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DEVELOPMENTS OF NOTE

ABA Issues Letter to FDIC on Deposit Interest Restrictions

The American Bankers Association (the “ABA”) requested guidance from the FDIC on a number of issues concerning the FDIC’s recent changes to its rule (the “Final Rule”) that imposes interest rate restrictions on banks that are not “well-capitalized.” The Final Rule generally prohibits banks that are not “well-capitalized” from offering rates on deposits that are more than 75 basis points above an FDIC-computed national rate. Under the Final Rule affected banks may petition the FDIC for permission to pay a different rate in a market in which the effective yield differs from the national rate.

The ABA’s [request letter](#) was issued in response to ABA member questions regarding the application of the Final Rule. (The Final Rule was discussed in the [June 2, 2008 Alert](#).) The ABA letter forwards 17 questions received from member banks concerning the deposit interest limitations and suggests that the member questions may provide insight as the FDIC prepares industry guidance on the Final Rule. Among the issues with respect to implementation of the Final Rule as to which the ABA member banks seek clarification from the FDIC are:

- How far above the national rate must a market rate be in order for the FDIC to determine that the effective yield in a market differs from the national rate?
- Will the FDIC’s determination be product-specific or will there be a general determination that the higher of the local rate or national rate may be used?
- How will rates offered on the Internet be factored into the local market?
- How frequently will determinations of higher effective yields be made?

- In computing the national rates as well as local rates, how will the FDIC take into account the common practice of branch-level staff offering higher rates to react to local competitive pressures?
- How does the rule apply to variable rate products?
- If the FDIC makes a determination that the effective rate in a given market is higher than the national rate, will every bank in that market be able to use the local rates or must each bank that wants to use the local rates obtain the FDIC's prior approval?

SEC Sends Letters to CFOs of Certain Publicly-Held Banking Companies Regarding Disclosure of Loan Loss Accounting

The staff of the SEC's Division of Corporation Finance sent a [letter](#) (the "Letter") to chief financial officers of certain publicly-held banking companies (the "Banks") regarding public disclosure of the manner in which they account for their provision and allowance for loan losses. The Letter recommends that the publicly traded Banks reassess, in light of the economic downturn and the increase in high risk loans, their loan loss and related disclosure in the Management's Discussion and Analysis ("MD&A") section of their SEC filings.

Specifically, the Letter recommends that the Banks review their disclosure and, to the extent that the issue is relevant and material for a particular Bank, consider changes to the Bank's disclosure with respect to the following issues concerning higher risk loans:

- The carrying value of higher risk loans by loan type, for example, junior lien mortgages and, to the extent feasible, allowance data for these loans;
- Current loan-to-value ratios by higher-risk loan type, further segregated by geographic location to the extent the loans are concentrated in any areas (with discussion on how the ratios are calculated and the source of the underlying data);
- The amount and percentage of refinanced or modified loans by higher risk loan type;
- Asset quality information and measurements, such as delinquency statistics and charge-off ratios by higher risk loan type;
- The Bank's policy for placing loans on non-accrual status when a loan's terms allow for a minimum monthly payment that is less than interest accrued on the loan (with discussion on how the policy impacts nonperforming loan statistics);
- The expected timing of adjustment of option adjustable rate mortgage loans and the effect of the adjustment on future cash flows and liquidity, taking into consideration current trends of increased delinquency rates of ARM loans and reduced collateral values due to declining home prices; and
- The amount and percentage of customers that are making the minimum payment on their option ARM loans.

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The Letter then suggests that a Bank disclose any changes that it made in calculating its allowance for loan losses, including any changes to its policies for determining non-accruals and charge-offs as well as the estimation methods used and assumptions made.

Subsequently, the Letter suggests that Banks consider disclosure of declines in the value of assets serving as collateral for the Bank's loans. Next, the Letter discusses potential additional disclosure concerning risk-mitigation transactions, changes in key ratios (*e.g.*, the ratio of non-performing loans to total loans), and the effect of accounting for an acquisition on the allowance for loan losses.

Finally, the Letter states that a Bank would be acting in a manner inconsistent with generally accepted accounting principles ("GAAP") if it delayed recognizing credit losses that the Bank can estimate, and cautions Banks that it will take action against a Bank that delays recognition of credit losses in a manner inconsistent with GAAP.

SEC and CFTC to Hold Joint Meetings on Regulatory Harmonization

The SEC and CFTC issued a [joint notice](#) announcing that they will hold joint meetings to discuss assessments of the current regulatory scheme, harmonization of the agencies' rules and related recommendations for changes to statutes and regulations. The meetings are designed to respond to the recommendation in the recent Treasury white paper on financial regulatory reform "that the CFTC and the SEC complete a report to Congress by September 30, 2009 that identifies all existing conflicts in statutes and regulations with respect to similar types of financial instruments and either explains why those differences are essential to achieve underlying policy objectives with respect to investor protection, market integrity, and price transparency or makes recommendations for changes to statutes and regulations that would eliminate the differences." The meetings, which are open to the public, will be held on September 2 and September 3, 2009. The meetings will consist of five panels. Topics to be discussed include (a) the regulation of (1) exchanges and markets, (2) intermediaries, (3) clearance and settlement, and (4) investment funds and (b) enforcement. The agencies are seeking public comment on the topics to be discussed at the meetings, which must be received on or before September 14, 2009.

OTHER ITEM OF NOTE

Goodwin Procter Issues Client Alert Discussing Recent Revisions to Massachusetts Data Security Regulations

Goodwin Procter issued a [Client Alert](#) discussing recent revisions to the Massachusetts data security regulations concerning protection of personal information of Massachusetts residents (201 CMR 17.00), including a postponed compliance date of March 1, 2010.