March 2009

Association for Financial Professionals

Legislative and Regulatory Status Update

A monthly summary of federal issues

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Overview – In an effort to bring AFP members the *best* information on how Washington DC is affecting the lives of financial professionals, *Legislative & Regulatory Status Update* is currently in the process of finding new and better ways of changing to fit your needs. Last year, we added the Credit Crisis Section to highlight the rapid changes with various rescue plans and regulatory changes to address the crisis. This month, we've added a longer analysis on one issue, Secretary of the Treasury Timothy Geithner's Financial Stability Plan (see page 14). We will do this for a single issue each edition to provide an in-depth analysis on a hot topic impacting your profession. . We want to hear your thoughts both on this change and the publication as a whole. Feel free to email l Michael Griffith at mgriff@afponline.org with your thoughts, suggestions, or concerns.

This month, AFP's Government Relations Committee (GRC) met and took part in meetings on Capitol Hill. During these meetings, AFP members spoke with Members of Congress, and their staffs' about how the credit crisis is affecting their business, their ability to create and retain jobs, and solutions for improving access to credit. This resulted in a proposal to work with Congress and the Federal Reserve to expand the Fed's existing Commercial Paper Funding Facility (CPFF) to Tier 2 Companies (see page 2 for more details). This was an idea that developed during the meeting and is something AFP's Advocacy Team is working to accomplish.

The struggling economy continues to be the focus of policymakers' attention. In addition to Secretary Geithner's Financial Stability Plan (see pages 1 &14), the Federal Reserve and the Federal Deposit Insurance Corp (FDIC) extended their current liquidity programs (see page 4). Additionally, , the new Securities and Exchange Commission (SEC) Chair Mary Shapiro has re-proposed regulations for the rating agencies (see page 7). Next month, AFP's President & CEO Jim Kaitz will take part in a roundtable at the SEC to discuss rating agencies and develop a plan for the future.

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CREDIT CRISIS

03/09 **AFP Urges the Fed to Expand Commercial Paper Program** – On March 30, 2009, AFP sent a letter to the Board of Governors of the Federal Reserve requesting that the Federal Reserve extend the Commercial Paper Funding Facility (CPFF) to Tier 2 commercial paper issuers. Given the current volatile state of capital markets, AFP argued that this expansion is necessary and will help ease credit availability for Tier 2 companies and other organizations in need of access to credit. The Tier 2 commercial paper market is approximately $80 billion in size and includes such household names as FedEx, Kraft, Macy's, Kroger, Safeway, and Time Warner. Click here to view the letter in its entirety.

03/09 **Financial Crisis Resolution Introduced** – U.S. Senators John McCain (R-AZ) and Byron Dorgan (D-ND) introduced a Senate resolution, S. Res 62, that would create a bipartisan committee responsible for investigating the causes of the current financial crisis. During a nationally televised press conference on March 3, 2009, Senators Dorgan and McCain said that the committee would be independent, carry subpoena power, and have "authority to get to the bottom of this crisis". The committee would not be able to prosecute any wrong doing that it uncovers; such matters would be referred to the Justice Department.

03/09 **Money Market Funds Reforms Announced** – On March 18, 2009, the Investment Company Institute (ICI), the major trade association for U.S. mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs), announced their adoption of new standards for money market funds in an effort to improve their functioning and regulation. The ICI Board of Governors adopted a resolution that would, for the first time, require money market funds to meet new mandated daily and weekly minimum liquidity standards. The group also adopted a proposal that tightens the portfolio maturity limits currently applicable to money market funds and raises the credit quality standards. Along with the adoption of the new standards, the ICI Board also announced that they will encourage the SEC to require that the funds choosing not to implement the recommendations disclose that fact to their investors.

To view the new money market funds standards in their entirety, click here.

03/09 **Treasury Secretary Unveils Financial Stability Plan** – Shortly after Congress passed President Obama's economic recovery plan, Treasury Secretary Timothy Geithner introduced a financial stability plan. During a nationally televised press conference, Secretary Geithner unveiled a broad plan that would help restart the flow of credit, clean up and strengthen banks, and provide critical aid for homeowners and small businesses.

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Under this framework, three new programs are being created to strengthen the nation's banks and bring in private capital to restart lending. This new plan will increase Treasury's commitment to various programs aimed at improving secondary markets and securitization to directly benefit consumers and businesses. To read more about the Financial Stability Plan, click here. For an in-depth analysis, see page 14.

03/09 **Rating Agencies Receive Government Bond Deals – AFP Responds** – On March 20, 2009, the *Wall Street Journal* reported that credit rating companies would be the recipients of nearly $1 billion dollars in new fees as a result of a new rescue effort run by the Federal Reserve. Earlier this month, the Federal Reserve announced the extension of the Term Asset-backed Loan Facility (TALF) which was designed to renew the issuance of consumer and business asset-backed securities (ABS). The program will initially lend up to $200 billion to eligible owners of certain AAA-rated asset-backed securities. In order to qualify for this program, the securities being purchased must have the triple-A rating from at least two of the three big rating firms. The next day, *WSJ* issued a correction to their original story saying that the potential fee of nearly $1 billion in revenue was incorrectly stated. Depending on the kinds of securities issued and the ultimate size of the TALF program, the rating agencies could earn tens of millions to a few hundred million dollars, based on Wall Street Journal estimates.

In response to this article, AFP released a statement suggesting that credit rating agencies should waive their fees as restitution to taxpayers for the role they played in the current market meltdown. "It's outrageous that credit rating agencies are going to make upwards of a billion dollars rating new debt while those same agencies are culpable for arbitrary and poor quality ratings that resulted in the financial meltdown we have seen over the last year", said Jim Kaitz, AFP President & CEO in his released statement. Click here to view AFP's full statement.

03/09 **Term Asset-backed Loan Facility (TALF) –** On March 13, 2009, the Federal Reserve Bank of New York announced that it extended the application period for the Fed's Term Asset-backed Loan Facility to accommodate participants filling out the lengthy application. The TALF program was designed to jump start the secondary credit markets in an effort to further unlock the flow of and access to credit. Originally, the New York Fed announced it would accept applications through March 13, 2009, but that deadline was extended to March 19, 2009. Additionally, the lending rate for TALF loans was established on March 19, 2009.

The Term Asset-backed Loan Facility (TALF) was designed to renew the issuance of consumer and business asset-backed securities (ABS). The program will initially lend up to $200 billion to eligible owners of certain AAA-rated asset-backed securities backed by newly and recently originated auto loans, credit card loans, student loans and SBA-guaranteed small business loans. The Fed signaled that this program could be expanded up to $1 trillion dollars in the future.

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The first loans accepted into the program were awarded on March 25, 2009.

For additional information on this new program, click here.

03/09 **FDIC Debt Guarantee –** On March 17, 2009, the board of directors of the Federal Deposit Insurance Corporation (FDIC) voted to extend the debt guarantee portion of the Temporary Liquidity Guarantee Program (TLGP) from June 30, 2009 to October 31, 2009. The board also voted to impose a surcharge on debt issued on or after April 1, 2009, and with a maturity of one year or longer.

The surcharge will be in addition to current fees for guaranteed debt and will be put into the deposit insurance fund (DIF) to keep down special assessments. Current TLGP fees are being set aside to cover potential program losses.

The FDIC created the TLGP program to strengthen confidence and encourage liquidity in the banking system by guaranteeing newly issued senior unsecured debt of banks, thrifts, and certain holding companies, and by providing full coverage of non-interest bearing deposit transaction accounts, regardless of dollar amount. The TLGP was created in October 2008, as part of a coordinated effort by the FDIC, the U.S. Department of the Treasury, and the Federal Reserve to remedy unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

For more information on this program, click here.

AFP has compiled a cumulative list of programs implemented following the Emergency Economic Stabilization Act of 2008, to view a continuously updated list, please click here.

Legislative Issues

TREASURY AND FINANCE

03/09 **Credit Unions –** On March 24, 2009, at a hearing before the Senate Banking Committee, credit unions asked to have a limit on commercial lending of 12.5% of assets lifted. Credit unions argued that they are potential source of liquidity for small businesses that have lost access to credit recently.

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Banks argue that they are already providing sufficient credit and that many credit unions have not yet reached their limit. Senator Charles Schumer (D-NY) has introduced a bill to lift the cap on commercial credit union lending.

03/09 **Futures and Derivatives –** On March 15, 2009, in an interview on ABC's *This Week*, Larry Summers, the Director of the National Economic mentioned requiring clearing all derivatives as a part of a broader financial markets regulatory reform. It is not clear how this would fit into the Administration's overall plan, but is indicative of their ideas moving forward.

On March 10, 2009, AFP's Government Relations Committee (GRC) met with legislators to discuss their concerns about proposals to require all derivatives contracts to be cleared. GRC members told congressional staff that contracts would likely have to be standardized to be cleared and the difficulty they would face complying with FAS-133 under such conditions. They further elaborated that the loss of these products would cost each of their firms millions of dollars and increase volatility and risk.

One bill that would enact such mandates is H.R. 977, "The Derivatives Markets Transparency Act of 2009". The bill seeks to have all futures and derivatives contracts regulated by the Commodities Futures Trading Commission (CFTC) and have all over-the-counter derivatives go through clearing. It has been reported out of the House Agriculture Committee, but would have to be considered by the House Financial Services Committee before it could be considered by the entire House. Before the bill was marked up, AFP submitted a letter voicing concern on the inclusion of commonly-used risk mitigation products, such as interest rate and foreign exchange swaps, in the bill.

03/09 **Data Security –** On March 19, 2009, the Senate Commerce Committee held a hearing on cyber security. The hearing mainly focused on the larger strategic threat of a cyber attack. Committee Chairman John Rockefeller (D-WV) and Sen. Olympia Snowe (R-ME) are working on a proposal to create a new cyber security office. Currently, merchant liability laws for data breaches are state-specific, causing merchants to have vastly different standards to comply with in each state. This proposal could provide an opportunity for having one nationwide standard.

03/09 **CFTC Chairman Nomination on Hold –** U.S. Senator Bernard Sanders (I-VT) placed a hold on the nomination of Gary Gensler to be chairman of the Commodity Futures Trading Commission (CFTC) citing Gensler's work 10 years ago to exempt derivatives traded off-exchange from regulation. This move may block Gensler from being considered by the full Senate despite the fact that the Senate Agriculture Committee voted to favorably recommend Gensler. In 2008, Senator Maria Cantwell (D-WA) placed a hold on former CFTC Acting Chairman Walter Lukken. Because of her hold, Lukken was never confirmed by the full Senate despite the Agriculture Committee's favorable recommendation.

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FINANCIAL ACCOUNTING AND REPORTING

03/09 **Fair Value Measurement and Impairment-** Financial Accounting Standards Board (FASB) Chairman, Robert Herz and Securities and Exchange Commission's (SEC) Acting Chief Accountant, James Kroeker were called to testify at the House Committee on Financial Services' Capital Markets Subcommittee hearing on March 12, 2009, to examine the mark-to-market accounting rules that many contend have exacerbated the current troubles in the financial industry and in the broader economy. Members of the Subcommittee expressed agitation that the FASB and the SEC had not made much progress towards resolving the mark-to-market dilemma facing many businesses in this illiquid market that is causing them to take significant, permanent write-downs on their assets that they hold at current market values. Subcommittee Members sent a stern ultimatum to the SEC and FASB to issue guidance within three weeks that would either suspend mark-to-market accounting or provide clarifying guidance on how to value these assets in this current economic environment. Subcommittee Chairman Paul Kanjorski (D-PA) indicated that without immediate action from the FASB and the SEC, Congress would be forced to use legislative means to rectify the problem.

PENSIONS AND INVESTMENTS

03/09 **Defined Benefit Plan Funding -** Congress provided some relief from massive increases in funding for traditional pension plans by passing the *Worker, Retiree and Employer Recovery Act of 2008* (WRERA) at the end of last year. However, additional relief is needed or plan sponsors will have to divert cash from operations to meet significantly increased funding requirements. A coalition of groups, including the Committee on Investment of Employee Benefits Assets (CIEBA), are pursuing additional temporary relief from funding requirements that have grown because of the current economic crisis. A letter requesting additional Congressional action, signed by more than 250 organizations and companies (including CIEBA and AFP) was sent to the Congress in January.

House Minority Leader John Boehner (R-OH) is planning on introducing *The Savings Recovery Act*, legislation that would provide funding relief by allowing greater flexibility in recognizing losses and increase the amount of time that plan sponsors have to fund up their plans from seven to nine years. The legislation will also include temporary capital gains relief and increase contribution limits for defined contribution plans.

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03/09 **Advice in 401(k) Plans.** Several key Members of Congress have expressed concern about Pension Protection Act provisions expanding access to advice for defined contribution plan participants. House Education and Labor Committee Chairman George Miller (D-CA) and Subcommittee Chairman Robert Andrews (D-NJ) are skeptical about the new rules allowing investment managers to also provide advice. They argue that the rules do not adequately protect participants from inherent conflicts of interest. On March 24, 2009, a hearing was held on this topic in the Subcommittee on Health, Employment, Labor and Pensions of the Education and Labor Committee.

REGULATORY ISSUES

TREASURY AND FINANCE

03/09 **SEC Re-Proposes Rules Relating to Credit Rating Agencies -** The Securities and Exchange Commission (SEC) has re-proposed rules to reform credit rating agencies in an effort to bring increased transparency to the ratings process. These newly proposed rules would require public disclosure of credit rating histories for all outstanding credit ratings issued by a Nationally Recognized Securities Rating Organization (NRSRO) on or after June 26, 2007 paid for by the obligor being rated or the issuer, underwriter or sponsor of the security being rated. To view the rules in their entirety, click here.

AFP submitted formal comments on the re-proposed rules on the original request on July 25, 2008.

03/09 **Credit Default Swaps –** In March, the Securities and Exchange Commission (SEC) approved exemptions to allow ICE Trust US LLC and CME Group to operate a clearinghouse for credit default swaps (CDS).

Since CDS's were revealed to play a critical role in AIG's decline, the instruments have been under scrutiny by lawmakers and regulators. A proposal from the House Agriculture Committee, H.R. 977, "The Derivatives Markets Transparency Act of 2009", seeks to have CDS's regulated solely by the Commodities Futures Trading Commission (CFTC) rather than the SEC. Further, the act would require all CDS's to be cleared and give the CFTC power to suspend CDS trading.

03/09 **Same-Day ACH –** The Federal Reserve banks announced that they plan to introduce a service to enable banks to clear and settle certain automated clearinghouse transactions on the same day instead of one or two business days. The launch of the service is scheduled for the second quarter of 2010. It represents the first significant change in ACH settlement schedules in 35 years. The accelerated-settlement service would be voluntary and would require both the originator and the receiver to opt-in.

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It applies to a limited subset of ACH standard entry class codes, consumer checks converted to ACH (ARC, POP, and BOC), and debits initiated by telephone (TEL) or the Internet (WEB). It does not apply to credit transactions, such as payroll direct deposits or online bill payments. The private ACH network operator EPN is considering a similar settlement service.

01/09 **FFIEC Releases Guidance on RDC** - The Federal Financial Institutions Examination Council (FFIEC) issued guidance to identify risks, evaluate controls and assess risk management practices related to remote deposit capture (RDC) services.

RDC enables business customers to transmit scanned checks to be deposited into a bank account. This process was made possible by the Check 21 Act legislation passed in 2003 allowing banks to clear and settle checks based on digital images in lieu of paper. For corporate customers, remote check-image capture offers convenience and earlier availability of funds, while reducing processing costs. Deposits originating from corporate customers using RDC, however, also introduce exposure to risks that include duplicate check presentment and information security issues.

The guidance comes at a time when the adoption of remote deposit capture is expanding from large corporate businesses to the small-business customers and consumers. The establishment of the general framework for financial institutions will lead to greater scrutiny and tighter process oversight of banking clients.

The guidance addresses the essential elements of an RDC risk management process in an electronic environment, focusing on RDC deployed at a customer location. A copy of the nine-page guidance titled "Risk Management of Remote Deposit Capture"can be found at http://files.ots.treas.gov/482031.pdf

PENSIONS AND INVESTMENTS

03/09 IRS Issues Notice on Funding Interest Rate – On March 31, 2009, the Internal Revenue Service issued a notice to allow plan sponsors to use the an interest rate from any ‘applicable month’ for calculating liabilities for 2009 funding obligations. (Applicable month would be any month from September to January 2008.) This move will provide some relief from burgeoning funding requirements resulting from the dramatic fall in asset values.

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11/08 **DOL Proposed Rules on 401(k) Disclosure and Advice Stalled -** The Obama Administration has put a hold on all regulations that were not finalized by January 20, 2009. This includes the Department of Labor (DOL) proposed rules for increased disclosure of investment-related information and fees for participants in defined contribution plans. It also affects two other DOL rules, one dealing with disclosure from service providers to plan sponsors and the other implementing the advice provisions of the Pension Protection Act (PPA). The outlook for eventual release of the two disclosure regulations is unclear. The new Secretary of Labor Hilda Solis has ordered a review of the proposed advice rule in light of significant opposition from key members of Congress and participant groups.

FINANCIAL ACCOUNTING AND REPORTING

03/09 **Standard Setters Respond to Credit Crisis -** The International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB) announced that they will work jointly and expeditiously to resolve accounting issues in response to the global financial crisis following their joint board meeting held in London on March 23-24, 2009. The two boards have agreed to work toward common standards that deal with off balance sheet activity and the accounting for financial instruments. The boards have agreed to develop the IASB projects on consolidation and derecognition as joint projects once the FASB has completed its short-term amendments to its existing standards. Furthermore, the boards have agreed to issue proposals to replace their respective financial instruments standards (e.g. FAS 133 and IAS 39) with a common standard in a matter of months, not years. As part of this project the boards will also examine loan loss accounting, including the incurred and expected loss models.

03/09 **FASB Announces New FSP's on Mark-to-Market -** In response to a March 12, 2009 House Financial Services Subcommittee on Capital Markets hearing, the Financial Accounting Standards Board (FASB) issued two Financial Statements of Positions (FSPs). The first FSP (FSP FAS 157-e) provides additional guidance for determining the fair value of financial assets when the market is not active and a transaction is not distressed. FASB proposed a two step model for determining whether a market is not active and a transaction is not distressed. Step one provides factors that should be considered in determining whether a market is inactive. Step two requires companies to presume that a quoted price is associated with a distressed transaction unless evidence suggests that (a) there was sufficient time before the measurement date to allow for usual and (b) customary marketing activities for the asset and there were multiple bidders for the asset. If evidence that neither (a) and (b) are not present for a given market price, companies are required to use an alternative valuation technique to derive at the fair value, such as a present value technique rather establishing fair value based on the last transaction price.

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The second FSP (FSP FAS 115-a, and EITF 99-20-b) modifies the current indicator for recognizing other than temporary impairments (OTTI) in debt and equity securities and requires additional disclosures related to the methodology for assessing OTTI under the new model. The new model would require management to assert that (a) it does not have the intent to sell the security, and (b) more likely than not it will not have to sell the security before recovery of the cost basis.

If management can make this assertion for debt securities, impairment would be separated into two components: impairment related to credit losses and impairment related to other factors. Impairment related to credit losses will continue to be included in earnings. However, impairment related to other factors (i.e. liquidity) will be included in other comprehensive income (OCI) as a deduction from the total impairment. The deadline for comments is April 1, 2009. The FSPs can be found here and here.

03/09 **Lease Accounting -** The IASB and FASB launched a public discussion on lease accounting by publishing their preliminary views in a joint discussion paper, which is a response to concerns raised by investors and other users of financial statements regarding the treatment of lease contracts under International Financial Reporting Standards (IFRSs) and US generally accepted accounting principles (GAAP). In the discussion paper the IASB and the FASB discuss a possible new approach to lease accounting. The boards propose that lease accounting should be based on the principle that all leases give rise to liabilities for future rental payments and assets (the right to use the leased asset) that should be recognized in an entity's statement of financial position. This approach is aimed at ensuring that leases are accounted for consistently across sectors and industries. The IASB and the FASB will each be holding a live web presentation introducing the discussion paper in May 2009. The discussion paper can be found at FASB's website. According to the World Leasing Yearbook 2009, total annual leasing volume in 2007 amounted to US$760 billion; yet many of those lease contracts do not appear in an entity's statement of financial position (balance sheet). This is because IFRSs and US GAAP split leases into two categories—finance leases (capital leases under US GAAP) and operating leases—and only the assets and liabilities arising from finance leases are recognized in the statement of financial position. For an operating lease the lessee simply recognizes lease payments as an expense over the lease term. The different accounting treatment of finance and operating leases has given rise to various problems.

03/09 **SEC Road Map for U.S. Adoption of IFRS –** On March 24, 2009, Craig Olinger, deputy chief accountant in the SEC's Division of Corporate Finance, spoke at a District of Columbia Bar seminar. He indicated that he could say little about the deliberations while the comment period on the road map, which expires April 20, 2009, remains open. Olinger also did not say when the SEC might make a decision on whether to finalize its road map and commit itself to a 2011 decision on whether to require IFRS.

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02/09 **Fair Value Disclosures** - The Financial Accounting Standards Board (FASB) has issued a staff position that would require disclosures about fair value of financial instruments in interim financial statements as well as in annual financial statements. After receiving comments, FASB has delayed implementation while it deliberates. The staff position can be found here.

02/09 **SEC Extends IFRS Roadmap Comment Period -** The Securities and Exchange Commission (SEC) extended the period to comment on the International Financial Reporting Standards (IFRS) road map to April 20, 2009. Originally, the comment period was set to expire February 19, 2009. The extension was granted to give the public more time to thoroughly analyze and provide feedback to the SEC on this complex issue. At her Senate confirmation hearing SEC Chairman, Mary Schapiro, expressed concerns about the current pace the SEC is moving toward formal adoption. She also expressed reservations about the independence of the IASB and the quality of the rules issued. The proposed roadmap can be found here.

02/09 **XBRL Implementation -** The Securities and Exchange Commission (SEC) issued a final ruling that mandates public companies and foreign private issuers that issue their financial statements in accordance with US Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS) to report their information in extensible business reporting language (XBRL) format. The SEC provided for a phase-in implementation period for its registrants that will go into effect on April 1, 2009, requiring the largest public companies to implement for the June 30, 2009 quarterly filing. Accelerated filers will be required to implement XBRL filing by 2010, while all others will be required to do so by 2011. The SEC will allow the first XBRL filing to be submitted 30 days after the regular filing date. The new rules are intended to assist with automating regulatory filings and simplifying the process for analyzing the information. The final ruling can be found here.

02/09 **Joint Revenue Recognition Project -** The International Accounting Standards Board (IASB) and the US Financial Accounting Standards Board (FASB) published a discussion paper setting out a joint approach for the recognition of revenue. The boards' objective is to improve the existing guidance in both International Financial Reporting Standards (IFRS) and US Generally Accepted Accounting Principles (GAAP) by developing a single revenue model that can be applied consistently regardless of industry. The underlying principle of the model is similar to many existing requirements and the boards expect that many transactions would remain unaffected by the proposals. However, this clarification is designed to improve the comparability and understandability of revenue for users of financial statements. Comments on this paper are due by June 19, 2009. The discussion paper can be found here.

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01/09 **FASB Changes OTTI designation -** On January 7, 2009, the Financial Accounting Standards Board (FASB) approved a measure that may help companies deem fewer asset-value declines as "other-than-temporary" and record fewer write-downs. Companies can "exercise judgment when assessing whether declines in fair-value are indicative of a decline in the cash flows expected from the issuer of the security," FASB said in a statement.

PAYMENTS AND STANDARDS

3/09 **Interchange Fee Updates for Visa and MasterCard–** Effective April 2009, Visa and MasterCard will adjust their interchange fee rate programs.

> Visa: Visa will modify several Consumer Credit and Signature Preferred Interchange fees. Visa is lowering Card-Not-Present interchange rate fee assessed on Internet and catalog transactions, Retail Key-Entry and E-Commerce Interchange rates from 1.85% and 10 cents to 1.80% and 10 cents. Visa will be lowering hotel and car rental rate categories as well. All merchants will be impacted by a 5 basis point increase on Visa-branded Rewards cards (i.e., cards that give cardholders miles, points, cash or other perks for purchases). Visa will extend Small Ticket Interchange Rates to service stations when the transaction size is $15.00 or less. Visa will modify Interlink Interchange fees including the establishment a unique Interlink interchange category for Automated Fuel Dispenser (AFD) and Service Station transactions.
>
> MasterCard: MasterCard will modify about 40 commercial card interchange rates. MasterCard will launch a program for issuers to enroll Consumer World accounts in the "World High Value" program to qualify for differentiated interchange. As of April 2009, interchange rates for the new category will mirror those currently used for the Consumer World Elite cards, so there will be no immediate impact of this launch. In an upcoming April 2009 initiative, the MasterCard Acquirer Access fee that is currently in place and being billed at a pass through cost of a half-cent per authorization is being eliminated and replaced with Network Access and Brand Usage (NABU) fee, which will be billed at a pass through cost of 1.85 cent fee per authorization. This MasterCard change will greatly impact merchants with small transaction sales. The new fee is 3.7 times higher than the fee it replaces.

In related news, retailers are attempting to consolidate various lawsuits challenging Visa, MasterCard and large banks over interchange practices into a class action in U.S. District Court in Brooklyn, N.Y.

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11/08 **Remittance Information in Wire Transfers –** Following AFP's success in winning approval for the inclusion of remittance information with wire transfers, the operators of Fedwire and CHIPS are preparing for a major expansion of the wire transfer message format. The new format will require software changes by companies and banks to accommodate remittance information in their wire transfer communications systems.

The Federal Reserve and CHIPS met with AFP's Corporate Advisory Group on wire transfer in February to discuss detailed specifications with corporate practitioners in the future roll-out and implementation of the new wire format.

A progress report on the new format will be presented by the Federal Reserve Bank of New York and The Clearing House—operators of Fedwire and CHIPS— at the AFP Payments Forum, April 29 – May 1, 2009, in New York City.

To prepare, companies should:

- Meet with their wire transfer banks to let them know of their interest in receiving remittance information with wire transfers and sending the data with their outgoing wires.
- Speak with their IT staff about the software and systems used to send and receive wire transfer information and where changes must be made.

NACHA UPDATE

02/09 **Growth in Electronic Payments -** NACHA has announced that the number of US ACH payments in the 4th quarter 2008 grew by 4.5 percent over the same period in 2007, topping 3.8 billion. Internet-initiated ACH payments known as "WEB" entries increased 16.5 percent over 4th quarter 2007 volumes. In the business-to-business segment, the number of CTX payments in the 4th quarter 2008 was 14.4 million, for $691 billion, a 15 percent growth over 4th quarter 2007 levels. More than 195 million electronic remittance records moved with these payments.

03/09 **NACHA Proposed Rule Changes -** NACHA is developing a formal rules proposal and considering consolidating some or all of the three ACH SEC Codes: ARC, BOC and POP. Potential rules change may have an impact on your business if you convert checks to ACH at the lockbox (ARC), in the back office (BOC) or at the point of sale (POP).

Three possible approaches to SEC consolidation are:

1. Leave the current SEC codes in place, but work to simplify and align the ACH Rules for ARC, BOC and POP.

2. Simplify and align the ACH Rules for ARC, BOC and POP and also combine ARC and BOC into one SEC code.

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3. Simplify and align the ACH Rules for ARC, BOC and POP and combine them into one SEC Code.

NACHA is also looking at Check 21 solutions and possible convergence of Check 21 with ACH. Since the passage of Check 21 Act in 2003 – which created a new negotiable instrument or the substitute check – it has enabled business customers to use remote deposit captures services to transit scanned checks to be deposited into a bank account. NACHA is currently attempting to better determine how the current differing requirements for the three SEC Codes affect ACH participants and what impact combining them could have on the efficiency of the ACH Network.

10/08 **International ACH Transactions** – NACHA has extended the effective date of the International ACH Transaction (IAT) rule for six months, to September 18, 2009, to allow more time for implementation. All financial institutions and organizations that send or receive cross-border payments must have software and systems in place by that date to comply with sanctions enforced by the Office of Foreign Assets Control (OFAC). An International ACH Transaction will be identified by the Standard Entry Class (SEC) Code, IAT. An IAT is an ACH entry that involves an office of a financial agency located outside the territorial jurisdiction of the U.S.

A summary of the NACHA rule is posted on the AFP Web site here to help companies decide whether their payments must be classified as International ACH Transactions. Be on the lookout for an upcoming webinar in June on this topic on the AFP website.

ISSUE ANALYSIS

03/08 **Systemic Risk – How Washington Intends to Address Regulatory Reform**
By Jeanine H. Arnett, Government Relations Manager, AFP

With the nation's attention squarely focused on financial markets reform, Congress has also focused their efforts on repairing a seemingly flawed system. Both the Chairman of the House Financial Services Committee, Rep. Barney Frank (D-MA), and the Chairman of the Senate Banking Committee, Sen. Chris Dodd (D-CT), have identified major regulatory reform as a key priority for their committees. Recently, Treasury Department Secretary Timothy Geithner sent legislative language to Capitol Hill that would allow the Federal Reserve Board (the Fed) to take the lead in determining which institutions pose a systemic risk while the Federal Deposit Insurance Corporation (FDIC) would handle resolution duties.

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Acknowledging that the past 18 months has been tumultuous for our nation's capital markets, the Secretary of the Treasury has attempted to craft a framework for major regulatory reform that provides new rules and focuses on containing systemic risk. This plan endeavors to provide stronger tools to prevent and manage future crises while simultaneously rebuilding confidence in the basic integrity of our financial system. The Treasury Department says that it wants to give "a single entity the ability to supervise, examine, and set prudential requirements for these critical parts of our financial system."

The new plan includes provisions to regulate hedge funds, create a central clearinghouse for derivatives transactions and add new oversight for money market mutual funds to reduce risk. Additionally, this new regulatory plan would require banks to set aside extra reserves during periods of economic boom to create a cushion for periods of economic slumps. Finally, Treasury's program also includes the creation of a mechanism to seize and dismantle large institutions whose failure threatens the nation's financial stability.

The four major components of this comprehensive regulatory reform are:

1. **Addressing Systemic Risk**: Consistent and conservative regulation of large interconnected firms and markets to avoid major crises.
2. **Protecting Consumers and Investors**: Providing more transparency and accountability to restore faith in the system.
3. **Eliminating Gaps in Our Regulatory Structure**: Creating a system where there is clear authority, resources and accountability so that regulation is balanced, effective and meets the needs of the American people.
4. **Fostering International Coordination**: Creating regulations that keep pace with ever changing global markets and ensuring that U.S. standards are consistent with international rules for financial regulation.

The first priority of the new Treasury financial stability plan is to adequately address systemic risk by creating a single independent regulator with responsibility over systemically important firms and critical payment and settlement systems. During his testimony before the House Financial Services Committee last week, Secretary Geithner attributed some of the current problems to inadequate internal risk management systems, ineffective rating agencies and slow responding regulators who did not address critical behaviors until such behavior had already resulted in catastrophic losses. To respond to this failure, Secretary Geithner is proposing that a new regulator:

a. Define a systemically important firm;
b. Focus on what these institutions do and not the form they take; and,
c. Clarify regulatory authority over payment and settlement activities.

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In general, the first part of the financial stability plan seeks to strengthen prudential oversight for all financial firms regardless of whether they own a depository institution. Conservative and consistent general oversight will allow for more accurate account of the risk that distress of these institutions could impose on our current financial system and the overall economy. Additionally, the current plan not only calls for robust capital requirements for financial firms in order to avert a crisis of this magnitude in the future but, requires that the new systemic regulator impose liquidity, counterparty and credit risk management requirements that are more stringent than ever before. Along with these stricter standards, the financial stability plan allows for a prompt corrective action regime that would allow the regulator to force protective actions as regulatory capital levels decline, similar to the powers of the FDIC with respect to its covered institutions .

Simultaneously, Secretary Geithner has suggested that all hedge funds and other private pools of capital, including private equity funds and venture capital funds, register with a federal financial regulator. In most instances, that regulator would be the SEC but the plan recognizes that some funds that trade commodity derivatives might fall under the Commodity Futures Trading Commission (CFTC). In addition to registration, the stability plan requires that all registered funds mandate investor and counterparty disclosure, provide information necessary to assess threats to financial stability and share reports with the systemic risk regulator. This is something of a non-sequitor. Recent events with Ponzi scheme mastermind Bernard Madoff exposed wide gaps and significant weaknesses in the regulation and enforcement of broker- dealers, investment advisors and the funds they manage, these reforms are attempting to close those gaps.

The financial stability plan proposes a comprehensive framework of oversight, protections and disclosure for the Over-the-Counter (OTC) Derivatives Market. The current financial crisis has been amplified by excessive risk-taking and little transparency which threatened the stability of these products. To respond to need for greater oversight in this area, the recommendations under the plan are:

a. To regulate all credit default swaps and OTC derivatives for the first time;
b. To institute a strong regulatory and supervisory regime;
c. To clear all contracts through designated central counterparties;
d. To require that all non-standardized derivatives be subject to robust standards;
e. To make aggregate data on trading volumes and positions available; and,
f. To apply robust eligibility requirements to all market participants.

Along with the mandates for greater regulation and supervision also comes a mandate from Treasury for greater disclosure. Under the new plan, regulators will introduce disclosure and suitability requirements where all market participants will be required to meet recordkeeping and reporting requirements.

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AFP Position

As the debate around regulatory reform continues to unfold, AFP will monitor the actions of the House and Senate and report back to our members on the specific reforms that directly impact corporate finance and treasury professionals. AFP continues to be a vocal advocate for clear and transparent practices in the regulatory process and we will continue to take that message to legislators as they consider the plans to fix our nation's capital markets.

AFP fully supports effective regulation and oversight of our nation's capital markets and we will advocate for disclosure requirements that are responsible and sensible. On behalf of our members, AFP will advocate that proposed regulations do not stymie the ability of businesses to do daily cash management and other necessary transactions.

We want to hear from you! Would you like to share how Treasury's plans are likely to affect your organization? E-mail questions, comments, and ideas to Jeanine Arnett at jarnett@afponline.org.

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-- Washington on the Web --

The AFP Web site is your direct link to current Washington activities impacting treasury and banking. Links to the following sites, and others, are located at the Government Relations section of http://www.AFPonline.org.

Congressional Record	http://www.access.gpo.gov/su_docs/aces/aces150.html
Department of the Treasury	http://www.ustreas.gov
Federal Register	http://www.access.gpo.gov/su_docs/aces/aces140.html
Financial Accounting Standards Board	http://www.fasb.org
Federal Deposit Insurance Corporation	http://www.fdic.gov
Federal Reserve Board	http://www.federalreserve.gov
The Federal Web Locator	http://www.infoctr.edu/fwl
***FedWorld**	http://fedworld.gov
Financial Management Service	http://www.fms.treas.gov
International Accounting Standards Board	http://www.iasb.org.uk/cmt/0001.asp
Office of the Comptroller of the Currency	http://www.occ.treas.gov
Securities and Exchange Commission	http://www.sec.gov
SEC EDGAR Database	http://www.sec.gov/edgar.shtml
****THOMAS**	http://thomas.loc.gov
The U.S. House of Representatives	http://www.house.gov
The U.S. Senate	http://www.senate.gov
The White House	http://www.whitehouse.gov

--Canada on the Web --

Canadian Payments Association	http://www.cdnpay.ca/
Government of Canada	http://www.canada.gc.ca
Department of Finance	http://www.fin.gc.ca
Canadian Institute of Chartered Accountants	http://www.cica.ca
Canada Deposit Insurance Corporation	http://www.cdic.ca
Bank of Canada	http://www.bankofcanada.ca
Investment Dealers Association of Canada	http://www.ida.ca
Canada Customs and Revenue Agency	http://www.tbs-sct.gc.ca
Canada Pension Plan Investment Board	http://www.cppib.ca
Invest In Canada	http://www.investincanada.com
Canada Business Network	http://www.cbsc.org
Canada Mortgage and Housing Corporation	http//www.cmhc-schl.gc.ca
Auditor General of Canada	http://www.oag-bug.gc.ca

--Europe on the Web --

European Commission Euro	http://europa.eu.int/comm/economy_finance/euro_en.htm
European Union General	http://europa.eu.int/index-en.htm
European Central Bank	http://www.ecb.int/

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* FedWorld is a central access point to locate and acquire government information

** THOMAS is the Library of Congress legislative information site