GOODWIN | PROCTER

August 17, 2010
Vol. 14 No. 1

FINANCIAL SERVICES ALERT

Goodwin Procter LLP has one of the largest financial services practices in the United States.

SUBSCRIBE

CONTACT US

FSA BACK ISSUES

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.

In this Issue:

Developments of Note

- Agencies Issue ANPR on Alternatives to the Use of Credit Ratings in Capital Rules
- Federal Court of Appeals for the Ninth Circuit Holds That There Is No Implied Private Right of Action under Section 13(a) of the Investment Company Act of 1940
- Wells Fargo Bank Ordered to Pay $203 Million in Overdraft Case
- SEC Staff Provides Derivatives Disclosure Guidance for Registered Funds
- SEC Staff Provides Guidance Regarding the Treatment of Short-Term Floating Rate Securities Subject to an Unconditional Demand Feature When Calculating a Money Market Fund's Weighted Average Life to Maturity
- FDIC Issues Proposed Guidance on Overdraft Payment Programs
- FDIC Announces Adoption of Open Door Policy to Allow Public to Give Input and Track Rulemaking Process under Dodd-Frank Act
- FDIC Establishes New Office of Complex Financial Institutions and Division of Depositor and Consumer Financial Protection
- SEC Staff Provides No-Action Relief From Adviser and Fund Code of Ethics Reporting Regarding Interests in 529 Plans
- FDIC Adopts Final Rule to Conform FDIC Regulations on Deposit Insurance Coverage and Advertisements to Permanent Standard Maximum Deposit Insurance Amount of $250,000
- SEC and CFTC Seek Comment on Key Definitions in Dodd-Frank Act Derivatives Regulation Scheme

Other Item of Note

- SEC, FINRA and NASAA Staff Update Report on Serving Senior Investors

DEVELOPMENTS OF NOTE

Agencies Issue ANPR on Alternatives to the Use of Credit Ratings in Capital Rules

The FDIC, the OCC and the FRB (the "Agencies") issued a joint advance notice of proposed rulemaking (the "ANPR") regarding alternatives to the use of credit ratings in the Agencies' risk-based capital rules for banking organizations. The ANPR was issued in response to Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection

Act, which requires the Agencies to review, by July 21, 2011, (1) their regulations requiring the use of an assessment of the credit-worthiness of a security or money market instrument and (2) any references to or requirements in such regulations regarding credit ratings. The Agencies must "modify any such regulations identified by the review to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as [the Agencies] shall determine as appropriate for such regulations." In making such determination, the Agencies must "seek to establish, to the extent feasible, uniform standards of credit-worthiness" for use by the Agencies, taking into account the entities they regulate and the purposes for which such entities would rely on such standards of credit-worthiness.

The ANPR describes the areas in the Agencies' risk-based capital standards where the Agencies rely on credit ratings, as well as the Basel Committee on Banking Supervision's (the "Basel Committee") recent amendments to the Basel Accord. Specifically, the Agencies' capital rules reference credit ratings issued by nationally recognized statistical rating organizations in four general areas: (1) the assignment of risk weights to securitization exposures under the general risk-based capital rules and advanced approaches rules; (2) the assignment of risk weights to claims on, or guaranteed by, qualifying securities firms under the general risk-based capital rules; (3) the assignment of certain standardized specific risk add-ons under the Agencies' market risk rule; and (4) the determination of eligibility of certain guarantors and collateral for purposes of the credit risk mitigation framework under the advanced approaches rules. In addition, the Basel "standardized" approach for credit risk relies extensively on credit ratings to assign risk weights to various exposures.

Through the ANPR, the Agencies are seeking comments on alternative standards of credit-worthiness that could be used for purposes of their risk-based capital standards. The ANPR notes that the Agencies are considering a wide range of approaches, including (a) developing risk weights for exposure categories based on objective criteria (such as the type of obligor and certain characteristics of the exposure) similar to the risk bucketing approach of the general risk-based capital rules, and (b) developing broad qualitative and quantitative credit-worthiness standards (such as credit spreads or debt-to-equity ratios) that banking organizations could use to measure the credit risk associated with exposures within a particular exposure category.

In evaluating these approaches, the Agencies noted that they will, to the extent practicable, consider whether any such approach would: (i) appropriately distinguish the credit risk associated with a particular exposure within an asset class; (ii) be sufficiently transparent, replicable, and defined to allow banking organizations of varying size and complexity to arrive at the same assessment of credit-worthiness for similar exposures and to allow for appropriate supervisory review; (iii) provide for the timely and accurate measurement of negative and positive changes in credit-worthiness; (iv) minimize opportunities for regulatory capital arbitrage; (v) be reasonably simple to implement and not add undue burden on banking organizations; and (vi) foster prudent risk management. The ANPR requests comments on the advantages and disadvantages of the proposed approaches, as well as any suggestions for other approaches that would meet the stated credit-worthiness standard.

The ANPR provides a detailed discussion of how the approaches might be implemented with respect to certain specific exposure categories, including: (1) sovereign exposures; (2) public sector entity ("PSE") exposures; (3) bank exposures; and (iv) corporate

exposures. For example, the ANPR discusses the possibility of expanding the general risk-based capital treatment of these exposures to the other risk-based capital regimes. The ANPR also discusses the possibility of using certain key financial, economic and market indicators and measures to determine the correct risk weighting for such exposures, or assigning exposures to one of a limited number of risk weight categories based on an assessment of the exposure's probability of default or expected loss.

With respect to securitization exposures, the Agencies are seeking comment on a number of proposals, including: (a) using the risk-based capital rules in effect prior to the implementation of the "recourse rule," which would eliminate all references to credit ratings and result in all securitization exposures receiving the same risk weight regardless of the amount of subordination in the securitization structure; (b) requiring banks to "gross-up" any such exposure by maintaining capital against its securitization exposure as well as all more senior exposures; (c) adopting the Basel Committee's approach to calculating capital requirements for securitization exposures that is based on the level of subordination and the type of underlying exposures and which uses a "concentration ratio" (equal to the sum of the notional amounts of all the tranches divided by the sum of the notional amounts of the tranches junior to or *pari passu* with the tranche in which the position is held including that tranche itself); and (d) designing a risk-weighting approach based on a supervisory formula. In addition, with respect to guarantees and collateral, the ANPR notes the possibility of the Agencies incorporating into the recognition of collateral and guarantees some of the credit-worthiness standards discussed above for sovereign, PSE, bank and corporate exposures.

The ANPR requests comments on all of the potential approaches, and commenters are asked to provide quantitative and qualitative support and/or analysis for proposed alternative methods. The ANPR notes that the Agencies recognize that a "more refined differentiation of credit-worthiness may be achievable only at the expense of greater implementation burden," and therefore are also seeking comment on the feasibility of and burden associated with each of the various alternative standards for banking organizations of varying size and complexity.

Before approving the issuance of the ANPR, several members of the FDIC's Board of Directors expressed concern about completely eliminating the use of credit ratings. In this regard, the ANPR notes that the Agencies are "interested in whether development of alternatives to the use of credit ratings would involve, in most circumstances, cost considerations greater than those under the current regulations."

Eliminating the use of credit ratings will also further delay implementation in the U.S. of the so-called Basel II "Standardized Approach" and revisions to the market risk rules. Both the Standardized Approach, a simpler version of Basel II that is expected to be optional for all U.S. banks that are not required to adopt the Basel II advanced approaches, and the proposed revisions to the market risk rules, use external ratings. Efforts to finalize these initiatives have now been delayed indefinitely until the Agencies determine appropriate alternatives to the use of such external ratings.

Comments on the ANPR are due within 60 days after its publication in the *Federal Register*, which is expected shortly. The OTS is expected to join the Agencies in issuing the ANPR upon clearance by the Office of Management and Budget.

The *Alert* will continue to monitor this area and provide updates on material developments as they occur.

Federal Court of Appeals for the Ninth Circuit Holds That There Is No Implied Private Right of Action under Section 13(a) of the Investment Company Act of 1940

Addressing an interlocutory appeal of *Northstar Financial Advisors v. Schwab Investments*, 609 F. Supp. 2d 938 (N.D. Cal. 2009), the U.S. Court of Appeals for the Ninth Circuit (the "Court") held that the SEC alone may enforce Section 13(a) of the Investment Company Act of 1940 (the "1940 Act"). The Ninth Circuit's decision reverses a decision by the District Court for the Northern District of California (the "District Court"), which held that, on the basis of changes to Section 13 made by Sudan Accountability and Divestment Act of 2007 (the "SADA"), there is a private right of action to enforce Section 13(a) of the 1940 Act. The suit alleged that a bond index fund had violated Section 13(a) of the 1940 Act by (a) improperly changing its concentration policy of investing no more than 25% in any industry so that the fund could invest more than 25% of its total assets in US agency and non-agency mortgage-backed securities and (b) failing to follow its investment objective of tracking a specified broad bond market index by investing in high-risk, non-US agency collateralized mortgage obligations that were not included in the index. In relevant part, Section 13(a) of the 1940 Act prohibits a registered investment company from deviating from certain investment policies absent shareholder approval. Among the policies subject to this condition, which are generally referred to as fundamental policies, are a registered investment company's concentration policy and any policy designated in its prospectus as fundamental in its registration statement filed with the SEC, which in the bond index fund's case included its investment objective. (The District Court decision was discussed in greater detail in the March 10, 2009 *Alert*.)

The Court reached its decision based on an analysis of the language and structure of the 1940 Act and the 1970 and 2007 amendments to the 1940 Act. In reaching its holding, the Court of Appeals stated that it agrees with the U.S. Court of Appeals for the Second Circuit that the structure of the 1940 Act does not indicate that Congress intended to create an implied private right to enforce the individual provisions of the 1940 Act, citing the Second Circuit's decisions in *Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110 (2d Cir. 2007) (per curiam) and *Olmsted v. Pruco Life Ins. Co. of New Jersey*, 283F.3d 429 (2d Cir. 2002). The Court also noted Congress' enactment of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (the "Iran Sanctions Act"), which added a rule of construction to Section 13(c) of the 1940 Act clarifying that the text of Section 13(c) (which was added to the 1940 Act by the SADA) does not imply or create a private right of action under Section 13(a) of the Act. (The Iran Sanctions Act was discussed in greater detail in the July 13, 2010 *Alert*). The District Court's reasoning in holding that there is an implied private right of action under Section 13(a) relied on the addition of Section 13(c) to the 1940 Act by the SADA.

The Court remanded the case to the District Court with instructions to dismiss the plaintiff's federal law claims.

Wells Fargo Bank Ordered to Pay $203 Million in Overdraft Case

Following a two-week bench trial, a federal judge has ordered Wells Fargo Bank, N.A. (the "Bank") to pay its customers $203 million in restitution for its practice of resequencing posted debit card transactions from highest to lowest dollar amounts, which the court found was an "unfair" and "fraudulent" practice under California consumer protection laws. The

court also issued injunctive relief requiring the Bank to cease engaging in resequencing practices by November 30, 2010. See *Gutierrez v. Wells Fargo Bank, N.A.*, No. C. 07-05923 (N.D. Cal. Aug. 10, 2010).

In its defense, the Bank asserted that the practice of paying high dollar amount debit card transactions before those of lower amounts is intended to benefit customers by providing for the payment of high priority purchases before other purchases. According to the court, however, this computerized practice was intended to maximize revenue generated from overdraft transactions by depleting customer account balances more quickly than if debit transactions were deducted from accounts in the order in which they occurred. The court further found that the Bank's resequencing practices, as well as its practice of approving overdraft transactions without point-of-sale notices, were not adequately disclosed to its customers and were contrary to "good faith" requirements under California law. The court also determined that the California consumer protection laws on which the plaintiffs relied to contest the Bank's resequencing practices do not impermissibly interfere with the business of banking or conflict with federal laws governing national bank fees. Accordingly, the court rejected the Bank's assertion that the National Bank Act and OCC regulations preempt the California consumer protections laws.

SEC Staff Provides Derivatives Disclosure Guidance for Registered Funds

Although the staff of the SEC (the "Staff") has not completed its review of derivatives use by registered funds, which, among other issues, is exploring the adequacy of derivatives-related disclosures (see the March 30, 2010 *Alert* for a more detailed discussion of the Staff's review), the Staff provided initial observations on registration statement and shareholder report disclosures regarding derivatives use in a letter sent to the Investment Company Institute for communication to its members.

PROSPECTUS DISCLOSURE

The Staff observed that some funds provide generic disclosures about derivatives that are either too abbreviated or too detailed and technical, to be useful to investors. The Staff indicated that all funds that use or intend to use derivative instruments should assess the accuracy and completeness of their disclosures and should (i) only reference derivatives in a fund's principal investment strategies if they are expected to be used in connection with such strategies; (ii) describe the purpose that the derivatives are intended to serve in a fund's portfolio, *e.g.* hedging, speculation, or as a substitute for investing in conventional securities; and (iii) disclose the extent to which a fund expects to use derivatives. In addition, the Staff noted that disclosure about a fund's principal risks that addresses derivatives should similarly be tailored to the types of derivatives used by the fund, the extent of their use, and why they are used. The Staff suggested that a fund review its use of derivatives annually when it updates its registration statement and assess whether it needs to revise its principal strategy and principal risk disclosures that address derivatives.

SHAREHOLDER REPORTS

The Staff also provided observations regarding derivatives disclosure in shareholder reports. The Staff observed that some funds whose financial statements appear to reflect significant

derivatives exposure do not discuss the effect of those derivatives on fund performance. The staff noted that Management's Discussion of Fund Performance (MDFP) included in annual shareholder reports should be consistent with operations reflected in a fund's financial statements, and a fund whose performance was materially affected by derivatives should discuss that fact, whether or not derivatives are reflected in the portfolio schedule at the close of the fiscal year. With regard to financial statements themselves, the Staff noted specific improvements that funds should make in certain disclosures required by FASB Accounting Standards Codification Topic 815: *Derivatives and Hedging*. In addition, the Staff stated that because an over-the-counter derivative is subject to the risk of nonperformance by the counterparty, the staff views identification of the counterparty to an over-the-counter derivative as a material component of the description of that position provided in a fund's schedule of investments.

SEC Staff Provides Guidance Regarding the Treatment of Short-Term Floating Rate Securities Subject to an Unconditional Demand Feature When Calculating a Money Market Fund's Weighted Average Life to Maturity

The Staff of the SEC's Division of Investment Management recently wrote to the Investment Company Institute (the "ICI") and stated that a money market fund may treat a short-term floating rate security ("STFRS") that is subject to an unconditional demand feature as a short-term variable rate security ("STVRS") for the purpose of calculating the fund's dollar-weighted average life to maturity ("WAL"). Rule 2a-7 under the 1940 Act, which regulates all registered investment companies that hold themselves out as money market funds or which use the term "money market" or a similar term in their names, requires among other things that each money market fund maintain a WAL of 120 days or less. Rule 2a-7(c)(2)(iii) provides that WAL is calculated without reference to the maturity shortening provisions in Rule 2a-7(d) regarding interest rate readjustments.

Under Rule 2a-7, a security's maturity generally is determined as the period remaining until (a) the date on which, in accordance with the terms of the security, the principal amount must be unconditionally be paid or (b) in the case of a security called for redemption, the date on which the redemption payment must be made. Rule 2a-7(d) provides several exceptions to that general rule, including exceptions for STVRSs and STFRSs. An STVRS is a security, the principal amount of which, in accordance with its terms, must unconditionally be paid within 397 calendar days and which has an interest rate that adjusts on specified dates. Like an STVRS, an STFRS is a security, the principal amount of which, in accordance with its terms, must unconditionally be paid within 397 calendar days; however, the interest rate for an STFRS adjusts whenever a specified interest rate changes.

Under Rule 2a-7(d)(2), an STVRS generally is deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate, or the period remaining until the principal amount may be recovered through demand. For purposes of calculating a fund's WAL, however, a security's remaining maturity is the period remaining until the principal amount may be recovered through demand because under Rule 2a-7(c)(2)(iii), any maturity shortening provision based on an interest rate readjustment must be disregarded. Under Rule 2a-7(d)(4), an STFRS generally is deemed to have a remaining maturity equal to one day. According to the ICI, in the context of an STFRS, Rule 2a-7(c)(2)(iii) could be interpreted as requiring a fund to use a remaining maturity equal to the period until the security is unconditionally paid in accordance with its

terms, even if the security has an unconditional demand feature that permits the fund to recover the principal amount earlier. A fund could not use the one-day period in calculating its WAL because of the prohibition of using the rule's maturity shortening provisions based on interest rate readjustments.

According to the ICI, nothing in the adopting release to the recent amendments to Rule 2a-7, which added the WAL requirement to the rule, indicated that for the purposes of calculating a fund's WAL, the SEC intended to calculate the remaining maturities of an STFRS without reference to a demand feature and an STVRS with reference to a demand feature. The Staff agreed, and thus, would permit a money market fund to treat an STFRS that is subject to an unconditional demand feature as an STVRS for the purpose of calculating the fund's WAL.

FDIC Issues Proposed Guidance on Overdraft Payment Programs

The FDIC issued proposed guidance on automated overdraft payment programs (the "Proposal"), which outlines additional expectations for the banks it supervises. The Proposal would supplement the FRB's overdraft rules under Regulation E, which are discussed in more detail in the June 1, 2010 and November 17, 2009 *Consumer Financial Services Alerts*. Whereas the new Regulation E opt-in requirement addresses only paying overdrafts resulting from one-time debit card and ATM transactions, the Proposal provides that customers should have an opportunity to opt out of the payment of overdrafts resulting from non-electronic transactions (*e.g*., checks). The Proposal also provides that banks should not process transactions in a manner designed to maximize the cost to customers. In addition, the Proposal calls for banks to monitor accounts and take meaningful and effective action to limit customer use of overdraft coverage as a form of short-term, high-cost credit, including, for example, by giving customers who overdraw their accounts on more than six occasions where a fee is charged in a rolling 12-month period a reasonable opportunity to choose a less costly alternative and decide whether to continue with fee-based overdraft coverage. Moreover, the Proposal states that the FDIC expects banks to institute appropriate daily limits on overdraft fees. The Proposal notes that overdraft payment programs will be reviewed at FDIC examinations. Comments on the Proposal are due no later than September 27, 2010.

FDIC Announces Adoption of Open Door Policy to Allow Public to Give Input and Track Rulemaking Process under Dodd-Frank Act

The FDIC announced that it has adopted an open-door policy (the "Policy") designed to allow the public to give input and track the process that will lead to the adoption of rules and regulations under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Policy goes beyond the requirements of the Administrative Procedure Act to allow public participation even before regulations are drafted and proposed. Under the Policy, interested parties can request a meeting with FDIC officials or staffers, and the FDIC will provide increased disclosure concerning meetings between senior FDIC officials and private sector individuals. The FDIC will disclose the names and affiliations of the private sector individuals as well as the subject matter of the meeting. The FDIC said that the Policy will apply to "meetings discussing how the FDIC should interpret or implement provisions [of the Dodd-Frank Act] that are subject to independent or joint rulemaking by the FDIC." The FDIC also stated that it will hold a series of round

table discussions with external parties on issues concerning implementing rules adopted under provisions of the Dodd-Frank Act.

FDIC Establishes New Office of Complex Financial Institutions and Division of Depositor and Consumer Financial Protection

The FDIC Board of Directors approved the establishment of a new Office of Complex Financial Institutions ("CFI") and a new Division of Depositor and Consumer Protection ("DCP"). The FDIC organized the CFI and the DCP to help the FDIC meet its responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The CFI, said the FDIC, will conduct continuous reviews and oversight of bank holding companies with more than $100 billion in assets and will examine any nonbank financial companies designated as systemically important by the Financial Stability Oversight Council created by the Dodd-Frank Act. The CFI is also the FDIC unit responsible for using the FDIC's powers under the Dodd-Frank Act to implement orderly liquidations of bank holding companies and nonbank financial companies that fail. The FDIC said that the establishment of the CFI is the first step in ending the presumption of "too big to fail."

SEC Staff Provides No-Action Relief From Adviser and Fund Code of Ethics Reporting Regarding Interests in 529 Plans

The staff of the SEC's Division of Investment Management (the "Staff") recently granted no-action relief to the effect that an investment adviser's code of ethics pursuant to Rule 204A-1 under the Investment Advisers Act of 1940 (the "Advisers Act") need not require persons subject to the code to report transactions in, or holdings of, any qualified tuition program established pursuant to Section 529 of the Internal Revenue Code (a "529 Plan"), provided neither the investment adviser nor any of its control affiliates manages, distributes, markets, or underwrites the 529 Plan. The relief also applies to related Advisers Act recordkeeping requirements. Although not requested to do so, the Staff granted corresponding relief regarding the reporting of 529 Plan transactions and holdings under an investment adviser's code of ethics adopted pursuant to Rule 17j-1 under the Investment Company Act of 1940.

FDIC Adopts Final Rule to Conform FDIC Regulations on Deposit Insurance Coverage and Advertisements to Permanent Standard Maximum Deposit Insurance Amount of $250,000

The FDIC Board of Directors adopted a final rule (discussed in FDIC Financial Institution Letter, FIL 49-2010) amending its deposit insurance and advertising of FDIC membership regulations to conform with provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act that permanently increase the standard maximum deposit insurance amount, effective July 22, 2010, from $100,000 to $250,000.

GOODWIN PROCTER FINANCIAL SERVICES PRACTICE

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. Kurucza
Thomas J. LaFond
Peter W. LaVigne
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

Goodwin Procter LLP
Boston
Hong Kong
London
Los Angeles
New York
San Diego
San Francisco
Silicon Valley
Washington, D.C.

SEC and CFTC Seek Comment on Key Definitions in Dodd-Frank Act Derivatives Regulation Scheme

The SEC published a joint advance notice of proposed rulemaking requesting comment from interested parties on rulemaking by the agencies to further define certain key definitions that are part of the comprehensive scheme for regulating swaps and security-based swaps set forth in the Wall Street Transparency and Accountability Act of 2010, Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The SEC has requested public comment on other rulemaking and studies required by the Dodd-Frank Act, as discussed in the August 3, 2010 *Alert*. The key definitions at issue are the definitions of "swap," "security-based swap," "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," "eligible contract participant," and "security-based swap agreement." The two agencies have also solicited comment on the regulations regarding "mixed swaps" that Title VII requires them to jointly prescribe. For further discussion of Title VII of the Dodd-Frank Act, please see the August 2, 2010 Special Edition of the *Alert*.

OTHER ITEM OF NOTE

SEC, FINRA and NASAA Staff Update Report on Serving Senior Investors

The Staff of the SEC, FINRA and North American Securities Administrators Association (NASAA) published a joint report that updates a 2008 report outlining practices used by financial services firms to strengthen their policies and procedures regarding senior investors.