



Legislative and Regulatory

# Status Update



AFP—Your Daily Resource

A monthly summary of federal issues

July-August 2009

## Overview

Despite the Independence Day holiday and August Congressional Recess, Washington has been extremely busy working on a number of controversial reforms. Health care reform is taking center stage, shifting legislators' focus from other policy priorities, including advancing financial markets reform. Of particular importance, Senator Christopher Dodd (D-CT), Chair of the Senate Banking Committee, has been taking the lead in the Senate Health, Education, Labor, and Pension (HELP) Committee on health care reform for the committee's Chairman, Senator Edward Kennedy (D-MA), who had been absent due to his battle with brain cancer before his passing this month.

Although health care has continued to draw the attention of a number of policy makers, the House Financial Services Committee held a number of hearings on financial markets reform throughout July (see page 2). Following these hearings, the Obama Administration released a number of legislative proposals of interest to AFP members. These proposals include reform of the over-the-counter (OTC) Derivatives markets (see page 2), the creation of a Systemic Risk Council (see page x), and new bank regulators. Of particular interest to AFP members is a proposal to reform the regulation of credit rating agencies, a key factor in the economic crisis. This month's in-depth issues analysis examines the Administration's credit rating agency reform proposal and discusses AFP's response (see page 8).

Aside from the big-picture regulatory reforms, AFP has been active on a number of other issues. On July 30, 2009, members from the AFP Board of Directors, Government Relations Committee (GRC), and Payments Advisory Group (PAG) took part in a call with the Government Accountability Office (GAO) to assist with a study on credit card interchange fees and how they affect businesses, municipalities, utilities, and universities.

On the plan sponsor front, the Committee on Investment of Employee Benefit Assets (CIEBA), AFP's voice on employee benefit investment issues, submitted comments to the Securities and Exchange Commission (SEC) on proxy access (see page 5).

On the legislative side of retirement fund investment, the House Education & Labor Committee approved legislation on 401 (k) fee disclosure, participant investment advice, and defined benefit plan funding relief (see page 4).

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## Legislative Issues

### Treasury and Finance

**08/09 AFP Releases Advocacy Toolkit** – Recently, AFP announced the creation of a new toolkit to assist AFP members with the task of communicating with elected officials. This toolkit was designed to help prepare financial professionals to be effective citizen lobbyists on issue impacting treasury and finance the industry. To download a copy of the toolkit, visit: <http://www.afponline.org/mbr/gr/intro.html> .

**08/09 Treasury Delivers Draft Rating Agency Legislation to Congress** - The Obama Administration sent draft legislation to Members of Congress to increase transparency, tighten oversight and reduce reliance on credit rating agencies. As part of a larger plan to retool our nation's financial regulatory structure, this draft legislation would work to reduce conflicts of interest at credit rating agencies while strengthening the Securities and Exchange Commission's (SEC) authority over, and supervision of, rating agencies. The Administration contends that investors were overly reliant on credit rating agencies, who often failed to describe the risk of rated products accurately. Treasury Department officials believe this lack of transparency prevented investors from understanding the full nature of the risks they were taking and played a significant role in the financial meltdown of late 2008.

For a more detailed synopsis of the Administration's plan for rating agencies, please refer to the Issues and Analysis section on page 8.

**08/09 Obama Administration Delivers Systemic Risk Regulator Legislative Language to Capitol Hill** – On July 22, 2009, the Obama Administration delivered proposed legislation to Capitol Hill that would require strong, consolidated supervision and regulation for all financial firms. The legislation also provides a regulatory regime to monitor, mitigate, and respond to risks in the financial system. The proposed language creates a Financial Services Oversight Council that will facilitate coordination of financial regulatory policy, resolve disputes and identify emerging risks in financial markets. The proposed Financial Services Oversight Council will replace the President's Working Group on Financial Markets and will have a permanent, full-time staff at Treasury.

The Financial Services Oversight Council will have eight members, one from each of the principal federal financial regulators: the Secretary of the Treasury, who shall serve as the Chair; the Chairman of the Board of Governors of the Federal Reserve System; the Chairman of the Commodity Futures Trading Commission (CFTC); the Director of the proposed Consumer Financial Protection Agency; the Chairperson of the Federal Deposit Insurance Corporation (FDIC); the Director of the Federal Housing Finance Agency (FHFA); the Director of the proposed National Bank Supervisor (NBS);

and the Chairman of the Securities and Exchange Commission (SEC).

To view the Administration's proposed legislation and plan, click [here](#).

**08/09 AFP Continues to Engage Congress to Take Action on Rating Agency Reform** – In July, both the House Financial Services Committee and the Senate Banking Committee held hearings to examine the need for more effective regulation of the credit rating agencies. Members of Congress have heard testimony from senior officials at the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve System (the Fed) and considered on how Congress could implement additional legislative fixes to better reform the current system. Following concerns raised during the hearings, Committee Chairman Barney Frank delayed consideration of these issues until after the August Congressional recess.

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

**08/09 OTC Derivatives Regulation Proposals** – On August 11, 2009, the Department of Treasury released proposed legislative language to address over-the-counter (OTC) Derivatives Reform. The language is a proposal and would have to be introduced by a Member of Congress for formal consideration. The goals of the proposal include:

- Preventing activities in the OTC markets from posing risk to the overall financial system;
- Promoting the efficiency and transparency of OTC markets;
- Preventing market manipulation, fraud, and other market abuses; and
- Ensuring that OTC derivatives are not marketed inappropriately to unsophisticated parties.

The language attempts to achieve these goals principally by requiring standardized derivatives be cleared and traded on regulated exchanges, reporting all OTC trades, and raising capital and margin requirements. The proposal exempts foreign exchange swaps and allows for the exemption of certain categories of trades that are part of an effective hedge from margin requirements.

Regulatory authority would be divided among the Commodities Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC), a proposed banking regulator, and the Department of Treasury. Jurisdiction would depend on both the product (physical commodity or security) and the entity engaged in the trade (bank or non-bank). The actual implementation of this system for complex trades has raised concerns.

This language is likely to be the basis for eventual reforms, but will still have to be passed by the legislature. A number of factions have competing proposals that will need to be reconciled, including legislation from a group of moderate Democrats and language in the House Cap & Trade bill. Additionally, following the release of Treasury's proposal, CFTC Chairman Gary Gensler sent a letter to the leadership of the Senate Agriculture Committee outlining additional changes he would like to see included.

On June 11, 2009, AFP sent a letter to the Treasury Department, Commodity Futures Trading Commission and Members of the House and Senate outlining specific AFP member concerns with regulation of the OTC derivatives markets

AFP fully supports regulations that encourage secure and transparent markets. AFP continues to reiterate that derivative products are essential risk management tools financial professionals rely on to help stabilize prices and mitigate risk.

However, AFP has expressed concerns regarding inflexible regulation of OTC derivatives and the potential impact it could have on members attempting to prudently hedge risk. AFP has been actively engaging policy makers on how our members use derivatives to mitigate their risk. As part of this effort, AFP is creating an OTC Derivatives Taskforce to highlight how our members hedge risk and how the push to standardization and increased capital and margin requirements could affect these practices. For more information on participating in the OTC Derivatives Task Force, [click here](#).

## Pensions and Investments

**08/09 Commodity Investments** – On August 6, 2009, Sen. Ron Wyden (D-OR) introduced the “Stop Tax-breaks for Oil Profiteering (STOP) Act” (S. 1588). The bill would tax non-profits investments in oil and gas as unrelated business taxable income (UBTI). Furthermore the bill would tax section 1256 contracts as 100% short-term capital. At present, gains under these contracts treat 60% of gains as long term capital and 40% as short term capital. The bill has been referred to the Senate Finance Committee.

**08/09 PBGC Investment Controversy** – Following a Senate Special Committee on Aging hearing on May 20, 2009 regarding contacts by the previous Pension Benefit Guarantee Corporation (PBGC) Director, Charles E.F. Millard with investment firms awarded contracts, the Committee's Chairman Herb Kohl (D-WI) introduced legislation to expand the PBGC Board and address conflicts of interest.

The bill, the “Pension Benefit Guarantee Corporation Governance Improvement Act of 2009” (S. 1544), would expand the board to include a representative of a company sponsoring a defined benefit pension plan, organized labor, plus two others. The bill calls for these appointees to be Presidential appointments, approved by the Senate, and bi-partisan.

**06/09 401(k) Fee Disclosure** - The House Education and Labor Committee voted out the “401(k) Fair Disclosure and Pension Security Act of 2009” (HR 2989). The legislation has three major parts – 401(k) disclosure, investment advice, and defined benefit plan provisions. Rep. George Miller (D-CA) Chairman of the Committee is the chief sponsor of the legislation. The legislation covers disclosure of costs and fees by service providers to plan sponsors; greatly expanded disclosure to participants; and a requirement for all plans to offer at least one very broad index fund (stocks or bonds). The bill calls for detailed information on investment expenses, administrative and transaction fees and any other charges that may be deducted from a participant's account. Bundled services would have to be ‘unbundled’ for purposes of fee disclosure. The bill would require all plans to offer a passively managed investment that is “...representative of the US investable equity market (including representation of small, mid, and large cap stocks) or the US investment grade bond market ... or a combination thereof ...”

**06/09 Investment Advice in Defined Contribution Plans** - As mentioned above, HR 2989 also includes reform of the regulation of investment advice. The bill prohibits “conflicted advice”—advice given to participants by individuals who may have a conflict of interest. The Pension Protection Act (PPA) allows plan investment managers to provide advice as long as they notify participants of any potential conflicts of interest. This legislation would repeal those provisions. The status of the Department of Labor's advisory opinion (SunAmerica) 2001-09(A), which facilitates the use of a computer model to provide advice is unclear.

**06/09 Defined Benefit Plan Funding** - The Fair Disclosure and Pension Security Act of 2009 (HR 2989) includes limited relief for defined benefit plan sponsors facing greatly increase funding requirements because of the economic downturn. The bill would:

- Provide flexibility to plan sponsors by allowing them to

change their funding methods in 2010 without Internal Revenue Service approval;

- Clarify that investment expenses can be amortized;
- Delay the effective date of any regulation implementing the Pension Protection Act that are issued this year;
- Amortize 2008 investment losses over a longer period. Plans would pay interest of their plans' losses for the next two years, but would not have to start amortizing those losses until 2011.
- Require all plans with \$50 million or more in underfunding to provide detailed financial and actuarial information to the Pension Benefit Guaranty Corporation (PBGC). Currently, plans that are less than 80% funded are subject to the for PBGC notification.

The bill also includes some funding relief for multiemployer pension plans.

## Regulatory Issues

### Treasury and Finance

#### 08/09 AFP Provides Comments on FDIC Guarantee Program

– On July 29, 2009, AFP submitted formal comments to the Federal Deposit Insurance Corporation (FDIC) on their proposed rule to extend the Transaction Account Guarantee Program. The program allowed participating banks to extend unlimited deposit insurance for non-interest bearing business accounts. It was created in late 2008 as part of the effort to provide additional liquidity to the banking system as well as increase confidence for corporate deposit holders. In the letter, AFP recommended that the program be extended through June 30, 2010. To read the complete letter, click here.

#### 08/09 Liquidity Programs Tapering Off as Markets Improve

– In early July, the Federal Reserve (the Fed) released a report that found that the utilization of credit extended through many of the liquidity programs declined as conditions in the financial markets began to improve. According to the report, improvements in market conditions have allowed some borrowers to obtain financing from private investors in the commercial paper market and from other sources. The Fed's lending facilities such as the Commercial Paper Funding Facility (CPFF), the Primary Dealer Credit Facility (PDCF) and the Term Securities Lending Facility (TSLF) have all seen declines in recent weeks. The full text of the report may be found here.

#### 07/09 SEC Proposes Rule Changes for Money Market Funds -

On June 24, 2009, the Securities and Exchange Commission (SEC) proposed several rule changes designed to significantly strengthen the regulatory framework for money market funds to increase their resilience to economic stresses and reduce the risks of runs on the funds.

Some highlights of the proposed amendments include:

- Require that money market funds have certain minimum percentages of their assets in cash or securities that can be readily converted to cash, to pay redeeming investors.
- Shorten the weighted average maturity limits for money market fund portfolios (from 90 days to 60 days).
- Limit money market funds to investing in only the highest quality securities (i.e., eliminate their ability to invest in so-called "Second Tier" securities).
- Require funds to stress test fund portfolios periodically to determine whether the fund can withstand market turbulence.
- Require money market funds to report their portfolio holdings monthly to the Commission and post them on their Web sites.
- Require funds to be able to process purchases and redemptions at a price other than \$1.
- Permit a money market fund that has "broken the buck" and decided to liquidate to suspend redemptions while the fund undertakes an orderly liquidation of assets.

AFP has prepared a brief summary of the rules and the various questions that the SEC would submitted comments to address. Click here to view the summary.

#### 07/09 Investors Group Advocates Major Reforms

– On July 15, 2009, a group co-chaired by former Securities and Exchange Commission (SEC) Chairmen William H. Donaldson and Arthur Levitt, Jr. released a series of recommended financial regulatory reforms. Among the proposals were recommendations including:

- Asset Backed Security (ABS) sponsors be required to retain a meaningful residual interest in their securitized products
- Hedge Funds be required to register with the SEC
- Regulators be granted authority to wind down systemically risky programs
- Shareholders have the right to place director names on a company's proxy
- Institutional investors should make timely, public disclosures on their proxy & investment guidelines

Among the more controversial recommendations is the creation of a board, similar to the Public Company Accounting Oversight Board, to oversee systemic risk. The report criticizes proposals to have either a council of regulators or the Federal Reserve act in such a capacity. The report recommends empowering a panel to identify systemic risk, but empowering current regulatory bodies to act. The full report is available here.

#### 06/09 AFP Continues to Push for Expansion of the Commercial Paper Program

– Earlier this year, AFP members and staff participated in a conference call with the staff of the Federal Reserve Board of Governors and the Federal Reserve Bank of New York to discuss a previous request to extend the Commercial Paper Funding Facility (CPFF) to Tier 2 commercial paper

issuers (Click here to view AFP's original request to the Fed).

AFP members argue that this expansion will help ease credit availability for Tier 2 companies and result in less demand for bank credit by Tier 2 companies. As additional evidence of tightening credit markets is made available, AFP will continue to engage the Fed on this issue and encourage them to consider expanding the program. To increase pressure for an expansion of the program, AFP has also sent a letter to the Chairman of the National Economic Council (NEC), Larry Summers. To view the NEC letter, click here.

**06/09 Bernanke to Revise Fed Rules on Rating Agencies** – Last month, the Federal Reserve Board announced the expansion of the number of credit-ratings companies permitted to rate assets for the Term Asset-Backed Securities Loan Facility (TALF). Currently only five of the 10 nationally recognized statistical rating organizations (NRSRO) are eligible to provide analysis.

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

## Pensions and Investments

**08/09 Foreign Bank Account Reporting (FBAR)** – Increased scrutiny of foreign bank accounts by the Internal Revenue Service (IRS) has led to concerns on the role of FBAR and retirement plan sponsors. Originally, the IRS indicated plans would have to file FBAR by September 23, 2009, but due to confusion on who the regulation applies to, the filing date has been moved to June 30, 2010.

The Committee on Investment of Employee Benefit Assets (CIEBA), the voice of AFP on employee benefit plan asset management and investment issues, held a webinar on the issue on July 30, 2009. Due to the degree of uncertainty of the current regulation, CIEBA will submit comments to the IRS on the issue. To send comments on the issue, click here. If you are interested in learning more about CIEBA resources on FBAR, please contact CIEBA's Coordinator, Michael Griffith, at [mgriff@afponline.org](mailto:mgriff@afponline.org).

**08/09 David Strauss Appointed to Head PBGC Advisory Board** – On August 11, 2009, President Obama named former Pension Benefit Guarantee Corporation (PBGC) Executive Director, David Strauss, to chair the PBGC's Advisory Board. David Strauss served as Executive Director of the PBGC from 1997-

2001 and greatly improved the finances of the Corporation during his tenure.

**08/09 SEC Proposes New Rules on Proxy Access** - The Securities and Exchange Commission (SEC) has proposed new rules that would allow shareholders to have their nominees for boards of directors included in company proxy materials. The proposal would affect all publicly traded companies and registered investment advisors, such as mutual fund companies. Under this proposal, shareholders could nominate up to 25% of the total number of seats on a corporate board. The proposal calls for certain minimum ownership thresholds for nominating directors as follows:

- At least 1 percent of the voting shares of large public companies, defined as a company with a market value of \$700 million or more;
- At least 3 percent of the voting shares of middle size companies, defined as a company with net assets of between \$75 million and \$700 million; and
- At least 5 percent of the voting shares of smaller companies, defined as a company with less than \$75 million.

In addition to the ownership criteria, the proposal requires nominating shareholders to have held the requisite number of share for at least one year prior to proposing a director or slate of directors.

The Committee on Investment of Employee Benefit Assets (CIEBA), the voice of AFP on employee benefit plan asset management and investment issues, submitted comments on the proposal. The CIEBA letter expresses concern that the low thresholds in the proposed rules may encourage actions that are not in the interests of long-term investors or retirement plan participants.

**07/09 Borzi Confirmed as EBSA Assistant Secretary** - Phyllis Borzi has been confirmed to serve as Assistant Secretary of Labor for Employee Benefit Security. In this capacity, she will lead the Employee Benefit Security Administration (EBSA) at the Department of Labor (DOL). EBSA is primarily responsible for regulation and enforcement of ERISA's fiduciary requirements. Asst. Secretary Borzi will be speaking to CIEBA, AFP's voice on retirement plan investment, at their Annual Meeting in Washington, DC in November.

## Pensions and Investments

**08/09 Identity Theft Red Flag Rule** – On November 1, 2009, new Red Flag rules from the Federal Trade Commission (FTC) are set to go into effect. These rules require financial institutions and businesses that are creditors to implement a written Identity Theft Prevention Program. A business is a creditor if it regularly provides goods or services first and allows customers

to pay later. This may include utilities, health care providers and telecommunications companies. The FTC has posted Frequently Asked Questions that explain who is covered and how to comply.

## Financial Accounting and Reporting

**08/09 FASB to Issue Guidance on Alternative Investment Valuation** – In coming weeks, the Financial Accounting Standards Board (FASB) will be issuing final guidance aimed at remedying practice issues that investors face in estimating fair values of their holdings in private equity, hedge funds and other investment companies.

The planned guidance, which FASB expects to issue by August 31, 2009, would permit use of a “practical expedient” for investors having to gauge the fair value of their interests in investment companies that calculate net asset value per share. The practical expedient for fair value is net asset value per share

**08/09 IFRIC Publishes Draft Interpretation on Extinguishing Financial Liabilities with Equity Instruments** - In the current environment, some entities are renegotiating the terms of financial liabilities with their creditors. In some circumstances, the creditor agrees to accept an entity’s shares or other equity instruments to settle the financial liability fully or partially. The International Financial Reporting Interpretations Committee (IFRIC) was asked for guidance on how an entity should account for such transactions. IFRIC proposes that:

- The entity’s equity instruments are part of any ‘consideration paid’ to extinguish the financial liability;
- The equity instruments are measured at either their fair value or the fair value of the financial liability extinguished, whichever is more reliably determinable;
- Any difference between the carrying amount of the financial liability extinguished and the initial measurement amount of these equity instruments is included in the entity’s profit or loss for the period.

The proposal is open for public comment until October 5, 2009.

**07/09 IASB Publishes Proposals on the Accounting for Rate-Regulated Activities** - The International Accounting Standards Board (IASB) released proposals on the Accounting for Rate Regulated Activities, the objective of which is to establish how assets and liabilities resulting from rate-regulated activities should be recognized and measured under International Financial Reporting Standards (IFRSs). The IASB was asked for guidance on the issue from many jurisdictions. Clarifying the accounting for rate regulation is of particular importance for jurisdictions that are in the process of adopting IFRSs and

where accounting for the effect of rate regulation is in place for some sectors. In those cases entities are currently recognizing sometimes significant ‘regulatory’ assets and liabilities by reference to the specific US standard. If adopted, the proposed IFRS would

- Define regulatory assets and regulatory liabilities;
- Set out criteria for their recognition;
- Specify how they should be measured; and
- Require disclosures about their financial effects.

**07/09 IASB Issues International Financial Reporting Standard (IFRS) Designed for Use by Small and Medium-Sized Entities (SMEs)** – The International Accounting Standards Board (IASB) released a new standard for small and medium sized entities. The standard is a result of a five-year development process with extensive consultation of SMEs worldwide. The IFRS for SMEs responds to strong international demand from both developed and emerging economies for a rigorous and common set of accounting standards for smaller and medium-sized businesses that is much simpler than full IFRSs. In particular, the IFRS for SMEs will:

- Provide improved comparability for users of accounts
- Enhance the overall confidence in the accounts of SMEs, and
- Reduce the significant costs involved of maintaining standards on a national basis.

The IFRS for SMEs will also provide a platform for growing businesses that are preparing to enter public capital markets, where application of full IFRSs is required.

**07/09 Financial Crisis Advisory Group (FCAG) Releases Recommendations** – The Financial Crisis Advisory Group (FCAG) was created to advise the International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB) on the standard-setting implications of the global financial crisis and potential changes to the global regulatory environment.

The FCAG’s report focused on four principles:

1. Effective Financial Reporting;
2. The Limitations of Financial Reporting;
3. Convergence of Accounting Standards and
4. Standard setter Independence and Accountability.

Among the recommendations made in each of the categories, one of the recommendations made by the FCAG was for the IASB and FASB boards to reconsider the appropriateness of an entity’s recognition of gains or losses as a result of fair value changes in its creditworthiness. AFP argued for this standard in a comment letter written to FASB in response to an exposure draft on fair value measurement for liabilities.

Another important recommendation to come from the FCAG of

particular interest to AFP members is for the Boards to explore alternatives to the current incurred loss model for loan loss provisions that would use more forward-looking information. Alternatives to consider include an expected loss model and a fair value model.

**07/09 FASB Initiates “Disclosure Framework” Project** – The Financial Accounting Standards Board (FASB) announced the addition of a new FASB agenda project aimed at establishing an overarching framework intended to make financial statement disclosures more effective, coordinated, and less redundant. The FASB expects to begin deliberations this quarter and plans to issue a preliminary views document in the first half of 2010. Some specific financial reporting areas the project will evaluate and address include whether the disclosure framework should:

- Apply to all entities or exclude private or nonprofit entities;
- Apply to interim reporting;
- Focus only on high-level principles; and
- Focus only on notes to financial statements or extend to ways to better integrate information provided in financial statements, MD&A, and other parts of a company’s public reporting package.

**06/09 IASB Issues Exposure Draft on Fair Value Measurement** – On May 28, 2009, the International Accounting Standards Board (IASB) issued an exposure draft on Fair Value Measurement. The proposed guidance deals with how fair value should be measured when it is required by existing standards. If adopted, the proposals would replace the current fair value measurement guidance with a single, unified definition of fair value, as well as further authoritative guidance on the application of fair value measurement in inactive markets. Sir David Tweedie, Chairman of the IASB, said, “This exposure draft is an important milestone in our response to the global financial crisis. The proposed guidance proposes clear and consistent guidance for the measurement of fair value and also addresses valuation issues that arise in markets that have become inactive. This guidance is consistent with the report of the Expert Advisory Panel and with US GAAP and would achieve overall convergence with US GAAP.”

The comments received on the exposure draft will aid the IASB in developing an international standard on fair value measurement, which it plans to publish in 2010. Comments are due September 28, 2009.

**06/09 FASB Proposes More Guidance on Fair Value Measurement** - On June 8, 2009, the Financial Accounting Standards Board (FASB) proposed FASB Staff Position (FSP), Estimating the Fair Value of Investments in Investment Companies That Have Calculated Net Asset Value per Share in Accordance with the AICPA Audit and Accounting Guide (FSP 157-g), to provide application guidance for estimating the fair value of

investments in investment companies that have calculated net asset value per share. The FASB determined that that net asset value per share is the most relevant estimate of fair value available that would not require undue cost and effort for investments within the scope of this FSP. As a practical expedient, the Board decided that a reporting entity should be permitted to estimate the fair value of an investment within the scope of this FSP using net asset value per share (or its equivalent, for example, partners’ capital per share for an investment in a partnership) without further adjustment, if the net asset value per share of the investment is determined in accordance with the investment companies Guide as of the reporting entity’s measurement date. Comments were due to FASB on July 8, 2009.

**06/09 Lease Accounting** - The International Accounting Standards Board (IASB) and Financial Accounting Standards Board (FASB) launched a public discussion on lease accounting by publishing their preliminary views in a joint discussion paper that discuss a possible new approach to lease accounting. AFP’s Government Relations Committee (GRC) responded by issuing a comment letter. In addition to answering specific questions posed by IASB and FASB, the GRC urged the two standards setters to consider the impact that its rulemaking will have on small to medium size companies with unsophisticated personnel and systems. The GRC advised the standard setters that the proposed standard should not be so complex that implementation of this standard would far outweigh its benefit. The GRC also cautioned that the implementation of this standard could add additional strain on businesses credit lines if this version is passed in a credit constrained market, such as the one we are facing today.

## Payments & Technology

**08/09 Cash Management Reporting Standard** – Accredited Standards Committee (ASC) X9 has launched a project to update and standardize the Bank Administration Institute (BAI) format for cash management reporting. BAI is widely used for account balance and transaction reports and lockbox detail, but the format often varies from bank to bank. The X9 project will produce a global standard that will increase visibility to cash and be implemented consistently by financial institutions. AFP Payments Advisory Group member Bill Lundeen, Group Manager, Global Banking, Procter & Gamble, is Co-Vice Chairman of the project.

**07/09 Interchange Fees** – On July 30, 2009, AFP Members took part in a call with the Government Accountability Office (GAO) to provide input on a study on credit card interchange fees. Fifteen members discussed their experiences with investigators from the GAO and provided input on proposals.

The study is part of the Credit CARD Act of 2009 (PL 111-

24), signed into law by President Obama in May. The law requires the GAO to issue a report by November on interchange fees, how card companies determine them, their effects on businesses and consumers, and business' ability to negotiate.

AFP will continue to work with legislators and regulators to highlight our members' experience with interchange fees and how they affect American businesses.

## Issue Analysis

### Obama Administration Proposal to Reform Credit Rating Agencies

*By Jeanine Arnett, Government Relations Manager, AFP*

On July 21, 2009, the Obama Administration delivered proposed legislation to Capitol Hill to increase transparency, tighten oversight, and reduce reliance on credit rating agencies. The legislation would work to reduce conflicts of interest at credit rating agencies while strengthening the Securities and Exchange Commission's (SEC) authority over and supervision of rating agencies. The Administration contends that investors were overly reliant on credit rating agencies who often failed to accurately describe the risk of rated products. Treasury officials believe that it was this lack of transparency that prevented investors from understanding the full nature of the risks they were taking. As a result, Treasury sent legislative language to Congress that would tighten oversight of credit rating agencies, protect investors from inappropriate rating agency practices, and bring increased transparency to the credit rating process.

As part of the proposed reform, the Administration's plan addresses the following areas relative to rating agency reform:

#### Conflicts of Interest

##### **Bar Firms From Consulting With Any Company That They Also**

**Rate:** Credit ratings agencies will face similar restrictions to other professional service providers, like accountants, and will be prohibited from providing consulting services to companies that contract for ratings.

##### **Strengthen Disclosure And Management Of Conflicts Of Interest:**

The legislation will prohibit or require the management and disclosure of conflicts arising from the way a rating agency is paid, its business relationships, affiliations or other conflicts.

##### **Disclose Fees Paid By An Issuer Along With Each Rating Report:**

Each rating report will disclose the fees paid by the issuer for a particular rating, as well as the total amount of fees paid by the issuer to the rating agency in the previous two years.

## Transparency & Disclosure

**Require Disclosure Of Preliminary Ratings To Reduce "Ratings Shopping":** Currently, an issuer may attempt to "shop" among rating agencies by soliciting 'preliminary ratings' from multiple agencies and then only paying for and disclosing the highest rating it received for its product. The proposal seeks shed light on this practice by requiring an issuer to disclose all of the preliminary ratings it had received from different credit rating agencies so that investors will see how much "shopping" happened and whether there were discrepancies with the final rating.

##### **Require Different Symbols To Be Used o Distinguish The Risks Of Structured Products:**

One of the challenges in the current crisis was that investors did not fully realize that the risks posed by structured products such as asset-backed securities are fundamentally different from those posed by corporate bonds, even with similar credit ratings. Treasury is proposing to require rating agencies to use different symbols for structured finance products as an indication of these disparate risks.

##### **Require Qualitative And Quantitative Disclosure Of The Risks Measured In A Rating:**

Agencies would be required to provide a much fuller picture of the risks in any rated security through the addition of qualitative and quantitative disclosure of the risks and performance variance inherent in any given security. Ratings cannot be a substitute for investor due diligence. Therefore, to facilitate investor analysis, Treasury would require that each rating also include a clear report containing assessments of data reliability, the probability of default, the estimated severity of loss in the event of default, and the sensitivity of a rating to changes in assumptions.

#### Strengthen SEC Authority and Supervision:

##### **Establish A Dedicated Office For Supervision Of Rating Agencies:**

The legislative proposal establishes a dedicated office within the SEC to strengthen supervision of rating agencies and to carry out the enhanced regulations required.

**Mandatory Registration:** Unlike the current voluntary system of registration, the proposal would make registration mandatory for all credit rating agencies. This would bring all ratings firms into a strengthened system of regulation.

**SEC Examination of Internal Controls and Processes:** The SEC would require each rating agency to document its policies and procedures for the determination of ratings. The SEC would examine the internal controls, due diligence, and implementation of rating methodologies for all credit rating agencies to ensure compliance with their policies and public disclosures.

#### Reduce Reliance on Credit Rating Agencies

**PWG Review of Regulatory Use of Ratings:** Treasury will work with the SEC and the President's Working Group on Financial Markets to



determine where references to ratings can be removed from regulations.

**SEC Recently Requested Public Comment on Whether to Remove References to Ratings in Money Market Mutual Fund Regulation:**

As part of a comprehensive set of money market fund reform proposals, the SEC requested public comment on whether to eliminate references to ratings in the regulation governing money market mutual funds, as a way to reduce reliance on ratings. Treasury will work with the SEC to examine opportunities to reduce reliance and increase the resilience of the money market mutual fund industry.

**Require GAO Study On Reducing Reliance:** In addition to regulatory efforts to reduce reliance on credit ratings, this legislation would require the GAO to study and issue a report on the reliance on ratings in federal and state regulations.

**Strongly Support SEC Actions on Credit Rating Agencies**

**Enable Additional Ratings On Structured Products:** Because structured products are often complex and require detailed information to assess, it can be difficult for a rating agency to provide “unsolicited ratings” – ratings on products it was not paid to rate. These ratings, while in existence previously, were ineffective because investors understood that these unsolicited ratings did not benefit from the same information as the fully contracted ratings. The SEC has proposed a rule that would require issuers to provide the same data they provide to one credit rating agency as the basis of a rating to all other credit rating agencies. This will allow other credit rating agencies to provide additional, independent analysis to the market.

**Require Disclosure Of Full Ratings History:** The SEC has proposed to require NRSROs to disclose, on a delayed basis, ratings history information for 100% of all issuer-paid credit ratings.

**Strengthen Regulation And Oversight Of Credit Rating Agencies:** In response to the credit market turmoil, in February the SEC adopted several measures to increase the transparency of the rating agencies’ methodologies, strengthen disclosure of ratings performance, prohibit certain practices that create conflicts of interest, and enhance record-keeping and reporting obligations to assist the SEC in performing its regulatory and oversight functions. The SEC has allocated resources to establish a branch of examiners dedicated specifically to conducting examination oversight of rating agencies.

**AFP Position**

Since 2002, AFP has been a vocal advocate for the reform of the credit ratings industry. During that time, we have conducted a number of surveys as well as, provided testimony to Congressional Committees in both the House and the Senate. We applaud the Administration for their work to increase transparency, tighten oversight, and reduce reliance on credit rating agencies. Although this proposal is merely a suggestion from the Administration to Congress, actual legislation has

yet to be introduced in the House or Senate. We expect that House leaders will introduce a bill following the August recess. When that happens, AFP will further analyze the proposal and provide our members with a summary of specific areas of this reform proposal that will directly impact financial professionals.

If you have any comments that you would like included in our analysis, please contact AFP’s Government Relations Manager, Jeanine Arnett, at 301.961.8853 or [jarnett@AFPonline.org](mailto:jarnett@AFPonline.org).

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## -- Washington on the Web --

The AFP Web site is your direct link to current Washington activities impacting treasury and banking. Links to the following sites, and others, are located at the Government Relations section of <http://www.AFPonline.org>.

<b>Congressional Record</b>	<a href="http://www.access.gpo.gov/su_docs/aces/aces150.html">http://www.access.gpo.gov/su_docs/aces/aces150.html</a>
<b>Department of the Treasury</b>	<a href="http://www.ustreas.gov">http://www.ustreas.gov</a>
<b>Federal Register</b>	<a href="http://www.access.gpo.gov/su_docs/aces/aces140.html">http://www.access.gpo.gov/su_docs/aces/aces140.html</a>
<b>Financial Accounting Standards Board</b>	<a href="http://www.fasb.org">http://www.fasb.org</a>
<b>Federal Deposit Insurance Corporation</b>	<a href="http://www.fdic.gov">http://www.fdic.gov</a>
<b>Federal Reserve Board</b>	<a href="http://www.federalreserve.gov">http://www.federalreserve.gov</a>
<b>The Federal Web Locator</b>	<a href="http://www.infoctr.edu/fwl">http://www.infoctr.edu/fwl</a>
<b>*FedWorld</b>	<a href="http://fedworld.gov">http://fedworld.gov</a>
<b>Financial Management Service</b>	<a href="http://www.fms.treas.gov">http://www.fms.treas.gov</a>
<b>International Accounting Standards Board</b>	<a href="http://www.iasb.org.uk/cmt/0001.asp">http://www.iasb.org.uk/cmt/0001.asp</a>
<b>Office of the Comptroller of the Currency</b>	<a href="http://www.occ.treas.gov">http://www.occ.treas.gov</a>
<b>Securities and Exchange Commission</b>	<a href="http://www.sec.gov">http://www.sec.gov</a>
<b>SEC EDGAR Database</b>	<a href="http://www.sec.gov/edgar.shtml">http://www.sec.gov/edgar.shtml</a>
<b>**THOMAS</b>	<a href="http://thomas.loc.gov">http://thomas.loc.gov</a>
<b>The U.S. House of Representatives</b>	<a href="http://www.house.gov">http://www.house.gov</a>
<b>The U.S. Senate</b>	<a href="http://www.senate.gov">http://www.senate.gov</a>
<b>The White House</b>	<a href="http://www.whitehouse.gov">http://www.whitehouse.gov</a>

## --Canada on the Web --

<b>Canadian Payments Association</b>	<a href="http://www.cdnpay.ca/">http://www.cdnpay.ca/</a>
<b>Government of Canada</b>	<a href="http://www.canada.gc.ca">http://www.canada.gc.ca</a>
<b>Department of Finance</b>	<a href="http://www.fin.gc.ca">http://www.fin.gc.ca</a>
<b>Canadian Institute of Chartered Accountants</b>	<a href="http://www.cica.ca">http://www.cica.ca</a>
<b>Canada Deposit Insurance Corporation</b>	<a href="http://www.cdic.ca">http://www.cdic.ca</a>
<b>Bank of Canada</b>	<a href="http://www.bankofcanada.ca">http://www.bankofcanada.ca</a>
<b>Investment Dealers Association of Canada</b>	<a href="http://www.ida.ca">http://www.ida.ca</a>
<b>Canada Customs and Revenue Agency</b>	<a href="http://www.tbs-sct.gc.ca">http://www.tbs-sct.gc.ca</a>
<b>Canada Pension Plan Investment Board</b>	<a href="http://www.cppib.ca">http://www.cppib.ca</a>
<b>Invest In Canada</b>	<a href="http://www.investincanada.com">http://www.investincanada.com</a>
<b>Canada Business Network</b>	<a href="http://www.cbnc.org">http://www.cbnc.org</a>
<b>Canada Mortgage and Housing Corporation</b>	<a href="http://www.cmhc-schl.gc.ca">http://www.cmhc-schl.gc.ca</a>
<b>Auditor General of Canada</b>	<a href="http://www.oag-bug.gc.ca">http://www.oag-bug.gc.ca</a>

## --Europe on the Web --

<b>European Commission Euro</b>	<a href="http://europa.eu.int/comm/economy_finance/euro_en.htm">http://europa.eu.int/comm/economy_finance/euro_en.htm</a>
<b>European Union General</b>	<a href="http://europa.eu.int/index-en.htm">http://europa.eu.int/index-en.htm</a>
<b>European Central Bank</b>	<a href="http://www.ecb.int/">http://www.ecb.int/</a>

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\* FedWorld is a central access point to locate and acquire government information

\*\* THOMAS is the Library of Congress legislative information site