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A REFERENCE GUIDE TO THE U.S. RESCUE EFFORTS

In view of the multifaceted and evolving nature of the government's response to the credit crisis, we have developed this reference guide to the principal regulatory programs and initiatives that have been announced to date. The guide summarizes the U.S. Treasury programs implemented under the Emergency Economic Stabilization Act of 2008, the administration's recently announced Financial Stability Plan and other key programs implemented by the Federal Reserve and the Federal Deposit Insurance Corporation. This guide should be read in conjunction with the update alerts and other materials posted on our web site portal dedicated to the credit crisis.

February 24, 2009

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I. RECENT DEVELOPMENTS

A. FINANCIAL STABILITY PLAN

On February 10, 2009, Treasury Secretary Geithner announced a new Financial Stability Plan to address the continuing credit crisis. The plan includes the following key components:

- **Financial Stability Trust.** Treasury will make new capital investments in financial institutions pursuant to a Capital Assistance Program. Investments will be placed in and managed by a newly established Financial Stability Trust. Recipients of such funds will face (i) new disclosure requirements and (ii) a forward-looking assessment described as a “stress test” (which will be mandatory for all banks with more than \$100 billion in assets). On February 23, Treasury announced that the new capital investments would be in the form of preferred shares mandatorily convertible into common equity and, correspondingly, suggested that tangible common equity would be a focus of the stress tests. Treasury also announced that preferred stock issued under the Capital Purchase Program would be exchangeable into such mandatory convertible preferred shares.
- **Public-Private Investment Fund.** A new entity, initially funded by \$500 billion (and up to \$1 trillion) of public and private capital and government supported financing, will purchase distressed assets from financial institutions.
- **Consumer and Business Lending Initiative.** Treasury will expand the previously announced Term Asset-Backed Securities Loan Facility (“TALF”) by increasing its seed capital from \$20 billion to \$100 billion, which it will leverage to up to \$1 trillion with additional funding from the Federal Reserve. The program will also be expanded by making loans available for purchases of securities backed by commercial real-estate assets, in addition to those backed by consumer and small business loans.
- **Enhanced Transparency, Accountability and Conditionality.** Recipients of funds from the Financial Stability Trust must (i) provide plans for the use of funds and monthly reports regarding the impact on their lending practices, (ii) participate in new mortgage foreclosure mitigation programs and (iii) comply with substantial restrictions on dividend payments, share repurchases and cash acquisitions.
- **Housing Support and Foreclosure Prevention.** Treasury and the Federal Reserve will continue purchases of up to \$600 billion of direct obligations of housing-related government-sponsored entities (“GSEs”) (Freddie Mac, Fannie Mae, Ginnie Mae and the Federal Home Loan Banks) and GSE-guaranteed mortgage-backed securities. In addition, pursuant to the Homeowner Affordability and Stability Plan announced on February 18, Treasury will (i) implement a \$75 billion foreclosure mitigation program, (ii) promulgate guidelines for mortgage loan modifications, (iii) seek legislative changes to facilitate additional judicial and non-judicial mortgage modifications and (iv) invest an additional \$200 billion in Fannie Mae and Freddie Mac to increase confidence in the broader mortgage markets.
- **Small Business and Community Lending Initiative.** Treasury and the Small Business Administration (the “SBA”) will attempt to increase small business lending through (i) the Consumer and Business Lending Initiative, (ii) increasing the guarantee for SBA loans to up to 90% and (iii) reducing SBA lending fees.

The Financial Stability Plan and the Homeowner Affordability and Stability Plan are described in greater detail in Sections III and V below.

B. OTHER RECENT DEVELOPMENTS

- **New restrictions on executive compensation.** On February 4, Treasury announced new guidelines on executive pay for recipients of TARP funds, and on February 17, President Obama signed the new stimulus bill, which significantly expanded the scope of the executive compensation restrictions applicable to TARP recipients. For the largest banks, the new restrictions will apply to the senior executive officers and the next 20 most highly compensated employees. Importantly, restrictions included in the stimulus bill apply retroactively to institutions that have already received TARP funds. See Section IV below for a description of the new rules.
- **Remaining TARP funds.** On January 12, Former President Bush requested that Congress release the second \$350 billion of funds authorized under the Troubled Asset Relief Program (“TARP”) and the Senate has voted to approve the release. The remaining TARP funds are effectively at Treasury’s disposal.
- **Congressional Oversight Panel reports.** The Congressional Oversight Panel established under the Emergency Economic Stabilization Act has issued three reports, most recently on February 6, criticizing Treasury for the lack of transparency in how the initial TARP funds were deployed, the lack of constraints on recipients’ use of TARP funds and the ineffectiveness of TARP to revive the credit markets and slow foreclosures. A Duff & Phelps valuation report commissioned by the panel estimated that in the eight largest deployments of TARP funds to healthy banks, Treasury received securities having a market value of approximately 78% of the funds invested. The report estimated that in the investments in riskier institutions (AIG and the second deployment to Citigroup), Treasury received securities having a market value of approximately 41% of the funds invested.
- **Enhanced federal regulation of markets and financial instruments.** Recent statements by senior members of the new administration suggest that a package of sweeping regulatory initiatives is likely to be announced relatively soon. Although there has yet to be any formal announcement of new regulations, these measures are likely to involve stricter regulation of market participants (*e.g.*, hedge funds, credit rating agencies and mortgage brokers) and regulation of previously unregulated financial instruments (*e.g.*, CDS contracts and other derivatives).
- **Too-big-to-fail institutions.** In his January 13 speech, Federal Reserve Chairman Bernanke emphasized that in the future any financial firms whose failure would pose a systemic risk must accept especially close regulatory scrutiny of their risk-taking. Chairman Bernanke stated that the United States urgently needs a new set of procedures for resolving failing non-bank institutions deemed systemically critical, similar to procedures that currently exist for rescuing banks under the systemic risk exception.
- **Insurance companies.** A number of insurance companies have filed applications with the Office of Thrift Supervision to acquire existing savings and loan associations, thereby transforming themselves into savings and loan holding companies, which are eligible to participate in the Capital Purchase Program. Most of the applications have been granted.

- **Good bank, bad bank reorganization at Citigroup.** On January 16, following discussions with the Federal Reserve and the Office of the Comptroller of the Currency, Citigroup announced a plan to reorganize itself into two operating units. The first unit—Citicorp—will focus on core banking operations; the second unit—Citi Holdings—will consist of the asset management and consumer finance divisions, along with the special asset pool to manage the assets covered by the federal guarantee program for Citigroup announced in November 2008.
- **Bank of America.** On January 15, Bank of America joined Citigroup as a recipient of government assistance under the Targeted Investment Program. In a joint rescue effort, Treasury, the FDIC and the Federal Reserve provided certain guarantees on a \$118 billion portfolio of loans. In addition, Treasury will invest \$20 billion of TARP funds into Bank of America in exchange for preferred stock, and the Federal Reserve will provide a non-recourse loan facility.
- **Auto companies increase the size of their request.** On February 17, General Motors and Chrysler submitted restructuring plans to Treasury requesting, in the aggregate, \$21.6 billion in loans from the government in addition to the \$24.9 billion already committed to these companies and their finance affiliates. As of February 21, Treasury had not responded to the companies' request.
- **FDIC Temporary Liquidity Guarantee Program.** The FDIC announced that it will soon revise the length of its debt guarantee to 10 years (instead of the current three) in cases where the debt is supported by collateral and the issuance supports new consumer lending.
- **Extension of Federal Reserve Programs.** During the January 27-28 Federal Open Market Committee meeting, the Federal Reserve Board of Governors voted unanimously to extend to October 30, 2009 the termination dates of several existing financial rescue programs, including the Commercial Paper Funding Facility and the Money Market Investor Funding Facility.
- **Commercial Paper Funding Facility.** Effective January 23, the facility will not purchase asset-backed commercial paper from issuers that were inactive prior to the creation of the program. This change to the eligibility requirements was made to prevent the continuation of asset-backed commercial paper conduits that previously exited the market. As of February 12, the Federal Reserve held about \$251 billion of paper under the facility, which amounts to almost 15% of the \$1.7 trillion commercial paper market. This balance is down nearly \$100 billion from the level on January 22, suggesting a recovery in the market for commercial paper.
- **Money Market Investor Funding Facility.** The Federal Reserve has announced two changes to the facility: (i) expanding the list of eligible investors to include a number of other money market investors, and (ii) adjusting several economic parameters, including the minimum yield on assets eligible to be sold to the facility, to enable the program to remain a viable source of backup liquidity for money market investors even at very low levels of money market interest rates.
- **Obligations issued or backed by GSEs.** In an effort to reduce the cost and increase the availability of credit to purchase homes, the Federal Reserve, further to its announcement on November 25, has commenced the purchase of GSE debt and mortgage-backed securities backed by GSEs. It will purchase up to \$100 billion in GSE direct obligations

through a series of competitive auctions and will also purchase up to \$500 billion in mortgage-backed securities.

- **Credit Default Swaps (“CDS”).** The SEC, the Federal Reserve, and the Commodity Futures Trading Commission have signed a memorandum of understanding to facilitate the regulatory oversight and supervision of CDS central counterparties. In light of this development, New York State has announced the suspension of its plan to regulate CDS contracts under the New York State Insurance Law. The SEC has approved temporary exemptions allowing LCH.Clearnet Ltd. to operate as a central counterparty for CDS.
- **Lobbying restrictions and transparency.** Treasury Secretary Geithner announced that new limits would be set to prevent political interference in the distribution of federal funds. Treasury will publish weekly a log of all contacts by public officials (including members of Congress) and bank officials regarding specific financial institutions. The new lobbying rules will be published shortly. Treasury has also announced a new policy of posting investment contracts for future completed transactions under TARP to Treasury’s website within five to 10 business days. Documents for contracts already completed will be posted on a rolling basis. Confidential and proprietary information will be redacted from the documents at the request of the individual institutions.
- **Assistance to Credit Unions.** The National Credit Union Administration, the regulator for credit unions, said on January 28 that it would guarantee uninsured shares at all corporate credit unions through February and will establish a voluntary guarantee program for uninsured shares of all corporate credit unions through December 31, 2010. It also gave a \$1 billion capital injection to U.S. Central Corporate Federal Credit Union.

II. INITIAL PROGRAMS UNDER THE EMERGENCY ECONOMIC STABILIZATION ACT

A. OVERVIEW

On October 3, 2008, former President Bush signed into law the Emergency Economic Stabilization Act of 2008 (“EESA”). The Act authorized the expenditure of \$700 billion for the purchase of “troubled assets” from financial institutions through the newly established Troubled Asset Relief Program (“TARP”). TARP was designed to provide Treasury with flexibility in responding to the crisis, and the Treasury Secretary is permitted to treat any financial instrument as a “troubled asset” if the purchase of such instrument would promote financial market stability. In making such a determination, the Treasury Secretary is required to consult with the Chairman of the Federal Reserve and provide notification to Congress. The money under EESA was to be disbursed in tranches—\$250 billion immediately, the next \$100 billion upon certification by the President that it is needed, and the remaining \$350 billion unless, within 15 days of the request, Congress objects through a joint resolution.

When EESA was presented to Congress, Treasury’s purpose was to fund the purchase of illiquid mortgage-related assets from financial institutions. Within days of the law’s passage, however, the government’s focus shifted to direct capital injections into financial institutions. On October 14, 2008, Treasury announced that \$250 billion of the TARP funds would be used for a new Capital Purchase Program (the “CPP”) to recapitalize the banks, and on November 12, former Treasury Secretary Paulson formally abandoned the original strategy of troubled asset purchases.

On January 12, former President Bush requested that Congress release the second \$350 billion of TARP funds on behalf of President Obama, and the Senate has voted to approve the release. The remaining TARP funds are effectively at Treasury’s disposal.

On February 10, Treasury announced a new Financial Stability Plan, which is described in Section III. Although the details of the plan have not yet been released, Treasury has allocated \$80 billion of TARP funds to the Consumer and Business Lending Initiative (an expansion of the previously announced TALF program) and \$75 billion to the Homeowners Affordability and Stability Plan, and it appears that the proposed Capital Assistance Program and Public-Private Investment Fund will be funded at least in part with remaining TARP funds.

To date, the TARP funds have been allocated in the following manner:

- \$250 billion to the Capital Purchase Program,
- \$40 billion for assistance to AIG,
- \$25 billion for assistance to Citigroup (including \$5 billion for loss absorption),
- \$24.9 billion for General Motors, GMAC, Chrysler and Chrysler Financial,
- \$20 billion for assistance to Bank of America,
- \$100 billion for TALF (as expanded under the Financial Stability Plan), and
- \$75 billion for the Homeowner Affordability and Stability Plan.

This leaves \$165.1 billion of uncommitted TARP funds available for use in the recently announced Capital Assistance Program and Public-Private Investment Fund.

Oversight of TARP is provided by a newly established Financial Stability Oversight Board, consisting of the Chairman of the Federal Reserve, the Treasury Secretary, the Chairman of the SEC, the Director of the Federal Housing Finance Agency and the Secretary of Housing and Urban Development, as well as by an Office of the Special Inspector General for TARP and a Congressional Oversight Panel. Treasury decisions under TARP are also subject to judicial review.

In five years, if TARP has generated a shortfall, the President is to submit proposed legislation to recoup amounts from the financial industry to avoid adding to the deficit or national debt.

B. CAPITAL PURCHASE PROGRAM

In brief:

- Treasury is investing up to \$250 billion of capital to qualifying U.S.-controlled financial institutions. The first \$125 billion was allocated to nine banks, and the balance is being allocated to a wide array of small and medium-sized banks and thrifts. Capital injections are being made on a rolling basis. As of February 13, Treasury had invested \$196.0 billion under the Capital Purchase Program.
- The CPP is aimed at healthy institutions, and the terms of participation are intended to encourage lending. The capital is not being allocated on a first-come, first-served basis.
- The capital is being injected in the form of non-voting preferred stock, redeemable after three years, and earlier out of the cash proceeds of Tier 1 qualifying equity offerings.
- Treasury is also receiving warrants to purchase common stock worth between 5% and 15% of the face amount of the preferred stock. The number of shares underlying the warrants will be reduced by half if the financial institution raises Tier 1 capital in an amount equal to the capital injection by December 31, 2009.
- On February 23, Treasury announced that preferred stock issued under the Capital Purchase Program would be exchangeable into the mandatory convertible preferred shares available under the Capital Assistance Program (described below in Section III.A). Conversion of such shares into common equity would enable banks to demonstrate greater tangible common equity, which Treasury suggested would be a measure of capitalization under the stress tests imposed by the Financial Stability Plan. It is not clear whether converting into mandatory convertible preferred shares would subject a bank to the other restrictions (regarding executive compensation or participation in foreclosure mitigation initiatives) imposed by the Capital Assistance Program.

The Program

The securities. Capital injections are being made in the form of purchases by Treasury of senior preferred stock (“Senior Preferred”) that will pay cumulative (or, in the case of banks that are not subsidiaries of holding companies, non-cumulative) dividends quarterly in arrears at a rate of 5%, increasing to 9% after five years (unpaid cumulative dividends will also compound at the dividend rate then in effect). All capital purchases occur at the highest-tier holding company, if any. The Senior Preferred constitutes Tier 1 capital and has perpetual life. Treasury is also receiving warrants to purchase common stock worth 15% (in the case of public institutions) or 5% (in the case of private institutions) of the face amount of the Senior Preferred (on the date of investment).

Each participating institution is to issue an amount of Senior Preferred equal to not less than 1%, and not more than 3%, of its risk-weighted assets, with an upper limit of \$25 billion. The liquidation preference for the Senior Preferred is \$1,000 per share (or higher depending on the qualifying institution’s available authorized preferred shares, in which case the qualifying institution may be required to appoint a depository to hold the Senior Preferred and issue depository receipts). The measurement of the maximum amount of capital eligible for purchase by Treasury is based on the information contained in the latest quarterly supervisory report filed by the applicant with its primary federal regulator, updated to reflect any material changes since the filing date.

Treasury may transfer the securities it acquires to third parties at any time.

Participation. Qualifying institutions are referred to in the program documents as “Qualifying Financial Institutions” or “QFIs.” The following are eligible publicly traded QFIs (“Public QFIs”):

- any U.S. bank or U.S. savings association not controlled by a bank holding company or a savings and loan holding company;
- any top-tier U.S. bank holding company;
- any top-tier U.S. savings and loan holding company that engages solely or predominately in activities permitted for financial holding companies under relevant law; and
- any U.S. bank or U.S. savings association controlled by a U.S. savings and loan holding company that does not engage solely or predominantly in activities permitted for financial holding companies under relevant law.

The following are eligible privately held QFIs (“Private QFIs”):

- any top-tier bank holding company, or a top-tier savings and loan holding company that engages solely or predominately in activities permissible for financial holding companies under relevant law, that in either case is not publicly traded;
- any U.S. bank or U.S. savings association organized in a stock form that is neither publicly traded nor controlled by a bank holding company or savings and loan holding company; and
- any U.S. bank or U.S. savings association that is not publicly traded and is controlled by a savings and loan holding company that is not publicly traded and does not engage solely or predominately in activities that are permitted for financial holding companies under relevant law, other than S corporations¹ and Mutual Depository Institutions.²

A bank holding company, savings and loan holding company, bank or savings association that is controlled by a foreign bank or company cannot participate in the CPP.

Term sheets have been released with respect to Public QFIs, Private QFIs and S corporations and the application deadlines for these entities have expired. Application details with respect to Mutual Depository Institutions are still under consideration. Within two business days after the completion of the investment agreements and the authorization of the investment, Treasury publicly discloses the name of each participating QFI and the capital purchase amount of the related investment.

Executive compensation. Participating institutions are required to adopt Treasury’s standards for executive compensation and corporate governance for the periods during which Treasury holds equity issued under the Capital Purchase Program. See Section IV for a description of these standards.

¹ “S corporation” means any U.S. bank, U.S. savings association, bank holding company or savings and loan holding company organized as a corporation that has made a valid election to be taxed under Subchapter S of the U.S. Internal Revenue Code.

² “Mutual Depository Institution” means any U.S. bank, U.S. savings association, bank holding company or savings and loan holding company organized in a mutual form.

Senior Preferred

Ranking. The Senior Preferred ranks senior to common stock and pari passu with existing preferred shares other than preferred shares which by their terms rank junior to any existing preferred shares.

Redemption. The Senior Preferred may not be redeemed for a period of three years from the date of investment except with proceeds from sales of Tier 1 qualifying perpetual preferred stock or common stock for cash (other than sales made by Private QFIs pursuant to financing plans announced on or prior to November 17), which result in aggregate gross proceeds of not less than 25% of the issue price of the Senior Preferred. After the three-year period, the QFI may redeem the Senior Preferred at any time, in whole or in part. Redemptions will be at 100% of the issue price and will be subject to primary regulator approval.

Tier 1 capital treatment. The Federal Reserve has adopted an interim final rule that will permit bank holding companies to include in their Tier 1 capital 100% of the Senior Preferred issued to Treasury under the Capital Purchase Program.

Restriction on dividends and repurchases. While Senior Preferred is outstanding, a QFI's ability to declare and pay dividends and undertake share repurchases is restricted unless Treasury consents otherwise.

Until the third anniversary of the date of the investment, neither a Public QFI nor its subsidiaries may declare or pay any dividends on common stock, other than regular quarterly cash dividends in amounts not to exceed the amount of any dividends declared or announced prior to October 14, dividends payable solely in shares of common stock and dividends in connection with a shareholders rights plan.

In the case of Private QFIs, for as long as the Senior Preferred is outstanding, no dividends may be declared or paid on common stock, junior preferred stock or pari passu preferred stock unless (i) in the case of cumulative Senior Preferred, all accrued and unpaid dividends for all past dividend periods on the Senior Preferred are fully paid or (ii) in the case of non-cumulative Senior Preferred, the full dividend for the latest completed dividend period has been declared and paid in full. In addition, Treasury's consent is required for any increase in common dividends per share until the third anniversary of the date of the investment. After the third anniversary and prior to the tenth anniversary of the date of investment, any increase in aggregate common dividends per share greater than 3% per annum requires Treasury's consent, provided that no increase in common dividends may be made as a result of any dividend paid in common shares, any stock split or similar transaction. After the tenth anniversary of the date of the investment, Private QFIs are prohibited from paying common dividends or repurchasing any equity securities or trust preferred securities.

Until the third anniversary of the date of the investment, a Public QFI (and its subsidiaries) cannot effect any repurchases of common stock, other capital stock or other equity securities (including trust preferred securities), other than:

- repurchases of the Senior Preferred;
- repurchases of junior preferred shares or common shares in connection with any benefit plan in the ordinary course of business consistent with past practice;

- purchases by a broker-dealer subsidiary of the QFI either solely for market-making, stabilization or customer facilitation transactions in the ordinary course of business or for resale in an offering underwritten by such broker-dealer;
- repurchases pursuant to any shareholders rights plan, acquisitions of record ownership where the beneficial ownership is held by other persons; or
- certain exchanges or conversions of junior stock, parity stock or trust preferred securities pursuant to pre-existing arrangements (or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for common stock).

Until the tenth anniversary of the date of the investment, a Private QFI cannot effect any repurchases of equity securities or trust preferred securities, other than:

- repurchases of the Senior Preferred; and
- repurchases of junior preferred shares or common shares in connection with any benefit plan in the ordinary course of business consistent with past practice.

These restrictions cease to apply if the Senior Preferred is redeemed in full or if Treasury transfers all of a QFI's Senior Preferred to an unaffiliated third party.

As long as Treasury owns any Senior Preferred of a QFI, the QFI may not repurchase the Senior Preferred from any third party (subject to certain limited exceptions for ordinary course broker-dealer, trustee or custodian activities) unless it also offers to repurchase a ratable portion of the Senior Preferred then held by Treasury.

Repurchases of other securities. Following redemption or the transfer to one or more third parties unaffiliated with Treasury of all of a QFI's Senior Preferred, the QFI may repurchase any of its warrants or other equity securities held by Treasury, at fair market value.

Voting rights. At inception, the Senior Preferred is non-voting, except for class voting rights on issuances of shares ranking senior to Senior Preferred, amendments to the rights of the security, or any merger or similar transaction that would adversely affect the rights of the holder of the security. However, if dividends on Senior Preferred have not been paid in full for six dividend periods, whether or not consecutive, the Senior Preferred will have a right to elect two directors (the total number of directors on the board of the QFI will be increased by two). This right terminates when full dividends have been paid for (i) four consecutive dividend periods in the case of non-cumulative Senior Preferred issued by Private QFIs and in the case of all Public QFIs or (ii) all prior dividend periods in the case of cumulative Senior Preferred issued by Private QFIs.

Transfer. The Senior Preferred is not subject to any contractual restrictions on transfer, provided that in the case of a Private QFI, Treasury and its transferees may not effect any transfer that would require the QFI to become subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Each Public QFI, and each Private QFI that becomes subject to Exchange Act reporting requirements, is obligated to put a shelf registration statement in place and grant piggyback registration rights to Treasury for the Senior Preferred.

Related party transactions. Private QFIs are prohibited from entering into transactions with related persons for as long as Treasury holds the Senior Preferred issued by such QFI, unless

(i) the terms of such transaction are no less favorable to the QFI and its subsidiaries than could be obtained from an unaffiliated third party and (ii) the transaction has been approved by the audit committee or comparable body of independent directors of the QFI.

Warrants

Amount. In the case of Public QFIs, Treasury is to receive warrants to purchase common stock having an aggregate market price equal to 15% of the Senior Preferred face amount as of the date of investment. The amount of shares underlying warrants then held by Treasury is to be reduced by half if, on or prior to December 31, 2009, the QFI has sold Tier 1 qualifying perpetual preferred stock or common stock for cash in an amount equal to 100% of the issue price of the Senior Preferred.

In the case of Private QFIs, Treasury is to receive warrants to purchase shares of preferred stock having an aggregate liquidation preference equal to 5% of the Senior Preferred as of the date of investment. The underlying preferred have the same rights, preferences, voting rights and other terms as the Senior Preferred, except that (i) dividends are to be paid at a rate of 9% per annum and (ii) the shares may not be redeemed until all the Senior Preferred has been redeemed.

A Private QFI is not required to issue warrants if (i) Treasury's investment is \$50 million or less and (ii) it is a Community Development Financial Institution ("CDFI")—*i.e.*, an institution that works in areas that are underserved by traditional financial institutions, including mortgage financing for low-income and first-time homebuyers and not-for-profit developers, and flexible underwriting and risk capital for needed community facilities, among others. The deadline for filing applications for CDFI certification has expired.

Term. The term of the warrants is 10 years.

Voting rights. Treasury will not exercise its voting power with respect to common stock issued upon exercise of the warrants. This does not apply to any third-party transferee.

Exercise price. Warrants are immediately exercisable, in whole or in part. In the case of warrants issued by Public QFIs, the initial exercise price for determining the number of shares of common stock underlying the warrants is the market price of the common stock on the last trading date prior to the date that Treasury approves the QFI's application to participate in the CPP (calculated on a 20-trading day trailing average), subject to customary anti-dilution adjustments. The exercise price is to be reduced by 15% of the original exercise price on each six-month anniversary of the issue date of the warrants if shareholder approval (described below) has not been received, subject to a maximum reduction of 45% of the original exercise price. In the case of warrants issued by Private QFIs, the initial exercise price is \$0.01 per share or such greater amount as the charter of the QFI may require as the par value per share of underlying preferred.

Permanent equity treatment. The FASB and the SEC have issued a joint statement in respect of the accounting for warrants granted under the CPP. The warrants may be treated as permanent equity, instead of as a liability, under U.S. GAAP, provided that the QFI has sufficient authorized but unissued shares of the class of stock that may be required upon settlement and any other necessary shareholder approvals have been obtained. The deadline for meeting the two conditions is the end of the fiscal quarter in which the warrants are issued.

Transferability. The warrants are fully transferable; provided, however, that Treasury may transfer or exercise no more than half of the warrants prior to the earlier of (i) the date on which the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from sales of Tier 1 qualifying perpetual preferred stock or common stock for

cash and (ii) December 31, 2009. In the case of a Private QFI, Treasury and its transferees may not effect any transfer that would require such Private QFI to become subject to the periodic reporting requirements of the Exchange Act. Each Public QFI, and each Private QFI that becomes subject to Exchange Act reporting requirements, is obligated to put a shelf registration statement in place and grant piggyback registration rights to Treasury for the warrants (and the shares underlying the warrants).

Reduction. If a Public QFI receives aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from sales of Tier 1 qualifying perpetual preferred stock or common stock for cash on or prior to December 31, 2009, the number of shares of common stock underlying its warrants then held by Treasury will be reduced by a number of shares equal to the product of (i) the number of shares originally underlying the warrants (taking into account all adjustments) and (ii) 0.5.

Shareholder approval. In the event a Public QFI does not have sufficient authorized but unissued shares reserved for issuance upon exercise of the warrants or needs shareholder approval under stock exchange rules for issuances of underlying shares upon exercise, the QFI is obligated to obtain shareholder approval as soon as practicable.

Alternative security. If the Public QFI's common stock is not listed or traded or if the QFI fails to obtain shareholder approval within 18 months after the issuance of the warrants, the warrants will be exchangeable, at the option of Treasury, for senior term debt or another instrument or security of the QFI with equivalent economic value.

Tax Treatment of Senior Preferred and Warrants

The Treasury has clarified that any amounts invested in a financial institution pursuant to TARP will not be treated as the provision of Federal financial assistance under Section 597 of the Internal Revenue Code, meaning that such amounts will not be treated as taxable income.

The Treasury has further clarified that securities issued under the CPP to the Treasury will not trigger the change in ownership rules under Section 382 of the Internal Revenue Code. Section 382 limits a corporation's deduction for net operating losses and certain built-in losses that are realized after an ownership change.

Expanded Eligibility under the Capital Purchase Program

Eligibility for coverage under the CPP is narrower than eligibility under TARP and, as regional banks started applying to participate in the CPP, others began lobbying to be included as well. Automobile makers pressed to have their finance subsidiaries included in the program, as have some insurance companies and home builders. Treasury, at least for the moment, has responded that the CPP is available only to financial institutions that are supervised by a federal banking regulator, which could include insurance groups that own a savings and loan holding company (supervised by the Office of Thrift Supervision (the "OTS")) or a financial holding company (supervised by the Federal Reserve).

Five insurance companies — Hartford Financial Services Group Inc., Genworth Financial Inc., Lincoln National Corp., the Phoenix Cos. Inc. and Aegon NV, a Dutch company that owns U.S. insurer Transamerica — filed applications with the OTS to acquire existing savings and loan associations, thereby transforming themselves into savings and loan holding companies, which are eligible to participate in the CPP. While Hartford, Lincoln and Phoenix have received approvals, Aegon has withdrawn its application citing improved conditions and Genworth's application is still under consideration. The transformation will subject these companies to federal supervision

(insurance companies are generally regulated at the state level) and will trigger certain restrictions on permitted activities, including providing at least 65% of their lending in the form of consumer loans such as mortgages. More insurance companies are said to have filed such applications.

Meanwhile, CIT Group Inc. and GMAC Financial Services, Inc. have joined American Express, Goldman Sachs and Morgan Stanley in announcing their transformation into bank holding companies, which makes them eligible to apply for the CPP. In addition, at least one insurance company, Protective Life Corporation, has been granted bank holding company status. It remains to be seen if more financial institutions will apply for such transformation.

Treasury also approved an investment under the CPP to facilitate the acquisition by PNC Financial Services Group of National City, suggesting that merger with a healthier institution may be an alternative available to institutions deemed insufficiently sound to participate in the CPP.

C. ASSET GUARANTEE PROGRAM

Treasury announced the establishment of the Asset Guarantee Program in its December 31 report to Congress. This program provides guarantees for assets held by systemically significant financial institutions that face a high risk of losing market confidence due in large part to a portfolio of distressed or illiquid assets. The program is to be applied with “extreme discretion” and it is anticipated that the program will not be made widely available. Treasury will determine the eligibility of applicants and allocation of resources on a case-by-case basis, in conjunction with other government programs or as a stand-alone program.

To date, no guarantees have been provided under this program. Treasury is “exploring” the use of the program to address the guarantee provisions of the agreement with Citigroup (the \$5 billion loss allocated to TARP as described in Section VI.B below).

Under the Asset Guarantee Program, Treasury would assume a loss position with specified attachment and detachment points on certain assets held by the qualifying financial institution, and the insured assets would be selected by Treasury and its agents in consultation with the financial institution receiving the guarantee. Only assets originating before March 14, 2008 would be eligible for the guarantee. Treasury would collect a premium, whether in cash or otherwise, as determined by Treasury. Actuarial analysis would be used to ensure that the expected value of the premium is no less than the expected value of the losses to TARP from the guarantee. The financial institution would also be obligated to adhere to a set of portfolio management guidelines specified by Treasury with respect to the guaranteed portfolio.

Eligibility for the program will be determined pursuant to the following factors:

- the extent to which destabilization of the institution could threaten the viability of creditors and counterparties exposed to the institution, both directly and indirectly;
- the extent to which the institution is at risk of a loss of confidence and the degree to which that stress is caused by a distressed or illiquid portfolio of assets;
- the number and size of financial institutions that are similarly situated, or that would likely be affected by destabilization of the institution being considered for the program;
- whether a loss of confidence in the firm’s financial position would cause major disruptions to the markets; and
- the institution’s ability to access alternative sources of capital and liquidity.

According to the Report to Congress on the EESA, under TARP accounting rules, Treasury achieves a greater effect per TARP dollar by taking an early loss position over a narrow interval of losses rather than a late loss position over a larger range of losses. Consequently, under the program, Treasury will generally take a relatively early loss position over a narrow range of losses to provide the greatest protection with each TARP dollar utilized. Treasury is reviewing its options for development of other programs to insure troubled assets.

III. FINANCIAL STABILITY PLAN

On February 10, Treasury Secretary Geithner announced the outlines of a revamped bailout strategy, consisting of both new measures and revisions to existing programs. Several weeks of speculation preceded the announcement, in particular regarding the creation of a “bad bank” or “aggregator bank” to purchase distressed assets from financial institutions (a variation of this idea was ultimately adopted in the form of the Public-Private Investment Fund described below). Initial public reaction to the plan has been lukewarm, largely due to the lack of details provided by Treasury. The Financial Stability Plan as announced to date includes the following components.

A. FINANCIAL STABILITY TRUST

The Financial Stability Trust program combines (i) new disclosure requirements for all financial institutions, (ii) a requirement that all large financial institutions and smaller institutions seeking government assistance submit to certain forward-looking financial assessments or “stress tests” and (iii) a new program for capital infusions into financial institutions, the Capital Assistance Program (“CAP”). Capital investments pursuant to CAP will be placed in and managed by a newly established Financial Stability Trust.

New accounting and disclosure requirements. Treasury will work with bank supervisors, the SEC and accounting standards setters to develop new disclosure requirements and accounting standings for banks. The requirements will aim to improve banks’ risk disclosures, while avoiding an overly conservative posture that could constrain lending activities. Whether this means that pure “mark-to-market” accounting will not be required is unclear.

Forward-looking assessments or “stress tests.” Banking institutions with assets in excess of \$100 billion, as well as any other institutions seeking CAP funds, will be required submit to forward-looking assessments of their financial stability. This “stress test” will be administered in coordination by the Federal Reserve, FDIC, the Office of Comptroller of the Currency and the Office of Thrift Supervision. The stress test will aim to determine whether the institution in question has the capital necessary to continue lending in what Secretary Geithner referred to as a “worse-than-expected” economic environment. On February 23, Treasury suggested that the stress tests would focus on tangible common equity as a measure of bank capitalization. Unlike Tier I capital, tangible common equity does not take into account preferred stock (such as the preferred stock issued under the Capital Purchase Program) or other types of equity.

Capital Assistance Program. Treasury will make available an unspecified amount of the remaining \$350 billion of TARP funds to purchase convertible preferred securities in financial institutions that “pass” the stress test described above. These securities will be convertible into common equity at the issuer’s option if needed to preserve lending in a worse-than-expected economic environment. The securities will pay an as-yet undetermined dividend and be convertible into common equity at a discount to the institution’s stock price as of February 9, 2009. (Treasury has not specified whether such conversion may ever occur at the government’s option.) As described below, recipients of CAP funds will have to provide certain disclosures, comply with new policies for mortgage foreclosure mitigation and submit to substantial restrictions on dividend payments, share repurchases and cash acquisitions.

B. PUBLIC-PRIVATE INVESTMENT FUND

Treasury will create a new entity, funded by an as-yet undefined combination of public and private capital and public financing, to purchase distressed assets from financial institutions. With leverage, the fund will initially provide \$500 billion in financing capacity, and will have the potential to provide up to \$1 trillion. The mechanism by which the distressed assets will be acquired and the specific economic incentives to be offered to private investors and the asset sellers has yet to be articulated. However, Treasury stated that the program will allow private sector buyers to determine the price of the distressed assets. Treasury has not indicated whether the fund will have the authority to manage the distressed assets once acquired, either through hedging or active trading.

Other open questions include: whether there will be a single “aggregator” fund or multiple competitive funds; the qualifications for private investor participation and whether sovereign wealth funds or other quasi-governmental entities will be allowed to participate; and whether the program will be available to purchase distressed assets held by non-banks involved in financial crisis, including insurance companies or, in order to reduce complexity in the financial system, existing securitization vehicles. It also remains unclear how the fund purchasing will be timed relative to other parts of the Financial Stability Plan, especially the “stress testing” component of the Capital Purchase Program. In Senate testimony about the Financial Stability Plan, the Treasury Secretary was reported as having an expectation that these two programs would be run “concurrently” but more details are needed to understand how these programs may effect each other. Likewise, it is not yet clear how the timing of the Homeowner Affordability and Stability Plan will operate in relation to the fund purchasing and whether potential loan modifications will be factored into private sector pricing of the troubled assets.

C. CONSUMER AND BUSINESS LENDING INITIATIVE

The Financial Stability Plan provides for a substantial expansion of the previously announced but not yet implemented Term Asset-Backed Securities Loan Facility (“TALF”). The TALF program was designed to jump-start consumer and small business lending by providing non-recourse government loans to investors who purchase securities backed by consumer and small business loans. Previously, TALF was to be funded with \$20 billion of TARP funds, which would be leveraged to up to \$200 billion with lending from the Federal Reserve; under the new plan, Treasury will contribute \$100 billion of TARP funds, which will be leveraged to up to \$1 trillion with Federal Reserve lending. TALF will also be expanded to provide financing for purchases of commercial mortgage-backed securities (in addition to those backed by consumer and small business loans) and may be further expanded to include residential mortgage-backed securities and corporate-debt-backed collateralized debt obligations. The TALF program is described in greater detail in Section VIII.C below.

D. INCREASED TRANSPARENCY, ACCOUNTABILITY AND CONDITIONS

In the months leading up to the Financial Stability Plan, Treasury was criticized by the Congressional Oversight Panel and others for the lack of transparency in the deployment of the initial \$350 billion of TARP funds, the absence of constraints upon the TARP recipients’ use of funds, the seemingly limited impact on the lending practices of the TARP recipients and the economy’s still-increasing mortgage foreclosures rates. The Financial Stability Plan sought to respond to these criticisms by conditioning the receipt of future TARP funds (either through the CAP or pursuant to “exception assistance”) on compliance with the following programs.

Up-front and ongoing reports on lending. Each recipient of new assistance must submit (i) an up-front plan describing how it intends to use the new capital to preserve and strengthen its lending capacity and (ii) monthly reports detailing its lending activities (including the number of new loans originated and asset-backed or mortgage-backed securities purchased) and comparing such results to projections of lending that would have occurred in the absence of government support. Public companies will file such reports on Form 8-K. Treasury will aggregate the data and publish metrics showing the impact of the Financial Stability Plan on credit markets.

Mortgage foreclosure mitigation. Recipients of new capital must comply with mortgage foreclosure mitigation programs of the Homeowner Affordability and Stability Plan discussed below.

Restrictions on dividends, stock repurchases and acquisitions. Without Treasury's explicit approval, recipients of CAP funds or exceptional assistance will be prohibited from repurchasing privately-held shares of their own stock or pursuing cash acquisitions, in each case until the government's investment is repaid. In addition, recipients of exceptional assistance and, in the absence of Treasury approval, recipients of CAP funds will be forbidden to pay any dividends in excess of a nominal sum. These requirements are more restrictive than those imposed under the Capital Purchase Program.

Executive compensation restrictions. Recipients of new capital will be subject to the restrictions on executive compensation discussed in Section IV.

Additional confidence-building measures. In addition, Treasury announced new measures to ensure that lobbyists do not influence applications for Financial Stability Plan funds and committed to making public (on the website FinancialStability.gov) a detailed report of the terms of new capital investments.

E. HOUSING SUPPORT AND FORECLOSURE PREVENTION

Facing criticism that the EESA had failed to stem the rise in mortgage foreclosure rates, Treasury included in the Financial Stability Plan the outlines of new measures to aid American homeowners. Treasury announced that it would (i) contribute \$50 billion to an undefined program to limit foreclosures on owner-occupied middle-class homes—potentially through a mortgage modification scheme, (ii) promulgate loan modification guidelines and build flexibility into the Hope for Homeowners Act to enable more loan modifications, and (iii) in order to drive down overall mortgage rates, continue its program to purchase up to \$600 billion of GSE debt and GSE-guaranteed mortgage-backed securities, as described in Section VIII.D.

On February 18, President Obama further articulated the Financial Stability Plan's housing initiative in announcing the Homeowner Affordability and Stability Plan. The plan, which revises up from \$50 billion to \$75 billion the amount of new funds that will be used for foreclosure prevention, is described in Section V.

F. SMALL BUSINESS AND COMMUNITY LENDING INITIATIVE

An additional objective of the Financial Stabilization Plan will be to restore the availability of credit to small businesses. Working together with the Small Business Administration (the "SBA"), Treasury plans to stimulate lending through (i) expanding TALF (pursuant to the Consumer and Business Lending Initiative discussed above) to make more financing available for purchases of securities backed by SBA loans, (ii) increasing the guarantee for SBA loans to up to 90% (pursuant to the recently enacted stimulus bill—the American

Recovery and Reinvestment Act) and (iii) reducing fees for SBA 7(a) and 504 lending and providing funds for improved oversight and loan processing.

IV. LIMITATIONS ON EXECUTIVE COMPENSATION

EESA, as enacted in October 2008, provided that institutions from which Treasury directly acquires debt or equity instruments will be subject to “appropriate” standards for executive compensation and corporate governance as determined by Treasury, including certain standards mandated in Section 111(b) of the EESA. Following EESA’s enactment, Treasury issued guidance on the scope of the statutory executive compensation standards as applied to institutions participating in the Capital Purchase Program and the Systematically Significant Failing Institutions Program (“SSFIP”). In January 2009, Treasury amended this guidance to clarify certain provisions, add compliance certification rules and provide interpretive guidance to institutions participating in the TARP.

On February 4, Treasury announced new guidelines on executive pay for recipients of TARP funds. This guidance did not purport to replace existing rules. On February 17, President Obama signed into law the new economic stimulus bill, which amended Section 111 of the EESA and significantly expanded the scope of the statutory executive compensation standards.

Set forth below is a summary of the executive compensation rules that will apply to TARP recipients under (i) the EESA, as amended by the stimulus bill; (ii) the February 4 Treasury guidelines; and (iii) the existing CPP and SSFIP Treasury guidance, in each case, assuming all existing rules are applicable and intended to operate together. It is important to note that the executive compensation provisions in the economic stimulus bill raise numerous interpretive issues, which will require further guidance from Treasury and the SEC. Moreover, the bill was signed less than two weeks after Treasury’s February 4 guidance, and it has been widely reported that the Obama administration had expressed to legislators that it did not support certain executive compensation restrictions in the bill. As such, it is not entirely clear to what extent Treasury’s February 4 guidance, or any of its prior guidance, will operate along with the stimulus bill and whether the stimulus bill’s executive compensation provisions will be amended.

The summary below is organized by setting forth the current executive compensation rules applicable to all participants in the TARP, those that apply to institutions receiving future assistance under generally applicable capital access programs (including the Capital Assistance Program), those that apply to institutions receiving future exceptional government financial assistance, and those that apply to institutions currently participating in the SSFIP.

Rules Applicable to All TARP Participants

The executive compensation rules in the stimulus bill will apply to all entities receiving financial assistance provided under the TARP, including those that have already received financial assistance under the TARP and those entities that in the future will receive such assistance. This retroactive applicability differs from Treasury’s February 4 guidance, which, in almost all respects, would have applied only to institutions that in the future became recipients of TARP funds.

These rules are as follows:

- \$500,000 employer tax deduction cap under Section 162(m)(5) of the Internal Revenue Code (added by Section 302 of the EESA);
- limits on compensation that exclude incentives for senior executive officers to take unnecessary and excessive risks that threaten the value of the entity;

- provision for the recovery of any bonus, retention award, or incentive compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees of the entity based on statements of earnings, revenues, gains, or other criteria later found to be materially inaccurate;
- prohibition on TARP recipient making any “golden parachute” payment to a senior executive officer or any of the next five most highly-compensated employees (under this rule, “golden parachute” covers any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued; under Treasury guidance applicable to TARP recipients participating in the CPP, severance up to three times the average taxable wage compensation over the five years preceding the employment termination could be paid);
- prohibition on TARP recipients paying or accruing any bonus, retention award, or incentive compensation other than (a) any bonus payment required to be paid under a written employment contract executed on or before February 11, 2009 or (b) long-term restricted stock that (i) does not fully vest during the period of TARP assistance, (ii) has a value not greater than one-third of the total amount of annual compensation of the employee receiving the stock, and (iii) is subject to other terms Treasury determines are in the public interest. The number and identity of employees to whom this prohibition applies will depend on the degree of TARP assistance received by the financial institution, as follows:
 - less than \$25 million ⇒ the most highly compensated employee
 - at least \$25 million but less than \$250 million ⇒ five most highly-compensated employees
 - at least \$250 million but less than \$500 million ⇒ senior executive officers and at least the 10 next most highly-compensated employees
 - \$500 million or more ⇒ senior executive officers and at least the 20 next most highly-compensated employees;
- prohibition on any compensation plan that would encourage manipulation of the reported earnings of the TARP recipient to enhance the compensation of any of its employees;
- TARP recipients must establish a Board Compensation Committee, comprised entirely of independent directors, for the purpose of reviewing employee compensation plans;
- the CEO and CFO of each TARP recipient must provide written certifications of compliance by the TARP recipient with the requirements of Section 111 of the EESA (for entities with publicly traded securities, the certification is made to the SEC; for entities that are not publicly traded, the certification is made to Treasury);
- the TARP recipient’s Board Compensation Committee must meet semi-annually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the TARP recipient from such plans (if the TARP recipient’s common or preferred stock is not registered under the Exchange Act and the TARP recipient has received \$25 million or less in TARP assistance, then the above duties may be carried out by the entity’s full board of directors);
- the board of directors of each TARP recipient must have in place a company-wide policy regarding excessive or luxury expenditures, as identified by Treasury (these expenditures “may” include excessive expenditures on entertainment or events, office and facility

renovations, aviation or other transportation services, or other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives or other similar measures conducted in the normal course of business operations);

- any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient that occurs during the period of TARP assistance must permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the SEC's compensation disclosure rules (it is not clear whether proxies filed in 2009 must include these separate vote proposals);
- Treasury may impose other "appropriate" executive compensation and corporate governance standards;
- CEOs of all companies that have received or do receive any form of government assistance must certify that the companies have strictly complied with statutory, Treasury and contractual executive compensation restrictions and re-certify such compliance annually; and
- Compensation Committees must provide an explanation of how their senior executive compensation arrangements do not encourage excessive and unnecessary risk-taking (the guidelines do not state where, when or in what form such an "explanation" must be made)

Rules Applicable to Institutions Participating in Future Generally Applicable Capital Access Programs

All future participants in generally applicable capital access programs will be subject to the following rules, as promulgated by Treasury on February 4:

- firms must comply with \$500,000 cap and restricted stock rule applicable to companies receiving exceptional government assistance (described below) but this cap may be waived by disclosure of compensation and, if requested, a non-binding "say on pay" shareholder resolution;
- firms must review and disclose the reasons compensation arrangements of both the senior executives and other employees do not encourage excessive and unnecessary risk taking;
- companies must have in place provisions to claw back bonuses and incentive compensation from the 20 senior executives following the top five senior executive officers if such executives are found to have knowingly engaged in providing inaccurate information relating to financial statements or performance metrics used to calculate their own incentive pay (this is the same as for companies receiving exceptional assistance); and
- the company-wide expenditures policy should be posted on the company website, and CEOs must certify expenditures that could be viewed as excessive or luxury items (this is the same as for companies receiving exceptional assistance).

Rules Applicable to Banks Needing Exceptional Assistance

The following additional rules apply to institutions receiving future exceptional financial assistance from the government (*i.e.*, assistance that is more than allowed under a widely available standard program):

- the total amount of compensation for senior executives subject to Internal Revenue Code Section 162(m)(5) is limited to \$500,000; restricted stock or other similar long-term incentive arrangements are not subject to this cap if structured so that the executive will only be able to cash in on such stock either after the government has been repaid (including for contractual dividend payments) or after a specified period according to conditions that consider, among other factors, the degree a company has satisfied repayment obligations, protected taxpayer interest or met lending and stability standards;
- the rationale for how compensation is tied to sound risk management must be submitted to a non-binding shareholder resolution;
- companies must have in place provisions to claw back bonuses and incentive compensation from the 20 senior executives following the top five senior executive officers if such executives are found to have knowingly engaged in providing inaccurate information relating to financial statements or performance metrics used to calculate their own incentive pay; and
- the ban on severance pay covers the top 10 senior executives, and severance for the next 25 executives may not exceed one year's compensation.

Rules Applicable to Institutions Currently Participating in the SSFIP

The executive compensation rules summarized above that are applicable to all TARP recipients will apply to all current participants in the SSFIP. It appears such participants will also be subject to the rules summarized above that are applicable to TARP recipients receiving exceptional assistance from the government. In addition to the above rules, such institutions will be banned from paying any severance to any senior executive officer and severance up to the 3x level referred to above is not protected.

V. HOMEOWNER AFFORDABILITY AND STABILITY PLAN

On February 18, President Obama announced the outlines of new plan to make mortgages more affordable and to slow the economy's increasing rates of mortgage delinquency and foreclosure. The Homeowner Affordability and Stability Plan will offer direct assistance to an estimated 7 to 9 million homeowners and, by providing an additional \$200 billion in funding to Fannie Mae and Freddie Mac, indirect assistance to the broader mortgage market. The plan will be instituted on March 4 and comprises the following three components.

A. REFINANCING OPPORTUNITIES FOR CURRENT BORROWERS

The plan offers aid to performing borrowers who, due to the decline in their home values, are unable to refinance their mortgages and take advantage of historically low prevailing mortgage rates. Under current rules, loans eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac—so-called “conforming loans”—are available only when the ratio of the amount of the loan to the value of the property securing it is equal to or less than 80 percent. Borrowers who have taken out conforming loans but whose properties have declined in value to such an extent that their loan-to-value ratios exceed 80 percent are thus unable to refinance their conforming mortgages (at least without injecting additional equity to pay off a portion of their existing loans).

The plan will increase the availability of refinancing options by allowing non-delinquent borrowers of certain conforming loans whose loan-to-value ratios are between 80 and 105 percent to refinance into 15- or 30-year fixed rate loans. Although complete eligibility details will be made available on March 4, the government has indicated that only loans owned or guaranteed by Fannie Mae or Freddie Mac will be available to be refinanced. The refinanced loans will have no prepayment penalties or balloon notes.

Interest rates on the refinanced loans will be determined by the prevailing market rates at the time of the refinancing and any associated points and fees quoted by the lender. Such rates will likely be less favorable than rates on traditional conforming loans, for although the market for Fannie Mae or Freddie Mac loans is highly developed, it is not developed for loans with loan-to-value ratios in excess of 80 percent. Such loans will benefit from a Fannie Mae or Freddie Mac guarantee, but their performance characteristics will likely differ from traditional Fannie Mae or Freddie Mac loans.

The increased availability of foreclosure options will have at least two foreseeable effects. First, it will remove the “cushion” provided to Fannie Mae and Freddie Mac by higher interest payments. The drop in home prices has increased the frequency of foreclosures and the losses borne by Fannie Mae and Freddie Mac in the event thereof. Such losses have been partially mitigated by above-market interest payments on performing loans that Fannie Mae and Freddie Mac continue to hold. The new refinancing program will cause Fannie Mae and Freddie Mac to suffer net losses if the decline in interest payments due to refinancing exceeds the cost savings that result from the refinanced loans defaulting less frequently. Second, the increased refinancing options will cause higher-than-expected prepayments on existing loans with loan-to-value ratios greater than 80 percent, which will have various consequences for investors in securities backed by such loans.

B. \$75 BILLION HOMEOWNER STABILITY INITIATIVE

The second major feature of the plan will be assistance to borrowers particularly at risk of defaulting on their mortgages. The centerpiece of this assistance will be the Homeowner Stability Initiative, a \$75 billion program designed to fund and facilitate loan modifications for up to 3 to 4

million borrowers. In addition, as announced in the Financial Stability Plan, the government plans to (i) develop new loan modification guidelines that will be required for all financial institutions that accept Financial Stability Plan funds and voluntary for other financial institutions and (ii) through changes to the bankruptcy code and Federal Housing Administration and Veterans Administration programs, facilitate additional loan modifications.

Homeowner Stability Initiative

Through a combination federal funding and incentive payments, the Homeowner Stability Initiative aims to cause lenders to voluntarily and temporarily lower the mortgage payments of at-risk borrowers. Although complete eligibility criteria will not be published until March 4, the government indicated that modifications will be available for first mortgage loans (i) on owner-occupied properties, (ii) that require a monthly mortgage payment in excess of 31 percent of the borrower's monthly income and (iii) that fall within the limits of Fannie Mae or Freddie Mac conforming loans (though they need not be owned or guaranteed by Fannie Mae or Freddie Mac). Borrowers with high total debt—in particular, total “back end” debt (including housing debt, car loans and credit cards) of more than 55 percent of their income—may only modify their loans if they enter a HUD-certified counseling program. Borrowers whose combined mortgage debt excess the market value of their home may also qualify, although, as will be seen below, it is unclear what benefit the initiative will offer them if their monthly mortgage payment is not also in excess of 31 percent of their monthly income.

Loan modification will work as follows. The lender, either by reducing a loan's interest rate or (less likely) its principal balance, will reduce the loan's monthly payment to 38 percent of the borrower's monthly income. Next, the government will share, dollar-for-dollar, the cost of a further reduction of the monthly payment until it represents 31 percent of the borrower's monthly income. The reduced rate must be kept in place for five years, after which point it can be gradually stepped-up to the rate for conforming loans at the time of the modification. The government did not make clear whether the program will be available if the loan is currently owned by a person or entity other than the lender although, given the great number of mortgage loans that are sold soon after origination, it most likely will be.

A series of incentive payments will encourage loan modifications and, subsequently, timely payments by borrowers. First, servicers, likely due to the additional complexity of servicing modified loans and to further encourage timely payments, will receive \$1,000 for each eligible modification and an additional \$1,000 for each year (up to three years) that the borrower stays current on its loan. Second, in order to encourage modification of non-delinquent loans, if a loan is modified prior to its borrower missing a payment the mortgage holder will receive \$1,500 and the servicer \$500. Third, if the borrower remains current on the modified loan, the government will pay up to \$1,000 each year (for up to five years) to reduce the principal balance of the borrower's loan. Finally, because lenders often foreclose on properties instead of modifying loans out of fear that a property's market value may decline, FDIC and Treasury will create a \$10 billion insurance fund to protect lenders from declines in a home price index.

The government outlined additional features to the initiative. Incentive payments will only be made for modifications that result in a smaller loss for the lender (taking in account the incentive payments) than would result from foreclosure. (Since no lender would voluntarily opt for a costlier course of action, the value of this provision is unclear.) Lenders will receive additional incentives to use alternatives to foreclosure, such as short sales or taking deeds in lieu of foreclosure. Finally, compliance with all aspects of the Homeowner Stability Initiative will be monitored by Fannie Mae and Freddie Mac, subject to Treasury's oversight and the Federal Housing Finance Agency's conservatorship of those entities.

Guidelines for Loan Modifications

The administration believes that the lack of clear and consistent loan modification guidelines has limited loan modifications. Treasury, in conjunction with the FDIC, will develop such guidelines, publish them on the internet, require that they be adopted by banks that receive funds under the Financial Stability Plan (as previously announced) and apply them when permissible and appropriate to all loans owned or guaranteed by the federal government and all loans owned or serviced by insured banks supervised by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the FDIC and the National Credit Union Administration.

Judicial Modifications and Other Changes

The administration will seek to modify personal bankruptcy provisions to allow judges to treat as unsecured the amount of a debtor's mortgage loan in excess of the value of the mortgaged property. This will enable the judge to modify the terms of such loan to make payments more affordable for the borrower. To qualify for such a modification, a borrower must first ask the loan's servicer or lender for a modification and certify that he or she has provided the servicer or lender with essential information for such purpose. Only mortgage loans conforming with Fannie Mae or Freddie Mac loan limits are eligible. The legislation will ensure that holders of loans guaranteed by the Federal Housing Administration or Veterans Administration are not harmed by the modification.

C. INCREASED FUNDING FOR FANNIE MAE AND FREDDIE MAC

In the third leg of the Homeowner Affordability and Stability Plan, Treasury will inject an additional \$100 billion of capital into each of Fannie Mae and Freddie Mac. Pursuant to the Housing and Economic Recovery Act of 2008, Treasury executed preferred stock purchase agreements to contribute \$100 billion to each of the agencies. Treasury will amend those agreements and increase the amounts of its commitments to \$200 billion. The addition capital will be drawn from funds authorized by the Housing and Economic Recovery Act rather than TARP.

VI. TARGETED BAILOUT PROGRAMS

Treasury has used a substantial portion of the TARP funds, in combination with other Federal Reserve financing tools, for targeted bailouts of particularly important institutions. The government has provided this assistance to certain institutions that were ineligible for funding under the Capital Purchase Program (in the cases of AIG and the auto industry) or that needed funding in excess of their CPP allocation (in the cases Citigroup and Bank of America). To date, Treasury has deployed a total of \$124.9 billion in TARP funds for targeted bailouts—consisting of \$40 billion to AIG, \$20 billion to Citigroup (on top of \$20 billion under the CPP), \$20 billion to Bank of America (on top of \$15 billion under the CPP) and \$24.9 billion to the auto industry.

Treasury has established three general programs under which these and future targeted bailouts could be carried out: the Systemically Significant Failing Institutions Program (the “SSFIP”), the Targeted Investment Program and the Automotive Industry Financing Program.

A. SYSTEMICALLY SIGNIFICANT FAILING INSTITUTIONS PROGRAM

On November 25, 2008, Treasury announced guidelines for participation in the SSFIP, which is designed to limit the impact on the economy of the failure of systemically significant institutions. To be eligible for the program, an institution must be systemically significant and face a substantial risk of failure. There are no deadlines under the SSFIP.

In determining the systemic significance of a particular institution, Treasury may consider, among other things:

- the extent to which the failure of an institution could threaten the viability of its creditors and counterparties because of direct exposures to the institution;
- the number and size of financial institutions that are similarly situated, or that would otherwise be likely to experience indirect contagion effects from the failure of the institution;
- whether a disorderly failure would cause major disruptions to the markets; and
- the institution’s ability to access alternative sources of capital and liquidity.

Treasury will determine the form, terms and conditions of any investment on a case-by-case basis in accordance with the considerations mandated in the EESA. Treasury may invest in any financial instrument, including debt, equity or warrants that the Treasury Secretary determines to be a troubled asset, after consultation with the Federal Reserve and notice to Congress. Treasury will require any participant to provide Treasury with warrants or alternative consideration, as necessary, to minimize the long-term costs and maximize the benefits to taxpayers in accordance with EESA. Treasury will also require any participant to comply with the limitations on executive compensation applicable to failing institutions, as described above. Further, Treasury will consider other measures, including limitations on the institution’s expenditures or bonuses, and corporate governance requirements, to protect the taxpayers’ interests or reduce ongoing risks to the financial system.

The first and only participant under the SSFIP thus far is AIG.

AIG

The federal government's assistance to AIG was announced prior to the establishment of the SSFIP. On September 16, AIG received access to an \$85 billion secured credit facility from the New York Fed. The facility had a 24-month term and an interest rate on outstanding balances of three-month LIBOR plus 850 basis points. Under the terms of the facility, AIG was also required to pay a commitment fee of 850 basis points on undrawn funds. The loan was collateralized by all assets of AIG and its primary non-regulated subsidiaries (including the stock of substantially all of its regulated subsidiaries). The loan was to be repaid from the proceeds of the sale of AIG's assets. The government also received a 79.9% equity interest in AIG and the right to veto the payment of dividends to common and preferred shareholders. On October 8, the New York Fed was authorized to borrow up to \$37.8 billion in investment grade fixed-income securities from certain regulated U.S. insurance subsidiaries of AIG in return for cash collateral (these securities had previously been lent by AIG's insurance company subsidiaries to third parties). In addition, on October 31, AIG was permitted to access \$20.9 billion through the Federal Reserve's Commercial Paper Funding Facility.

On November 10, Treasury and the Federal Reserve announced a restructuring and expansion of the original financial assistance package for AIG.

- **Capital injection.** Under the restructured package, Treasury purchased \$40 billion of AIG's newly issued senior preferred shares using TARP funds. The capital injection by Treasury was made on substantially the same terms as are generally provided under the CPP. AIG issued to Treasury senior preferred stock, with a liquidation preference of \$10,000 per share, and a warrant. The proceeds of the issuance of the preferred stock are to be used to repay the senior secured revolving credit facility made available by the New York Fed.

Noteworthy differences from the CPP include a dividend rate of 10% (subject to adjustment by Treasury); redemption of the preferred shares is tied to Treasury's ownership stake in voting securities of AIG falling below 30% and Treasury no longer controlling AIG; and restrictions on dividends and repurchases of junior or parity stock or common stock applicable for five years instead of three years.

The warrant will entitle Treasury to purchase a number of shares of common stock of AIG equal to 2% of the issued and outstanding shares of common stock on the date of investment. The initial exercise price will be \$2.50 per share of common stock (par value of common stock on the date of the investment), subject to customary anti-dilution adjustments.

AIG will be subject to the restrictions on executive compensation applicable to systemically significant failing institutions described in Section II.D.

Treasury will also influence other aspects of AIG operations. For as long as Treasury holds any preferred shares, AIG must comply with restrictions on corporate expenses and implement policies on lobbying, government ethics and political activities. In addition, it is subject to certain reporting obligations. Further, AIG must establish and maintain a risk management committee of its board to oversee and mitigate the major risks in its operations.

- **New York Fed credit facility.** The \$85 billion New York Fed facility was reduced to \$60 billion. The interest rate on the new \$60 billion facility was reduced to three-month

LIBOR plus 300 basis points, and the fee on undrawn funds reduced to 75 basis points. The new facility has a term of five years, instead of two. Other material terms of the facility remain the same.

In addition to the \$60 billion facility, the New York Fed established two new lending facilities for AIG:

- ***Residential mortgage-backed securities facility.*** Under this facility, on December 12, 2008, a newly formed LLC, borrowed approximately \$19.8 billion from the New York Fed and used the proceeds to purchase residential mortgage-backed securities (“RMBS”) from participating domestic AIG insurance company subsidiaries with an estimated fair market value of \$20.8 billion as of October 31, 2008. Proceeds to the insurance company subsidiaries, together with an additional \$1 billion in funding in the form of a cash contribution from AIG, were used to return all cash collateral posted by the New York Fed as counterparty under AIG’s domestic securities lending program, which was subsequently terminated.

The New York Fed lent the funds to the LLC for a term of six years, which may be extended in its sole discretion. The loan is secured by the portfolio of RMBS held by the LLC, which has a par value of approximately \$40 billion. The interest rate on the loan is one-month LIBOR plus 100 basis points.

Repayment of the loan will begin immediately upon the receipt of proceeds from the RMBS portfolio. Payments from the maturity or liquidation of the assets in the LLC will occur on a monthly basis, and will be used first to pay the necessary costs and expenses of the LLC; then to repay the principal due to the New York Fed; then to pay all interest due to the New York Fed; then to pay up to \$1 billion of deferred consideration to AIG’s domestic insurance company subsidiaries; and then to pay interest due in respect of such deferred consideration. Upon payment of all of the foregoing, 1/6th of any remaining cash flows from the RMBS assets will be paid as deferred consideration to participating domestic AIG insurance company subsidiaries, and 5/6th will be paid to the New York Fed as contingent interest on the senior loan.

- ***Collateralized debt obligations facility.*** Under this facility, the New York Fed (and other parties) entered into agreements to unwind approximately \$53.5 billion notional amount of credit derivatives written by AIG Financial Products and to enable a newly formed LLC to purchase the collateralized debt obligations (“CDO”) referenced by such derivatives. As of December 2, 2008, the LLC had purchased approximately \$46.1 billion of CDOs and unwound an equivalent notional amount of CDS. Settlement on the remaining \$7.4 billion is contingent upon the ability of the counterparties to unwind the related CDS. The LLC borrowed \$15.1 billion from the New York Fed for these transactions, and AIG has funded its \$5 billion contribution in full. Any additional CDO purchases will require further borrowing by the LLC, with a maximum limit of \$30 billion.

The New York Fed lent the funds to the LLC for a term of six years, which may be extended in its sole discretion. The interest rate on the loan is one-month LIBOR plus 100 basis points. AIG’s equity contribution will accrue distributions at a rate of one-month LIBOR plus 300 basis points. The repayment of the loan will begin immediately upon the receipt of proceeds from the CDO portfolio. Payments from the maturity or liquidation of the assets held by the LLC will be used first for the LLC expenses; then to repay the

New York Fed; and then to make payments to AIG. Any remaining funds will be split between the New York Fed (two thirds) and AIG (one third).

As part of the transaction, an AIG affiliate and the New York Fed agreed that the AIG affiliate would make a payment to the LLC to the extent that the collateral posted by it with counterparties with respect to terminated CDS was less than the negative mark-to-market value of the CDS as of October 31, 2008 or the LLC will make a payment to the AIG affiliate to the extent that the amount of such posted collateral exceeds such negative mark-to-market value.

B. TARGETED INVESTMENT PROGRAM

On January 2, Treasury announced details of the Targeted Investment Program, which is designed to foster financial market stability. Eligibility for participation in the program is based on the same eligibility factors set forth above in relation to the Asset Guarantee Program.

Treasury will determine the form, terms and conditions of any investment under this program on a case-by-case basis. Treasury may invest in any financial instrument that the Treasury Secretary determines to be a troubled asset, after consultation with the Federal Reserve and notice to Congress. Institutions participating in the program are required to provide Treasury with warrants or alternative consideration to minimize the long-term costs and maximize the benefits to taxpayers. Any participating institution is also required to adhere to rigorous executive compensation standards. Treasury may also impose other limits on the institution's expenditures or other corporate governance requirements to protect the interests of taxpayers.

Citigroup

On November 23, 2008, Treasury, the Federal Reserve and the FDIC agreed to provide Citigroup with a package of guarantees, liquidity access and capital, beyond the \$25 billion already invested under the Capital Purchase Program. Treasury and the FDIC provided a guarantee in respect of an asset pool of approximately \$301 billion, which remains on Citigroup's balance sheet, in exchange for preferred shares issued to Treasury and the FDIC. If necessary, the Federal Reserve will provide additional liquidity backstop for the residual risk in the asset pool through a non-recourse loan. Treasury has also provided a capital injection of \$20 billion from TARP funds in exchange for preferred stock, upon terms substantially similar to those of the CPP.

Citigroup is required to submit for approval of the government an executive compensation and bonus plan that rewards long-term performance and profitability, with appropriate limitations.

Eligible asset guarantee. The guarantee applies to a pool containing up to \$301 billion of assets, including loans and securities backed by residential and commercial real estate, consumer loans and such other assets as may be agreed upon with the government. The covered asset pool does not include any hedges. The guarantee will continue for 10 years for residential assets and for five years for non-residential assets.

Under the guarantee, Citigroup will absorb all losses in the pool of assets up to \$29 billion, plus \$1 billion in exchange for excluding benefits from hedges, plus \$9.5 billion existing loan loss reserve. Losses in excess of Citigroup's first loss position will be shared 90:10 between the government and Citigroup. The government's share of losses will be allocated to Treasury (which, via TARP, will absorb a second loss up to \$5 billion) and the FDIC (which will absorb a third loss up to \$10 billion).

If the covered losses exceed Citigroup's first loss position plus approximately \$16.7 billion (of which \$15 billion will have been absorbed by Treasury and the FDIC), the Federal Reserve will fund the remaining pool of assets with a non-recourse loan at a floating rate using the overnight indexed swap rate plus 300 basis points, subject to Citigroup sharing 10% of such losses. Interest payments are with recourse to Citigroup. The covered asset pool will be the sole collateral to secure the loan.

In return for the guarantee, Citigroup will issue approximately \$7 billion of cumulative perpetual preferred stock (approximately \$4 billion to Treasury and \$3 billion to the FDIC) with a dividend rate of 8% and a warrant to Treasury to purchase approximately 67 million shares of

Citigroup's common stock at a strike price of \$10.61 per share. The terms of the preferred stock and the warrant are substantially similar to those governing the preferred stock and warrants issued by Citigroup in return for the \$20 billion capital injection by Treasury (see below).

Citigroup is prohibited from paying common stock dividends in excess of \$0.01 per share per quarter for three years without the consent of Treasury, the Federal Reserve and the FDIC. One of the factors to be taken into account before such consent is given is Citigroup's ability to complete a common stock offering of appropriate size.

The definitive agreements that have been entered into in respect of the asset pool include guidelines for managing the guaranteed assets, including reporting requirements and approval rights in favor of the government at certain thresholds. If covered losses exceed \$27 billion, Treasury, the FDIC and the Federal Reserve have the right to change the asset manager of the asset pool. Citigroup will retain the income stream from the guaranteed assets, with a risk weighting of 20%.

Capital injection. Treasury also made a \$20 billion capital injection in exchange for Citigroup's issuance of cumulative perpetual preferred stock and a warrant (this is in addition to the \$25 billion invested under the Capital Purchase Program). The cumulative preferred ranks pari passu with all other series of outstanding preferred stock and has a liquidation preference of \$1,000 per share.

Noteworthy differences from the CPP include the dividend rate of 8%, redemption in cash or stock upon mutual agreement and a prohibition on the payment of common stock dividends in excess of \$0.01 per share per quarter for three years without Treasury's consent. One of the factors to be taken into account before such consent is given is Citigroup's ability to complete a common stock offering of appropriate size. The preferred stock is non-callable as long as all outstanding shares of preferred stock issued by Citigroup under the CPP have been redeemed or repurchased. The preferred stock has no impact on previously issued convertible securities.

The warrant entitles Treasury to purchase approximately 67 million shares of common stock of Citigroup at a strike price of \$10.61 (calculated on a 20-day trailing average determined as of November 21). The warrant has a 10-year term and is immediately exercisable, in whole or in part. The warrant is not subject to reduction based on additional offerings. The issuance of the warrant resulted in a reduction of the conversion price of the privately placed convertible securities issued by Citigroup in January 2008.

Good bank, bad bank. Following discussions with the Federal Reserve and the Office of the Controller of the Currency, Citigroup on January 16 announced a plan to reorganize into two operating units focused on banking and other financial services, respectively.

The first unit, Citicorp, will focus on Citigroup's core banking operations, which will consist of global institutional banking and retail banking services. Citicorp is expected to have assets of approximately \$1.1 trillion and will be approximately 65% deposit funded. The second unit, Citi Holdings, will consist of Citigroup's non-core businesses, which will initially include brokerage and asset management, local consumer finance and a special asset pool (to manage the assets covered by the federal guarantee outlined above and certain other non-strategic assets). Citi Holdings will seek to maximize the value of the non-core businesses by tightly managing risks and losses, restructuring and managing them through the current economic cycle, and taking advantage of value-enhancing combination and disposition opportunities as they emerge.

Citigroup plans to make the transition as quickly as possible. A formal split into two publicly traded entities is not currently envisaged.

Bank of America

On January 15, Treasury, the Federal Reserve and the FDIC agreed to provide a package of assistance to Bank of America in order to support its acquisition of Merrill Lynch. The regulators jointly guaranteed a \$118 billion pool of financial instruments on the books of the bank. In addition, Treasury has allocated \$20 billion from TARP funds (in addition to the \$15 billion already provided to Bank of America under the CPP), and the Federal Reserve will, if needed, provide a non-recourse loan in an unspecified amount.

Guarantee. The \$118 billion pool of financial instruments contains securities backed by residential and commercial real estate loans and corporate debt, derivative transactions referencing such securities and associated hedges. The assets in the pool will remain on the books of Bank of America, but will be ring-fenced. Bank of America will retain the income stream from the pool and all instruments in the pool will have 20% risk weighting. The pool contains cash assets with a carrying value of up to \$37 billion and a derivative portfolio with maximum potential future losses of up to \$81 billion.

The guarantee will remain in place for 10 years for residential assets and five years for non-residential assets. Bank of America may terminate the guarantee at any time with the government's consent. Termination requires payment of a fee (to be negotiated) and prepayment in full of any outstanding Federal Reserve loan balances. The guarantee covers only eligible losses, which means any credit losses incurred from January 15 through the duration of the guarantee, marks and credit valuation adjustments, and realized losses from permitted sales.

Under the guarantee, Bank of America will absorb the first \$10 billion of losses. Additional losses will be shared with Treasury, the FDIC and the Federal Reserve covering 90% of the losses and Bank of America bearing 10%. After the first \$10 billion in losses, Treasury and the FDIC will cover losses pro rata in proportions of 75% for Treasury up to a cap of \$7.5 billion and 25% for the FDIC up to a cap of \$2.5 billion. All further losses will be shared 90% by the Federal Reserve (through non-recourse lending) and 10% by Bank of America.

Loan. If the eligible losses reach \$18 billion, the Federal Reserve will provide a non-recourse loan facility to Bank of America subject to 10% loss sharing. The Federal Reserve loan will mature on the termination date of the guarantee. The fee will be 20 basis points per annum for undrawn amounts and a floating rate equal to the overnight indexed swap rate plus 300 basis points per annum for drawn amounts.

Guarantee fee. Bank of America will issue to Treasury and the FDIC \$4 billion of preferred stock (\$3 billion to Treasury and \$1 billion to the FDIC) with an 8% dividend and a warrant with an aggregate exercise value of 10% of the total amount of preferred stock issued.

Restrictions on Bank of America. Bank of America will be prohibited from paying common stock dividends in excess of \$0.01 per share per quarter for three years without the government's consent. Further, Bank of America is required to submit an executive compensation plan, including bonuses, to the government for its approval.

Capital injection. Bank of America will issue \$20 billion of preferred shares to Treasury with an 8% dividend.

C. AUTOMOTIVE INDUSTRY FINANCING PROGRAM

The Automotive Industry Financing Program is designed to prevent a disruption of the American automotive industry that could pose a systemic risk to financial market stability. Treasury will determine eligibility for the program and the allocation of the assistance on a case-by-case basis. In determining eligibility, Treasury may consider the following factors, among others:

- the importance of the institution to production by, or financing of, the American automotive industry;
- whether a major disruption of the institution's operations would likely have a materially adverse effect on employment and thereby produce negative spillover effects on overall economic performance;
- whether the institution is sufficiently important to the nation's financial and economic system that a major disruption of its operations would, with a high probability, cause major disruptions to credit markets and significantly increase uncertainty or losses of confidence, thereby materially weakening overall economic performance; and
- the extent and probability of the institution's ability to access alternative sources of capital and liquidity, whether from the private sector or other sources of U.S. government funds.

The other features of the program, including the issuance of securities, executive compensation standards and other corporate governance requirements, mirror those described under the Targeted Investment Program above.

As of January 16, Treasury had committed \$24.9 billion in TARP funds under this program, including \$4 billion subject to certain conditions.

General Motors and Chrysler

On December 19, in order to facilitate the restructuring of the domestic auto industry and to prevent disorderly bankruptcies, Treasury announced the terms of secured term loan facilities extended to General Motors and Chrysler under TARP. Under the facilities, Treasury is providing term loans (up to \$13.4 billion to General Motors and up to \$4 billion to Chrysler), in return for warrants to purchase common shares of the companies. The assistance is contingent on the companies' demonstrating, by March 31, 2009, that they are financially viable (*i.e.* if they have a positive net present value, taking into account all current and future costs, and can fully repay the loan). If they fail to do so, the loans will be called and all funds must be returned.

On February 17, General Motors and Chrysler submitted restructuring plans to Treasury (as required by the terms of its initial assistance) requesting, in the aggregate, an additional \$21.6 billion in government loans. General Motors, which had already received \$13.4 billion in loans, said that it would need an additional \$16.6 billion, for a total of \$30 billion, to survive. General Motors also said that it needed at least \$7.7 billion in loans from the Department of Energy to develop fuel-efficient technology. Chrysler had received \$4 billion in loans and said that it needed \$5 billion more. Each company argued that due to a lack of debtor-in-possession financing, the costs for restructuring through bankruptcy would be far higher—in the case of General Motors, up to \$100 billion.

Set forth below is a summary description of the terms of the existing facilities.

Terms. On January 2, Chrysler Holding LLC and its successor entities received \$4 billion. As of February 17, General Motors had received \$13.4 billion. The funds were provided on a full recourse basis to the borrowers and are to be used for general business purposes.

The loans bear interest at a rate per annum equal to the sum of (x) the greater of (A) three-month LIBOR and (B) the LIBOR floor of 2%, plus (y) a spread of 300 basis points (800 basis points upon the occurrence and continuance of an event of default under the loans).

Collateral. Subject to law and contractual obligations, General Motors and Chrysler must grant to Treasury first priority liens on all unencumbered assets, and junior liens on all encumbered assets.

Terms and Conditions. Under the terms of the facilities, General Motors and Chrysler must:

- provide warrants exercisable for non-voting stock;
- accept restrictions on executive salaries and bonuses, incentive compensation and severance, in keeping with the guidelines established for financial institutions receiving aid through TARP;
- conclude new agreements with their other major stakeholders, including dealers and suppliers, by March 31, 2009;
- allow the government to examine their books and records and provide periodic restructuring reports;
- report, and the government has the right to prohibit, any large transactions (*i.e.* with a value in excess of \$100 million); and
- not issue new dividends while the loan is outstanding.

In addition, General Motors and Chrysler must use their best efforts to:

- reduce their public indebtedness—excluding pension and employee benefit obligations—by not less than two-thirds through issuance of new debt or conversion of debt to equity;
- reduce, by December 31, 2009, total compensation for their U.S. workers to levels that equal the average pay and benefits at Toyota Motor Corporation, Nissan Motor Company and American Honda Motor Company in the United States;
- eliminate payments to their employees (and those of any subsidiary) who have been fired, laid off, furloughed or idled, other than customary severance pay;
- modify, by December 31, 2009, work rules for their U.S. workers to levels that are competitive with Toyota Motor Corporation, Nissan Motor Company and American Honda Motor Company in the United States,
- make one-half of voluntary employees beneficiary association payments in the form of stock.

These terms and conditions are non-binding and negotiations can deviate from the quantitative targets set forth above, provided that the company reports the reasons for these deviations and makes the business case to achieve long-term viability in spite of the deviations.

Warrants. Treasury received warrants to purchase common stock of the borrowers. The warrants, which have a perpetual term and are immediately exercisable (in whole or in part, at 100% of the issue price plus all accrued and unpaid dividends), have an exercise price per share

based on a 15-day trailing average determined as of December 2, subject to anti-dilution adjustments. The total number of issuable warrants is equal to 20% of the maximum loan amount divided by the exercise price per share, subject to a cap of 20% of the issued and outstanding common equity interests of the borrower, before giving effect to the exercise of the warrants. In the event the cap reduces the number of issuable warrants, Treasury will receive additional notes in an amount equal to 6.67% of the maximum loan amount less a sum equal to one-third the number of warrants actually granted multiplied by the exercise price per share.

The warrant shares are non-voting (unless upon the occurrence of a termination event or an event of default under the facility) and are not subject to any contractual restrictions on transfer.

In the event the borrower does not have sufficient available authorized shares of common stock to reserve for issuance upon exercise of the warrants and/or shareholder approval is required for such issuance, the borrower is required to call a meeting of its shareholders as soon as practicable after the date of the investment to increase the number of authorized shares of common stock. In the event that the borrower is not listed or traded at any time on a national securities exchange or securities association, or the consent of the borrower's shareholders described above has not been received within six months after the issuance date of the warrants, the warrants will be exchangeable, at Treasury's option, for senior term debt or security of the borrower.

Upon full payment of the outstanding loan, applicable interest and other fees and expenses, the borrower may repurchase any of its equity securities held by Treasury at fair market value or, if no recognized market for such securities exists at the time of prepayment, at the value attributed to such securities by an independent third party appraiser reasonably acceptable to Treasury.

In addition to direct investment in General Motors, Treasury has purchased \$5 billion in senior preferred equity from GMAC and will provide General Motors with a loan of up to \$1 billion to enable it to purchase GMAC equity in a rights offering. GMAC became a bank holding company on December 24.

GMAC

GMAC Preferred. Treasury purchased \$5 billion of Series D-1 fixed rate cumulative preferred membership interests of GMAC (the "GMAC Preferred"). The GMAC Preferred has perpetual life, is considered to be Tier 1 capital and will receive cumulative distributions at a rate of 8% per annum, payable quarterly. GMAC is subject to restrictions on dividends and repurchases substantially similar to those imposed on the participants in the CPP. The voting, registration and transfer rights with respect to the GMAC Preferred are also substantially similar to those with respect to the CPP's Senior Preferred.

The GMAC Preferred may not be redeemed for three years from the date of the investment except with the proceeds from sales of Tier 1 qualifying perpetual preferred or common membership interests for cash (other than sales made pursuant to financing plans that were publicly announced on or prior to November 17), which result in aggregate gross proceeds to GMAC of not less than 25% of the issue price of the GMAC Preferred. After the three years, the GMAC Preferred may be redeemed, in whole or in part, at any time at the option of GMAC. All redemptions must occur at 100% of the issue price, plus accrued and unpaid distributions, and will be subject to the approval of GMAC's primary federal bank regulator.

Warrant. Treasury also received a warrant to purchase additional preferred interests (having an aggregate capital amount equal to 5% of the GMAC Preferred) at an exercise price of \$.01 per share. Treasury has exercised the warrant.

Executive compensation. While Treasury holds any GMAC Preferred or the associated warrants, GMAC's compensation practices are subject to the same restrictions as applicable to institutions participating in the CPP, except that golden parachutes are more strictly defined. In addition, GMAC may not accrue or pay any bonus or incentive compensation to senior employees unless otherwise provided by the President's Designee. GMAC may not adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance compensation of its employees. Finally, GMAC must maintain all suspensions or other restrictions of contributions to benefit plans that are in place or initiated as of the closing date. Treasury will have the right to require GMAC to claw back any compensation paid to any senior employees in violation of these restrictions.

Term loan. Treasury also committed to make available to General Motors a single-draw term loan of up to \$1 billion to enable it to participate in a \$1.25 billion offering of Class B membership interests by GMAC to its common members. The loan is conditional on General Motors entering into the \$13.4 billion loan agreement with Treasury. The loan will accrue interest at a rate per annum equal to the sum of the greater of three-month LIBOR and 2%, plus the spread amount (300 basis points ordinarily and 800 points during a continuing event of default), multiplied by the outstanding principal balance. The loan is collateralized by the General Motor's stake in GMAC. Treasury has the option to exchange the loan at any time for GMAC equity held by General Motors. The loan will terminate on January 16, 2012 or earlier on the date of the exchange.

The \$1 billion loan to General Motors has several conditions. General Motors will be subject to the executive compensation restrictions applicable to systemically significant failing institutions. In addition, General Motors may not accrue or pay any bonus or incentive compensation to senior employees (the top 25 most highly compensated employees) unless otherwise provided by the President's Designee. GMAC may not adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance compensation of its employees. Finally, GMAC must maintain all suspensions or other restrictions of contributions to benefit plans that are in place or initiated as of the closing date. Moreover, Cerberus ResCap Financing, LLC (or affiliates) and General Motors must convert 100% of their respective participation interests in GMAC's senior secured credit facility with Residential Funding Company, LLC and GMAC Mortgage, LLC to common membership interests. The President's Designee has the right to review and prohibit any transaction in excess of \$100 million entered into by General Motors not in the ordinary course of business. Further, General Motors is required to implement and comply with a strict expense policy and to comply with periodic reporting and certification requirements set forth by Treasury.

Chrysler Financial

On January 16, a special purpose entity of Chrysler Financial (the "Chrysler Financial SPV") received \$1.5 billion of TARP funds from Treasury in the form of a term loan. The funds must be used to provide retail loans for the purchase of Chrysler autos. The loan has a five-year term with an interest rate of one-month Libor plus 1% for the first year and Libor plus 1.5% for the remaining years. The loan is secured by a senior secured interest in a pool of newly originated consumer auto loans and may be prepaid at any time without penalty. Chrysler Holdings LLC is the guarantor for certain loan covenants. In addition, in lieu of warrants the Chrysler Financial SPV must issue additional notes to Treasury in an amount equal to 5% of the total size of the loan.

20% of the notes vested on January 16. While the loan remains outstanding, on each January 16, 20% more of the original amount of the notes will vest.

While the loan is outstanding, Chrysler Financial's executive compensation practices are subject to the same restrictions applicable to participants in the CPP. Chrysler Financial must also reduce by 40% (relative to 2007) the aggregate bonus compensation paid to its senior executives in 2009 and must not adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance the compensation of any of its employees.

VII. FDIC TEMPORARY LIQUIDITY GUARANTEE PROGRAM

In brief:

- The FDIC program has two components. The first provides guarantees of new senior unsecured debt issued by FDIC-insured institutions and their holding companies on or after October 13, 2008 and on or before June 30, 2009. The guarantees extend until the earlier of the maturity of the debt or June 30, 2012. The second component provides full guarantees in respect of deposits in non-interest-bearing transaction accounts, through December 31, 2009.
- Any eligible institution that avails itself of either of the guarantees will be subject to enhanced supervisory oversight (including periodic on-site compliance reviews and an obligation to supply information).
- All eligible institutions must have informed the FDIC by December 5, 2008 if they desired to opt-out of one or both components of the program; their choice was irrevocable. All eligible institutions within the same holding structure were required to make the same decision regarding each component of the program. The FDIC maintains on its website a list of entities that opted out of the guarantees.
- The FDIC programs are independent of the Capital Purchase Program and participation in one does not affect the eligibility or conditions of participation in the other.
- As of December 30, 2008, approximately \$222 billion of debt was covered under the guarantee program.
- The FDIC is seeking authority from Congress to broaden its systemic risk special assessment authority to include holding companies of depository institutions so that it would be able to assess the holding companies for the benefits under the program.

Debt Guarantees

Coverage. The first component of the liquidity program provides for guarantees of new, senior unsecured debt issued by the following entities (collectively “Eligible Entities”):

- insured depository institutions;
- U.S. bank holding companies that have at least one chartered and operating insured depository institution within their holding company structure;
- U.S. savings and loan holding companies that have at least one chartered and operating insured depository institution within their holding company structure and that either (i) engage only in activities that are permissible under Section 4(k) of the Bank Holding Company Act or (ii) have at least one insured depository institution subsidiary that is the subject of an application that was pending on October 13, 2008 under Section 4(c)(8) of the Bank Holding Company Act; and
- other affiliates of insured depository institutions that the FDIC, after consultation with the appropriate Federal banking agency, designates as Eligible Entities. The FDIC indicated that some of the factors that it would consider include the ratings strength of the affiliate, the extent of the financial activities of the entities in the related holding company structure and the size and extent of the activities of the organization as a whole.

Insured depository institution means any FDIC-insured depository institution other than an insured branch of a foreign bank.

Covered debt. This guarantee covers all new, senior unsecured debt denominated in any currency (except for foreign currency deposits) and issued (or renewed) by Eligible Entities on or after October 13, 2008 and on or before June 30, 2009 (or the opt-out date, if earlier). Senior unsecured debt means an unsecured borrowing that is (a) evidenced by a written agreement or trade confirmation; (b) has a specified and fixed principal amount; (c) is non-contingent and contains no embedded options, forwards, swaps or other derivatives; and (d) is not, by its terms, subordinated to any other liability. For the period from October 13, 2008 until December 5, 2008 senior unsecured debt includes otherwise eligible debt of all maturities. After December 5, senior unsecured debt excludes all debt with maturities less than 30 days. Senior unsecured debt may pay either a fixed or floating interest rate based on a commonly-used reference rate with a fixed amount of scheduled principal payments.

Eligible senior unsecured debt includes federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, including zero-coupon bonds, U.S. dollar denominated certificates of deposit owed to an insured depository institution, an insured credit union as defined in the Federal Credit Union Act, or a foreign bank, U.S. dollar denominated deposits in an international banking facility of an insured depository institution owed to an insured depository institution or a foreign bank, and U.S. dollar denominated deposits on the books and records of foreign branches of U.S. insured depository institutions that are owed to an insured depository institution or a foreign bank. The senior unsecured debt must be clearly identified as guaranteed by the FDIC. Eligible Entities will not be able to select which new, senior unsecured debt up to the guarantee limit will be guaranteed.

The guarantee does not extend to any obligation that has a stated maturity of one month (including instruments with terms of up to 35 days because of weekends, holidays and calendar issues), contingent debt, obligations from guarantees, convertible debt, derivatives, derivatives-linked products, debt that is paired or bundled with any security, capital notes, any unsecured portion of secured debt, negotiable certificates of deposit, and deposits in foreign currency or other foreign deposits, and any funds swept from individual, partnership or corporate accounts held at insured depository institutions, revolving credit arrangements, structured notes, instruments that are used for trade credit and retail debt securities. Loans to affiliates, including parents, subsidiaries and controlling shareholders, directors and officers of both the Eligible Entity and affiliates, are also excluded.

Amount of covered debt. The amount of guaranteed debt may not exceed 125% of the Eligible Entity's outstanding debt as of the close of business on September 30, 2008 that was scheduled to mature before June 30, 2009 (excluding debt extended to affiliates). The limit applies separately to each legal entity within a group. In the event that the Eligible Entity that is not an insured depository institution had a zero balance outstanding as of September 30, 2008 the amount that it may issue under the program is determined on a case-by-case basis by the FDIC and the Eligible Entity's primary federal regulator. In the event that the Eligible Entity that is an insured depository institution had a zero balance outstanding (or only federal funds outstanding) on September 30, its debt guarantee limit is 2% of its consolidated total liabilities as of September 30. The FDIC may, either temporarily or for the duration of the debt guarantee program, adjust the limit for certain Eligible Entities on a case-by-case basis in consultation with the appropriate Federal banking agency. An Eligible Entity that is both an insured depository institution and a direct or indirect subsidiary of a parent Eligible Entity may combine its guarantee limit with its parent's guarantee limit (or multiple parents' guarantee limits) provided that it

supplies a prior written notice to FDIC and FDIC does not object. A survivor in a merger has a combined guarantee limit of all parties to the merger.

Eligible Entities may borrow up to the 125% limit immediately. The debt guarantee program proceeds may not be used to prepay debt that is not FDIC-guaranteed.

Notification to the FDIC. The debt guarantee is not effective until the issuing Eligible Entity notifies the FDIC of the issuance of such debt via FDICconnect. As part of the notification, the CFO of the Eligible Entity must certify that the Eligible Entity has not exceeded its limit on the amount of debt guaranteed.

Requirements with respect to non-guaranteed debt. Participating Eligible Entities are required to notify the FDIC if they elect to issue non-guaranteed debt with maturities beyond June 30, 2012. Eligible Entities that make such election incur nonrefundable fees and are subject to disclosure requirements.

Disclosure. Participating Eligible Entities are required to disclose in writing to any interested lenders and creditors whether newly issued debt is guaranteed under the program.

Duration. The debt guarantee extends until the earlier of the maturity of the debt and June 30, 2012. The portion of debt that exceeds the Eligible Entity's limit or that matures after the three-year cut-off date is not covered by the debt guarantee program. Further, any outstanding guarantees terminate if the Eligible Entity opts-out of the program.

Payment of claims under the debt guarantee. Payment under the debt guarantee is triggered by a payment default of the Eligible Entity. The FDIC pays the principal and interest in respect of the debt as scheduled through the maturity of the instrument without regard to default or penalty provisions. After June 30, 2012, the FDIC may elect to make a final payment of all outstanding principal and interest for an instrument whose maturity extends beyond that date. In such a case, the FDIC is not liable for prepayment penalty.

Securities Act registration exemption. The SEC staff issued a no-action letter to the FDIC on November 24, 2008 concurring with the view that debt maturing on or before June 30, 2012 and guaranteed under the Temporary Liquidity Guarantee Program would be considered guaranteed by an instrumentality of the United States for purposes of Section 3(a)(2) of the Securities Act.

Exchange Act Section 11(d)(1). As a government security, debt issued under the Temporary Liquidity Guarantee Program should also be exempt from Section 11(d)(1) of the Exchange Act, which generally prohibits a broker-dealer that participates in a new issuance from extending credit to customers in connection with that issuance.

Transaction Account Guarantees

Coverage. The second component of the program offers unlimited guarantees on bank deposits that do not bear interest. The guarantees run through December 31, 2009. Holding companies are excluded from being considered as Eligible Entities for this component of the program because they do not accept deposits on their own. All non-interest-bearing transaction accounts at Eligible Entities were covered by the guarantees until December 5 unless the Eligible Entity opted out. Accounts eligible for protection are transaction accounts maintained at Eligible Entities, with respect to which interest is neither accrued nor paid, and on which the Eligible Entities do not reserve the right to require advance notice of intended withdrawal. Interest bearing money market deposit accounts are not covered. Interest on Lawyers Trust Accounts and

negotiable order of withdrawal accounts with interest rate no higher than 0.5% are covered if the insured institution at which the deposit is held commits to maintaining the interest rate at below 0.5%. If Eligible Entities conduct any sweeps from one account to another as part of their normal banking operations, only the funds that are in a non-interest-bearing transaction account or a non-interest-bearing savings account after the completion of any sweep are guaranteed by the FDIC.

Disclosure. From December 19, each Eligible Entity must post a prominent notice in the lobby of its main office and each branch clearly indicating whether it is participating in the transaction account guarantee component of the program and whether the funds are insured in full by the FDIC. If the participating Eligible Entity uses sweep arrangements or takes other actions that result in funds being reclassified as interest-bearing or non-transactional, then this and the fact that the guarantee is voided by such actions must be disclosed in writing to affected customers. The language of the disclosures is specified by FDIC. Prior to December 19, these disclosures were to be made in a commercially reasonable manner.

Payments under the transaction account guarantee. The FDIC will endeavor to pay guaranteed claims as soon as possible upon the failure of the participating Eligible Entity in the same manner as it pays claims under regular FDIC deposit insurance.

Fees

Under the debt guarantees, participants are charged fees on a sliding scale based on the maturity dates of the debt. For maturities of 180 days or less (excluding overnight debt), an annualized fee of 50 basis points is charged until the debt's maturity. For debt with a maturity of 181-364 days, a 75-basis point fee is charged until the debt's maturity. For 365 days or greater, a 100-basis point fee is charged until the debt's maturity. These fees are to be paid shortly after issuance.

The amount of assessment for an Eligible Entity that is not an insured depository institution is determined by multiplying the amount of FDIC-guaranteed debt by the term of debt (expressed in years) and an annualized assessment rate based on the applicable fee rate. The fee rate is increased by 10 basis points if the combined assets of all insured depository institutions affiliated with such Eligible Entity constitute less than 50% of consolidated holding company assets as of September 30, 2008. An Eligible Entity remaining in the debt guarantee program will not be charged the fees if it does not issue any new senior unsecured debt under the program. If the covered debt is retired prior to its scheduled maturity date, the fees will not be reduced. The fees will be applicable to commercial paper issued under the Commercial Paper Funding Facility.

An Eligible Entity that breaches its limit and represents that such excess debt is guaranteed by the FDIC would be subject to enforcement actions. Also, the applicable fees on all its outstanding guaranteed debt would be increased by 100%.

Each participating Eligible Entity that chooses to issue long term non-guaranteed debt must pay the FDIC a nonrefundable fee of 37.5 basis points charged on all its senior unsecured debt (other than debt owed to affiliates) with a maturity date on or before June 30, 2009 that was outstanding as of September 30, 2008. This nonrefundable fee must be paid in six equal monthly installments.

Under the transaction account guarantees, a 10-basis point surcharge is added to the existing risk-based deposit insurance premium for any amount in the non-interest-bearing transaction accounts in excess of the existing limit of \$250,000 (or, if applicable, in excess of any other pass-through coverage on the account, and including any amounts that are swept into a non-

interest-bearing savings account). The 10-basis point fee is to be paid quarterly together with regular FDIC premiums.

At the end of the program, surplus funds, if any, will remain as part of the Deposit Insurance Fund and will be included in the future calculation of the reserve ratio. Any deficiency, however, will be recovered by an emergency systemic risk assessment on all FDIC-insured institutions, even on the institutions that choose to opt-out of the program.

VIII. FEDERAL RESERVE FUNDING PROGRAMS

A. COMMERCIAL PAPER FUNDING FACILITY

The Federal Reserve's Commercial Paper Funding Facility ("CPFF") became operational on October 27, 2008 and purchases of eligible commercial paper will continue until October 30, 2009. During the first day of the program, it was reported that sales of longer-term commercial paper increased ten-fold from sales the prior week. Any paper issued under the CPFF qualifies under the FDIC's Temporary Liquidity Guarantee Program and will be assessed FDIC fees.

Structure. The CPFF is structured as a credit facility made available to a special purpose vehicle ("SPV"). The New York Fed lends to the SPV on a recourse basis and is secured by all assets of the SPV. The SPV purchases commercial paper from eligible issuers through the New York Fed's primary dealers. The SPV will hold the paper until maturity and will use proceeds from maturing paper and other assets of the SPV to repay its loan. The SPV does not purchase commercial paper from investors. However, issuers are permitted to repurchase outstanding commercial paper from investors and finance those repurchases by selling commercial paper to the SPV.

Eligible issuers. The program is open to all U.S. issuers of commercial paper, including issuers with a foreign parent. Effective January 23, the CPFF will not purchase asset-backed commercial paper ("ABCP") from issuers that were inactive prior to the creation of the CPFF. An issuer will be considered inactive if it did not issue ABCP to institutions other than the sponsoring institution for any consecutive period of three months or longer between January 1 and August 31, 2008.

Eligible paper. The commercial paper must be unsecured or asset-backed, have a three-month maturity, be U.S. dollar-denominated, and be rated at least A-1/P-1/F1. Interest-bearing commercial paper and commercial paper with an extendable maturity will not be eligible for purchase by the SPV.

Registration and fee. Eligible issuers register with the Federal Reserve at least two business days in advance of their intended use of the CPFF. At the time of registration, issuers are required to pay a 10-basis point facility fee based on the maximum amount of their commercial paper that the SPV may own. Issuers not intending to access the CPFF need not register.

Maximum amount. The maximum allowable amount for each issuer is the greatest amount of U.S. dollar-denominated commercial paper the issuer had outstanding on any day between January 1 and August 31, 2008, as certified by the issuer to the Federal Reserve at the time of registration.

Price. The price of the purchased commercial paper is discounted based on a rate equal to a spread over the three-month overnight indexed swap rate on the day of purchase. The spread for unsecured commercial paper is 100 basis points per annum and the spread for ABCP is 300 basis points per annum. For unsecured commercial paper, an additional 100 basis points per annum surcharge must be paid on each trade execution date. Issuers who are protected under the FDIC's debt guarantee pursuant to the FDIC's Temporary Liquidity Guarantee Program will not be subject to the unsecured credit surcharge on the commercial paper covered by such guarantee (but will be subject to the FDIC's fees). The daily lending rates under CPFF are posted on the New York Fed website at 8:00 am (EST) and via Bloomberg screen.

B. MONEY MARKET INVESTOR FUNDING FACILITY

On October 21, 2008, the Federal Reserve announced, as a complement to the Commercial Paper Funding Facility, that it would support a private-sector initiative to restore liquidity to U.S. money market investors. Under the Money Market Investor Funding Facility (“MMIFF”), which became operational on November 24, 2008, the New York Fed has established a credit facility to provide senior secured funding to a series of private sector SPVs to facilitate the purchase of eligible assets. The MMIFF has been initially authorized to lend to five SPVs. The SPVs in turn are authorized to purchase up to \$600 billion in eligible assets.

On January 7, the Federal Reserve announced two changes to the MMIFF: (i) expanding the list of eligible investors to include a number of other money market investors; and (ii) adjusting several economic parameters of the MMIFF, including the minimum yield on assets eligible to be sold to the MMIFF, to enable the program to remain a viable source of backup liquidity for money market investors even at very low levels of money market interest rates. On February 3, the Federal Reserve announced that it would exercise its authority to extend the MMIFF until October 30, 2009.

Structure. Each SPV is authorized to purchase, at amortized cost, eligible assets from eligible investors using proceeds of borrowings from the MMIFF and from the issuance of asset-backed commercial paper (“ABCP”). The SPVs will issue to the seller of eligible assets ABCP equal to 10% of the asset’s purchase price. The ABCP will have a maturity equal to the maturity of the asset and will be rated at least A-1/P-1/F1 by two or more major credit rating agencies. The New York Fed will commit to lend to each SPV 90% of the purchase price of each eligible asset until its maturity (this amounts to a maximum lending of \$540 billion out of the currently authorized \$600 billion). The loans, to be issued at the primary credit rate (currently 1.75%), will be on an overnight basis, will be senior to the ABCP, with recourse to the SPV, and secured by all assets of the SPV. However, if the primary credit rate rises above 2.25%, the New York Fed’s right to receive interest above 2.25% will be subordinated to the rights of the ABCP holders to receive principal and interest.

The operational documents of each SPV will designate ten financial institutions from which it may purchase eligible assets. Each of these designated financial institutions must have a short-term debt rating of at least A-1/P-1/F1 from two or more major credit rating agencies. A concentration limit is imposed on each SPV: at the time of the purchase, the eligible assets of any one financial institution may not exceed more than 15% of the assets of the SPV, except during an initial ramp-up period when it will be 20%.

Eligible assets. Eligible assets include U.S. dollar-denominated certificates of deposit, bank notes and commercial paper with a remaining maturity of at least seven days and no more than 90 days issued by the financial institutions designated in operational documents of the SPVs. The assets must have a yield at least 60 basis points above the primary credit rate at the time of the purchase by the SPV. Each asset sold to each SPV must have a minimum size of \$250,000. The list of eligible assets may be expanded upon assessment of the effects on the MMIFF.

Eligible investors. In addition to U.S. money market mutual funds regulated pursuant to Rule 2a-7 under the Investment Company Act of 1940, eligible investors will include funds that are managed or owned by a U.S. bank, insurance company, pension fund, trust company, SEC-registered investment advisor or a U.S. state or local government entity. In order to be eligible under the MMIFF, these institutions are required to (i) maintain a dollar-weighted average portfolio maturity of 90 days or less; (ii) hold the fund’s assets until maturity under usual circumstances; and (iii) hold only assets that, at the time of purchase, are rated in one of the top

three long-term investment-grade rating categories (*e.g.*, A and above) or the top two short-term investment-grade rating categories (*e.g.*, A-2 and above), or that are the credit equivalent thereof.

Eligible investors will also include any U.S. dollar-denominated cash collateral reinvestment fund, account, or portfolio associated with securities lending transactions that is managed or owned by a U.S. bank, insurance company, pension fund, trust company, or SEC-registered investment advisor. Eligible investors will be subject to approval by the New York Fed prior to participation, and may be subject to debt and/or deposit rating criteria.

Rate of return on the ABCP. Eligible investors will initially earn an interest rate on the ABCP that is at least 25 basis points below the interest rate on the assets they sell. Upon winding up of an SPV, eligible investors may receive a contingent distribution of funds, if there is available accumulated income in the SPV, which will increase the yield on the ABCP up to 25 basis points above the yield on the assets that the eligible investor sold to the SPV.

Downgrade or default of eligible assets and termination. If eligible assets of an institution held by the SPV are downgraded, then the SPV must cease all asset purchases until all of the SPV's assets issued by that institution have matured. If there is a payment default of any of the assets held by an SPV, the SPV must cease all asset purchases and repayments on outstanding ABCP. Upon maturity of the assets, the proceeds will first be used to repay the New York Fed and any remaining available cash will then be used to repay principal and interest on the ABCP.

SPVs will cease to purchase assets on October 30, 2009, as per the Federal Reserve's February 3 announcement. On October 30, 2009, SPVs will enter into a wind-down process during which the proceeds from the maturation of the assets of the SPVs will be used first to repay principal and interest on the New York Fed's loans and then to repay principal and interest on the ABCP. A small fixed amount of any excess spread remaining in the SPV after completion of the wind-down process will be allocated proportionally among investors that sold assets to the SPVs. The New York Fed will receive any remaining excess spread.

C. TERM ASSET-BACKED SECURITIES LOAN FACILITY (TALF)

On November 25, 2008, the Federal Reserve announced the establishment of the Term Asset-Backed Securities Loan Facility (“TALF”), a new program designed to jump-start consumer and small business lending by providing non-recourse government loans to investors who purchase securities backed by consumer and small business loans. The original program would have provided up to \$200 billion in loans to purchase asset-backed securities (“ABS”) collateralized by auto loans, student loans, credit card loans and small business loans. The facility was to have commenced making loans in February 2009 and ceased making such loans on December 31, 2009.

On February 10, as part of the Financial Stability Plan, Treasury announced that TALF would be recast as the “Consumer and Business Lending Initiative” and substantially expanded. Under the new plan, \$100 billion in TARP funds will be leveraged with lending from the Federal Reserve up to a total of \$1 trillion in financing capacity. The facility will also be expanded to include commercial mortgage-backed securities and may be further expanded to include other classes of securities. Although the details of the new plan have not yet been finalized, it appears that the basic structure and terms of the facility will be substantially similar to the TALF proposal, which is described below.

Structure. The New York Fed will extend non-recourse loans fully secured by eligible collateral. The loan amount will be equal to the market value of the eligible collateral minus a haircut. The minimum size for each loan under TALF will be \$10 million. The loans will have a three-year term, and interest will be payable monthly. The loans will not be subject to mark-to-market accounting rules or re-margining requirements. TALF loans will be pre-payable at the option of the borrower, but substitution of collateral during the term of the loans will not be permitted. Any remittance of principal on eligible collateral must be used immediately to pay down principal amount of the TALF loan.

Borrowers will be able to choose either a fixed or floating interest rate on the loans (floating-rate loans will be based on a spread over LIBOR). The New York Fed will set the interest rates on the loans so as to provide borrowers an incentive to purchase eligible ABS at yield spreads higher than in more normal market conditions but lower than in the highly illiquid conditions that have prevailed during the recent turmoil in the financial markets.

In the event a borrower does not repay its loan, the New York Fed will enforce its rights in the collateral and sell the collateral to a special purpose vehicle established by the New York Fed (see below).

Eligible borrowers. All U.S. companies that own eligible collateral may participate, provided they maintain an account relationship with a primary dealer. A U.S. company is a business entity or institution organized under U.S. law or the laws of its territories and political subdivisions (including an entity with a non-U.S. parent company) and a U.S. branch or agency of a foreign bank.

Eligible collateral. Borrowers may use U.S. dollar-denominated ABS that have a credit rating in the highest investment-grade rating category from two or more rating agencies and do not have a rating of below the highest investment-grade rating category from a rating agency. All or substantially all of the credit exposures underlying the ABS must be newly or recently originated exposures to U.S.-domiciled obligors. The credit exposures underlying the ABS must be auto loans (which includes retail loans and leases relating to cars, light trucks, or motorcycles, and will include auto dealer floor plan loans), student loans (which includes federally guaranteed student

loans (including consolidation loans) and private student loans), credit card loans, small business loans guaranteed by the U.S. Small Business Administration (“SBA”) or, as announced in the Financial Stability Plan, commercial mortgage-backed securities. Treasury also announced in the Financial Stability Plan that it would consider further expanding the definition of eligible collateral to encompass non-agency residential mortgage-backed securities and corporate debt-backed collateralized mortgage obligations.

Eligible ABS must be issued on or after January 1, 2009. All or substantially all of the underlying credit exposures of eligible auto loan ABS must have been originated on or after October 1, 2007. All or substantially all of the underlying credit exposures of eligible SBA-guaranteed loan ABS must have been originated on or after January 1, 2008. All or substantially all of the underlying credit exposures of eligible student loan ABS must have had a first disbursement date on or after May 1, 2007. Eligible credit card ABS must be issued to refinance existing credit card ABS maturing in 2009 and must be issued in amounts no greater than the amount of the maturing ABS.

The underlying credit exposures must not include exposures that are themselves cash or synthetic ABS. Moreover, the originators of the credit exposures underlying the ABS must have agreed to comply with (or already be subject to) the executive compensation restrictions described in Section IV. Eligible collateral for a particular borrower must not be backed by loans originated by the borrower or by an affiliate of the borrower. Eligible auto loan ABS and credit card ABS must have an expected life of no more than five years.

Haircuts. The New York Fed will determine collateral haircuts for each class of eligible collateral based on the price volatility of each such class and the maturity of the eligible collateral pledged. Haircuts are currently expected to range between 5% and 16% of the loan amount.

Pricing and allocation. The New York Fed will offer a fixed amount of loans under TALF on a monthly basis. Borrowers wishing to request one or more TALF loans must indicate for each loan the eligible ABS collateral, the desired loan amount, and the desired interest rate format (fixed or floating). Loan proceeds will be disbursed to the borrower, contingent on receipt by the New York Fed’s custodian banks of the eligible collateral. The New York Fed will have absolute discretion to reject any bids. It will also scrutinize any potentially high-risk ABS offered as collateral. At the inception of each loan, the New York Fed will assess a non-recourse loan fee.

Primary dealers. Each borrower must use a primary dealer as its agent to access TALF and must deliver eligible collateral to a clearing bank. Primary dealers are expected to collect, aggregate, and submit loan requests on behalf of their customers, similar to the role they perform at Treasury auctions. Additionally, they will be expected to pre-screen the proposed collateral for eligibility under TALF.

TALF SPV. The New York Fed will set up an SPV to purchase and managed any assets it acquires under TALF. The New York Fed will enter into a forward purchase agreement with the SPV, under which the SPV will commit, for a fee, to purchase all assets securing a TALF loan at a price equal to the TALF loan amount plus accrued but unpaid interest. Treasury will purchase subordinated debt issued by the SPV to finance the first tranche of asset purchases (now up to \$100 billion), using TARP funds. The New York Fed will lend funds in excess of the \$100 billion to the SPV, if needed. The New York Fed’s loan to the SPV will be senior to Treasury’s subordinated loan, with recourse to the SPV and will be secured by all the assets of the SPV. All cash flows from the SPV assets will be first used to repay principal and interest on the New York Fed’s senior loan until the loan is repaid in full. Next, the cash flows will be used to repay

Treasury's loan in full. Thereafter, the New York Fed and Treasury will share any residual cash flows.

D. PURCHASE OF GOVERNMENT-SPONSORED-ENTITY (GSE) OBLIGATIONS

Purchase of Direct Obligations of the GSEs

To reduce the cost and increase the availability of credit for house purchases, the Federal Reserve announced that it would conduct a series of auctions to purchase up to \$100 billion of direct obligations of the GSEs (Fannie Mae, Freddie Mac, Ginnie Mae and the Federal Home Loan Banks). The auctions are designed to lower the GSEs' borrowing costs, which is expected to result in lower mortgage rates for consumers. The purchases will initially involve fixed-rate non-callable senior benchmark securities issued by the GSEs and may later be expanded to include other types of securities. The purchases have begun and will take place over the next several quarters, subject to market conditions.

Only primary dealers are eligible to submit bids in the auctions, both on their own behalf and on behalf of customers. Securities to be included in the auctions will be chosen in consultation with market participants. The auctions will be conducted via FedTrade about once a week, and the awards will be based on a multiple price competitive auction process. Dealers will be limited to three propositions per issue, with a minimum size of \$1 million and a minimum increment of \$1 million.

Purchase of Mortgage-Backed Securities Guaranteed by the GSEs

A further measure to lower mortgage rates, the Federal Reserve will also purchase up to \$500 billion of MBS guaranteed by the GSEs. The purchases began on January 5 and are expected to be completed by the second quarter of 2009. The Federal Reserve selected asset managers BlackRock Inc., Goldman Sachs Asset Management, PIMCO and Wellington Management Company, LLP to conduct the purchases.

Only fixed-rate agency MBS securities guaranteed by the GSEs—such as 15, 20 and 30-year fixed MBS securities—are eligible to be purchased. CMOs, REMICs, Trust IOs/Trust POs and other mortgage derivatives or cash equivalents are not eligible for this program. Initially, the investment managers will trade only with the primary dealers who are eligible to transact with the New York Fed directly (they should submit offers on behalf of their customers). The investment managers will employ a passive buy and hold investment strategy with respect to the purchased MBS securities. The commonly referenced market indices will guide the purchases and the pace will be adjusted based on the market conditions. The investment managers will be required to purchase frequently and to disclose the Federal Reserve as their principal. The investment managers may use a “dollar roll” strategy, involving sale of a security for delivery in the current month and the simultaneous agreement to repurchase a substantially similar security at a specified later date to smooth market supply and demand.

IX. TREASURY TEMPORARY GUARANTEE PROGRAM FOR MONEY MARKET FUNDS

On September 29, 2008, in response to growing concern about the health of the money market industry, Treasury announced the establishment of the Temporary Guarantee Program for Money Market Funds. Under the program, Treasury guarantees the share price of eligible money market funds that apply to the program and pay a fee to participate. The program provides coverage to shareholders for amounts held in participating money market funds as of the close of business on September 19. The guarantee is triggered if a fund's net asset value, or NAV, falls below \$0.995 per share, which is commonly referred to as "breaking the buck." Funds that broke the buck before September 19 are not eligible for the program.

Eligibility. The program is open to publicly offered money market mutual funds that are registered with the SEC and regulated pursuant to Rule 2a-7 under the Investment Company Act of 1940. This includes both retail and institutional funds and taxable and tax-exempt funds. To be eligible, a fund must have had an NAV per share of at least \$0.995 as of September 19. The program does not cover funds that broke the buck prior to that date (such as The Reserve Fund's Primary Fund, which fell to 97 cents per share on September 16 as a result of its holdings of securities issued by Lehman Brothers Holdings Inc.). The guarantee program is open to funds that have a policy of maintaining a stable share price of \$1.00, as well as funds that maintain a per share price of more than \$1.00. The deadlines for enrollment in the program have expired.

Coverage. The coverage of the Treasury program is based on the number of shares held at the close of business on September 19. Specifically, the guarantee covers the lesser of (i) the number of shares held on September 19 and (ii) the number of shares held at the time of a "Guarantee Event." Any increase in the number of shares held after September 19 is not covered. The guarantee covers shares that are sold and repurchased. For example, if an investor held 100 shares as of September 19, subsequently sold 50 shares and later repurchased 25 shares, the investor would be covered for 75 shares.

Upon the occurrence of a Guarantee Event, a participating fund must be liquidated within 30 days, at which time shareholders will receive \$1.00 per covered share, subject to the overall amount available to all funds under the program. The program is funded by Treasury's Exchange Stabilization Fund, which currently has approximately \$50 billion in assets. The guarantee program is not otherwise backed by the full faith and credit of the U.S. government.

Term. The guarantee program was initially available for a three-month term ending on December 18. Treasury has extended the program for current participants until April 30, 2009 and may further extend the program in its sole discretion for any additional period up until September 18, 2009.

Fees. Participating funds are required to pay a fee for the initial period of 1 basis point if the fund's NAV per share is greater than or equal to \$0.9975 and 1.5 basis points if the fund's NAV per share is less than \$0.9975, but greater than or equal to \$0.995. Any extension of the program beyond the initial three month term requires additional payments by participating funds. For the extension until April 30, 2009, participating funds will pay a fee of 1.5 basis points if the fund's NAV per share is greater than or equal to \$0.9975 and 2.2 basis points if the fund's NAV per share is less than \$0.9975 but greater than or equal to \$0.995. The extension fees are calculated as of September 19, 2008.

Other developments. Exercising its authority under the guarantee program and citing extraordinary circumstances, on November 20, 2008, Treasury announced its agreement to assist

with the liquidation of the Reserve Fund's U.S. Government Fund, despite the fund not having applied to the program. Under the agreement, the fund was allowed to continue to sell assets at or above their amortized cost for a 45-day period. At the conclusion of this period, Treasury's Exchange Stabilization Fund was authorized to purchase any remaining securities at amortized cost, up to an amount required to ensure that each shareholder of the fund received \$1 for every share it owns. The fund's advisers and trustees are required to waive fees accrued after November 19, 2008 to the extent that the fund's shareholders do not receive distributions of \$1 per share. Treasury has, however, noted that it does not foresee a need to take similar action with respect to other funds participating in the program.

X. OTHER REGULATORY INITIATIVES

A. GUIDANCE ON MARK-TO-MARKET ACCOUNTING

In the period leading up to the credit crisis, significant criticism was leveled at mark-to-market accounting standards, many viewing the accounting standards under both U.S. GAAP and International Financial Reporting Standards (“IFRS”) as a contributing factor to the crisis. In response to concerns, various actions have been taken, both in the United States (by the SEC and the FASB) and in the EU (by the IASB).

In the United States, the EESA directed the SEC to study the mark-to-market standards under U.S. GAAP, contained principally in Statement of Financial Accounting Standards No. 157 (Fair Value Measurement) (“SFAS 157”). In its report delivered to Congress on December 30, 2008, the SEC recommended against suspension of fair value accounting (of which mark-to-market accounting is a subset) and of SFAS No. 157. The report, however, set forth eight sets of recommendations for improvement of fair value accounting, prominent among which is the recommendation that the models for accounting for impairments be re-assessed.

SFAS 157 establishes a single definition of fair value and a framework for measuring fair value under U.S. GAAP and expands disclosure about fair value measurements. The standard defines fair value as the “price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.” As such it focuses on “exit price” rather than on “entry price” or management’s good faith assessment. The standard establishes a hierarchy to rank the evidence to be relied upon in measuring fair value (Levels 1 through 3), distinguishing between evidence based on market data (observable inputs, which could be Level 1 or 2) and evidence based on a reporting entity’s own assumptions (unobservable inputs, which are Level 3). The standard defaults in favor of observable inputs (at the highest level) wherever possible.

Shortly after enactment of the EESA, the SEC and the FASB issued guidance in respect of applying SFAS 157. Thereafter, the FASB issued additional guidance. The SEC also issued guidance in respect of hybrid securities and, separately, in the EU the IASB issued amendments to the IFRS fair value accounting standards. These initiatives are described below.

The IASB and FASB have also announced that they will create a global advisory group, which will help ensure that reporting issues arising from the global economic crisis are considered in an internationally coordinated manner.

FASB FSP 157-3. On October 10, 2008, the FASB staff issued FASB Staff Position No. FASB 157-3. FSP 157-3 is intended to clarify by example how companies should apply SFAS 157 to value financial assets that have no active market. The guidance responds to specific concerns that reporting entities are unsure how their own assumptions (*i.e.*, expected cash flows and appropriately risk-adjusted discount rates) should be considered when observable inputs do not exist, how observable inputs in inactive markets should be considered and how market quotes should be considered when assessing the relevance of observable and unobservable inputs.

Among other things, FSP 157-3 clarifies that:

- Even in times of market dislocation, it is not appropriate to conclude that all market activity represents forced liquidations or distressed sales. However, it is also not appropriate to automatically conclude that any transaction price is determinative of fair value.

- The use of a reporting entity's own assumptions about future cash flows and appropriately risk-adjusted discount rates is acceptable when relevant observable inputs are not available. In some cases, the entity may determine that observable inputs (Level 2) require significant adjustment based on unobservable data and thus would be considered a Level 3 fair value measurement.
- Broker quotes are not necessarily determinative if an active market for a financial asset does not exist. In weighing broker quotes as an input, less reliance should be placed on quotes that do not reflect the results of market transactions. Whether a quote is an indicative offer or a binding offer should also be considered.

SEC position on perpetual preferred securities. The assessment of declines in fair market value of perpetual preferred securities ("PPS") (which are structured in equity form but possess significant debt-like characteristics) has also presented challenges in the current market, as Statement of Financial Accounting Standards No. 115 (*Accounting for Certain Investments in Debt and Equity Securities*) ("SFAS 115") does not address the impact, if any, of debt-like characteristics on the assessment of other-than-temporary impairment.

In response, on October 14, 2008, the Office of the Chief Accountant of the SEC, after consultation with the FASB staff, concluded that with respect to PPSs it would not object to an issuer applying an impairment model (including an anticipated recovery period) similar to a debt security. In reaching this conclusion, the SEC staff noted that it had no objection to such treatment provided that there has been no evidence of a deterioration in credit of the issuer and that it would expect an issuer to provide adequate disclosure about its PPS holdings in situations where the cost exceeds the current fair value as required by FSP 115-1/124-1 (*The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*). This no-objection position is effective until SFAS 115 can be formally addressed by the FASB.

IASB amendments. On October 13, 2008, the IASB amended IAS 39 to permit financial instruments that had previously been measured at fair value to be reclassified to a different accounting basis, thereby permitting reclassifications for previously held trading assets other than derivatives. In connection with this change, the IASB also amended IFRS 7 (*Financial Instruments: Disclosures*) to require additional disclosure about instruments that are reclassified out of fair value or reclassified from available for sale to loans and receivables. As published, the amendments permit the reclassification of some financial instruments out of the fair-value-through-profit-or-loss category and out of the available-for-sale category, thereby introducing into IFRS the same possibility of reclassifications that is already permitted under U.S. GAAP.

B. PROPOSED REGULATION OF CREDIT DEFAULT SWAPS

In September 2008, the SEC Chairman, following the lead of the governor of New York, called for greater regulation of credit default swaps (“CDS”) and other credit derivatives. The Governor of New York had announced that New York State would regulate certain sellers of CDS contracts in cases where the buyer of the CDS protection owned or was likely to own the underlying reference asset. In these cases, the seller of the protection would be deemed to be conducting an insurance business and would be required to be licensed in the State of New York under the New York State Insurance Law. These requirements would not apply where the buyer, at the time the swap was entered into, did not hold, or reasonably expect to hold, a “material interest” in the reference asset (as contemplated by guidelines issued by the New York State Department of Insurance in Circular No. 19 (“Best practices for financial guaranty insurers”)).

In response to these developments, the SEC has urged Congress to provide the agency with the authority to regulate CDS and other credit derivatives. The SEC has also called for authority to mandate trade and position reporting by dealers, and position reporting for market participants with significant holdings.

The SEC, the Federal Reserve, and the CFTC have now signed a memorandum of understanding announcing the intent to coordinate the regulatory oversight and supervision of CDS central counterparties, which are expected to commence operations in 2009. The central counterparties will seek to address (and thus reduce) counterparty risk, thereby mitigating the potential systemic impacts of counterparty defaults. While the operational guidelines of the central counterparties are yet to be announced, it is intended that risk will be reduced by entering into CDS trades with a central counterparty, thereby alleviating counterparty risk through imposition of stringent collateral obligations and insulating the market from systemic risk emanating from the failure of a large counterparty. Further, the central counterparty system is expected to facilitate greater market transparency and be a catalyst for a more competitive trading environment that includes exchange trading of CDS. The memorandum of understanding also establishes a framework for consultation and information sharing between the SEC, the Federal Reserve and the CFTC.

Owing to these developments at the federal level, New York State has, as of November 20, announced the suspension of its plan to regulate CDS contracts. The remainder of Circular No.19, dealing with best practices by financial guaranty insurers as of January 1, 2009, remains intact. On November 19, 2008, the State of Missouri Department of Insurance, Financial Institutions and Professional Regulation issued Insurance Bulletin 08-12 on Covered Credit Default Swaps. The Bulletin, which is similar to the New York Insurance Department Circular 19, requires, as of January 1, 2009, covered CDS sellers transacting business in Missouri to obtain a certificate of authority from the Department. The Bulletin also provides that the Department may defer or suspend enforcement if it believes that a comprehensive solution to regulating the entire market is adopted or near. The Department has confirmed that it has no intention of deferring implementation of the Bulletin in the absence of comprehensive federal regulation, and the Department is prepared to take enforcement actions albeit none have been taken thus far.

At this point, it appears that the U.S. CDS market will be regulated by the Federal Reserve, the SEC and the CFTC jointly. In setting out the supervisory expectations of the central counterparties, the three agencies will take into account the “Recommendations for Central Parties” developed by the Committee on Payment and Settlement Systems of the central banks of the Group of Ten countries in conjunction with the Technical Committee of the International Organization of Securities Commission.

On February 12, 2009, after several hearings, the House Agriculture Committee voted to approve the introduction of H.R. 977 (“Derivates Market Transparency and Accountability Act of 2009”) into the House of Representatives. The bill, if enacted, would generally require that OTC derivatives transactions be settled and cleared through a CFTC-regulated derivatives clearing organization, except that transactions in financial commodities may be cleared and settled through an SEC-regulated clearing agency. As an alternative to clearing, OTC derivatives transactions may be reported to the CFTC. The bill also grants the CFTC the authority to summarily suspend trading in all CDS with the concurrence of the President if the public interest and the protection of investors so require.

The SEC has granted a temporary exemption from Sections 5 and 6 of the Exchange Act for broker-dealers and exchanges effecting transactions in CDS contracts. Further, the SEC specifically exempted LCH.Clearnet.Ltd. from the requirement to register as a clearing agency under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for CDS transactions.

In addition to the regulatory and legislative efforts, steps are being taken by the FASB and the financial derivatives industry to provide greater transparency for the CDS market. The FASB staff issued FASB Staff Position No. FAS 133-1 and FIN 45-4, requiring sellers of CDS protection to disclose detailed information regarding their financial positions under credit derivatives that are subject to SFAS 133 (which includes CDS contracts). This heightened disclosure will be required for financial statements beginning with reporting periods ended after November 15.

Separately, the Depository Trust & Clearing Corporation (“DTCC”) began posting on its website a weekly announcement of the outstanding gross and net notional values CDS contracts of the top one-thousand reference entities, together with the weekly trading volume of each name. In addition, DTCC announced on January 12 that it will support all central counterparty solutions for CDS in a non-discriminatory manner with its Trade Information Warehouse. In contrast, the EU so far has failed to achieve a commitment from a sufficient number of dealers for getting a European clearing solution for CDS.

C. OVERSIGHT OF CREDIT RATING AGENCIES

On February 2, 2009, the SEC issued new rules designed to promote greater transparency and accountability of the credit-rating industry and also proposed rules that would require additional disclosures by rating agencies.

New Rules Effective April 10, 2009

Under the new rules, all “national recognized statistical rating organizations” (“NRSROs”) will be:

- prohibited from making any recommendations to an issuer on how to obtain a favorable credit rating;
- required to maintain records of all actions related to a current rating;
- required to maintain records of the rationale for any material differences between the credit rating implied by the NRSRO’s quantitative model and the final credit rating of a structured finance product for which a quantitative model is a substantial component of the credit rating process;
- required to retain records of any third-party complaints regarding the performance of a credit analyst;
- required to provide an annual report to the SEC of the number of credit rating actions that took place during the fiscal year for each class of security for which the NRSRO is registered;
- required to prohibit personnel who have made recommendations about the particular issuer, or were involved in determining credit ratings or in developing methodologies for that issuer, from taking part in any fee discussions;
- subject to a ban on acceptance of gifts over \$25 in value from clients;
- required to publish a 10% sample of the NRSRO’s rating actions for each class of credit rating for which the NRSRO is registered and has issued 500 or more issuer-paid credit ratings on its website in eXtensible Business Reporting Language (“XBRL”) format after six months have elapsed since the date of each such rating action; and
- required to disclose: (i) statistics on all upgrades, downgrades or defaults (relative to the initial rating) for each asset type over one-, three- and 10-year periods; (ii) how much verification was performed on the quality of complex securities; (iii) how the quality assessments play a role in the determination of a credit rating; and (iv) more detailed information on ongoing credit surveillance process, including the use of different models or criteria used for ratings surveillance in contrast to criteria used for the initial ratings.

Proposed Rules

The SEC also re-proposed two rules, which are open for public comment through March 26, 2009.

Disclosure of data by an NRSRO. The SEC has indicated an interest in encouraging rating agencies (including rating agencies that are not NRSROs) to share their competing ratings. Earlier last year, the SEC had proposed that an NRSRO publicly disclose significant data relating to the structured finance products provided to the NRSRO by the deal arranger. After receiving comments on this proposal, the SEC has scaled back the proposal by placing the burden on the deal arranger to disclose such data instead of the NRSRO. The SEC has also proposed that NRSROs seeking competing ratings certify that the information is being accessed solely to determine credit ratings.

Additional internet disclosure by “issuer-pays” NRSROs. This proposal would require an “issuer-pays” NRSRO to publish 100% of its ratings actions on its website in XBRL format; however, it would not be required to make disclosures until 12 months after a particular security has been rated (to allow the NRSRO to earn a profit by selling its ratings). The SEC is also seeking comment on whether this proposal should be extended to ratings agencies that sell their ratings to investors.

Deferred Proposals

Rating symbols. The SEC has deferred action on whether to impose rules that would require NRSROs to change their rating symbols specifically for structured finance products.

SEC reliance on credit ratings. The SEC has also deferred final decision on whether to substantially eliminate references to NRSRO credit ratings in its rules and forms and whether, in lieu of citing credit ratings, to place greater emphasis on management’s analysis of the assets.

European Efforts

Regulators in Europe have also taken steps to improve the transparency of ratings information. EU regulators have agreed to new rules that impose liability on credit rating agencies for their opinions and also proposed to impose a new rule whereby complex securities must be distinguished from the more traditional types of securities such as corporate or municipal bonds.

XI. INTERNATIONAL DEVELOPMENTS

European Efforts

Efforts to stabilize the global economy continue across the UK and Europe as the financial crisis deepens despite previous efforts. Most recently, the UK announced a fiscal stimulus package aimed at small to medium sized businesses and a second comprehensive bank bailout measure. The major provisions of the most recent UK schemes are followed by summaries of the initial UK rescue package. Key terms of some individual European country bailout measures, beginning with recent developments, follow.

The European Commission believes that there is a broad consensus in Europe now for an overhaul of the EU's financial-market regulation. New proposals are being devised by a high-level group headed by former Banque de France governor Jacques de Larosiere to improve Europe's financial supervisory system. In addition, the European Commission announced on January 26 that it would allocate an extra €36.2 million to the three committees—known as CEBS, CEIOPS and CESR—that are made up of national banking, insurance and securities industry supervisors from across the EU and to the three accounting and auditing bodies—IASCF, EFRAG and PIOB—to improve their ability to supervise large banks and other financial institutions cross-borders.

Recent UK Developments

Aid to Small and Medium Sized Enterprises

In response to complaints that, despite government efforts to unfreeze the credit markets, banks are still not lending enough to small and medium sized businesses, the UK government launched a program tailored specifically to these entities.

- ***Working Capital Scheme.*** The government will inject £10 billion under its “Working Capital Scheme” to permit banks to lend capital. It will provide guarantees covering 50% of the risk on existing and new working capital portfolios worth up to £20 billion for businesses with an annual turnover of up to £500 million. As a condition of receiving the money, banks will pay a premium and must commit to using some of the capital made available as a result of the guarantee for new lending. In the event that there are defaults on loans, the UK government has set aside £225 million to cover repayments that cannot be made. The program will run to March 31, 2011.
- ***Enterprise Finance Guarantee.*** The government created the “Enterprise Finance Guarantee” scheme, which will secure up to £1.3 billion in additional bank loans to companies with an annual turnover of up to £25 million. These companies will be eligible to borrow up to £1 million, with 75% of the loan to be guaranteed by the government. The loan may be used for working capital and new investments. The lending banks must certify that the loans are in addition to loans that they would otherwise make. The program will run to March 31, 2010.
- ***Capital for Enterprise Fund.*** The “Capital for Enterprise Fund” will help to provide long term capital to viable businesses with growth potential that have high levels of debt that have exhausted traditional forms of financing. The fund will provide £75 million in equity, with £50 million contributed by the government and an additional £25 million provided by major banks. The fund will provide equity and quasi-equity of £250,000 to £2 million for companies with a turnover of up to €50 million. The

UK government has indicated that it is in discussions with credit insurance providers about providing similar guarantees on debts owed by small businesses to their suppliers.

A Second Bank Bailout Package

The UK government announced a second set of measures, and extended several of its initial programs, to reinforce the stability of the financial system and increase the confidence and capacity of banks to lend. Banks participating in certain of the new schemes will be required to agree to “lending responsibility agreements” that will have specific and quantified lending commitments that will be binding and externally audited, in addition to meeting other specified criteria set forth by the Treasury. Each of the new measures and extensions of previously established programs is subject to state aid approval from the EU.

- **Asset Protection Scheme.** The government is establishing an “Asset Protection Scheme” that will act as an insurance mechanism to protect qualifying UK-incorporated authorized deposit takers against large-scale losses on loans that already exist on their books. Eligible banks will pay a fee, determined on a case by case basis and likely paid for in preference shares, though possibly in cash, in exchange for the government protection. Participants will remain responsible for a first portion of losses (the “first loss” amount), plus further residual losses expected to be in the region of 10% of credit losses exceeding the “first loss” amount in order to incentivize banks to keep losses to a minimum.

Assets may be in any currency and are likely to be portfolios of commercial and residential property loans, structured credit assets, other corporate and leveraged loans and any closely related hedges, with a focus on assets with the highest risk of uncertainty about future performance. In each case, the assets must have been held by the participating institution or an affiliate as at December 31, 2008. Assets included in the scheme will continue to be managed by the institution and will remain on its balance sheet, but will be required to be “ring-fenced” by the institution so that actions in relation to them, including enforcement and disposal, will be subject to appropriate Treasury controls.

The Asset Protection Scheme initially will be open to any UK-incorporated authorized deposit taker (including UK subsidiaries of international banks) with more than £25 billion of eligible assets. Affiliated entities may also be considered. Subsequently, the scheme may be made available to other UK-incorporated authorized deposit takers (including UK subsidiaries of international banks), in line with the goals of the program. A number of additional conditions to participation will apply, including in relation to remuneration policy. Full details on the plan are expected to be available by the end of February 2009. The scheme is expected to last at least five years.

- **Asset Purchase Program.** The Bank of England is establishing a £50 billion “Asset Purchase Program” to increase the availability of corporate credit by reducing the illiquidity of the underlying instruments. Under the new scheme, the Bank will be authorized and indemnified by the Treasury to purchase, through a specially created fund, high quality investment grade private sector assets, including paper issued under the Credit Guarantee Scheme, corporate bonds, commercial paper, and, eventually, syndicated bank loans and a limited range of asset-backed securities created in viable securitization structures. The Bank (through a separate company) will purchase those

corporate assets from the banks that would be most likely to restore the flow of finance to corporate borrowers. The Bank may only purchase assets for which there will be genuine private demand under normal market conditions. There will be a list of assets eligible for purchase, created by the Bank and approved by HM Treasury. The government also said the Bank will, if necessary, use this framework as part of its monetary policy toolkit to initiate “quantitative easing,” an effort to increase the money supply in order to boost the economy as interest rates head toward zero.

- ***New guarantee scheme for asset-backed securities.*** To address the loss of mortgage lending capacity in markets, the government established a new £50 billion guarantee scheme for asset-backed securities beginning in April that will provide partial and full guarantees of eligible triple-A rated asset-backed securities, including mortgages and consumer debt. The government plans to set conforming criteria to ensure that only transparent structures and high quality assets are eligible, and will keep the scope of the scheme under review. UK banks and building societies eligible for the Credit Guarantee Scheme are eligible to participate in this new guarantee scheme.
- ***Credit Guarantee Scheme extended.*** The UK government will extend its existing Credit Guarantee Scheme beyond its previous April expiration date to December 31, 2009. The scheme guarantees new unsecured borrowing, and so far over £100 billion of the guarantees have been taken up, helping to bring down the inter-bank lending rate from 6 to 2¼%. All other aspects of the scheme will remain the same. These are described more fully below.
- ***Special Liquidity Scheme permitted to lapse, Discount Window Facility extended.*** The Bank of England allowed its Special Liquidity Scheme to lapse as scheduled on January 30, though it will remain operational for three years thereafter. To enable banks to continue to have access to long-term liquidity on demand, it will extend its Discount Window Facility and increase maturities from 30-days to 1-year for an incremental fee of 25 bps.
- ***Treasury converts RBS preference share investment to ordinary shares.*** The Treasury announced its decision to convert its preference share investment in RBS to ordinary shares, resulting in an ownership stake of up to 70% in the bank. In consultation with UK Financial Investments (“UKFI”), the organization that manages the government’s shareholdings in the recapitalized institutions, the government has agreed with RBS to convert its shareholding in exchange for a commitment by the bank to: (i) maintain availability and active marketing of competitively-priced lending to large corporations, homeowners and small businesses at 2007 levels or above and (ii) increase lending further by £6 billion in the next 12 months. The UK government has stated that it is not its aim to be a permanent investor in UK financial institutions; as such, UKFI plans to continue developing and executing its strategy for disposing of the government’s shareholding in recapitalized institutions in an orderly way.
- ***Northern Rock to cease reducing its existing mortgage book.*** The government confirmed that Northern Rock terminated its policy of rapidly reducing its existing mortgage book. The policy was designed to assist in rapid repayment of its loan from the government. The UK governmental also stated that it will consider further measures to ensure that, when the housing market recovers, UK lenders can best support lending to creditworthy customers who need mortgages but can only afford deposits of less than 25%.

- ***FSA confirms no new statutory requirements.*** Finally, the FSA published a statement clarifying that there are no new statutory requirements for bank capital ratios, and that capital buffers built in as part of the recapitalization exercise are seen as playing a role in both withstanding losses and facilitating continued lending. The government announced that both it and the FSA support a capital regime that incorporates counter cyclical measures that allow banks to build up buffers in good years that can be drawn down during times of economic difficulty. It added that the FSA and the Bank will strongly support the work by the Financial Stability Forum and the Basel Committee in this area.

Aid to Auto Industry

The UK has unveiled a package of loans worth £2.3 billion for the UK auto industry, including measures to support training schemes for car workers, help for car parts suppliers and grants for “green” research and development.

October 2008 UK Bailout Plan

The first plan established by the UK government earmarked up to £50 billion for a Tier 1 capital facility made available to UK financial institutions in the form of preference shares or other permanent interest bearing shares providing the government rights above ordinary shareholders and entitling it to dividend payments prior to holders of ordinary shares. The government provided £37 billion in new capital to RBS, Lloyds and HBOS, with controlling stakes taken in each and conditions attached to participation including limits on executive remuneration and dividend payments.

To reopen the medium-term funding market for participating institutions that raise appropriate amounts of Tier 1 capital, the UK government established a £250 million “Credit Guarantee Scheme,” which made available a government guarantee of short and medium term debt issuances to assist in refinancing maturing, wholesale funding obligations as they fall due. The program envisaged the issuance of senior unsecured debt instruments of varying terms of up to 36 months. About £100 billion in state guaranteed debt was issued in 2008.

In addition, the Bank of England made available under its “Special Liquidity Scheme” up to £200 in short-term liquidity, allowing banks to swap illiquid financial assets for highly liquid gilts. The Bank of England also announced new emergency overnight borrowing facilities designed to ease pressure in the money markets. A “Discount Window Facility” provides liquidity insurance in the event of stress to otherwise financially sound banks, giving them the ability to borrow government securities against a wide range of collateral. Both programs were set to expire on January 30, 2009.

Other European Countries

Recent Developments

On January 13, the German government unveiled a second stimulus package comprised of €50 billion in public investments and tax cuts this year and the next, as well as a commitment to create a €100 billion fund intended to underwrite credit to companies. Denmark joined Germany, announcing on January 18 that it would offer up to Dkr100 billion (€13.4 billion) in loans to recapitalize its banks and promote lending. Germany is also weighing the nationalization of Hypo Real Estate Holding AG, having bailed it out twice.

The French government also made available a second tranche of bank recapitalization funds in the amount of €10.5 billion in exchange for top executives giving up their 2008 bonuses. Société Générale said it would receive €1.7 billion in funds to boost its Tier 1 capital ratio. A second fiscal stimulus plan is currently being prepared by the French government. The French president announced that the plan would be worth approximately €10.6 billion and that it would emulate the German plan to help companies borrow. The government will also provide a further €6 billion rescue package for French automakers.

It is expected that other European countries will announce additional fiscal stimulus and bank rescue plans in the coming weeks. In the past few months, the Commission has approved 36 national rescue measures and guarantee schemes in seventeen EU countries, each of which bear the official imprimatur of the Commission, including the initial measures taken by France, Germany, the United Kingdom, Denmark, Italy, Portugal, Spain, the Netherlands and Greece. All of the new rescue packages described above are subject to Commission state aid review.

The Dutch government provided further assistance to ING. ING transferred the risk on 80% of its €27.7 billion Alt-A mortgage security portfolio to the Dutch government at 90% of par value. ING retained the legal ownership of 100% of the securities and remains exposed to 20% of any results on the portfolio. The Dutch government will be exposed to 80% of any results on the portfolio and will be entitled to receive 80% of any cash flows on the total portfolio. ING will pay to the Dutch government an annual guarantee fee consisting of a fixed amount plus a percentage of the payments received on the securities. The net present value of this fee is €0.6 billion. ING will receive from the Dutch state payments representing a net present value of €0.5 billion. ING will also receive a management fee with a net present value of €0.7 billion. ING is required to increase its lending by €5 billion at market conforming conditions and to conform to certain restrictions on corporate governance and executive compensation.

Initial Programs

On December 11 and 12, 2008, the European Council approved the European Economic Recovery Plan (the “EERP”), a coordinated response to the economic crisis between member states. The total package is approximately €200 billion, representing 1.5% of the EU’s GDP and comprises a combination of national and EU resources. Until the end of 2010, the EERP will permit EU member states (without the obligation to notify the Commission) to grant subsidized loans, guarantees, and direct aid of up to €500,000 to individual enterprises.

Germany enacted a rescue package providing €500 billion in total aid to the country’s financial markets, with up to €400 billion earmarked for lending guarantees for banks, €80 billion for recapitalization of the banks and insurers and, if necessary, for the purchase of risky assets, and €20 billion in back-up guarantees. Participants were prohibited from paying discretionary bonuses to board members or managing directors and distributing dividends to shareholders other than on any stock issued to the government in connection with the fund, and were required to maintain a high solvency ratio. Fundamentally sound institutions must submit a report to the European Commission (the “Commission”) that illustrates that they remain fundamentally sound and how they are planning to repay the assistance. Other institutions are required to provide a restructuring plan within six months to enable the Commission to assess the need for government interventions. In addition, bank beneficiaries of recapitalization must also engage in lending to small and medium-sized enterprises. Commerzbank AG and Hypo Real Estate Holding AG have benefited from this assistance. Germany also passed a fiscal stimulus plan with €23 billion that included tax cuts, help for the auto industry, infrastructure investments, and a €15 billion credit fund for small and medium-sized enterprise.

France earmarked €360 billion for its banks in the form of guarantees of up to €320 billion of inter-bank loans and up to €40 billion in the form of capital injections. The French government made €10.5 billion in capital to its six largest banks in the form of subordinated loans repayable after other debts, non-dilutive to existing shareholders, without requiring a change in dividend policy. Participants in the rescue package are required to follow rules related to executive payouts and stock options crafted by France's main business lobby. These include prohibitions on issuing golden parachutes for executives who leave failed institutions and a limitation on the size of golden parachutes paid to other executives to two years salary plus bonus. In addition, participants that offer stock options to top executives must also make available similar benefits to all employees. Participating banks are required to provide monthly reports on how they are using the funds. An ombudsman has been appointed to ensure that the banks increase their lending. The French government also established a fiscal stimulus plan worth €26 billion over two years, comprised of €1.4 billion in tax credits with €10.5 billion in infrastructure spending.

Austria, Belgium, Italy, the Netherlands, Portugal, Spain and Sweden also committed capital for guarantees and capital injections. Switzerland agreed to provide a cash infusion to, and take troubled assets off the balance sheets of, one of its banks, while a second Swiss bank declined and accessed capital from third parties.

Coordinated European Efforts

Governments across Europe have also focused on, and bolstered, protections of individual savings deposits. In accordance with an agreement in October 2008 among EU finance ministers to increase EU-wide retail deposit guarantee protection to €50,000, Finland, Bulgaria, the Czech Republic, Romania and Sweden raised each of their deposit guarantee limits to €50,000, while Belgium, Cyprus, Greece, Italy, Lithuania, the Netherlands, Portugal and Spain opted to raise each of their scheme limits to €100,000 per individual depositor. Still other countries removed any limit from their deposit guarantees, following the example set by Ireland in early October, including Austria, Denmark, Germany, Hungary, the Slovak Republic and Slovenia. France guarantees savings deposits up to €70,000 of total customer deposits at a single institution, irrespective of the number of deposits there are and where they are held in the EEA, and the United Kingdom guarantees savings deposits up to £50,000 on the same basis within the United Kingdom.

On December 18, 2008, the European Parliament approved a revision to the Directive on Deposit Guarantee Schemes that would require all Member States to increase the level of deposit guarantee from €20,000 to €50,000 by June 30, 2009, and to €100,000 by the end of 2010, in the event of deposits being unavailable. The increase to €100,000 will take effect unless the Commission impact assessment, to be ready by December 31, 2009, suggests it is not financially viable for all Member States. The revision also requires that Member States reimburse in full up to the coverage level rather than giving them the option to require 10% co-insurance to be paid by the depositor. Finally, it reduces the payout period from three months to 20 days in the event of deposits being unavailable. The extension of this period, up to a maximum of 10 days, could only be admitted in exceptional circumstances and by approval of competent authorities. The European Parliament has also called upon Member States to consider setting up an emergency payout system to make an appropriate amount available to a depositor within three days or less. The European Council has to formally endorse the new legislation and Member States will be required to bring the legislation into force by June 30, 2009.

To further reinforce financial stability in the European economic environment, the Commission has recently proposed amendments to certain EU rules on capital requirements for

banks. Under the new rules, a bank will be restricted in lending beyond 25% of its capital base to other banks and cross-border banking groups will be more closely monitored by newly formed colleges of supervisors made up of regulators from each country in which they operate. In an effort to encourage higher underwriting standards, EU ministers have also increased the amount of capital that banks are required to set aside to cover risky assets to 5% of any securitized product. Focusing on the condition of the European economic environment as a whole, EU ministers introduced a “European remit” requirement whereby all national banking supervisors must consider the impact of that their decisions would have on the wider EU sector. Final adoption of these new measures is expected to take place by April 2009.

The European Central Bank (“ECB”) has also been focusing on the credit derivatives market, including proposals to regulate CDS contracts. On November 3, 2008, the ECB announced that it supported the creation of a centralized counterparty for CDS contracts following similar initiatives in the United States. The ECB announcement suggested that the clearinghouse model would provide an appropriate solution to counterparty risk by reducing such risk of default, increasing availability of information, standardizing evaluation criteria and freeing up collateral. In addition to the ECB position, European Commissioner for Internal Market and Services, Charlie McCreevy, has called for concrete proposals by year-end to further address risk management of the European CDS market.

Additionally, in line with the G-20 objective to ensure that all financial market products and participants are regulated or subject to oversight, as appropriate to their circumstance, European Commissioner McCreevy recently launched a public consultation on the regulation of hedge funds. The consultation focuses on certain areas, including (i) the systemic risks of hedge funds, (ii) the impact of hedge funds on the efficiency and integrity of the financial markets, particularly with respect to practice of short selling, (iii) the best approach to risk management and administration of hedge funds and (iv) the transparency of hedge funds towards investors and investor protection.

Coordinated Global Efforts

The G-20 held its Summit on Financial Markets and the World Economy on November 15, 2008. In its statement, the G-20 recognized the seriousness of the current crisis in the global economy and the financial systems and judged its root causes to include a lack of appreciation of risk by market participants and by the regulators, excessive leverage, unsound risk management practices, inconsistent and insufficiently coordinated macro-economic policies and inadequate structural reform. The G-20 committed to cooperation and to carrying out an action plan for structural reforms of the financial markets and of regulatory regimes.

The G-20 focused on the following five principles for reform:

- strengthening transparency and accountability of financial markets;
- enhancing sound regulation;
- promoting integrity in financial markets;
- reinforcing international cooperation; and
- reforming international financial institutions.

Finance ministers were asked to develop additional recommendations in the areas of mitigating against pro-cyclicality in regulatory policy, reviewing and aligning global accounting standards; strengthening the resilience and transparency of credit derivatives markets and reducing their systemic risks; reviewing compensation practices as they relate to incentives for risk taking and innovation; and defining the scope of systemically important institutions and determining their appropriate regulation or oversight.

Based on the five principles, the G-20 developed an action plan and set both short-term goals (to be implemented by March 31, 2009) and medium-term goals. The principal elements include the following:

Strengthening Transparency and Accountability

Short-term:

- global accounting standards bodies should enhance guidance for valuation of securities and address the accounting and disclosure standards for off-balance sheet vehicles;
- regulators and standard setters should enhance disclosure requirements for complex financial instruments; and
- private equity firms and hedge funds should present proposals for best practices and finance ministers should assess the adequacy of these proposals.

Medium-term:

- global accounting standards bodies should develop a single high-quality global standard;
- financial institutions should provide enhanced risk disclosures and disclose all losses on an ongoing basis, consistent with international best practice, as appropriate; and
- regulators should work to ensure that financial institutions' financial statements include a complete, accurate and timely picture of the firm's activities (including off-balance sheet activities).

Enhancing Sound Regulation – Regulatory Regimes

Short-term:

- regulators should develop recommendations to mitigate pro-cyclicality, including a review of how valuation and leverage, bank capital, executive compensation and provisioning practices may exacerbate cyclical trends.

Medium-term:

- national and regional bodies should review the differentiated nature of regulation in the banking, securities and insurance sectors;
- national and regional bodies should review the scope of financial regulation, with a special emphasis on institutions, instruments and markets that are currently unregulated, and ensure that all “systematically important” institutions are appropriately regulated; and
- definitions of capital should be harmonized to achieve consistent measures of capital and capital adequacy.

Enhancing Sound Regulation – Prudential Oversight

Short-term:

- regulators should take steps to ensure that credit rating agencies meet the highest standards of IOSCO and that they avoid conflicts of interest, provide greater disclosure to investors and to issuers, and differentiate ratings for complex products;
- authorities should ensure that financial institutions maintain adequate capital in amounts necessary to sustain confidence;
- international standard setters should set out strengthened capital requirements for banks’ structured credit and securitization activities; and
- supervisors and regulators should speed up efforts to reduce the systemic risks of CDS and OTC derivatives transactions; insist that market participants support exchange traded or electronic trading platforms for CDS contracts; expand OTC derivatives market transparency; and ensure that the infrastructure for OTC derivatives can support growing volumes.

Medium-term:

- credit rating agencies should be registered; and
- supervisors and central banks should develop internationally consistent approaches for liquidity supervision of international banks.

Enhancing Sound Regulation – Risk Management

Short-term:

- regulators should develop enhanced guidance to strengthen banks’ risk management practices, in line with international best practices, and encourage financial firms to reexamine their internal controls and implement stronger policies for sound risk management;
- regulators should develop and implement procedures to ensure that financial firms implement policies to better manage liquidity risk;

- supervisors should ensure that financial firms develop processes that provide for timely and comprehensive measurement of risk concentrations and large counterparty risk positions across products and geographies;
- firms should reassess their risk management models to guard against stress and report to supervisors on their efforts;
- financial institutions should have clear internal incentives to promote stability, and action needs to be taken, through voluntary effort or regulatory action, to avoid compensation schemes that reward excessive short-term returns or risk taking; and
- banks should exercise effective risk management and due diligence over structured products and securitization.

Medium-term:

- authorities should monitor substantial changes in asset prices and their implications.

Promoting Integrity in Financial Markets

Short-term:

- national and regional authorities should work together to enhance regulatory cooperation between jurisdictions on a regional and international level; national and regional authorities should work to promote information sharing about domestic and cross-border threats to market stability and ensure that national (or regional, where applicable) legal provisions are adequate to address these threats; and
- national and regional authorities also should review business conduct rules to protect markets and investors, especially against market manipulation and fraud and strengthen their cross-border cooperation to protect the international financial system from illicit actors. In case of misconduct, there should be an appropriate sanctions regime.

Medium-term:

- authorities should focus on jurisdictions that pose risks of illicit financial activity, money laundering and terrorist financing, and should exchange of information on taxation.

Reinforcing International Cooperation

Short-term:

- supervisors should collaborate to establish supervisory colleges for all major cross-border financial institutions, as part of efforts to strengthen the surveillance of cross-border firms; and
- major global banks should meet regularly with their supervisory college for comprehensive discussions of a firm's activities and assessment of the risks it faces.

Medium-term:

- authorities should collect information on areas where convergence in regulatory practices such as accounting standards, auditing and deposit insurance is making progress, is in need of accelerated progress or where there may be potential for progress.

In furtherance of the G-20 statement, on November 24, 2008, the IOSCO Technical Committee launched three task forces – on short selling, unregulated financial markets and products and unregulated financial entities – all of which will present their reports to the next Technical Committee meeting in February 2009 and to the next G-20 summit in spring 2009.

The Short Selling Task Force will work to eliminate gaps in various regulatory approaches to naked short selling, including delivery requirements and disclosure of short positions. In this connection, it will also examine how to minimize adverse impacts on legitimate securities lending, hedging and other types of transactions that are critical to capital formation and to reducing market volatility. The Task Force will be chaired by the Securities and Futures Commission of Hong Kong.

The Unregulated Financial Markets and Products Task Force will examine ways to introduce greater transparency and oversight to unregulated market segments, such as OTC markets for derivatives and other structured financial products. It will be co-chaired by the Australian Securities and Investments Commission and the Autorité des Marché Financiers of France.

The Unregulated Financial Entities Task Force will examine issues surrounding unregulated entities such as hedge funds, including the development of recommended regulatory approaches to mitigate risks associated with their trading and traditional opacity. It will be chaired by the CONSOB of Italy and the UK Financial Services Authority.

A senior UK official stated on January 28 that G-20 remains on track to complete an agreement on the changes to the regulation of the global financial system.

Industry Response

The Securities Industry and Financial Markets Association, the American Securitization Forum, the European Securitization Forum and the Australian Securitization Forum have launched the Global Joint Initiative to Restore Confidence in Securitization Markets (the “Global Joint Initiative”). The Global Joint Initiative stems from both the recognition of how crucially important the securitization and structured derivatives markets are to the world economies and the current crisis in the markets.

The report issued under the aegis of the Global Joint Initiative identified multiple factors that contributed to the current crisis, presented the near- and medium-term market outlook and outlined the significant threat to global economic growth if the securitization sector does not recover. The report further identified four priorities for immediate action by the industry to restore confidence in market practices and proactively guard against future systemic shocks: (i) improve disclosure of information on underlying assets for residential mortgage-backed securities (“RMBS”); (ii) enhance transparency with regard to underwriting and origination practices; (iii) restore the credibility of credit rating agencies; and (iv) improve confidence in valuations, methodologies and assumptions. The report also made the following recommendations:

- increase and enhance initial and on-going pool information on U.S. non-agency RMBS and European RMBS into a more easily accessible and more standardized format;
- establish core industry-wide market standards of due diligence disclosure and quality assurance practices for RMBS;

- strengthen and standardize core representations and warranties as well as repurchase procedures for RMBS;
- develop industry-wide standard norms for RMBS servicing duties and evaluating servicer performance;
- expand and improve independent, third-party sources of valuations and improve the valuation infrastructure and contribution process for specified types of securitization and structured products;
- restore market confidence in the rating agencies by enhancing transparency of the ratings process;
- establish a Global Securitization Markets Group to report publicly on the state of the market and changes in market practices; and
- establish and enhance educational programs aimed at directors and executives with oversight over securitized and structured credit groups, as well as at investors with significant exposure to these products.

Each member of the Global Joint Initiative is working with its membership base to implement the recommendations. The implementation does not require regulatory or legislative involvement.

The members of the Global Joint Initiative have other task forces and projects dedicated to restoring confidence in the securitization markets, such as the due diligence initiative and the rating agency Task Force. Furthermore, a host of private and public sector group participants are engaged in similar efforts to tackle the crisis in the securitization markets and other markets.

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This guide is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning the initiatives discussed in this guide can be directed to:

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LIST OF ANNOUNCEMENTS AND INITIATIVES

Emergency Economic Stabilization Act of 2008 (“EESA”)

Text:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h1424enr.txt.pdf

Reports to Congress:

<http://treasury.gov/initiatives/eesa/congressionalreports.shtml>

Agreements for Assistance under EESA

<http://www.treas.gov/initiatives/eesa/agreements/index.shtml>

Limitations on Executive Compensation Guidance

Capital Purchase Program - Interim Final Rule:

<http://treasury.gov/initiatives/eesa/docs/Exec%20Comp%20CPP%20Interim%20Final%20Rule.pdf>

Executive Compensation FAQ:

http://treasury.gov/press/releases/reports/tarp%20_executive%20compensation%20faqs.pdf

Direct Purchases (Failing Institutions):

<http://treasury.gov/initiatives/eesa/docs/Exec%20Comp%20PSSFI%20Notice.pdf>

February 4 Treasury Guidance: <http://treasury.gov/press/releases/tg15.htm>

Stimulus Bill Requirements:

http://s3.amazonaws.com/publica/assets/docs/exec_pay_limits.pdf

Congressional Oversight Panel Reports

Third Report of the Congressional Oversight Panel, dated February 6, 2009

<http://cop.senate.gov/documents/cop-020609-report.pdf>

Valuation Report of Duff & Phelps, dated February 4, 2009

<http://cop.senate.gov/documents/cop-020609-report-dpvaluation.pdf>

Valuation Report – Appendix I

<http://cop.senate.gov/documents/cop-020609-report-dpvaluation-app01.pdf>

Valuation Report – Appendix II

<http://cop.senate.gov/documents/cop-020609-report-dpvaluation-app02.pdf>

Valuation Report – Appendix III

<http://cop.senate.gov/documents/cop-020609-report-dpvaluation-app03.pdf>

Legal Analysis of the Investments by the Treasury in Financial Institutions under TARP, dated January 27, 2009

<http://cop.senate.gov/documents/cop-020609-report-dpvaluation-legal.pdf>

Second Report of the Congressional Oversight Panel, dated January 9, 2009

<http://cop.senate.gov/documents/cop-010909-report.pdf>

First Report of the Congressional Oversight Panel, dated December 10, 2008

<http://cop.senate.gov/documents/cop-121008-report.pdf>

Tax Guidance under EESA

General:

<http://treasury.gov/initiatives/eesa/taxguidance.shtml>

Executive Compensation and golden parachutes:

<http://treasury.gov/initiatives/eesa/docs/N-08-94.pdf>

Application of IRC Section 382 (limitation of net loss deduction):

<http://treasury.gov/initiatives/eesa/docs/Notice%202008-100.pdf>

Application of IRC Section 597 (federal assistance funds):

<http://treasury.gov/initiatives/eesa/docs/Notice%202008-101.pdf>

Capital Purchase Program

Transaction reports:

<http://www.ustreas.gov/initiatives/eesa/transactions.shtml>

Tranche reports to Congress:

<http://www.ustreas.gov/initiatives/eesa/tranche-reports.shtml>

Securities Purchase Agreement:

<http://treasury.gov/press/releases/reports/spa.pdf>

Form of Letter Agreement:

<http://treasury.gov/press/releases/reports/letteragreement.pdf>

Certificate of Designations:

<http://treasury.gov/press/releases/reports/certificateofdesignation.pdf>

Form of Warrant:

<http://treasury.gov/press/releases/reports/warrant.pdf>

Form of Warrant – Stockholder Approval Required:

<http://treasury.gov/press/releases/reports/shareholderapprovalwarrant.pdf>

Joint SEC and FASB Letter on Accounting for Warrants:

<http://treasury.gov/press/releases/reports/secfasbletter.pdf>

Announcement of program:

<http://www.ustreas.gov/press/releases/hp1207.htm>

Term sheet for publicly traded financial institutions:

<http://www.ustreas.gov/press/releases/reports/termsheet.pdf>

Term sheet for privately-held financial institutions:

<http://treasury.gov/initiatives/eesa/docs/Term%20Sheet%20-%20Private%20C%20Corporations.pdf>

Term sheet for S-Corporations

<http://www.treas.gov/initiatives/eesa/docs/scorp-term-sheet.pdf>

Application form and guidelines:

<http://www.ustreas.gov/press/releases/reports/applicationguidelines.pdf>

Application process-related FAQs for publicly traded financial institutions:

<http://www.ustreas.gov/press/releases/reports/faqcpp.pdf>

Application process-related FAQs for privately-held financial institutions:

<http://treasury.gov/press/releases/reports/faq%20111708%20%20private.pdf>

Application process-related FAQs for S-Corporations

<http://www.treas.gov/initiatives/eesa/faqs.shtml>

Asset Guarantee Program

<http://treasury.gov/initiatives/eesa/congressionalreports102.shtml>

Financial Stability Plan

Fact Sheet:

<http://www.ustreas.gov/news/index2.html>

Systemically Significant Failing Institutions Program

Guidelines:

<http://www.treasury.gov/initiatives/eesa/program-descriptions/ssfip.shtml>

AIG's CDO Facility:

http://www.newyorkfed.org/markets/aclf_terms.html

AIG's RMBS Facility:

http://www.newyorkfed.org/markets/rmbs_terms.html

AIG financial package restructuring press release and term sheet:

<http://treas.gov/press/releases/hp1261.htm>

Targeted Investment Program

Program description:

<http://treasury.gov/initiatives/eesa/program-descriptions/tip.shtml>

Assistance to Citigroup

Press release and term sheet:

<http://www.treas.gov/press/releases/hp1287.htm>

Assistance to Bank of America

Press release and term sheet:

<http://treasury.gov/press/releases/hp1356.htm>

Automotive Industry Financing Program

Former Treasury Secretary Paulson statement:

<http://www.treasury.gov/press/releases/hp1332.htm>

Summary of terms of assistance to General Motors:

<http://www.treasury.gov/press/releases/reports/gm%20final%20term%20&%20appendix.pdf>

Summary of terms of assistance to GMAC, LLC:

<http://treasury.gov/press/releases/hp1335.htm>

Summary of terms of assistance to Chrysler:

<http://www.treasury.gov/press/releases/reports/chrysler%20final%20term%20&%20appendix.pdf>

Summary of terms of assistance to Chrysler Financial:

<http://treasury.gov/press/releases/hp1362.htm>

GM Restructuring Plan:

<http://treasury.gov/initiatives/eesa/agreements/auto-reports/GMRestructuringPlan.pdf>

Chrysler Restructuring Plan Summary:

<http://treasury.gov/initiatives/eesa/agreements/auto-reports/ChryslerRestructuringPlanSummary.pdf>

Chrysler Restructuring Plan:

<http://treasury.gov/initiatives/eesa/agreements/auto-reports/ChryslerRestructuringPlan.pdf>

Chrysler Cover Letter:

<http://treasury.gov/initiatives/eesa/agreements/auto-reports/ChryslerCoverLetter.pdf>

Temporary Liquidity Guarantee Program

Final Rule:

<http://www.fdic.gov/news/news/press/2008/pr08122.html>

Reporting instructions and election forms:

<http://www.fdic.gov/news/news/financial/2008/fi08125.html>

Amended Interim Final Rule:

<http://www.fdic.gov/regulations/laws/federal/2008/08TLGPamendment.pdf>

Extension of the deadline to opt-out:

<http://www.fdic.gov/news/news/press/2008/pr08110.html>

Interim Final Rule;

<http://www.fdic.gov/news/board/TLGPreg.pdf>

Announcement of the Interim Final Rule:

<http://www.fdic.gov/news/news/press/2008/pr08105.html>

Announcement of program:

<http://www.fdic.gov/news/news/press/2008/pr08100.html>

Fact sheet:

<http://www.fdic.gov/news/news/press/2008/pr08100b.html>

FAQs:

<http://www.fdic.gov/regulations/resources/TLGP/faq.html>

Technical briefings:

http://www.vodium.com/MediapodLibrary/index.asp?library=pn100624_fdic_tlgp&SessionArgs=0A1U0100000100000101

Commercial Paper Funding Facility

Federal Reserve Statistical Release (including balance of CPFF):

<http://www.federalreserve.gov/releases/h41/Current/h41.pdf>

Daily rates:

<http://www.newyorkfed.org/markets/cpff/cpff.cfm>

Announcement of creation:

<http://www.federalreserve.gov/newsevents/press/monetary/20081007c.htm>

Terms and conditions:

http://www.newyorkfed.org/markets/cpff_terms_conditions.html

Issuer Registration Form and Qualification Certification:

http://www.newyorkfed.org/markets/CPFF_Issuer_Registration_Process.html

http://www.newyorkfed.org/markets/CPFF_Reg_and_Certification.pdf

FAQs:

http://www.newyorkfed.org/markets/cpff_faq.html

Announcement relating to asset management services:

<http://www.newyorkfed.org/newsevents/news/markets/2008/an081008.html>

Money Market Investor Funding Facility

Announcement:

<http://www.federalreserve.gov/newsevents/press/monetary/20081021a.htm>

Terms and conditions:

http://www.newyorkfed.org/markets/mmiff_terms.html

FAQs:

http://www.newyorkfed.org/markets/mmiff_faq.html

Additional details:

<http://www.newyorkfed.org/newsevents/news/markets/2008/an081110.html>

Announcement of changes in structure:

<http://www.federalreserve.gov/newsevents/press/monetary/20090107a.htm>

Term Asset-Backed Securities Loan Facility

Master Loan and Security Agreement:

http://www.newyorkfed.org/markets/TALF_MLSA.pdf

Form of Certification for TALF Eligibility:

http://www.newyorkfed.org/markets/Form_Certification_TALF_Eligibility.pdf

Form of Auditor Attestation:

<http://www.newyorkfed.org/markets/TALFAuditorAttestationForm.pdf>

Announcement by the Federal Reserve:

<http://www.federalreserve.gov/newsevents/press/monetary/20081125a.htm>

Announcement by Treasury:

<http://treasury.gov/press/releases/hp1292.htm>

Former Treasury Secretary Paulson's speech:

<http://treasury.gov/press/releases/hp1293.htm>

Additional information:

<http://www.federalreserve.gov/newsevents/press/monetary/20081219b.htm>

Terms and conditions:

http://www.newyorkfed.org/markets/talf_terms.html

FAQs:

http://www.newyorkfed.org/markets/talf_faq.html

Direct Purchase of GSE Obligations

FAQs:

http://www.newyorkfed.org/markets/gses_faq.html

Announcement:

<http://www.federalreserve.gov/newsevents/press/monetary/20081125b.htm>

Purchase of Mortgage-Backed Securities

FAQs:

http://www.newyorkfed.org/markets/mbs_faq.html

Announcement:

<http://www.federalreserve.gov/newsevents/press/monetary/20081230b.htm>

Temporary Guarantee Program for Money Market Funds

Extension of the program:

<http://www.treasury.gov/press/releases/hp1290.htm>

Announcement of program:

<http://www.ustreas.gov/press/releases/hp1147.htm>

Clarifications on program:

<http://www.ustreas.gov/press/releases/hp1151.htm>

Opening of program:

<http://www.ustreas.gov/press/releases/hp1161.htm>

Tax exempt money market fund notice:

<http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Tax-exempt-MoneyMarketFundNotice2008.pdf>

Insurance dedicated money market fund notice:

http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Insurance_Dedicated_Money_Funds.pdf

Guaranty agreement and related documentation:

<http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-fund.shtml>

Technical FAQs relating to enrollment:

<http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Technical-FAQ.pdf>

FAQs:

<http://www.ustreas.gov/press/releases/hp1163.htm>

Announcement of conclusion of enrollment period:

<http://www.ustreas.gov/press/releases/hp1188.htm>

CDS Regulation

Announcement for strengthening of CDS market:

<http://www.ustreas.gov/press/releases/hp1272.htm>

Memorandum of Understanding regarding CDS Central Counterparties:

<http://www.ustreas.gov/press/releases/reports/finalmou.pdf>

Announcement of Governor of the State of New York:

http://www.state.ny.us/governor/press/press_0922081.html

Details on New York State regulation:

http://www.ins.state.ny.us/circltr/2008/cl08_19.pdf

Suspension of New York State regulation:

<http://www.ins.state.ny.us/press/2008/p0811201.htm>

FASB Announcement:

<http://www.fasb.org/news/nr091208.shtml>

DTCC Announcement:

http://www.dtcc.com/news/press/releases/2008/warehouse_data_values.php

DTCC Announcement

http://www.dtcc.com/news/press/releases/2009/dtcc_supports_ccps.php

European Central Bank Announcement:

<http://www.ecb.int/press/pr/date/2008/html/pr081103.en.html>

Statement of European Commissioner for Internal Market and Services:

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/538&format=HTML&aged=0&language=EN&guiLanguage=en>

Credit Rating Agencies

SEC announcement:

<http://www.sec.gov/news/press/2008/2008-284.htm>

Fact sheet:

<http://www.sec.gov/news/press/2008/nrsrofactsheet-120308.htm>

Final rule:

<http://www.sec.gov/rules/final/2009/34-59342.pdf>

Proposed rule:

<http://www.sec.gov/rules/proposed/2009/34-59343.pdf>

Coordinated Global Efforts

G-20 statement:

<http://www.whitehouse.gov/news/releases/2008/11/20081115-1.html>

SEC Chairman Cox statement on meeting of IOSCO Technical Committee:

<http://www.sec.gov/news/press/2008/2008-279.htm>

Industry Response

Restoring Confidence in the Securitization Markets:

http://www.sifma.org/capital_markets/docs/Survey-Restoring-confidence-securitization-markets.pdf

Speech of the Chairman of the Federal Reserve

<http://www.federalreserve.gov/newsevents/speech/bernanke20090113a.htm>