December-January 2009

Association for Financial Professionals

Legislative and Regulatory Status Update

A monthly summary of federal issues

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01/09 **Overview** – 2008 was a year of market and political upheaval and in 2009 we should start to see the results. The 111th Congress has already taken their oaths of office and President-elect Barack Obama will be sworn in on January 20, 2009, leading to the first time Democrats have controlled the White House and both houses of Congress since 1993. The President-elect has signaled that recovery will be his number one priority, with hints on tax breaks for creating or keeping jobs, tax breaks on repatriation, and robust funding for green infrastructure projects.

Beyond the short-term recovery. Congress will consider overhauling the regulatory system to address the causes of the credit crisis. This includes swaps and derivatives regulation (see page 3), further reforming credit rating agencies (see page 6), and reforming interchange fees (see page 7). Despite the Democrats having strong majorities in Congress and control of the White House, expect to see a great deal of jurisdictional fighting between congressional committees, debates over priorities, and a great deal of back-and-forth on what the next financial markets regulatory system will look like.

In the meantime, credit markets have not thawed and worrying reports continue to come out daily. Legislators and regulators continue to develop programs to shore up the economy. An important bill for defined benefit retirement plans, the *Worker, Retiree, and Employer Recovery Act of 2008* was passed by Congress in late December and signed by President Bush on December 23, 2008 (see page 4). The Committee on Investment of Employee Benefit Assets (CIEBA), AFP's voice on employee retirement investment issues, played a key role in advocating for passage of the legislation.

This edition of status update is organized differently from past editions in order to create an easy to use format to find the content you need. We added a *Credit Crisis* section (page 2), which has updates on all the regulatory and legislative efforts to shore up the economy. Following the *Credit Crisis* section is *The Obama Administration and the 111th Congress* (see page 6). Here, we detail all the changes in Washington, DC and what we expect to happen in the new Congress.

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CREDIT CRISIS

01/09 **Federal Reserve Liquidity Facilities Extended -** In late December, the Federal Reserve announced that three liquidity facilities: the Primary Dealer Credit Facility (PDCF) – which provides discount window loans to primary dealers; the Asset-Backed Commercial Paper Money Market Fund Liquidity Facility (AMLF) – which 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; have all been extended through April 30, 2009. The extension for these facilities is consistent with the terms for several other liquidity-related facilities.

01/09 **Treasury Extends Money Market Fund Guarantee -** The U.S. Treasury Department also announced an extension of the temporary guarantee program, the Money Market Investor Funding Facility (MMIFF), for money market funds until April 30, 2009 in an effort to support ongoing stability in this market. Additionally, the Federal Reserve Board expanded the program to include U.S.-based securities-lending cash-collateral reinvestment funds, portfolios, and accounts (securities lenders); and U.S.-based investment funds that operate in a manner similar to money market mutual funds, such as certain local government investment pools, common trust funds, and collective investment funds.

The Fed also authorized the adjustment of several of the economic parameters of the MMIFF, including the minimum yield on assets eligible to be sold to the MMIFF

For more information on Treasury's announcement, click here and for the Fed's announcement, click here.

01/09 **GAO Releases a Study on the Troubled Asset Relief Program -** The Government Accountability Office (GAO) recently released a comprehensive study that critiqued Treasury's Troubled Asset Relief Program. In its initial findings for the newly created Office of Financial Stability (OFS) within the Treasury Department, GAO found that additional action is needed to better ensure integrity, accountability and transparency. During an examination of the capital purchase program (CPP), the GAO suggested that Treasury develop a means to ensure that institutions participating in the program comply with key program requirements. Further, GAO recommended that the Treasury formalize the existing communications strategy to ensure that external stakeholders, including Congress, were informed about the program's strategy and rational for actions taken. According to the GAO, implementing these recommendations would mitigate concerns from several key policy makers and standard setters that the TARP program is not sufficiently transparent and tax payers are not assured their money is being spent wisely. Finally, the GAO review called for the establishment of an effective management structure and more a more efficient system for internal controls.

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The Department of Treasury generally agreed with the recommendations and in a statement shortly after the report's release, Treasury Assistant Secretary Neel Kashkari reiterated that the department is working with regulators to develop the most effective and efficient methods for meeting their policy objectives.

01/09 **Credit Default Swaps -** On December 17, 2008, House Financial Services Committee Ranking Member Spencer Bachus (R-AL) sent a letter to Committee Chairman Barney Frank (D-MA) requesting that that Committee consider additional oversight over the largely unregulated credit default swaps (CDS) market. "…The Committee on Financial Services is well-positioned to oversee the development of sensible regulation of credit default swaps that recognizes the systemic risk posed by these instruments but also preserves their beneficial uses as a risk management tool for individual firms", Rep. Bachus said in his letter.

Rep. Bachus' request follows the November announcement from the President's Working Group (PWG) on Financial Markets regarding a series of initiatives to strengthen oversight and the infrastructure of the over-the-counter derivatives market. Among those initiatives was the development of a credit default swaps central counterparty (CCP) specifically created to mitigate counterparty risk. While the outline for the proposal is vague, the idea is similar to clearinghouse proposals.

Separately, in the House Agriculture Committee, Chairman Colin Peters (D-MN) has announced his intentions to mark up a bill that would require all swaps and derivatives contracts to be reported and to have a clearinghouse for all transactions. This would be part of wider bill to enhance the Commodities Futures and Trading Commission's (CFTC) authority to curb speculation and regulate futures markets.

01/09 **IRS Allows Companies to Borrow from Foreign Subsidiaries -** The Internal Revenue Service significantly eased its rule under tax code section 965, which allows U.S. corporations to access funds "trapped" in overseas subsidiaries. As it became more difficult for corporations to raise funds either from banks or by issuing commercial paper, the IRS program permitted companies to move their offshore cash into their U.S. parent for a longer period of time without incurring the 35% corporate tax they would normally owe, thus alleviating some short-term liquidity pressure.

12/08 **Fair Value Study –** On December 30, 2008 The U.S. Securities and Exchange Commission (SEC) rejected calls by banks to suspend an accounting rule blamed for exacerbating the financial crisis, saying the "fair- value" standard should instead be improved.

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"Fair-value accounting did not appear to play a meaningful role in the bank failures that occurred in 2008," the released statement concludes. The study, ordered by Congress, recommends changes in the accounting for so-called impaired securities and helping companies in determining the value of investments in inactive markets.

The 211-page report recommends development of tools to help measure fair-value "when relevant market information is not available in illiquid or inactive markets." The study proposes helping companies determine when markets become inactive and how the impact of a change in credit risk on an asset or liability's value should be estimated. Congress mandated the SEC study fair-value rules as part of the $700 billion federal financial-rescue package was passed in October.

12/08 **Funding Relief/Pension Protection Act Implementation –** Congress passed a measure providing some transition relief to pension plans with respect to implementation of the Pension Protection Act (PPA). Congress passed the *Worker, Retiree, and Employer Recovery Act of 2008* (H.R. 7327) that changes the PPA phase-in rules to make the new funding rules somewhat less harsh and clarifies asset smoothing rules. H.R. 7327 allows plans to take unexpected gains or losses into account when determining asset values, within certain limits. Many plan sponsors are concerned that the transition to the PPA funding rules will require them to make excessive contributions to their defined benefit plans, at a time when they have limited access to credit, need cash to fund operations, and asset values are extremely depressed. The Committee on Investment of Employee Benefit Assets (CIEBA), the voice of AFP on employee benefit plan asset management and investment issues, strongly supported the legislation. The bill also allows retirees to skip Minimum Required Distributions from 401(k) plans and IRAs in 2009 and makes some technical corrections to the PPA. President Bush signed the legislation on December 23, 2008.

Looking forward, there will be an effort by CIEBA, AFP and other groups representing plans to provide additional temporary relief from plan funding requirements that have been greatly increased because of the current economic crisis. Groups are working to get pension relief provisions into any stimulus package that is considered by the Congress in January-February, 2009.

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A Cumulative List of the Programs Implemented following The Emergency Economic Stabilization Act of 2008

Since the passage of the Emergency Economic Stabilization Act in early October, federal agencies responded by implementing a number of programs aimed at adding liquidity back to troubled capital markets.

Troubled Asset Relief Program – The Treasury Department began buying equity in financial firms under the Capital Purchase Program after deciding that acquiring bad assets would take too long to recapitalize banks given the current market conditions. Citing the major advantages of capitalization lending, Treasury Secretary Paulson commented that capital purchases are very powerful in terms of the impact on the value U.S. dollar.

Joint Agency Program for Creditworthy Borrowers – In early November, the Department of Treasury, the Federal Deposit Insurance Corporation and the Federal Reserve released a joint statement announcing additional programs designed to promote financial stability. These programs – which will make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposits and provide backup liquidity to U.S. banking organizations – were designed to strengthen the capital foundation of the U.S financial system and improve the overall functioning of credit markets.

Interest on Reserve Balances - The Federal Reserve began paying interest on depository institutions' required and excess reserve balances for the first time, in an effort to increase liquidity. The Fed later tweaked the interest payments in an effort to better achieve its goal for trading at the targeted federal funds rate, which was lowered to 1 percent. Under this payment scale, interest payments on excess balances will equal the lowest targeted fed funds rate during the course of a reserve maintenance period.

Money Market Fund Liquidity – A program created by the Federal Reserve to enhance liquidity in money market investment vehicles. The Money Market Investor Funding Facility (MMIFF) provided senior secured funding to a series of private-sector special purpose vehicles. These special purpose vehicles will purchase eligible assets from money market funds, issued by highly rated financial institutions with maturities less than 90 days, including bank notes, commercial paper ,and U.S. dollar denominated certificates of deposit.

Federal Reserve Buys Commercial Paper — The Federal Reserve announced the purchase of three-month commercial paper directly from U.S. issuers, including those with a foreign parent. The commercial paper (CP) was purchased through the newly-created Commercial Paper Funding Facility (CPFF) which was designed as a funding backstop for issuers of commercial paper.

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THE OBAMA ADMINISTRATION AND THE 111th CONGRESS OUTLOOK

01/09 **Presidential Transition of Power –** President-elect Obama has finished naming his cabinet and has fleshed out his economic team. Key positions include:

- **Secretary of Treasury:** President of the Federal Reserve Bank of New York, Timothy Geithner
- **Director of the National Economic Council:** former Harvard President, Larry Summers
- **Chair of the Council of Economic Advisors:** Christina Romer;
- **Director of the Domestic Policy Council:** Melody Barnes
- **Chairman of the Securities and Exchange Commission (SEC):** Financial Industry Regulatory Authority (FINRA) CEO, Mary Schapiro
- **Chairman the Commodities Futures Trading Commission (CFTC):** Gary Gensler
- **Secretary of Labor:** Representative Hilda Solis (D-CA)

Of these positions, the Secretaries of Treasury and Labor and the Chairmen of the SEC and CFTC face Senate confirmation hearings.

01/09 **The 111th Congress -** In Congress, House Financial Services Committee Chairman Barney Frank (D-MA) has expressed great concern over the current state of the regulatory system and has announced that his committee will continue to provide oversee the Treasury's Troubled Asset Relief Program (TARP). Chairman Frank has identified three key areas that he wants the Committee to focus on in the new Congress: recapitalization of financial institutions; restoration of liquidity to financial markets; and curtailing foreclosures and preserving housing values. In the Senate Banking Committee, Chairman Chris Dodd (D-CT) has identified specific actions that his Committee will take in the next Congress. They include: intensive oversight of the implementation of the Emergency Economic Stabilization Act; creation of a financial regulatory structure that spurs competition and ensures adequate capitalization, regulation and supervision; increased safeguards for consumers in areas such as mortgage lending, credit card lending and investor rights; and addressing critical economic and national security challenges facing the nation.

01/09 **Interchange Fees -** The issue of interchange fees was widely debated by Congress in 2008 with several members of both the House and the Senate introducing bills that sought to address concerns over the pricing models that payment card systems used. Both Senate Majority Whip Richard Durbin (D-IL) and House Judiciary Committee Chairman John Conyers' (D-MI) introduced bills that would regulate interchange fees and would give merchants and card providers the ability to engage in voluntary negotiations related to the fees associated with processing electronic payments.

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In September, House Financial Services Committee Chairman Barney Frank (D-MA) sent a letter to House Speaker Nancy Pelosi (D-CA) requesting that the Financial Services Committee have a role in deciding credit and debit card interchange fee issues. Chairman Frank claimed exclusive jurisdiction over any bill that makes decision regarding the regulation of financial institutions claiming that his committee is best suited to address these complex issues.

Although these particular interchange fees bills were not brought before the full House or Senate for a vote, Rep. Carolyn Maloney's H.R. 5244, *the Credit Cardholders' Bill of Rights* – a bill that provides protections to consumers – did pass the House. The legislation was not considered by the Senate, ensuring that the issue of credit card fees and consumer rights will be a top priority for the House Financial Services Committee and Senate Banking Committee when Congress convenes its new session in January 2009.

12/08 **Data Security/Identity Theft –** With the nation focused on the current crisis in the financial markets, issues surrounding data security are unlikely. However, this issue could suddenly draw attention should a major data breach result in significant public outcry

12/08 **401(k) Fee Disclosure –** While legislation on enhanced fee disclosure in defined contribution plans did not pass, in the 110th Congress, key members of Congress are committed to moving legislation this year. Rep. George Miller (D-CA), Chairman of the House Education and Labor Committee, reiterated his intention to move 'tough' fee disclosure legislation in the 11th Congress.

Legislative Issues

TREASURY AND FINANCE

01/09 **SEC Adopts New Rules for Rating Agencies -** On December 3, 2008, the Securities and Exchange Commission (SEC) voted to adopt several rule changes to bolster its oversight of credit rating agencies and left the door open for more regulation in the future. During a public meeting, the Commission approved a series of measures to increase transparency and accountability at rating agencies to ensure that nationally recognized statistical rating organizations (NRSROs) provide more meaningful ratings and greater disclosure to investors. These adopted proposals amend the 1934 Securities Exchange Act to vastly improve disclosure, reporting and recordkeeping practices at the rating agencies to reduce conflicts of interests and promote competition within the industry.

Additionally, the Commission voted to propose new disclosure requirements that would apply only to credit rating agencies that derive their revenues from securities issuers. Under these new proposed rules agencies would be required to disclose the ratings history for all issuer-paid ratings.

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AFP has been an active voice on the issue of credit rating agencies and provided written comments to the SEC when these rules were first released. To view a copy of the letter, click here.

REGULATORY ISSUES

TREASURY AND FINANCE

11/08 **Identity Theft "Red Flags" Rule –** The Federal Trade Commission (FTC) has delayed until May 1, 2009, enforcement of the Red Flags Rule requiring creditors to develop and implement written identity theft prevention programs. The rule applies to utility and telecommunications companies, automobile dealers and other entities that extend credit to consumers or allow them to defer payment, such as retailers. The original November 1, 2008, deadline was extended because some industries were not aware of the rule or their need to comply. The mandate was developed pursuant to the Fair and Accurate Credit Transactions (FACT) Act of 2003. The FTC has posted compliance guidelines on its Web site.

PENSIONS AND INVESTMENTS

12/08 **DOL Issues Proposed Rules on 401(k) Fee Disclosure to Participants -** On July 22, 2008, the Department of Labor (DOL) proposed rules for increased disclosure of investment-related information and fees for participants in defined contribution plans. The goal of the proposed regulations is to "establish a uniform disclosure framework for all participant-directed individual account plans." The proposed rules mandate that the required disclosures be provided when a participant is eligible to participate and annually thereafter. Further, the rules require quarterly disclosure of the actual dollar amount charged to participants' accounts for specified administrative expenses.

The deadline for comment was September 8, 2008. CIEBA, the voice of AFP on employee benefit plan asset management and investment issues submitted a comment letter to DOL. CIEBA objected strongly to the proposed effective date of January 1, 2009 in its comment letter.

As of this writing, the final rules have NOT been issued. The new Administration could move these rules forward or revisit the entire process.

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10/08 **Increased Reporting on Pension Assets –** The Financial Accounting Standards Board (FASB) has issued a FASB Staff Position (FSP) designed to increase transparency in accounting disclosures about pension investments. The FSB, No. 132(R)-a, *Employers' Disclosure about Postretirement Benefit Plan Assets,* would require plan sponsors to provide much more information about asset allocation and portfolio risk and institutionalize the use of fair value measurement of alternative investments. The Committee on Investment of Employee Benefit Assets (CIEBA), the voice of AFP on employee benefit plan asset management and investment issues, submitted a detailed comment letter in May, 2008. At its meeting on September 24, 2008, the FASB Board discussed a number of provisions, but did not make final decisions on several key issues. They did agree that the effective date would be no earlier than fiscal years ending after December 15, 2009.

FINANCIAL ACCOUNTING AND REPORTING

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 writedowns.

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.

11/08 **SEC Road Map for U.S. Adoption of IFRS –** The Securities and Exchange Commission formally issued its proposed road map that could lead to mandatory adoption of international financial reporting standards beginning as early as 2014 for the largest financial report filers. The SEC is accepting comments on the plan through February 19, 2009. The proposed roadmap can be found here.

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.

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The funds on payroll cards and other bank ("open loop") general spending cards qualify as deposits and are covered by FDIC insurance, if 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.

12/08 **Credit Cards and Interchange Fees –** In Canada, merchants have launched a campaign to build resistance to rising credit card interchange fees and the increase in the number of bank-issued rewards cards, which are costlier for businesses to accept. Merchants are also concerned that a percentage-based debit card interchange fee might be introduced in Canada. Debit card pricing is currently based on a flat fee that varies by volume.

In related card matters, The U.S. Department of Justice has opened up antitrust investigations into Visa. Inc., MasterCard Inc., American Express Co., and Discover Financial Services policies' that forbid merchants to surcharge customers for paying with cards, or to steer customers to other forms of payment.

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.

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.

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.

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11/08 **GAO Check 21 Study –** The Check Clearing House for the 21st Century Act of 2003 (Check 21) required the GAO to evaluate the implementation and administration of the act. In a report issued in October 2008, the GAO found that check truncation has not yet resulted in overall gains in economic efficiency for the Federal Reserve, or for a sample of banks due to the continued processing of paper checks in conjunction with electronic check images, though efficiencies are expected in the future.

11/08 **Federal Reserve Payments Pricing** – The Federal Reserve continues to encourage further movement to electronic check collection with its 2009 fee schedule for Fed payment services to depository institutions. The Reserve Banks' fees for Check 21 services are expected to decline 10 percent. In contrast, fees for paper checks will increase 41 percent. In addition, the fees for the Reserve Banks' electronic payment services will increase approximately two percent. Fee schedules for all prices services are available here.

NACHA UPDATE

11/08 **XML Format for Remittance Information** – NACHA is requesting comment on a proposal that would allow payment-related remittance information to flow through the ACH network in XML format. Current standards only allow EDI and UN/EDIFACT-formatted data in addenda records with ACH payments. The proposal is intended to enable greater use of the ACH network for business-to-business payments, especially for small-to-medium enterprises, and provide an alternative for achieving straight-through processing of payment related information.

Comments on the proposal are due to NACHA by January 9, 2009. An Executive Summary and ACH Participant Survey are posted on the NACHA Website.

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. To comply with the federal government's sanctions policies against terrorists and narcotics traffickers, the rule requires that international ACH transactions have sufficient data to screen and identify unlawful transactions. 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.

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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