February 2009

Association for Financial Professionals

Legislative and Regulatory Status Update

A monthly summary of federal issues

Date of Last Change

02/09

Overview – President Barack Obama started his first month with a flurry of activity to jump-start the U.S. economy and the financial system. One of the first pieces of legislation to be enacted was a $787 billion stimulus package. Shortly thereafter, Secretary of the Treasury Timothy Geithner unveiled a financial stability plan to restart the flow of credit, clean up and strengthen banks, and assist homeowners (see page 2 for details).

In the meantime, Congress has been examining a number of reforms to the financial system in a series of hearings (see page 5 for more details). Any major changes are not likely to be immediate, due to the complex nature of the topic and the number of interested parties. One key aspect being discussed by a number of policy makers is empowering a systemic risk regulator, the nature of which will be the subject of a great deal of debate.

One of the most controversial issues to be dealt with, derivatives products, promises to lead to a hotly contested jurisdictional fight. The House Agriculture Committee approved a bill sponsored by the Committee Chairman Colin Peterson(D-MN) to require all over-the-counter to be cleared with reporting to the Commodities Futures Trading Commission (CFTC). The CFTC is overseen by the Senate and House Agriculture Committees (see page 6). There is little doubt the Chairman of the House Financial Services Committee will not want to cede jurisdiction on this issue. AFP submitted a letter to the Committee expressing concern about the unintended consequences this legislation could have on interest rate and foreign exchange swaps.

The new Securities and Exchange Commission (SEC) Chairman, Mary Shapiro, has already begun to review two important regulatory issues of interest to AFP members. The SEC has re-proposed regulations on credit rating agencies (see page 7) and the Chairman has expressed reservations about the speed towards transitioning to International Financial Accounting Standards (IFRS) (see page 8).

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CREDIT CRISIS

02/09 **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.

The new Financial Stability Plan will take a comprehensive approach to addressing the flaws in the current regulatory system. In an effort to foster greater transparency, Treasury revealed a new website that would show taxpayers exactly where their dollars are going. Financialstability.gov will track every dollar spent by the government and allow the average citizen to measure the return on investment. Further, this new website will allow the average citizen to see how government action is impacting the overall flow of lending and cost of borrowing.

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 represents a drastic shift from the original Troubled Asset Relief Program, which focused largely on injecting capital into financial firms to help them improve their balance sheets to counter asset value declines. Under the new framework, Treasury will increase its 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.

02/09 **Loan Volumes Curbed by TARP Beneficiaries –** According to information released by the Treasury Department earlier this month, bank lending during the final three months of 2008 generally trended downward despite aid for the troubled financial sector. Decreasing loan demand, tighter lending standards and other factors such as losses written off on loans all impacted this trend. Despite this bleak report, Treasury officials contend that lending activity probably held up better than it would have without assistance from the Troubled Asset Relief Program (TARP)

The underlying data for this informal study was collected via a survey on loan activity of the top 20 recipients of TARP funds. The survey did reveal that although there was a downward trend in lending, some institutions did report that they continued to originate, refinance and renew many loans in spite of economic headwinds.

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02/09 **Fed Maintains Federal Funds Rate and Extends Several Liquidity Programs –** In February, the Federal Reserve announced that they would maintain the federal funds rate at the zero to 0.25 percent rate during a meeting of the Federal Open Market Committee of the Federal Reserve Board.

Additionally, the Committee also decided that several of its existing liquidity programs that were scheduled to expire on April 30, 2009, will now be extended through October 30, 2009. The Fed took these actions in light of the continuing strain on the nation's financial markets.

The Fed approved extensions of the Primary Dealer Credit Facility (PDCF) – a program that provides discount window loans to primary dealers; the Asset-Backed Commercial Paper Money Market Fund Liquidity Facility (AMLF) – a program that provides loans to depository institutions to purchase asset-backed commercial paper from money market mutual funds; and the Term Securities Lending Facility (TSLF) – a program under the Federal Reserve Bank of New York that auctions term loans of Treasury securities to primary dealers. Additionally, the Commercial Paper Funding Facility (CPFF) – a program designed as a funding backstop for issuers of commercial paper; and the Money Market Mutual Fund Liquidity Facility (MMIFF) – a program designed to enhance liquidity in money market investment vehicles; have all been extended through October 30, 2009.

For additional information, please 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

02/09 **Congress Urges SEC to Undergo a Comprehensive Overhaul –** In response to the most recent headlines surrounding Bernard Madoff's alleged massive Ponzi scheme, several Members of Congress sent a strong letter to U.S. Securities and Exchange Commission (SEC) Chairman Mary Schapiro urging her to undertake a thorough reorganization of the entire agency. Rep. Daniel Maffei (D-NY) and Michael Arcuri (D-NY) urged Chairman Schapiro to immediately focus on "transparent agency-wide restructuring of personnel and practices from the top level down". To view the letter in its entirety, click here.

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02/09 **Congress Prepares to Address Systemic Financial Regulatory Reform –** House Financial Services Chairman Barney Frank (D-MA) intends to have an outline of financial services regulatory reform by early April and has announced that the first phase of his multi-faceted approach will be to designate a federal agency that would monitor risks to the overall financial system. Chairman Frank released a statement that underscores the need for a systemic risk regulator that would have more flexible power so as to discourage behaviors that sought to circumvent overly strict rules.

During a press briefing in early February, Chairman Frank was clear is saying that any new regulator would not reduce the authority of the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC) or any of the current bank regulators. Moreover, the Chairman does not expect the Fed to relinquish any of its regulatory day-to-day power if it takes on the role of systemic risk regulator in a new program.

Senate Banking Committee Chairman Chris Dodd (D-CT) also has identified actions that his Committee will take to address the need for systemic regulatory reform. Chairman Dodd intends to continue intensive oversight of the implementation of the Emergency Economic Stabilization Act and is encouraging the creation of a financial regulatory structure that spurs competition and ensures adequate capitalization, regulation and supervision. While no specific plan has been released yet, we do expect legislative language and proposals in the coming weeks.

02/09 **Futures and Derivatives –** On February 12, 2009, the House Committee on Agriculture marked up and reported out 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.

Before the mark 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. AFP also cautioned that while, clearing is a valuable feature for managing risk, such a requirement may lead to a standardization of contracts. Standardization would make it difficult to comply with the hedging rules in FAS-133.

The bill still needs to be approved by the House Financial Services Committee before it can be voted on by the entire House of Representatives. House Financial Services Chairman Barney Frank (D-MA) is expected to take issue with a number of portions of the bill, which could hold off passage.

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02/09 **Deposit Insurance –** On February 2, 2009, House Financial Services Committee Chairman Barney Frank introduced and marked up H.R. 786, a bill to permanently increase federal deposit insurance from $100,000 to $250,000. Additionally, the bill would expand the Federal Deposit Insurance Corporation's (FDIC) ability to borrow from $30 billion to $100 billion.

02/09 **Data Security/Identity Theft –** On January 20, 2009, Inauguration Day, Heartland Payments Systems disclosed it was the victim of possibly the largest data breach in history. Even with this major breach, Congress has not yet introduced legislation to address data security, identity theft, or help clarify the issue of merchant liability.

President Obama has made cyber security a priority for his administration at the federal level, but has not indicated any specific policies for the private sector. The President has ordered a 60 day review of federal cyber security and has mentioned cyber security as a priority in a number of major speeches, most recently in his nationally televised appearance before a joint session of Congress.

PENSIONS AND INVESTMENTS

02/09 **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. WRERA provides some transition relief with respect to implementation of the *Pension Protection Act* (PPA). 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.

REGULATORY ISSUES

TREASURY AND FINANCE

02/09 **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.

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Public comments on the proposed rules must be received by Thursday, March 26, 2009. AFP intends to submit formal comments on the proposal.

12/08 **Posting Time for ACH Debits** – The Federal Reserve Board decided not to change the posting time for ACH debit transfers to coincide with the posting of ACH credit transfers. Currently ACH credits are posted at 8:30 am, while ACH debit transfers are posted at 11:00 am ET.

AFP supported the Fed's proposal to change the posting time when it was released for comment in 2008. In its May 27, 2008 letter to the Fed, AFP indicated that simultaneous posting of ACH debits and credits would enable businesses to more accurately establish cash positions earlier in the day and help reduce idle cash balances. Further, it would help reduce the volume of late-day wire transfers by financial institutions managing their daylight overdraft positions.

In its December 2008 decision, the Fed acknowledged that, "simultaneous posting of ACH credit and debit transfers to 8:30 am would enhance the efficiency of the payment system in the long run" and stated that it "will re-consider a posting-rule change in the future."

PENSIONS AND INVESTMENTS

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 one implementing the advice provisions of the Pension Protection Act (PPA). The outlook for eventual release of the two disclosure regulations is unclear. The proposed advice rule is unlikely to be released because it has engendered significant opposition from key members of Congress and participant groups.

FINANCIAL ACCOUNTING AND REPORTING

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. If approved, the new policy would be effective for interim and annual periods ending after March 15, 2009. Comments are being solicited by FASB until March 2, 2009. The staff position can be found here.

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02/09 **SEC Road Map for U.S. Adoption of IFRS -** 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.

2/09 **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.

01/09 **Fair Value Rules -** 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.

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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PAYMENTS AND STANDARDS

12/08 **FDIC Insurance for Stored Value Cards** – The Federal Deposit Insurance Corporation (FDIC) has defined eligibility rules for deposit insurance on the funds underlying payroll cards, gift cards and other stored value mechanisms. An FDIC General Counsel's Opinion published November 13, 2008, stated that the funds underlying stored value products will qualify as "deposits" covered by FDIC insurance if they have been placed at an insured depository institution.

The funds on payroll cards and other bank ("open loop") general spending cards qualify as deposits and are covered by FDIC insurance. The funds have been placed at insured depository institutions by a commercial entity, e.g., an employer in the case of payroll cards or a retail store in the case of general spending cards. On the other hand, merchant "closed loop" cards are issued by a specific merchant who is prepaid through sale of the cards. Closed loop cards do not provide access by cardholders to money at a depository institution and are not insured "deposits."

The FDIC also defined the conditions under which the cardholder (e.g., an employee) rather than the distributor (an employer) would qualify for "pass-through" deposit insurance. In its November 2005 Comment Letter, AFP recommended against mandating disclosure of FDIC insurance coverage on the stored value card, a position which the FDIC adopted in its decision.

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.

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NACHA UPDATE

02/09 **Growth in Electronic Payments -** NACHA has announced that the number of US ACH payments in the 4th quarter of 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.

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 look out for an upcoming webinar on this topic on the AFP website.

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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