers/loans/loanmod/loanmodguide.html

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

On November 12, 2008, the Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve issued an interagency statement on meeting the needs of creditworthy borrowers. These agencies have recently implemented several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These efforts seek to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The agencies believe that it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. To support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to Creditworthy Borrowers

The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Lending to creditworthy borrowers provides sustainable returns for the lending

organization and is constructive for the economy as a whole.

If underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

Strengthening Capital

Maintaining a strong capital position complements and facilitates a banking organization's capacity and willingness to lend and bolsters its ability to withstand uncertain market conditions. Banking organizations should focus on effective and efficient capital planning and longer-term capital maintenance.

Working with Mortgage Borrowers

The agencies expect banking organizations to work with existing borrowers to avoid preventable foreclosures, which can be costly to both the organizations and to the communities they serve, and to mitigate other potential mortgage-related losses. To this end, banking organizations need to ensure that their mortgage servicing operations are sufficiently funded and staffed to work with borrowers while implementing effective risk-mitigation measures. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

Structuring Compensation

Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. The agencies will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U.S. economy.

OCC Responds on Credit Card Proposal

On November 12, 2008, the Office of the Comptroller of the Currency responded to a request that it approve a new workout program for troubled credit card borrowers.

In its response, the agency noted that while the OCC strongly encourages national banks to work with distressed borrowers, the agency cannot approve a plan that defers the timely recognition of losses, since that would compromise the transparency and integrity of a bank's financial reports and could lead to a loss of public confidence in the banking system.

Agencies Issue Final Rule to Implement Unlawful Gambling Enforcement Act

On November 12, 2008, the Department of the Treasury and the Federal Reserve Board released a joint final rule to implement the Unlawful Internet Gambling Enforcement Act of 2006.

The final rule requires U.S. financial firms that participate in designated payment systems to establish and implement policies and procedures that are reasonably designed to prevent payments to gambling businesses in connection with unlawful Internet gambling. For purposes of the rule, unlawful Internet gambling generally would cover the making of a bet or wager that involves use of the Internet and that is unlawful under any applicable federal or state law in the jurisdiction the bet or wager is initiated, received, or otherwise made.

In addition, the final rule provides non-exclusive examples of such policies and procedures and sets out the regulatory enforcement framework. Compliance with this rule is required by December 1, 2009.

Federal Reserve Board Alerts Public to Instances of Questionable Solicitations Directed at Consumers

On November 4, 2008, the Federal Reserve Board alerted the public to instances of questionable solicitations directed at consumers. Under this scheme, targeted individuals are told that they can work through a broker to access a Federal Reserve program that offers sizable loans to consumers. These solicitations guarantee access to personal loans through a nonexistent Federal Reserve lending program. The Federal Reserve is advising consumers that it has no involvement in these solicitations and does not directly sponsor consumer lending programs.

The Federal Reserve strongly advises consumers to verify the legitimacy of potential service providers before entering into a business transaction. Consumers with questions regarding solicitations that they suspect may be fraudulent are encouraged to contact the Federal Reserve Board Consumer Help Center at http://www.federalreserveconsumerhelp.gov.

FTC Charges Internet Payday Lenders with Failing to Disclose Key Loan Terms and Using Abusive and Deceptive Collection Tactics

On November 13, 2008, the Federal Trade Commission (FTC) and the State of Nevada charged 10 related Internet payday lenders and their principals, based mainly in the United Kingdom, with violating federal and state law by failing to disclose loan terms and illegally badgering U.S. consumers for sums far higher than amounts they borrowed. According to the FTC and State of Nevada filed complaint, through Web sites such as www.cash2today4u.com, the defendants offered consumers loans of $500 or less within 24 hours without requiring a credit check, proof of income, or documentation.

The defendants were charged with violating the FTC Act by using unfair and deceptive tactics, including falsely threatening consumers with arrest or imprisonment and falsely claiming that consumers are legally obligated to pay the debts. The defendants were also charged with violating the Truth in Lending Act and Regulation Z by failing to make required written disclosures before consummating a consumer credit transaction. The complaint states that the defendants did not disclose key loan terms in writing. Consumers, who asked for written disclosure that includes annual percentage rate, payment schedule and late payment fees, were told that the transaction was oral only.

The Commission vote to approve this complaint was 4-0. The complaint was filed in the U.S. District Court for the District of Nevada.

OTS Issues New Examination Procedures on Identity Theft Red Flags and Address Discrepancies

On October 24, 2008, the Office of Thrift Supervision (OTS) issued examination procedures, which were jointly developed with the other federal banking agencies, on identity theft and address discrepancies. The underlying identity theft rules and guidelines take effect on November 1, 2008, which is when the OTS will begin using the procedures during examinations.

The rules require financial institutions and creditors to establish a written Identity Theft Prevention Program to combat identity theft. The rules also require issuers of credit cards and debit cards to develop policies and procedures for scrutinizing requests for a change of address that are followed closely by a request for an additional card or replacement card. In addition, the rules require institutions to develop and apply policies and procedures for handling notices of address discrepancies received from consumer reporting agencies. The rules implement the Fair and Accurate Credit Transactions Act, which amended the Fair Credit Reporting Act.

SEC Improves Disclosure for Mutual Fund Investors

On November 19, 2008, the Securities and Exchange Commission voted unanimously to improve mutual fund disclosure by requiring that funds provide investors with a concise summary, in plain English, of the key information they need to make informed investment decisions. The new summary prospectus will appear at the front of a fund's prospectus. The SEC also approved amendments to encourage funds to make greater use of the Internet so investors can receive more detailed information in a way that best suits their needs.

The key information to be included in this new, plain English, disclosure will include: description of the fund's investment objectives and strategies; fees; risks; performance; purchase and sale procedures; tax consequences; and financial intermediary compensation

This key information will be standard across all funds and will allow investors to more simply compare one fund to another. Additionally, investors will have access to more searchable information on the internet.

Additionally, the SEC adopted a new rule that permits sending a summary prospectus to satisfy prospectus delivery requirements provided that the mutual fund's summary prospectus, statutory prospectus and other specified information are available online. The summary prospectus must have the same information in the same order as the summary at the front of the statutory prospectus. In addition:

- The online materials must be in a user-friendly format that permits investors and other users to move back and forth between the summary prospectus and the statutory prospectus;
- Investors have to be able to download and retain an electronic version of the information; and
- The statutory prospectus and other information must be provided in paper or by e-mail upon request, so investors can choose the format in which they receive more detailed information.

The rule changes are effective on February 28, 2009 and funds must begin complying with the form changes on January 1, 2010.

OFAC Releases Guidance on Opening Securities and Futures Accounts

On November 5, 2008, The Treasury Department's Office of Foreign Assets Control (OFAC) released guidance that sets forth certain recommended practices that it believes should be included in a strong OFAC compliance program. The guidance focuses on the account opening process, noting that it is similar to existing Customer Identification Program (CIP) rules. However, because OFAC regulations apply to all U.S. persons, firms that have not yet been required to implement a CIP (e.g., investment advisers, commodity pool operators, commodity trading advisers) will be particularly affected by the new OFAC guidance. The guidance notes OFAC's expectation that firms screen all potential new client identification and transaction information through the Specially Designated Nationals and Blocked Persons list and other applicable OFAC sanctions programs as part of their account opening procedures. The results of these reviews should be adequately documented. OFAC also notes that periodic checks of related "non-accountholders," such as beneficiaries, guarantors, or principals, may be necessary depending on the firm's risk profile.

OFAC recommends that firms use risk-based measures for verifying the identity of each new customer who opens an account. In establishing procedures, firms should identify and consider their size (e.g., total assets under management), their location, their customer base, the types of accounts they maintain, the methods by which accounts can be opened, and the types of identifying information available for each customer.

OFAC also comments on the distinction of liability found between the OFAC rules and the existing CIP guidance regarding introducing/clearing relationships. Under existing CIP regulations, there are circumstances where a clearing firm would not be expected to comply with CIP responsibilities, provided that it has properly allocated these responsibilities to a responsible introducing firm. However, OFAC rules are stricter and do not permit businesses to reallocate liability to any third party. Therefore, if an OFAC violation occurs, a clearing firm could ultimately be held responsible.

OFAC Updates Securities Industry Risk Factor Guidance

On November 5, 2008, The Treasury Department's Office of Foreign Assets Control (OFAC) published an update to its notice on "Risk Factors for OFAC Compliance in the Securities Industry." OFAC has identified specific risk factors that are relevant to both regulated and unregulated firms in the securities industry. The risk factors highlight the need for financial institutions that deal with foreign counterparties and customers to conduct appropriate risk-based due diligence to ensure compliance with OFAC regulations.

OFAC groups the risk factors risk factors under a variety of different categories, including international transactions, confidential accounts, foreign broker/dealers, omnibus account relationships, third-party introduced business, and very high net worth and hedge fund accounts, among others. The full list of risk factors is available at:

http://www.treasury.gov/offices/enforcement/ofac/policy/securities_risk_11052008.pdf

FinCEN Withdraws Dated AML Rule Proposals for Unregistered Investment Companies, Commodity Trading Advisors, and Investment Advisers

On October 30, 2008, Financial Crimes Enforcement Network (FinCEN) announced that it had withdrawn its proposed anti-money laundering (AML) program rules for unregistered investment companies, commodity trading advisors and investment advisers.

Given the passage of time since these rules were first proposed in 2002 and 2003, FinCEN has determined that it will not proceed with BSA requirements for these entities without publishing new proposals and allowing for industry comments. FinCEN will continue to consider whether and to what extent it should impose requirements under the BSA on these entities.

Since the proposed rules were first published, FinCEN has concluded rulemakings for banks, broker-dealers and futures commission merchants. The financial transactions of unregistered investment companies, investment advisers, and commodity trading advisors and their clients must be conducted through, and their assets carried by, other financial institutions that are subject to BSA requirements. Thus, as FinCEN continues to consider the extent to which BSA requirements should be imposed on these entities, their activity is not entirely outside the current BSA regulatory regime.

Additional Information

If you would like additional information about the topics discussed in this newsletter, or about PwC Financial Services Regulatory, please call:

David Albright, Principal	703-918-1364
John Campbell, Principal	646-471-7120
Roger Coffin, Principal	646-471-2545
Carlo di Florio, Principal	646-471-2275
Jeff Lavine, Partner	703-918-1379
Ric Pace, Principal	703-918-1385
Bruce Roland, Principal	410-783-7650
Dan Ryan, Partner	646-471-8488
David Sapin, Principal	703-918-1391
Ellen Walsh, Principal	646-471-7274
Gary Welsh, Managing Director	703-918-1432
Dan Weiss, Managing Director	703-918-1431
Harold Schuler, Managing Director	703-918-1392

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