

Financial Services Updates (2/12 – 2/25/09)

Department/Agency	Action	More Information
<p>Obama Administration</p>	<p>A. The President signs the American Recovery and Reinvestment Act of 2009 (the “Stimulus Act”) on February 17, 2009. Relevant financial industry provisions include:</p> <p>I. Coverage –</p> <ol style="list-style-type: none"> 1. all TARP participants - amends sec. 111 of the EESA, source of TARP 2. sponsors of ABS which have been pledged as collateral for TARP facility – includes non-depository institutions 3. apply to Senior Executive Officers (SEO) – top 5 most highly compensated executive of a public co. or the non-public counterparts <p>II. Duration –</p> <p>While there is any outstanding obligation to the federal government because of financial assistance from TARP, except when the government is holding only warrants to purchase stock</p> <p>III. Restrictions –</p> <ol style="list-style-type: none"> 1. <u>Executive Compensation</u> – <ol style="list-style-type: none"> a. limit compensation to exclude incentives which encourage SEO to take unnecessary and excessive risks that threaten the value of the co. b. include claw-back provisions to recover any bonus, retention award or incentive compensation given to SEO and 20 most highly compensated employees in the event that statement of earnings is found to be inaccurate c. SEO and 20 most highly compensated employees are prohibited from receiving a golden parachute upon severance d. no compensation plans that encourage manipulation of earnings 2. Prohibition on bonus, retention award or incentive compensation (other than restricted stock) 	

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	<p>a. Coverage:</p> <ul style="list-style-type: none">i. does not fully vest during the period in which there is an outstanding obligation under TARPii. has a value greater than 1/3 of the employees' compensation andiii. is subject to other terms and conditions by the Treasury Secretaryiv. DOES NOT apply to written employment contracts executed before February 11, 2009 <p>b. Scope:</p> <ul style="list-style-type: none">i. > \$25M - most highly compensated employeeii. \$250M > \$25M – top 5 most highly compensated employeesiii. \$500 M > \$250M – CEO and 10 most highly compensated employeesiv. \$500 M + - CEO and <i>at least</i> 20 most highly compensated employees <p>2. <u>Compliance Certifications</u> – CEO and CFO must certify that the company has complied with all executive compensation restrictions.</p> <p>3. <u>Compensation Committee</u> – Establish a compensation committee composed of independent directors</p> <p>4. <u>Luxury Expenditures</u> – Board must adopt a policy on excessive or luxury expenditures, as determined by the Treasury Secretary, which may include <i>entertainment or events, office or facilities renovation, aviation and other transportation, or other activities or events that are not reasonable expenditures conducted in the normal course of business</i></p> <p>5. <u>Executive Pay</u> – Shareholders have a non-binding vote to approve the compensation of executives</p> <p>6. <u>Retroactive Review</u> – For companies receiving TARP assistance prior to the enactment of the Stimulus Act, Finance Secretary can review bonuses of CEO and next 20 most highly paid employees.</p>	
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IV. Modifications to Treasury guidelines issued on February 4, 2009

1. Stimulus Act applies to all TARP recipients retroactively while the Treasury guidelines apply to TARP recipients on a going forward basis
2. Treasury limitation on annual compensation of \$500,000 for senior executives is modified in Stimulus Act. Other than those receiving exceptional assistance, this may be waived for most TARP recipients by submitting the compensation to shareholder resolution.

B. The President announces the Homeowner Affordability and Stability Plan on February 18, 2009.

I. Refinancing up to 4 to 5 Million Responsible Homeowners to make mortgages more affordable

- allow a low cost re-financing for responsible homeowners who took conforming loans owned or guaranteed by Fannie Mae and Freddie Mac to refinance through these institutions

II. \$75 B Homeowner Stability Initiative (HSI) to reach up to 3 to 4 million at-risk homeowners

- HSI intended to those who intend to stay in their present homes (not for speculators or house flippers) and includes those who are in imminent, but not actual, default

- Shared effort – lender brings down interest payment and HSI will match that reduction on a dollar for dollar basis
- Pay for success – servicers receive an up-front fee of \$1,000 for each eligible modification
- Incentives to stay current – HSI will provide a monthly balance reduction payment on the principal of the loan for borrowers paying on time
- Reaching borrowers early – Incentives of \$500 to servicers and \$1,500 to mortgage holders if they modify at-risk loans before the borrower falls behind
- Home Price Decline Reserve Payments – Treasury will create a \$10 B insurance fund to discourage lenders to foreclose on viable borrowers because of concerns over falling home prices

<http://www.treas.gov/initiatives/eesa/homeowner-affordability-plan/ExecutiveSummary.pdf>

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	<ul style="list-style-type: none"> • Treasury will develop clear and consistent guidelines <p>III. Supporting low mortgage rates by strengthening confidence in Fannie Mae and Freddie Mac</p> <ul style="list-style-type: none"> - increase commitment to Fannie Mae and Freddie Mac - Treasury to increase Preferred Stock Purchase Agreements to \$200 B each (from \$100 B) - Treasury to continue purchasing Fannie Mae and Freddie Mac MBSs - Treasury will increase the GSE's retained mortgage portfolios to \$900 B - Treasury will work with Fannie Mae and Freddie Mac to support state housing finance agencies - No money to be used from Financial Stability Plan or EESA/TARP 	
Treasury	<p>Treasury and IRS developed guidelines and tables to implement the Making Work Pay credit, a provision in the Stimulus Act which will reduce the amount of money withheld from paychecks (February 21, 2009).</p> <p>The Treasury announced the members of the Presidential Task Force on the Auto Industry to discuss restructuring plans submitted by Chrysler and General Motors (February 20, 2009).</p>	<p>http://www.ustreas.gov/press/releases/tg37.htm</p> <p>http://www.ustreas.gov/press/releases/tg36.htm</p>
Agencies		
Interagency	<p>Treasury, Federal Reserve Board, OTS, OCC and FDIC release a joint statement to reiterate their "determination to preserve the viability of systemically important financial institutions." If a financial institution's stress test determines that additional capital is needed to survive a more challenging economic environment, it will be given an opportunity to private sources of capital. Failing that, the government will consider making the temporary capital buffer available. Any government capital will be in the form of mandatory convertible preferred shares. However, the agencies stressed that they would prefer it if the management of these institutions remained in private hands (February 23, 2009).</p>	<p>http://www.ustreas.gov/press/releases/tg38.htm</p>
Fed	<p>Chairman Bernanke gave a semiannual monetary report to Congress at which he outlined the steps that the Treasury and the Fed have taken to promote economic recovery and transparency at the Fed. He said that "if actions</p>	<p>http://www.federalreserve.gov/newsevents/testimony/bernanke20090224a.htm</p>

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	<p>taken by the Administration, the Congress, and the Federal Reserve are successful in restoring some measure of financial stability--and only if that is the case, in my view--there is a reasonable prospect that the current recession will end in 2009 and that 2010 will be a year of recovery" (February 24, 2009).</p> <p>Federal Reserve entered into enforcement agreements with Corus Bankshares (Illinois), Polk County Bancorporation (Iowa), Temecula Valley Bancorp (California) and Florida Community Banks (Florida). All agreements concerned the capital adequacy of the banks and had limitations on dividends, and debt and stock redemption. They also included a capital plan (February 19, 2009).</p> <p>Chairman Bernanke announced policies to ease credit and their implications on the Fed's balance sheet (February 18, 2009).</p> <p>FOMC announced that it would expand its meetings in March, August, September and December 2009 to two-days to allow for greater discussion (February 13, 2009).</p>	<p>http://www.federalreserve.gov/newsevents/press/enforcement/2009enforcement.htm</p> <p>http://www.federalreserve.gov/newsevents/press/monetary/20090213a.htm</p>
FDIC	<p>FDIC announced the receivership of the following banks:</p> <ul style="list-style-type: none"> - Silver Falls Bank, Oregon by Citizens Bank (2/20/09) - Pinnacle Bank, Oregon by Washington Trust Bank (2/13/09) - Corn Belt Bank and Trust Co., Illinois by Carlinville National Bank (2/13/09) - Riverside Bank of the Gulf Coast, Florida by TIB Bank (2/13/09) <p>Sherman County Bank, Nebraska by Heritage Bank (2/13/09)</p>	<p>http://www.fdic.gov/news/news/press/2009/index.html</p>
OTS		
OCC		
SEC	<p>SEC obtained a court order to stop a \$4.4 M ponzi scheme based in Hawaii which targeted members of the deaf community in the US and Japan (Feb. 19, 2009).</p> <p>Robert Khuzami was named Director of the Division of Enforcement at the SEC. Khuzami was a former federal prosecutor in the US Attorney's Office in the Southern District of New York and is a graduate of BU Law (February 19, 2009).</p>	<p>www.sec.gov/news/press/2009/2009-31.htm</p> <p>http://www.sec.gov/news/press/2009/2009-31.htm</p>

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	<p>UBS settled a complaint filed by the SEC alleging that the firm acted as an unregistered broker-dealer and investment adviser. The SEC alleged that UBS facilitated the ability of certain US clients to maintain undisclosed accounts in Switzerland and other countries to avoid US taxes. UBS's settlement included a \$200 M disgorgement. UBS also agreed to an additional \$180 M disgorgement with the Justice Department, as well as \$400 M in tax-related payments. Around 250 account records were turned over (February 18, 2009).</p> <p>SEC charged Robert Allen Stanford and three of his companies (Stanford International Bank, Stanford Group Co. and Stanford Capital Management), alleging a fraudulent multi-billion dollar investment scheme (at least \$8 B). Two other associates were charged (February 17, 2009).</p> <p>SEC charged Research in Motion Ltd. and four of its senior executives with stock option backdating over and eight year period from 1998 to 2006. RIM is the maker of Blackberry (February 17, 2009).</p> <p>SEC charged George Georgiou of Toronto, Canada with manipulating the market in four microcap stocks from 2004 to September 2008. Mr. Georgiou is said to have created a market for these stocks through nominee accounts that he controlled and made at least \$20.9 M in these schemes (February 12, 2009).</p> <p>SEC settled with KBR, Inc. and Halliburton Co. It was alleged that a KBR subsidiary bribed Nigerian officials over a ten-year period in violation of the Foreign Corrupt Practices Act. KBR and Halliburton agreed to pay \$177 M in disgorgement (February 11, 2009).</p>	<p>http://www.sec.gov/news/press/2009/2009-26.htm</p> <p>http://www.sec.gov/news/press/2009/2009-32.htm</p> <p>http://www.sec.gov/news/press/2009/2009-27.htm</p> <p>http://www.sec.gov/news/press/2009/2009-24.htm</p> <p>http://www.sec.gov/news/press/2009/2009-23.htm</p>
CFTC	<p>CFTC is seeking comments to proposed amendments to CFTC regulations regarding the content of the acknowledgement letter that a futures commission merchant or derivatives clearing organization must obtain from any depository holding its segregated customer funds or funds of foreign or foreign options customers (February 20, 2009).</p> <p>CFTC obtained a federal court order freezing the assets and prohibiting destruction of documents of Brookshire Raw Materials Management LLC and its principals. The defendants are charged with misappropriating \$4.6 M in a ponzi scheme (February 20, 2009).</p>	<p>http://www.cftc.gov/newsroom/generalpressreleases/2009/pr5617-09.html</p> <p>http://www.cftc.gov/newsroom/enforcementpressreleases/2009/pr5616-09.html</p>
MA DOB		

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<p>Other</p>	<p>In his speech before a joint session of Congress, President Obama announced a plan to create a new lending fund for auto loans, college loans and small business loans. He also reiterated the Administration’s housing initiatives and support for the banking system in order to keep them viable to enable them to lend. Finally, the President called on Congress to overhaul the nation’s outdated regulatory system (February 24, 2009).</p> <p>FASB is launching new short-term projects to provide additional guidance on fair value measurement and disclosure. The new guidance will be completed by the end of the second quarter 2009 and will include guidance on “whether a market for an asset or liability is active or inactive, determining when a transaction is distressed, and application of fair value to interests in alternative investments such as hedge funds and private equity funds.” The projects were in response to the SEC’s study on mark-to-market accounting (February 23, 2009).</p>	<p>http://www.cnn.com/2009/POLITICS/02/24/sotn.obama.transcript/</p> <p>http://news.bna.com.ezproxy.bu.edu/srln/SRLNWB/split_display.adp?fedfid=11624772&vname=srlrnotallissues&fn=11624772&jd=a0b7y7k0y5&split=0</p> <p>(BU login required)</p>
<p>Congress</p>	<p>Note: Hedge Fund Transparency Act introduced on January 29, 2009 by Senators Grassley and Levin would include hedge funds in the definition of “investment company” under the 1940 Investment Company Act, unless the hedge funds meet certain criteria. Hedge funds would also be required to implement anti-money laundering programs.</p>	<p>http://news.bna.com.ezproxy.bu.edu/srln/SRLNWB/split_display.adp?fedfid=11402095&vname=srlrnotallissues&fn=11402095&jd=a0b7w1h1u8&split=0</p> <p>(BU login required)</p>
<p>Marketplace Developments</p>	<p>Treasury stress tests for banks with assets more than \$100 B to begin on February 25, 2009.</p>	
<p>Courts</p>	<p>The 10th Circuit rejected a securities fraud claim that a company misrepresented a subsidiary’s prospects as a stand alone company. The court held that the investors failed to establish a causal connection between the decline in the subsidiary’s stock price after it was spun off and the alleged misrepresentations (In re Williams Securities Litigation - WCG Subclass, 10th Cir., No. 07-5119, 2/18/09).</p>	

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	The US District Court of Southern New York dismissed a derivative suit filed against Merrill Lynch for lack of standing under Delaware law. Plaintiffs sued for losses suffered as a result of Merrill's investment in collateralized debt obligations and other mortgage backed securities. The court held that, since the plaintiffs were no longer Merrill shareholders as a result of its acquisition by Bank of America, then they had no standing to sue (In re Merrill Lynch & Co. Inc. Securities, Derivative, and ERISA Litigation, S.D.N.Y., Master File No. 07 Civ. 9633 (JSR), 2/17/09).	
Miscellaneous	<p>De Larosiere report on EU financial regulation will come out today. It is expected to outline a pan-European authority to which national regulators can go for cross-border banking issues. It will also propose a supervisor on the EU's biggest banks and insurers but is not expected to call for a continent-wide set of regulations (February 25, 2009).</p> <p>Massachusetts Office of Consumer Affairs and Business Regulation issued revised regulations on information security, including a new effective date on January 1, 2010 (February 12, 2009).</p>	<p>The Wall Street Journal, February 25, 2009, A8</p> <p>http://www.mass.gov/?pageID=ocapressrelease&L=1&L0=Home&sid=Eoca&b=pressrelease&f=20090212_idtheft&csid=Eoca</p>
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