May 2009

Association for Financial Professionals

Legislative and Regulatory Status Update

A monthly summary of federal issues

Date of
Last Change

05/09 **Overview** – In the run up to the Memorial Day recess, there was a flurry of activity in Washington, DC. Three bills were passed by Congress and signed by President Obama to reign in credit card practices (see page 9), boost funding and powers for federal investigation of financial crimes (see page 7), and extend the Federal Deposit Insurance Corp's (FDIC) expanded deposit insurance limit and ability to borrow money from the Treasury (see page 3). Most of these efforts are minor compared to the larger battle for comprehensive financial markets regulatory overhaul expected over the summer (see page 3).

Credit rating agency reform is gaining steam in the legislature, with a hearing this month in the House (see page 4). Reform proposals for futures and derivatives continue to be discussed by the legislature, with the Obama Administration weighing in (see page 5). This issue looks increasingly likely to advance in the near future, with the confirmation of a new Chairman of the Commodities Futures Trading Commission (CFTC), Gary Gensler (see page 5).

In addition to Mr. Gensler's confirmation, included this month is a section listing the confirmation status of a number of additional Presidential Appointees (page 10).

Along with financial market regulatory reforms, two other key policy areas that have the potential for impacting financial professionals are advancing rapidly. The House Energy Committee marked up and approved a cap-and-trade bill that will mandate caps on green house gas emissions, implement a trading scheme, and allow for a derivatives market on emission allowances and offsets (see page 6). Included in this month's edition is an in-depth look at proposals to effectively combat cyber crime (see page 15). Electronic payments systems are likely to be a central focus in efforts to prevent a catastrophic attack on our financial system. AFP is meeting with Capitol Hill staff to ensure that a secure and efficient payments system is maintained without imposing undue liabilities on financial professionals.

Date of
Last Change

CREDIT CRISIS

05/09 **Stress Test Results Revealed –** On May 7, 2009, the Federal Reserve announced the results of the stress tests administered to assess the capital adequacy of the nation's 19 largest banks. Nine of the 19 largest banks, including J.P. Morgan Chase and Goldman Sachs, will not be required to raise additional capital; however, six of the nation's largest banks need to boost their capital levels by $75 billion. Among the banks included are Bank of America, Wells Fargo and GMAC.

Unfortunately for many corporate customers, news of these additional capital requirements only exacerbate the problems related to access to credit – the results of the stress tests point to even more difficulty getting new credit from the banks required to raise more capital. To view the complete results of the stress tests, click here.

05/09 **Money Market Funds Continue to Grow In Challenging Times** – Assets in money market funds rose 28.2% from a year earlier to $3.4 trillion dollars at the close of the first quarter in 2009. This growth is expected to continue for the foreseeable future. According to various reports, the growth of these assets can be attributed to declining interest rates and the difficult economic conditions that have forced investors out of equity funds and into products with a reputation for safety. As of April 30, 2009, the average money fund was generating an annual return of 0.53% while the average savings account was generating a return of 0.26%. According to Bloomberg and Morningstar Inc., money fund assets held by the 10 largest providers have increased 32.7% from a year earlier. Consolidation of funds and a potential increase in regulation are also likely to benefit larger, conservative fund companies going forward. In late September 2008, the Treasury Department implemented a temporary guarantee program for money market funds in order to support ongoing stability in financial markets. The program, now extended to September 18, 2009, provides coverage to shareholders up to the amount held in participating money market funds as of the close of business on September 19, 2008.

05/09 **FDIC Insurance Guarantee Extended** – On May 20, 2009, President Obama signed into law PL-111-22, the "*Helping Families Save Their Home Act of 2009*". Included in the law is a provision to temporarily extend the $250,000 deposit guarantee until December 31, 2013. The law also extends the Federal Deposit Insurance Corporation's (FDIC) ability to borrow funds from the U.S. Treasury.

A separate program that provided unlimited insurance on non-interest bearing accounts is still set to expire on December 31, 2009. Unless the FDIC decides to extend the program, the guarantee will drop down to a maximum $250,000 guarantee through December 31, 2013.

Date of
Last Change

05/09 **FDIC Approves New Assessment –** On May 22, 2009, the Federal Deposit Insurance Corp. (FDIC) approved a 5-bassis point assessment for the second quarter of 2009 that is based on total assets minus Tier 1 capital. This new assessment is seen as a boon to smaller banks that depend on larger deposit bases for income.

The new assessment is in lieu of a proposed assessment that would have been based on deposits. Chairman of the FDIC Board, Sheila Bair, credits a new law signed by President Obama on May 20, 2009, PL-111-22, the "*Helping Families Save Their Home Act of 2009*" with giving the FDIC enough cushion to move forward with this lower assessment.

05/09 **Regulatory Plans At a Stand Still –** On Capitol Hill, the two committees of jurisdiction over financial markets reform appear to be at a standstill. House Financial Services Committee Chairman Barney Frank (D-MA) has indicated that he would like reform to take two steps; first with a bill to address oversight and systemic risk and a second bill to consolidate government agencies. Moreover, he has indicated that he would like the Federal Reserve to play the role of a systemic risk regulator.

Senate Banking Committee Chairman Christopher Dodd (D-CT) has indicated he would like to pass a single omnibus bill and has expressed skepticism over the Fed's ability to act as a systemic risk regulator (see page 6).

Treasury Secretary Timothy Geithner has said that he plans to release a comprehensive blueprint for reform by mid-June. While a comprehensive plan may be in the works, there have already been piecemeal releases, such as a letter to key members of Congress on the principles the Administration would like to see in the regulation of over-the-counter derivative products (see page 5). Furthermore, according to recent reports, the Obama Administration may call for stripping the Securities and Exchange Commission (SEC) of some of its powers and move them to the Fed.

Separately, the Committee on Capital Markets Regulation, an organization composed of top business, finance, law, and academic luminaries, put out their own proposal. Some key recommendations include giving the Federal Reserve the ability to regulate systemic risk and creating a separate regulator that would combine most of the other federal regulator agencies to oversee aspects of safety, financial soundness, and market structure. The executive summary of the report is available here.

04/09 **AFP Presents Case to the Fed for Expanding Commercial Paper Program** – In March, AFP members and staff participated in a conference call with the staff of the Federal Reserve Board of Governors and the Federal Reserve Bank of New York to discuss a previous request to extend the Commercial Paper Funding Facility (CPFF) to Tier 2 commercial paper issuers. (Click here to view AFP's original request to the Fed).

Date of
Last Change

AFP members argued that this expansion is necessary and will help ease credit availability for Tier 2 companies and other organizations. The Tier 2 commercial paper market is approximately $80 billion in size and includes such household names as FedEx, Kraft, Kroger, Safeway, and Time Warner.

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

05/09 **AFP Urges Congress to Take Action on Rating Agency Reform** – On May 19, 2009, the Capital Markets, Insurance and Government Sponsored Enterprises Subcommittee of the House Financial Services Committee held a hearing to examine the need for more effective regulation of the credit rating agencies. Witnesses at the hearing included an executive from a large rating agency, an executive from an alternative rating agency, as well as academics who offered testimony on how Congress and the Securities and Exchange Commission could better reform the system.

AFP provided formal comments to the Subcommittee and suggested two proposals for credit rating agency reform that would significantly alter the way the ratings business is run. The first proposal would have rating agencies adopt a stand-alone model, where the only business of the credit rating agency would be to produce credible and reliable ratings. The second proposal recommended that the Federal government be *required* to use alternative rating organizations, encouraging competition and breaking the government's addiction to Standard & Poor's, Moody's and Fitch. To read AFP's complete written statement, click here.

In addition to sharing our proposals with Members of Congress, AFP's President and CEO Jim Kaitz recently appeared on CNBC to discuss rating agency reform and make the case for fundamental change. To view the CNBC piece interview, click here.

05/09 **Competing Derivative Proposals Introduced** - On May 4, 2009, Senators Carl Levin (D-MI) and Susan Collins (R-ME) introduced a bill that would authorize federal financial regulators to regulate swap agreements such as credit default swaps (CDS). S. 961, the "*Authorizing the Regulation of Swaps Act*", is intended to give regulators immediate authority over swap agreements and serve as an interim step pending more detailed financial regulatory reform legislation later this year. The bill would repeal over a dozen provisions in existing law, including the Commodity Futures Modernization Act of 2000, which expressly *prohibits* federal regulators from regulating swap agreements.

Date of
Last Change

On May 13, 2009, the White House urged Congress to provide the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) with authority over derivatives markets, including CDS. In a letter to several Members of Congress Treasury Secretary Geithner revealed a new framework for derivatives regulation. Secretary Geithner told legislators that the framework should:

- Prevent activities that threaten the stability of the entire financial system;
- Promote the efficiency and transparency of those markets;
- Deter market manipulation, fraud, and other market abuses, and;
- Ensure that over-the-counter (OTC) derivatives are not inappropriately marketed to "unsophisticated" retail investors.

Geithner specifically sought statutory amendments to mandate the central clearing of all standardized OTC derivatives contracts. Central clearinghouses or counterparties, in turn, would be subject to appropriate supervision. In addition, all OTC derivatives dealers and firms with large exposures to counterparties should be subject to a robust regime of prudential supervision and regulation, including:

- Conservative capital requirements;
- Business conduct standards;
- Reporting requirements, and;
- Initial margin requirements with respect to bilateral credit exposures on both standardized and customized contracts.

This approach explicitly exempts customized contracts from the clearing requirement. AFP is on record voicing concern that a requirement to clear all derivative contracts could lead to the standardization of contracts and would conflict with the short cut rule under FAS-133.

On May 15, 2009, Rep. Bart Stupak (D-MI) introduced HR 2448, the "*Prevent Unfair Manipulation of Prices (PUMP) Act of 2009*." The bill focuses on requiring energy commodities to go through clearinghouses, but also sets severe limits on the purchase of naked CDS's and mandating that the CFTC regulate the market for derivatives of carbon offsets.

05/09 **CFTC Chairman Nominee Approved –** Senators Bernard Sanders (I-VT) & Maria Cantwell (D-WA) released their holds on the nomination of Gary Gensler to be Chairman of the Commodity Futures Trading Commission (CFTC). Their objections stemmed from Gensler's work 10 years ago to exempt derivatives traded off-exchange from regulation.

Date of
Last Change

On May 19, 2009, Gensler was approved by the Senate by an 88-6 vote. At a speech following his swearing in ceremony, the Chairman stated "We…must urgently close the gaps in our laws to bring much needed transparency and regulation to the over-the-counter derivatives market."

05/09 **Council for Systemic Risk Oversight Gains Bipartisan Approval –** During a recent hearing in the Senate Banking Committee, Federal Deposit Insurance Corporation (FDIC) Chairman Sheila Baird suggested the creation of a systemic risk council to oversee large financial companies. The council would consist of existing regulators and would have the ability to intervene and take action when necessary. Chairman Baird suggested that the council be made up of the Fed, the FDIC, Treasury and the Securities and Exchange Commission (SEC), with the possible addition of other prudential supervisors, who would work together to track trends, follow risky products, set risk-based capital standards that extend beyond depository institutions and find ways to harness market discipline. A number of Senators including Chairman Christopher Dodd (D-CT) and freshman Senator Michael Johanns (R-NE) said that they would support the creation of this council and thought this was the best approach. Click here to read Chairman Bair's complete testimony.

05/09 **Carbon Trading –** Late on May 21, 2009, the House Energy and Commerce Committee passed HR 2454, the *American Clean Energy & Security Act of 2009*. The bill would create a cap-and-trade system with the goal of cutting greenhouse emissions by 17% by 2020. The bill was approved by a 33-25 vote, with just one Republican voting to approve the measure. While this was the first major hurdle for the bill, various provisions still will need approval by eight other committees in the House of Representatives before it can be considered by the whole House.

Companies subject to regulation under this bill would be given a maximum emissions allotment. Additional emissions would be accounted for either through carbon allowances or the trading of credits. The bill will give away 85% of carbon allowances, mostly to the energy industry, and have the government auction off the remainder.

The bill provides for a market to trade emission allowances and carbon offsets (programs recognized as causing a net reduction in CO_2 in the atmosphere).

While this bill is not moving quickly, its proponents, including the President, have made it a priority. With a close vote on a cap-and-trade bill in the Senate in 2008, the likelihood of such a measure becoming law increases each year as scientists paint increasingly dire climate change scenarios and greenhouse gas reduction policies gain popularity.

Date of
Last Change

Businesses will be impacted differently, depending on the emission footprint created by their operations. Financial professionals may consider conducting an emissions audit ahead of passage of legislation to assess potential risk and opportunities. The bill also provides a number of incentive provisions, along with the ability to trade emissions. These measures have the potential of mitigating compliance costs or even providing income for businesses with small carbon footprints or firms that can easily adjust their business to lower their emissions.

05/09 **Hearing on International Financial Regulatory Models –** On May 21, 2009, the Senate Homeland Security & Government Affairs Committee held a hearing to compare the U.S. regulatory model to that of other governments. Two key models considered were consolidated financial markets regulators, such as those found in Germany, Japan, and the United Kingdom, and the "twin peaks" approach, where one agency is tasked with risk and prudential management and another is responsible for consumer protection & regulating business conduct.

05/09 **Financial Fraud Bill Signed–** On May 20, 2009, President Obama signed into law S. 386, the "*Fraud Enforcement and Recovery Act*". The law gives federal authorities additional funding and broader power to investigate a wide range of financial crimes, with a focus on mortgage, commodity and securities fraud. The new law passed both the Senate and House with wide bipartisan support.

05/09 **NOL Carryback Bill –** In April, Senate Finance Committee Chairman Max Baucus (D-MT) and Sen. Olympia Snowe (R-MN) introduced S. 823, *The Net Operating Loss (NOL) Carryback Act of 2009*. The bill would allow companies to reclaim tax dollars from profitable years to offset recent losses. Additional measures have been introduced to exclude firms that have received funds from the Treasury's Troubled Assed Relief Program.

A similar measure was included in the 2008 stimulus package, but was scaled back to apply only to small businesses. While there has not been a mark up scheduled for this bill, it is likely to be considered as a part of any future stimulus or tax bills.

05/09 **Data Security –** On April 1, 2009, Senate Commerce Committee Chairman John "Jay" Rockefeller (D-WV) and Sen. Olympia Snowe (R-ME) introduced S. 773, the *Cybersecurity Act of 2009.*The bill seeks to create a comprehensive national strategy for cybersecurity, including private industry. The bill would create a Cybersecurity Advisor in the White House who, along with a panel, would create rules and regulations regarding network security standards for the Federal government, federal contractors, and "critical infrastructure," which is likely to include financial and payments systems. The Obama Administration is close to releasing the results of a 60 day review of cybersecurity policy and will likely propose a policy similar to this bill.

Date of
Last Change

On April 28, 2009, the Senate Homeland Security and Government Affairs Committee held a hearing on the topic. At this hearing, the Ranking Member, Sen. Susan Collins (R-ME), voiced concern that the responsibility for cybersecurity could be moved to the White House rather than the Department of Homeland Security.

On the House side, Rep. Bobby Rush, Chairman of the Commerce, Trade, and Consumer Protection Subcommittee, re-introduced the *Data Accountability and Trust Act (DATA)*, HR 2221. This bill would standardize notification thresholds in the event of a data breach. The bill would require companies to notify customers in the event of a breach, unless it can be demonstrated that the data stolen was sufficiently encrypted. Also, the bill would pre-empt state statutes ONLY in the event the Federal Trade Commission seeks redress.

AFP is actively working with Congress to explain our members' risk to data breaches. For an in-depth look at AFP's cybersecurity efforts, see page 16.

PAYMENTS

05/09 **Credit Card Act of 2009 –** On May 22, 2009, President Obama signed H.R. 627, the "*Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009*". The new law will prohibit a number of practices by card companies, such as double-cycle billing, require a 45 day notification of interest rate increases, require that payments apply to higher interest balances first, and limit the length of time consumers can be charged punitive interest rates as a result of missed payments.

The bill also requires that the Government Accountability Office (GAO) conduct a study on interchange fees to determine merchants' ability to negotiate rates. The study will also look into transparency issues and the method card companies use to determine interchange fee rates, including the effects of marketing and rewards programs.

PENSIONS AND INVESTMENTS

05/09 **Hearing on PBGC Investment Controversy –** On May 20, 2009, the Senate Special Committee on Aging held a hearing on the Pension Benefit Guarantee Corporation's (PBGC) $33.2 billion deficit and an investigation into contacts by the previous Director, Charles E.F. Millard, with investment firms awarded contracts with the PBGC.

There was no link suggested between the deficit and the performance of the companies awarded the contracts. Witnesses attributed the deficit to a spike in retirement plan terminations coupled with low interest rates.

Both witnesses and committee members expressed long-term concern about the effects this expanded deficit could have on the sustainability of the PBGC, but witnesses assured committee members that current benefit obligations were not threatened.

Date of
Last Change

05/09 **Defined Benefit Plan Funding -** House Minority Leader John Boehner (R-OH) – the father of the Pension Protection Act – introduced the *"Savings Recovery Act"* (H.R. 2021). The bill provides 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 also includes temporary capital gains relief and increased contribution limits for defined contribution plans.

A coalition of groups and individual plan sponsors continues to press Congress for additional temporary funding relief. Several individual Democratic members of Congress have expressed interest in introducing legislation, but no action has been taken to date.

04/09 **401(k) Fee Disclosure** - Rep. George Miller (D-CA) Chairman of the House Education and Labor Committee and Rep. Robert Andrews (D-NJ) chairman of the Subcommittee on Health, Employment, Labor and Pensions have introduced a bill (H.R. 1984) to significantly expand the rules governing disclosure of fee information in defined contribution plans. The legislation covers disclosure by service providers to plan sponsors; disclosure to participants and a requirement for all plans to offer at least one broad index fund (stocks or bonds). The bill calls for detailed information on investment expenses, administrative and transaction fees and any other charges that may be deducted from a participant's account. Bundled services would have to 'unbundled' for purposes of fee disclosure. A hearing was held on the bill shortly after introduction and action by the House is expected this year.

CONFIRMATION WATCH

With a new Administration in Washington comes a host of Presidential nominations and appointments. In an effort to keep you informed, below is a list of relevant appointments that may be of interest.

Gary Gennsler – Chairman of the Commodities Futures Trading Commission (CFTC)
Neal Wolin – Deputy Secretary of the Treasury
Rosa Gumatoa Rios - U.S. Treasurer (*not yet confirmed)*
Michael Barr - Assistant Secretary of Treasury for Financial Institutions (*Approved by Senate Banking Committee, awaiting full Senate vote)*
Daniel Tangherlini – Assistant Secretary for Management and Chief Financial Officer (*not yet confirmed)*
Phyllis Borzi – Assistant Secretary of Labor for Employee Benefit Security (*not yet confirmed)*

Date of
Last Change

REGULATORY ISSUES

TREASURY AND FINANCE

05/09 **Bernanke to Revise Fed Rules on Rating Agencies –** On May 19, 2009, the Federal Reserve Board announced the expansion of the number of credit-ratings companies permitted to rate assets for the Term Asset-Backed Securities Loan Facility (TALF). Currently only five of the 10 nationally recognized statistical rating organizations (NRSRO) are eligible to provide analysis.

The Fed said newly issued and older commercial mortgage-backed securities (CMBS) must have at least two AAA ratings from DBRS, Fitch Ratings, Moody's Investors Service, Realpoint LLC or Standard & Poor's and can't have a rating below AAA from any of them. The Fed said it is "more broadly" determining which ratings companies to use to determine eligible collateral for the central bank's credit programs. For additional information, click here.

AFP expressed great concern over the large fees that the rating agencies stand to collect for rating assets for the TALF and released a statement that suggesting that credit rating agencies should waive their fees as restitution to taxpayers for the role that their current market meltdown. "It's outrageous that credit rating agencies are going to make millions of 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. Click here to view AFP's full statement.

05/09 **Shareholder Proxy Access –** On May 20, 2009, the Securities and Exchange Commission (SEC) voted 3-2 to propose changes to rules that would make it easier for shareholders to nominate corporate directors.

The new proposal would allow, under certain state laws and company charters, certain shareholders to nominate candidates for board positions and have their candidates included on company-issued ballots.

The full proposal will have a 60 day comment period after its publication in the Federal Register, which has not occurred as of this writing. The SEC's press release on the proposal is available here.

04/09 **Fed Opens Foreign Swap Lines to Foster International Liquidity –** On April 6, 2009, the Federal Reserve announced four new swap arrangements with overseas counterparts to help provide foreign currency liquidity to domestic banks. The agreement gives U.S. financial firms access to Euros, Yen, Pound Sterling and Swiss Francs through the Fed. For more information, click here.

Date of
Last Change

04/09 **SEC Announces New Enforcement Efforts –** On April 27, 2009, U.S. Securities and Exchange Commission Chairman Mary Schapiro highlighted the agency's more aggressive approach to oversight of money market and hedge funds. During a recent address, Chairman Schapiro said that money market funds will soon face stricter rules on credit quality, maturity, and liquidity. Further, she announced that the SEC staff is also evaluating whether more fundamental changes may be necessary to protect investors from "runs on funds" or sudden outflows during distressed financial times. To read Chairman Schapiro's entire speech, click here.

PENSIONS AND INVESTMENTS

05/09 **Iwry Assumes New Post at Treasury** - J. Mark Iwry has been appointed as senior advisor to the Secretary and deputy assistant secretary for retirement and health policy, a newly created position. Iwry most recently served as a senior fellow at the Brookings Institution and served as tax benefit counsel in the Clinton Administration. Iwry is credited with authoring the automatic IRA proposal. The proposal, part of President Obama's budget, would require any employer who does not offer a retirement plan to set up direct-deposit Individual Retirement Accounts for their employees.

05/09 **Defined Benefit Plan Funding** - Responding to requests from plan sponsors; CIEBA and other groups, and members of Congress, the Treasury Department has revised proposed funding regulations dealing with the interest rate used to value pension liabilities to allow plan sponsors additional flexibility. The guidance allows plans to use a one-month yield curve from any month from September through December, 2008.

CIEBA and AFP signed onto a letter asking the Treasury Department to allow plan sponsors additional flexibility in changing their methodology for valuing liabilities for the next two years. Under current rules, plans need the IRS' consent to change valuation methods. Plans choosing the one-month yield curve option, described above, may face significant volatility in their future funding requirements.

4/09 **Borzi Nominated for EBSA -** The Obama Administration has nominated Phyllis Borzi to serve as Assistant Secretary of Labor for Employee Benefit Security. In this capacity, Borzi will lead the Employee Benefit Security Administration (EBSA) at the Department of Labor. EBSA is primarily responsible for regulation and enforcement of ERISA's fiduciary requirements. Borzi has long experience in the employee benefits arena, including serving as pension and employee benefits counsel to the House Education and Labor Committee for 16 years. Borzi is currently a research professor at the School of Public Health and Health Services at the George Washington University and she is of counsel to O'Donoghue and O'Donoghue, a law firm specializing in employee benefits.

Date of
Last Change

FINANCIAL ACCOUNTING AND REPORTING

05/09 **IASB Proposes New Fair Value Standard** - The International Accounting Standards Board (IASB) published for public comment an exposure draft of guidance on fair value measurement. If adopted, the proposals would replace current international fair value measurement guidance with a single, unified definition of fair value, as well as further authoritative guidance on the application of fair value measurement in inactive markets. IASB's starting point in developing the exposure draft was the equivalent US standard, SFAS-157 Fair Value Measurements, as amended. The proposed definition of fair value is identical to the definition in SFAS-157 and the supporting guidance is largely consistent with US GAAP. The exposure draft is open for comment here until September 28, 2009.

05/09 **FASB Issues New FSP on Fair Value Accounting -** The Financial Accounting Standards Board (FASB) has issued another Financial Statements of Position (FSPs). FSP 157 –f. Measuring Fair Value under FASB Statement No. 157 (FSP FAS 157-f) provides additional guidance for determining the fair value of financial liabilities in cases where there is a lack of observable market information. AFP continues to support the FASB in their efforts to issue timely guidance on fair value measurement. However, this FSP appears to be significantly flawed in its proposed approach. See the article from AFP for further details.

05/09 **Lease Accounting** - The International Accounting Standards Board (IASB) and Financial Accounting Standards Board (FASB) launched a public discussion on lease accounting by publishing their preliminary views in a joint discussion paper that discuss a possible new approach to lease accounting. At itsBoard meeting in May, FASB discussed how a lessor would apply a right-to-use model and reached the following tentative decisions:

(1) A lessor would recognize an asset representing its right to receive rental payments (a lease receivable).

(2) A lessor would recognize a liability representing its performance obligation under the lease—that is, its obligation to permit the lessee to use one of its assets (the leased item). The lessor will satisfy that performance obligation (and will recognize revenue) over the lease term.

(3) A lessor would not recognize any revenue at the inception of a lease contract.

AFP has been asked to participate in a roundtable discussion with the Equipment Leasing and Financing Association (ELFA) to discuss a joint position on the proposed views. The first meeting is scheduled in June in Washington.

<u>Date of</u>
<u>Last Change</u>

05/09 **Elimination of Qualifying Special Purpose Entities -** The FASB is finalizing two proposals on special purpose entitites. The first new standard will amend FAS 140 and will require a company to provide additional disclosures about its involvement with variable interest entities and any significant changes in risk exposure due to that involvement. A company will also be required to disclose any significant judgments and assumptions made in determining whether it must consolidate a variable interest entity.

The second standard will amend FIN 46(r) and will transparency about transfers of financial assets and a company's continuing involvement in transferred financial assets. It will remove the concept of a qualifying "special-purpose entity" from U.S. GAAP, change the requirements for derecognizing financial assets, and require additional disclosures about a transferor's continuing involvement in transferred financial assets.

04/09 **Off Balance Sheet Accounting -** The IASB announced that it will hold several round-table discussions in June on consolidation and derecognition of financial instruments. The objective of the round tables is to seek further views on the consolidation proposals (for which the comment deadline closed in March) and to discuss the interaction of those proposals and the proposals on derecognition, particularly with regard to securitizations and the use of structured vehicles for off balance sheet accounting. Off balance sheet accounting was identified as a matter of concern by the G-20 and led to the acceleration the work on this issue.

04/09 **Financial Statement Presentation -** The comment period recently ended in April on a joint FASB/IASB discussion paper outlining their preliminary ideas for changes to financial statements. These proposals would fundamentally alter the way information is presented on financial statements. A key feature of the proposal is that the balance sheet, income statement, and cash-flow statement will be divided into two major sections: business and financing. The financing section would include those activities that fund a company's business. For nonfinancial institutions, that would primarily include cash, bank loans, bonds, and other items that arise from general capital-raising efforts. The business section would be further subdivided into operating and investing categories. The section would focus on what a company does to produce goods and provide services. The operating category will include primary or "core" revenue and expense-generating activities, and the investing category will include activities that generate a return but are not "core." The single greatest concern of the preparers that commented was the suggestion that businesses be required to use the direct cash flow method (rather than the indirect method) as most businesses are not set up to collect data in this manner. This could be a costly expense to companies if adopted.

02/09 **Joint Revenue Recognition Project -** The IASB and FASB published a discussion paper setting out a joint approach for the recognition of revenue. The objective is to develop a single revenue model that can be applied consistently regardless of industry. Comments on this paper are due by June 19, 2009. The discussion paper can be found here.

Date of
Last Change

PAYMENTS AND STANDARDS

04/09 **EU Brings Antitrust Charges Against Visa Europe for Fee Over-Charging –** European Union regulators have brought antitrust charges against Visa Europe on the grounds of the payment card company's restricting competition between banks due to its too high interchange fees for cross-border transactions.

The move follows MasterCard's decision to lower the same type of fees within its card network, as a result of pressure from European Union regulators. According to the interim agreement between the two parties, MasterCard lowered interchange fees on international credit card and debit card transactions to an average of 0.3 percent and 0.2 percent, respectively. Presently, Visa applies a 0.61 percent rate for international EU credit transactions and EUR 0.18 for debit payments.

NACHA UPDATE

04/09 **Growth in Electronic Payments -** NACHA has reported that the number of ACH payments in 2008 has reached over 18.2 billion, growing by 1.2 billion over the previous year. The portion of ACH payment volume passing through the ACH Operators has increased by 7.1 percent year-over-year to 14.96 billion, with $29.96 trillion in value. Internet-initiated ACH debits known as “WEB” entries increased 19.7 percent to almost 2.1 billion payments. When combined with consumer-initiated credit payments (CIE), the dollar value of consumer ACH payments made via the Internet totaled $939 billion in 2008. The number of EDI-formatted addenda records which have been transmitted via the ACH Network for invoice and other payment-related details rose by 14.6 percent year-over-year to 1 billion, while NACHA corporate trade exchange (CTX) payments and Cash Concentration or Disbursement (CCD) payments have grown by 16.1 percent and 17.9 percent, respectively. The volume of payments via back office conversion (BOC), which allows retailers that accept checks at the POS to convert eligible checks to ACH debits in the back-office, has increased by 1,772 percent in 2008 to 78.46 million payments. Federal government ACH payments grew 10.2 percent to 1.14 billion payments in 2008.

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).

Date of
Last Change

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.
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. The passage of the *Check 21 Act* in 2003 – which created a new negotiable instrument or the substitute check – 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.

ISSUE ANALYSIS

Protecting the 21st Century Payments Systems

The Obama Administration and Congress Get Serious About Cybersecurity

By Michael Griffith, Public Policy Coordinator, Association for Financial Professionals

Cybersecurity is getting a great deal of attention by legislators and security experts. AFP is presently discussing our members' interests in securing the electronic financial & payments systems, where responsible actors will not have to bear the liability for criminal data breaches. Congressional staff has indicated that this will be a long-term legislative effort and that the goal will be a comprehensive, nationwide cybersecurity policy. AFP will be working with key policy makers to ensure treasury professionals are not burdened with undue costs and responsibility while still shouldering much of the liability for data breaches.

Cyber attacks are a threat in two regards. The dooms day scenario is a catastrophic attack, where all connections are shut down, financial systems are put in danger either through a system that is so unreliable that no one will use it, or a complete shutdown of the networks that make commerce possible. The other scenario is happening already; data breaches are resulting in the theft of sensitive intellectual property from both the public and private sectors. This includes financial information, new product designs, company secrets, and identity information. In the case of financial professionals, there is the risk of customer information being stolen, resulting in expensive notification, along with liability for rectifying the consequences for stolen data. Furthermore, interchange fees that are supposed to be used to protect against fraud does not cover merchant liability in the event of a data breach.

At present, there is not a national cybersecurity policy. Responsibilities are divided across the public and private sectors and by states and federal

Date of
Last Change

agencies. Companies manage their own IT, but also have PCI standards to meet. States have their own laws, including laws on merchant liability and the protocol for reporting data breaches. Nationally, the Department of Homeland Security, National Security Agency, and U.S. Air Force all have responsibility for defending the nation against cyber attacks, but each federal agency is responsible for their own IT policy.

With critical infrastructure increasingly reliant on computer networks, it is no longer tenable to be without a discernable national policy. As one of his first acts in office, President Obama ordered a top-to-bottom review of the federal government's cybersecurity preparedness. Melissa Hathaway, the person charged with heading up the review, recently completed the study and its results are being reviewed internally. Along with this review, President Obama has indicated the importance of this issue by appointing a number of defense staff who have voiced concern on the issue and have advocated for a comprehensive national cybersecurity policy.

In Congress, Senator Jay Rockefeller (D-WV) introduced a bill (S. 773) to create an office in the White House to manage national cybersecurity. This bill would also give the office responsibility over cybersecurity for "critical infrastructure" which AFP Government Relations Staff has been told should include the payments system. The bill also would study the feasibility of creating an insurance market for businesses to protect against liability in the event of a data breach.

Other efforts seek to address specific interests; the Senate Energy Committee is considering a cybersecurity measure for the electric grid in their draft energy bill and senior Members of the Senate Homeland Security Committee have expressed concern about the possibility of the Department of Homeland Security losing jurisdiction over this issue. On the House side, the Subcommittee on Emerging Threats, Cybersecurity and Science and Technology of the House Energy and Commerce Committee recently held a hearing on the ineffectiveness of the PCI standard. Also, Reps. Bobby Rush (D-IL) & Cliff Stearns (R-IL) introduced a bill on notification that includes a degree of pre-emption of state laws.

AFP applauds the efforts of policy makers to address these issues. The payments system is a critical part of our infrastructure and a secure, reliable electronics payments network is necessary for commerce. In our discussion with policymakers, AFP is advocating a comprehensive, national data security policy for the private sector. This would replace the current byzantine structure, where companies have to comply with local, private, and national standards. Data breach crimes are national and international in nature and should be regulated, guarded against, and adjudicated accordingly. Furthermore, AFP advocates the establishment of a merchant liability ceiling where responsible companies that comply with a national data security standard cannot be held liable in the event of a criminal breach.

Creating a framework to update America's cyber security will necessarily take a long time. Our economy is ultimately much more efficient due to electronic payments systems, but it does create a vulnerability that must be addressed. It is important that your Member of Congress understand how important these systems are to your business and the economy, along with the risk you are forced to assume.

- Tell members of Congress about the necessity of a safe, reliable payments system;
- Explain the risk your company assumes, even if it is PCI compliant;
- Explain how much money is lost to interchange fees and the lack of protection these fees provide with respect to data breaches;
- Let members of Congress know about any difficulty you may have complying with conflicting state regulations.

Date of
Last Change

If you decide to contact your legislators, please copy mgriff@afponline.org so we can be aware of our members outreach efforts.

While addressing these issues will likely prove to be a long process, it provides AFP and its members several opportunities to address the data security issue and find a fair and effective way to mitigate the risk of a criminal breach.

President Obama is scheduled to reveal the results of a 60 day review of federal cybersecurity policy on May 29, 2009. Along with this, it has been said he will outline an ambitious policy package for a new national cybersecurity policy with many similarities to Sen. Rockefeller's legislation. For updates, stay tuned to AFP's Payments Newsletter and AFP's website as the political dynamic on this issue changes.

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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