

The Buck Starts Here - Perspectives on the Financial Crisis

Financial Services Development Update

(5/6/2009 - 6/9/2009)

| Department/Agency | Action/Development |
|--------------------------|--|
| Obama Administration | <p>May 13, 2009. The administration proposed a regulatory framework for regulating over-the-counter (“OTC”) derivatives, including the market for credit default swaps. The proposed framework is aimed to achieve four broad objectives: (1) preventing OTC derivatives activities from posing systemic risk to the financial system; (2) making the OTC derivatives market more efficient and transparent; (3) preventing market manipulation, fraud and other market abuses; and (4) seeing that OTC derivatives are not marketed to unsophisticated purchasers.</p> <p>May 22, 2009. President Obama signed the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act”). The President pushed Congress to take up the CARD Act to address what the administration felt were abusive practices in the credit card industry. The CARD Act codifies many of the provisions incorporated in the Federal Reserve rules adopted on December 18, 2008. Most of the requirements of the CARD Act go into effect in February 2010, five months sooner than the Federal Reserve rules. For more on the CARD Act see the Congress section below.</p> <p>May 28, 2009. The administration proposed a single agency to regulate the banking industry, combining the OCC, OTS, and the bank supervisory functions of the Federal Reserve and the</p> |

Submitted by Grant F. Butler, Esq.
Goodwin Procter LLP
Boston, Massachusetts
June 2009

| | |
|----------|---|
| | <p>FDIC. This proposal was met with immediate and strenuous opposition.</p> <p>June 9, 2009. The administration backs away from a single prudential banking regulator, and may only consolidate the OTS. The SEC, CFTC, OCC, Federal Reserve, and FDIC are now expected to retain their current supervisory powers. The Federal Reserve and FDIC may gain systemic risk oversight and resolution powers, respectively. The administration’s plan for regulatory reform is scheduled to be released on June 17.</p> <p>June 9, 2009. The administration asks the European regulators to put their banks through more rigorous public stress tests to help ensure that the institutions survive if the economy slips from bad to worse. Treasury Secretary Geithner will likely discuss the issue in Italy later this week during closed-door meetings with finance ministers from the Group of Eight leading nations. The International Monetary Fund also warned that economic recovery in the euro zone could be retarded by banks burdened with bad assets.</p> |
| Treasury | <p>May 13, 2009. The Treasury announced it will re-open the Capital Purchase Program (“CPP”) application window for banks with total assets under \$500 million and raise from 3% of risk-weighted assets to 5% the amount for which qualifying institutions can apply. The application window is being reopened for all term sheets – public and private corporations, Subchapter S corporations, and mutual institutions. The Treasury will also extend the deadline for small banks to form a holding company for the purposes of the CPP. Both the window to form a holding company and the window to apply or re-apply for CPP will be open for six months. The Treasury plans to fund these additional capital investments under the CPP using the proceeds of the repayments it expects to receive from some of the largest banks.</p> <p>May 14, 2009. The Treasury and HUD announced a further expansion of the Making Home Affordable Program (“MHA Program”). In addition to incentivizing servicers to modify mortgages, the MHA Program now offers incentives to services and borrowers for pursuing short sales and deeds-in-lieu of foreclosure in instances where a borrower cannot qualify for modification. In addition to this short-sale initiative, the Treasury and HUD announced a new Home Price Decline Protection initiative aimed at providing creditors with additional incentives to modify loans in areas where home price declines are most severe. Under this new initiative, incentive payments are calculated by directly linking the payment amount to</p> |

| | |
|-------------|--|
| | <p>both the rate of home price declines in a local housing market and the average cost of a home in that market.</p> <p>May 21, 2009. The Treasury made an additional investment of \$7.5 billion in GMAC LLC. This investment includes \$4 billion to support GMAC's anticipated growth in Chrysler dealer and retail loans and \$3.5 billion to help GMAC address its capital needs as identified through the Supervisory Capital Assessment Program ("SCAP") completed with the Federal Reserve. Treasury's \$7.5 billion investment in GMAC will be made in the form of 9 percent Mandatorily Convertible Preferred Interests.</p> <p>June 8, 2009. The New York Times reports that the Treasury may release the TARP executive compensation rules as early as the week of June 8th. More stringent rules will be released that apply to banks who have received more than one capital infusion. The Treasury is also expected to outline broad executive compensation principles to set standards for the financial services industry. These principles will not include bonus restrictions, although they will encourage banks to set compensation in a way that avoids rewarding risk-taking through short term bonus awards.</p> <p>June 9, 2009. The Treasury announced that it will allow 10 of the largest U.S. banks to repay \$68 billion in TARP money. The Treasury did not name which banks would be allowed to repay their TARP money, however, news reports state that the list includes: Northern Trust, BB&T, Morgan Stanley, State Street, JPMorgan Chase & Co., US Bancorp, American Express, Capital One Financial Corp., Goldman Sachs, and Bank of New York Mellon. Ten community banks have already been allowed to repay their TARP funds.</p> |
| Interagency | <p>June 1, 2009. The federal banking agencies (the "Agencies") issued a joint notice of proposed rulemaking seeking to amend their regulations to implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act"). The proposal implements the portion of the SAFE Act requiring any bank employees acting as residential mortgage loan originators to register with and obtain a unique identifier from the Nationwide Mortgage Licensing System. The Agencies are specifically requesting comment on whether the de minimis exception of 25 or fewer mortgage loan originations is appropriate. The agencies are also specifically requesting comment on whether the definition of "mortgage loan originator" should cover individuals who (1) modify existing residential mortgage loans; (2) engage in</p> |

| | |
|------------------------|---|
| | <p>approving mortgage loan assumptions, (3) engage in certain refinancing transactions, and (4) engage in loan modification and limited refinancing activities. Comments are due within 30 days of publication in the <i>Federal Register</i>.</p> |
| <p>Federal Reserve</p> | <p>May 7, 2009. The SCAP results for the 19 largest U.S. bank holding companies (BHCs) were released. Ten of these BHCs were required to raise a combined \$75 billion in Tier 1 capital, including Bank of America, Citigroup, Wells Fargo, GMAC, Morgan Stanley, Regions, Fifth Third, KeyCorp, PNC and SunTrust. By contrast, J.P. Morgan Chase, Goldman Sachs, American Express, BB&T, State Street, MetLife, Bank of New York Mellon, US Bancorp and Capital One were not required to raise additional capital.</p> <p>May 8, 2009. The Federal Reserve Board approved final rules that revise the disclosure requirements for mortgage loans under Regulation Z (Truth in Lending). The revisions implement the Mortgage Disclosure Improvement Act which was enacted in July 2008 as an amendment to the Truth in Lending Act.</p> <p>May 19, 2009. The Federal Reserve Board on Tuesday announced that, starting in July, certain high-quality commercial mortgage-backed securities issued before January 1, 2009 (legacy CMBS) will become eligible collateral under the Term Asset-Backed Securities Loan Facility (“TALF”). The Federal Reserve had previously expanded the TALF to include newly issued CMBS in the June subscription.</p> <p>May 20, 2009. The Federal Reserve announced the approval of final amendments to Regulation D (Reserve Requirements of Depository Institutions) to liberalize the types of transfers consumers can make from savings deposits and to make it easier for community banks that use correspondent banks to receive interest on excess balances held at Federal Reserve Banks. The amendments would also ensure that correspondents that are not eligible to receive interest on their own balances at Reserve Banks pass back to their respondents any interest earned on required reserve balances held on behalf of those respondents. The Federal Reserve Board revised Regulation D's restrictions on the types and number of transfers and withdrawals that may be made from savings deposits. The final amendments increase from three to six the permissible monthly number of transfers or withdrawals from savings deposits</p> |

by check, debit card, or similar order payable to third parties. The Federal Reserve stated that technological advancements have eliminated any rational basis for the distinction between transfers by these means and other types of pre-authorized or automatic transfers subject to the six-per-month limitation. The Federal Reserve Board also approved final amendments to Regulation D to authorize the establishment of excess balance accounts at Federal Reserve Banks. Excess balance accounts are limited-purpose accounts for maintaining excess balances of one or more institutions that are eligible to earn interest on their Federal Reserve balances.

May 22, 2009. The Federal Reserve Board adopted a final rule that will allow bank holding companies to include in their Tier 1 capital without restriction senior perpetual preferred stock issued to the Treasury Department under the Troubled Asset Relief Program (“TARP”). This rule makes final the interim final rule that the Federal Reserve Board adopted in October 2008. The Federal Reserve Board also adopted an interim final rule that will allow bank holding companies that are S-Corps or that are organized in mutual form to include in Tier 1 capital all subordinated debt issued to Treasury under TARP, provided that the subordinated debt will count toward the limit on the amount of other restricted core capital elements includable in Tier 1 capital. The interim final rule also will allow small bank holding companies that are S-Corps or that are organized in mutual form to exclude subordinated debt issued to Treasury under TARP from treatment as "debt" for purposes of the debt-to-equity standard under the Federal Reserve's Small Bank Holding Company Policy Statement.

June 1, 2009. The Federal Reserve outlined the criteria it will use to evaluate applications to redeem Treasury capital from the 19 BHC’s that participated in the SCAP. Any BHC seeking to redeem Treasury capital must demonstrate an ability to access the long-term debt markets without reliance on the FDIC's Temporary Liquidity Guarantee Program (“TLGP”) and must successfully demonstrate access to public equity markets.

June 2, 2009. The Federal Reserve Bank of New York announced \$11.5 billion in TALF loans requested in the June facility. The early June facility did not include legacy and new issue CMBS. The subscription and settlement cycle for both legacy and new issue CMBS will occur in the latter part of each month, whereas the cycle for non-CMBS ABS TALF asset classes will remain in the first half of the month.

| | |
|-------------|---|
| | <p>June 8, 2009. The 10 banking organizations required by the Supervisory Capital Assessment Program to bolster their capital buffers all submitted capital plans that the Federal Reserves stated that, if implemented, would provide sufficient capital to meet the required buffer under the assessment's more-adverse scenario.</p> |
| <p>FDIC</p> | <p>May 8, 2009. Kitsap Bank, Port Orchard, Washington, assumed all of the deposits of Westsound Bank, Bremerton, Washington.</p> <p>May 21, 2009. The FDIC sold the assets of BankUnited to a private equity investor group including John Kanas, W.L. Ross, Carlyle Investment Management, Blackstone Capital Partners, Centerbridge Capital Partners, LeFrak Organization, The Wellcome Trust, Greenaap Investments Ld., and East Rock Endowment Fund.</p> <p>May 21, 2009. The FDIC announced that it will be providing policy guidance soon on the eligibility of private equity firms to purchase failing banks.</p> <p>May 22, 2009. Morton Community Bank, Morton, Illinois, assumed all of the deposits of Citizens National Bank, Macomb, Illinois and Midland States Bank, Effingham, Illinois, Assumes All of the Deposits of Strategic Capital Bank, Champaign , Illinois.</p> <p>May 22, 2009. The FDIC adopted a final rule to levy a special assessment on insured institutions as part of the agency's efforts to rebuild the Deposit Insurance Fund (“DIF”) and help maintain public confidence in the banking system. The final rule establishes a special assessment of five basis points on each FDIC-insured depository institution's assets, minus its Tier 1 capital, as of June 30, 2009. The special assessment will be collected September 30, 2009. The special assessment will be assessed against assets minus Tier 1 capital rather than domestic deposits, but the assessment will be capped at 10 basis points of an institution's domestic deposits so that no institution would pay an amount higher than they would have paid under the interim rule. The final rule allows the FDIC to impose additional special assessments of 5 basis points on the expanded assessment base for the third and fourth quarter of 2009, if the FDIC estimates that the DIF reserve ratio would fall too low.</p> <p>May 29, 2009. The FDIC approved establishing the FDIC Advisory Committee on Community Banking to provide the FDIC with advice and guidance on a broad range of</p> |

| | |
|-----|--|
| | <p>important policy issues impacting small community banks throughout the country, as well as the local communities they serve, with a focus on rural areas.</p> <p>May 29, 2009. The FDIC issued a final rule changing the way the FDIC administers its statutory restrictions on the deposit interest rates paid by banks that are less than well capitalized. The final rule defines nationally prevailing deposit rates as a direct calculation of those national averages, as computed and published by the FDIC based on data available to it. Reliance on the Treasury yields in the regulation would be discontinued. In recognition of the blurring of local deposit market boundaries brought about by the Internet and other innovations, the final rule also establishes a presumption that locally prevailing deposit rates equal the national rates published by the FDIC. This presumption could be overturned by evidence presented by banks to the FDIC.</p> <p>June 3, 2009. The FDIC postponed the pilot sale of assets under the Legacy Loan Program. As a next step, the FDIC will test the funding mechanism contemplated by the LLP in a sale of receivership assets this summer.</p> <p>June 5, 2009. Republic Bank of Chicago, Oak Brook, Illinois, assumed all of the deposits of Bank of Lincolnwood, Lincolnwood, Illinois in the 37th bank failure of 2009.</p> <p>June 5, 2009. An effort by the Carlyle Group and other investors to buy the failed Silverton Bank of Atlanta fell apart. The FDIC stated that the deal could not be completed and Silverton was moving into liquidation. The FDIC, which took over Silverton May 1, said shutting the bank down was less costly than the bids it had received</p> |
| OCC | <p>May 29, 2009. The OCC issued Interpretive Letter #1115, permitting the purchase of auction rate preferred securities by a wholly-owned subsidiary of a national bank.</p> |
| SEC | <p>May 5, 2009. The SEC initiated an action in federal district court against a portfolio manager at an investment adviser to a hedge fund and a salesman at an investment bank alleging that they had violated Section 10(b) of, and Rule 10b-5 under, the Securities Exchange Act of 1934, by engaging in insider trading in credit default swaps. According to the SEC, this action is the first such action brought by the SEC alleging insider trading in those types of</p> |

| | |
|-------|---|
| | <p>instruments.</p> <p>May 13, 2009. The SEC voted to propose amendments to Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended. Rule 206(4)-2 imposes certain requirements on a registered adviser that has custody of client assets, or is deemed to have custody of client assets by virtue of its access to them, e.g., when the adviser has the authority to withdraw funds from a client account held by a third party custodian. The proposed amendments include surprise exam for all advisers with custody, annual SAS-70 requirement for advisers holding client assets with and affiliated custodian, reporting requirements and direct delivery of statements to clients.</p> <p>May 20, 2009. The SEC voted to propose amendments to the proxy rules under the Securities Exchange Act of 1934 (the “1934 Act”) that would facilitate director nominations by shareholders. These amendments would apply to all companies that report under the 1934 Act, including investment companies, but would not apply to debt-only companies. The proposed amendments would also modify Rule 14a-8 under the 1934 Act so that a company could not exclude from its proxy materials a shareholder proposal affecting the issuer’s nomination procedures or disclosure requirements.</p> <p>June 4, 2009. The SEC charged former Countrywide Financial CEO Angelo Mozilo and two other former executives with securities fraud for deliberately misleading investors about the significant credit risks being taken in efforts to build and maintain the company's market share. Mr. Mozilo was additionally charged with insider trading for selling his Countrywide stock based on non-public information for nearly \$140 million in profits.</p> |
| FINRA | <p>May 15, 2009. As part of the ongoing process of developing a single rulebook following the consolidation of the member regulation, enforcement and arbitration operations of the New York Stock Exchange into the NASD to create FINRA, FINRA has issued a Regulatory Notice seeking public comment on a proposal to include in the Consolidated FINRA Rulebook modified versions of (a) NASD Rule 2310, which deals with suitability obligations, and (b) Incorporated NYSE Rule 405, which deals with know-your-customer obligations. Comments must be received by June 29, 2009.</p> |

| | |
|-----------------|--|
| <p>Congress</p> | <p>May 6, 2009. Congress passed the Helping Families Save Their Homes Act of 2009. The Act amends the operation of the Hope for Home Owners Program including putting a cap on upfront and annual fees and allowing payments to servicers and underwriters for successful modifications. The Act gives more power to the Federal Housing Administration and the Rural Housing Authority to modify loans. The Act also amends Section 131 of the Truth in Lending Act, giving purchasers of residential mortgage loans (including investors, such as investment and hedge funds) affirmative disclosure obligations to consumers. The Act will increase the FDIC's Treasury borrowing authority from \$30 billion to \$100 billion and grants the FDIC temporary additional borrowing authority of \$500 billion for systemic reasons -- subject to a two-thirds vote of the agency's board, a two-thirds vote of the Federal Reserve, and the agreement of the Treasury Secretary in consultation with the President. Under the Act, the FDIC may levy bank holding companies for any systemic special assessment if they stand to benefit from government actions, such as the TLGP. The Act maintains the current \$250,000 FDIC deposit insurance coverage for four years through 2013 and allows the FDIC to take up to eight years, from the current five years, to recapitalize the Deposit Insurance Fund. The Act also increases the borrowing authority of the National Credit Union Administration.</p> <p>May 19, 2009. Congress passed the CARD Act, which prohibits universal default practices, requires issuers who increase a customer's interest rate to periodically review and decrease the rate under certain circumstances, prohibits double-cycle billing, requires penalty fees to be reasonable and in proportion to the omission or violation, mandates that payments in excess of the monthly minimum to be applied to the highest-rate balances first, restricts issuers from increasing rates on customers in the first year after an account is opened, and requires promotional rates to last at least six months.</p> <p>May 28, 2009. The House Financial Services Committee scheduled hearings June 10, 11, 17, and 18 on regulatory restructuring legislation, and plans to consider a bill by the end of the month.</p> <p>June 9, 2009. The Congressional Oversight Panel ("COP") released its report on the SCAP. The COP noted that the unemployment rate climbed to 9.4 percent in May, bringing the average unemployment rate for 2009 to 8.5 percent. If the monthly rate continues to increase during the remainder of this year, the COP warns that it will likely exceed the 2009 average of</p> |
|-----------------|--|

| | |
|--------------------------|---|
| | <p>8.9 percent assumed under the more adverse scenario. The COP suggests that the stress tests should be repeated should that occur. The COP also recommends that stress testing should be repeated so long as banks continue to hold large amounts of toxic assets on their books and that banks should be required to run internal stress tests between formal tests conducted by the regulators and should share the results with regulators. The COP further recommends that regulators should have the ability to use stress tests in the future when they believe that doing so would help to promote a healthy banking system.</p> |
| Marketplace Developments | <p>May 28, 2009. A private equity consortium, including Lightyear Capital, Crestview Partners and Fortress Investment Group took control of First Southern Bancorp Inc. in a deal valued at \$800 million.</p> <p>June 3, 2009. The Wall Street Journal reported that the 19 banks that underwent the SCAP stress tests have raised \$85 billion since the results were announced on May 7, 2009. The banks raised \$65 billion from equity sales and another \$20 billion from nonguaranteed debt sales and the conversion of preferred shares to common stock.</p> <p>June 5, 2009. Regulators push for management changes at the largest TARP recipients. Bank of America appointed four new board members with banking experience. The Wall Street Journal reports that the FDIC is pushing for a shake-up of Citigroup's top management against the wishes of the OCC and the Federal Reserve.</p> |