

# FINANCIAL SERVICES ALERT QUARTERLY

Goodwin Procter LLP, a firm of 900 lawyers, has one of the largest financial services practices in the United States.

## SUBSCRIBE

## CONTACT US

## BACK ISSUES OF FSA

## CONSUMER FINANCIAL SERVICES ALERT

## OTHER PUBLICATIONS

## EDITORS

Eric R. Fischer

Jackson B.R. Galloway

Elizabeth Shea Fries

### Disclaimer:

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, is provided with the understanding that it does not constitute the rendering of legal advice or other professional advice by Goodwin Procter LLP or its attorneys.

### IRS Circular 230 Notice:

To ensure compliance with requirements under Treasury Department Circular 230, we inform you that the contents of this *Alert* are not intended or written to be used, and may not be used, for the purpose of (i) avoiding U.S. federal tax penalties or (ii) promoting, marketing or recommending to another party any matter addressed herein. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax adviser.

©2010 Goodwin Procter LLP  
All rights reserved.

## Paul Lee Named a Leading Asian-American Professional and his Profile and Picture are Placed on Display at Federal Reserve Bank of Cleveland

In 2009, The National Association of Asian American Professionals conferred its annual leadership award on our Banking Group partner, Paul Lee and on five other leading Asian-American professionals, including the architect Maya Lin, former Secretary of Labor Elaine Chao and the playwright David Henry Hwang. Profiles and pictures of the six honorees have been placed on display at the Federal Reserve Bank of Cleveland and at its branch offices in Cincinnati and Pittsburgh during Asian Heritage Month in May.

## ISSUES DURING THE MOST RECENT QUARTER

### February 16, 2010

- FinCEN Adopts Rule to Expand Section 314(a) Information Sharing Procedure
- FRB Chairman Bernanke Announces Exit Strategy for Crisis Response Programs, Including by Raising Interest Rates on Reserve Balances
- Senate Regulatory Reform Efforts Move Forward as Senator Dodd Reaches an Impasse with Senator Shelby, Moves Forward with Senator Corker
- OFAC Issues Proposed Belarus Sanctions Regulations

### February 23, 2010

- Second Circuit Vacates Dismissal of Mutual Fund Shareholder Securities Fraud Claim Regarding Affiliated Transfer Agent Arrangements, But Affirms Dismissal of Related Excessive Fee Claim
- FRB Increases Interest Rate Charged at Discount Window and Reduces Maturities of Discount Window Loans
- Goodwin Procter Issues Client Alert on Recent SEC Staff Guidance Regarding Section 13 and Section 16 Compliance

### March 2, 2010

- DOL Issues Proposed Regulation to Replace Previously-Issued Guidance on Investment Advice for Participant-Directed ERISA Plans and IRAs
- IRS Issues Guidance and FinCEN Publishes Proposed Rule on FBAR Filings
- SEC Amends Rule Requiring Internet Availability of Proxy Materials

- Federal Banking Agencies Clarify Risk Weights for FDIC Claims and Guarantees
- IOSCO Publishes Template for Collection of Data from Hedge Funds to Assist Securities Regulators' Assessment of Systemic Risk
- SEC Issues Adopting Release for Amendments to Regulation SHO

*The compliance date for the amendments is November 10, 2010.*

- Additional Developments in EU Alternative Investment Fund Managers Directive with Implications for Non-EU Managers and Funds
- Reminder: Annual Update Requirement for Ongoing Regulation D Offerings

### **March 5, 2010 – Special Edition**

- SEC Provides Details on Amendments to Money Market Fund Rules

*The SEC has specified a range of compliance dates from May 28, 2010 through October 31, 2011, which are discussed in detail in the Special Edition.*

### **March 9, 2010**

- FinCEN, the Federal Banking Agencies and the SEC Issue Joint Guidance on Obtaining and Retaining Beneficial Ownership Information
- OCC Permits After-the-Fact Notice for Community Development Investments Aggregating up to 15% of a National Bank's Unimpaired Capital and Surplus
- SEC Staff Clarifies Compliance Date for New Money Market Fund Stress Testing Requirement

*The compliance date for the new stress testing requirement is May 28, 2010.*

- SEC Staff Updates FAQ on Advisers Act Custody Rule to Address Recent Rule Amendments
- Goodwin Procter Issues Client Alert Providing Further Analysis of IRS Guidance and FinCEN Rule Proposal Regarding FBAR Requirements
- UCITS III Funds as Suitable Vehicles for Hedge Fund Managers

### **March 16, 2010**

- Senator Dodd Releases Revised Financial Regulatory Reform Bill
- Senators Merkley and Levin Introduce Bill to Restrict Proprietary Trading by Banks and Large Non-Banks and to Prohibit Conflicts of Interest by Underwriters of Asset-Backed Securities
- FDIC Extends Securitization Safe Harbor

*The securitization safe harbor was extended until September 30, 2010.*

- Federal District Court Dismisses Class Action Suit Alleging Securities Fraud Related to Mutual Fund's Mortgage Securities Holdings

- Federal District Court Denies Motion to Dismiss ERISA Class Action Claims Challenging Bank's Inclusion of Affiliated Mutual Funds and Company Stock in Its Retirement Plans
- CFTC Grants No-Action Relief from CPO Registration Requirements in Context of Common Control Entities
- FRBNY Announces Eligibility of Certain Money Market Funds for Reverse Repurchase Program
- Federal Banking Agencies Revise CRA Guidance to Allow Pro Rata Credit for Mixed-Income Housing

### March 23, 2010

- Senate Banking Committee Passes Dodd Bill
- FINRA Rulemaking Addressing Placement Agent Pay-to-Play Activities May Forestall Proposed SEC Ban on Adviser Use of Placement Agents to Solicit Government Entity Clients
- Wachovia Agrees to Penalties for Anti-Money Laundering Violations
- Banking Agencies Issue a Final Policy Statement on Funding and Liquidity Risk Management

*The Policy Statement becomes effective on May 21, 2010.*

- Second Circuit Holds that FRB Must Release Information Relating to Loans to Financial Institutions
- New ERISA Litigation Update Available

### March 30, 2010

- Covered Bond Legislation Introduced in the House of Representatives
- FDIC Revises Q&As on Brokered Deposit Restrictions and Deposit Rate Limits
- First Circuit Dismisses SEC's Rule 10b-5 Claim Against Executives of Mutual Fund's Principal Underwriter Over Alleged Misstatements in Fund Prospectuses
- OCC Issues Interpretive Letter Concluding that National Bank, Which Elected Tennessee Law for Corporate Governance, May Reclassify Common Stock into New Classes of Preferred Stock
- Exemptive Applications for ETFs that Rely Significantly on Derivatives on Hold While SEC Staff Reviews Derivative Use by Registered Funds

### April 6, 2010

- U.S. Supreme Court Issues Decision in *Harris Associates* Mutual Fund Excessive Fee Case
- U.S. Supreme Court Vacates Decision in *Ameriprise Financial v. Gallus* Mutual Fund Excessive Fee Case and Remands to Eighth Circuit for Consideration in Light of *Harris Associates*

- Department of Labor Concludes that “Typical” Office-Based Mortgage Loan Officers are Eligible for Overtime Pay
- Federal District Court Dismisses ERISA Claims Relating to Securities Lending Practices
- Pamrapo Savings Bank Assessed \$5 Million Fine for Bank Secrecy Act Violations
- NCUA Proposes New Regulation that Would Provide FCU Directors with Clear Guidance Regarding Their Fiduciary Duties to FCU They Serve

*Comments on the new regulation are due by May 28, 2010.*

### **April 13, 2010**

- SEC Proposes Significant Revisions to Regulation AB and Other Rules Regarding Asset-Backed Securities

*Comments on the proposed amendments are due by August 2, 2010.*

- HIRE Act Becomes Law: Revenue Offsets Aimed at Offshore Tax Evasion Have Extensive Reach
- Certain Noteworthy Tax Changes Resulting from the Health Care Reform Legislation
- US District Court Finds that Mutual Fund Violated Section 13(a) of 1940 Act by Failing to Secure Shareholder Approval of Amendment to Fund’s Industry Concentration Policy Effected Through Change in Status of Privately Issued Mortgage-Backed Securities as a Separate Industry
- US District Court Dismisses Closed-End Fund’s Complaint Alleging That Investors Violated 1940 Act Anti-Pyramiding Limits
- Basel Committee Issues Updated Proposed Principles on Banks’ Corporate Governance

*Comments on the Proposed Principles are due by June 15, 2010.*

- SEC Staff Provides Guidance Regarding Collateralization Requirements for Repurchase Agreements Held by Certain Joint Accounts Used by Affiliated Investment Companies
- Director of SEC Division of Investment Management Comments on Collective Investment Trusts, Additional Money Market Fund Regulations and the Division’s Review of Derivative Use by Funds
- FDIC Board Approves Interim Rule Extending Transaction Account Guarantee Program to December 31, 2010

### **April 20, 2010**

- SEC Commences Administrative Proceedings over Pricing of Securities Backed by Subprime Mortgages in Mutual Fund and Closed-End Fund Portfolios as FINRA and State Authorities Take Related Action
- FDIC Proposes Risk-Sensitive Deposit Insurance Assessment Scheme for Large and Highly Complex Institutions

*Comments on the Notice of Proposed Rulemaking are due by July 2, 2010.*

**PARTNERS AND COUNSEL**

[Marco E. Adelfio](#)  
[Lynne B. Barr](#)  
[Raymond P. Boulanger](#)  
[John J. Cleary](#)  
[Daniel T. Condon](#)  
[Margaret B. Crockett](#)  
[James S. Dittmar](#)  
[Anna E. Dodson](#)  
[Alison V. Douglass](#)  
[Eric R. Fischer](#)  
[James O. Fleckner](#)  
[Elizabeth Shea Fries](#)  
[Lynda T. Galligan](#)  
[Jackson B.R. Galloway](#)  
[Stuart M. Glass](#)  
[Mark Holland](#)  
[John Hunt](#)  
[James J. Kelly](#)  
[Robert G. Kester](#)  
[Robert M. Kurucz](#)  
[Thomas J. LaFond](#)  
[Paul W. Lee](#)  
[William P. Mayer](#)  
[Philip H. Newman](#)  
[Christopher E. Palmer](#)  
[Byron C. Pavano](#)  
[Regina M. Pisa](#)  
[Mark S. Raffman](#)  
[Robert S. Seigal](#)  
[Brenda R. Sharton](#)  
[Kevin L. Sheridan, Jr.](#)  
[Derek N. Steingarten](#)  
[William E. Stern](#)  
[Marian A. Tse](#)  
[Kimberly K. Vargo](#)  
[Scott A. Webster](#)  
[Michael P. Whalen](#)

- FinCEN Issues Final Rule Amending Certain BSA Requirements for Mutual Funds  
*Open end mutual funds must comply with the rulemaking's additional recordkeeping requirements by January 10, 2011; the compliance date for all other aspects of the rulemaking is May 14, 2010.*
- Federal District Court Denies Motion to Dismiss Class Action Suit Alleging Misrepresentations in Mutual Fund's Offering Documents
- SEC Proposes Large Trader Reporting System  
*Comments on the proposal are due by June 22, 2010.*
- Regulatory Agencies Make Available Online Model Privacy Notice Form Builder

**April 27, 2010**

- Goodwin Procter Partner Mark Holland Honored as Independent Counsel of the Year
- Senators Dodd and Lincoln Propose OTC Derivatives Markets Reform
- FRB Chairman Bernanke Testifies Before House Committee on Lessons from Failure of Lehman
- FINRA Reminds Broker-Dealers of Due Diligence Obligations in Regulation D Offerings

**May 4, 2010**

- Lynne Barr Receives Lifetime Achievement Award from American College of Consumer Financial Services Lawyers
- FFIEC Releases Updated Bank Secrecy Act/Anti-Money Laundering Manual
- FDIC Releases Additional FAQs Regarding Private Equity Investments
- Federal Banking Agencies Issue Final Guidance on Correspondent Concentration Risks
- OCC Issues Interpretive Letter Confirming Authority of National Bank to Hold Auction Rate Preferred Securities for its Own Account
- FRB Issues Final Rule Amending Regulation D to Authorize Reserve Banks to Offer Term Deposits  
*The Final Rule becomes effective on June 4, 2010.*
- FinCEN Issues Advisory on Reverse Mortgages
- Independent Directors Council Issues Paper on Board Oversight of Target Date Funds