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DEVELOPMENTS OF NOTE

SEC Adopts Temporary Rule Requiring Money Market Fund Portfolio Holdings and Valuation Information to be Reported to the SEC under Certain Circumstances

The SEC has adopted Rule 30b1-6T under the Investment Company Act of 1940 (the "1940 Act") as an interim final temporary rule, to require a money market fund to report portfolio holdings and valuation information under certain circumstances. Specifically, the rule requires a money market fund whose share price calculated using market-based prices of the fund's portfolio holdings, commonly known as its "shadow price," is less than 99.75% of its stable share price on a business day (a "report date") to notify the SEC of such fact by the next business day, and file with such notification a schedule of the fund's portfolio holdings and valuation information as of the report date. The rule also requires that until the fund's shadow price is 99.75% of, or greater than, its stable share price, the fund must file with the SEC a schedule of its portfolio holdings and valuation information as of the end of each week by the close of the second business day of the following week.

The information required by Rule 30b1-6T is similar to the information that would be required by proposed Form N-MFP, which together with proposed Rule 30b1-6 under the 1940 Act, was proposed by the SEC in connection with the SEC's recent proposed amendments to Rule 2a-7 under the 1940 Act. Those amendments are discussed in the [July 7, 2009 Alert](#). Proposed Rule 30b1-6, if adopted as proposed, would require all money market funds to file Form N-MFP monthly. The information also is similar to the information required of certain participants in the Treasury's Temporary Guarantee Program for Money Market Funds, which expired on September 18, 2008. That program is discussed in the [September 30, 2008 Alert](#) and [October 14, 2008 Alert](#).

Rule 30b1-6T is effective as of September 18, 2009 and expires on September 17, 2010. The SEC is accepting comments on the rule through October 26, 2009.

FDIC Announces Winning Bidder in Legacy Loans Program Pilot Sale

The FDIC announced that it has signed a bid confirmation letter with Residential Credit Solutions (“RCS”), the winning bidder in a pilot sale of receivership assets that the FDIC conducted to test the funding mechanism for the Legacy Loans Program (the “LLP”). The LLP is part of the Public-Private Investment Program (“PPIP”) announced in March 2009 by the Secretary of the Treasury, the FRB, and the FDIC, and is being developed to help banks remove troubled loans and other assets from their balance sheets. For more on the PPIP, please see the [March 24, 2009 Alert](#). The transaction involves loans formerly held by Houston-based Franklin Bank SSB (“Franklin”), which failed in November 2008. Under the terms of the transaction, the FDIC will set up a limited liability company (the “LLC”) and convey to it a portfolio of Franklin’s home loans with an unpaid balance of \$1.3 billion. In return, the FDIC will take a note for \$727,770,000 from the LLC, which it will guarantee in its corporate capacity. The FDIC anticipated that it will sell the note, which will have a 4.25% coupon funded by the cash flow from the mortgage portfolio, at a future date. The FDIC will keep a 50% equity stake in the LLC, and will sell the other 50% stake to RCS, which will pay just over \$64 million in cash. After the closing, which is expected to occur before the end of September 2009, RCS will manage the portfolio and service the loans under the Home Affordable Modification Program guidelines. The FDIC stated that, based on its analysis and assumptions, the present value of this bid equals 70.63% of the outstanding principal balance of this portfolio. The FDIC called the transaction a test case that could be replicated soon, possibly in connection with another bank failure. The FDIC also stated that it will analyze the results of this test sale to determine whether the LLP can be used to remove troubled assets from the balance sheets of open banks.

SEC Votes to Propose Ban on Flash Orders

At its open meeting on September 17, 2009, the SEC voted to propose a ban on flash orders by amending Rule 602 of Regulation NMS to eliminate the exception that permits them. The proposed rule would effectively ban the use of flash orders by US equity and options exchanges by eliminating the “immediate execution or withdrawal” exception Rule 602 under Regulation NMS.

Flash Orders. Flash orders generally are marketable limit orders for exchange listed equities or options that, upon arrival at an exchange or ATS, are first permitted to interact immediately with all available contra side trading interest at the exchange or ATS that receives the order, and then, if the exchange or ATS does not have sufficient available trading interest at the NBBO to fully execute the flash order upon arrival, the exchange or ATS flashes the order to its market participants at the market-wide best bid or offer (the “NBBO”) for the security. The market participants who are given the opportunity to see the flashed order are given a very short amount of time (normally less than one second) to respond with their own order to execute against the flashed order at a price that matches the NBBO price. If a market participant decides to step up to the flashed order with a responding order, the flash order will be executed against the market participant’s response order. If there is no response to the flashed order, the exchange or ATS generally will route the flash order (or the unexecuted portion of the flash order) to the away market displaying the best-priced quotations for the stock. Critics of flash orders have argued that the use of such orders gives institutional traders with faster execution capacity, such as certain high-

speed algorithmic traders, an unfair informational advantage over participants in the market that do not realistically have the same ability to access and execute against flash orders. The SEC release describing the proposed ban on flash orders (the “Proposing Release”) states that the SEC “preliminarily believes that, in today’s highly automated trading environment, the exception for flash orders from Exchange Act quoting requirements may no longer serve the interests of long-term investors and could detract from the efficiency of the national market system.”

Elimination of the “Immediate Execution or Withdrawal” Exception. Rule 602 of Regulation NMS generally requires exchanges to make available to vendors the best bids and best offers for listed securities that are communicated on an exchange by members of the exchange so that such best bids and offers can be included in the consolidated quotation data that is widely disseminated to the public. However, the “immediate execution or withdrawal” exception in Rule 602 permits an exchange to exclude from the consolidated quotation data that is disseminated to the public any bids and offers that either are either (i) immediately executed or (ii) immediately cancelled or withdrawn if not immediately executed. The Proposing Release states that the immediate execution or withdrawal exception in Rule 602 that permits flash orders to be excluded from the public quote stream, which was originally adopted in 1978 when exchanges executed trades manually, no longer makes sense in today’s highly-automated, electronic execution market structure. In today’s highly automated, electronic execution markets, it is possible for thousands of orders to be communicated, executed and/or cancelled in less than a second.

Application of Flash Order Ban to ATSS and Indications of Interest. If the proposed rule eliminating the immediate execution or withdrawal exception of Rule 602 is adopted, the SEC would consider orders that an ATS with 5% or more of the trading volume in an NMS stock that displays orders for such stock to more than one person in the ATS that either are immediately executed or cancelled to be orders covered by Rule 301(b)(3) of Regulation ATS, which requires an ATS that meets the 5% volume threshold in an NMS stock traded on such ATS to provide to a national securities exchange or FINRA (for inclusion in the public quote stream) the best bid and offer for such NMS stock that is displayed to more than one person in the ATS. Until now, many ATSS have taken the position that “indications of interests” (IOIs) are not orders and thus not “bids” or “offers” that would be required to be included in the public quote stream. The proposed rule would make flash orders entered into a threshold ATS that would be the best bid or offer for an NMS stock to be fully subject to Rule 301(b)(3)’s requirement to include such best priced bids or offers in the public quote stream, regardless of the particular term that an ATS might use to characterize the order, such as “indication of interest.”

Locked and Crossed Markets. Currently, flash orders are excepted from the provisions of Regulation NMS that generally prohibit locked and crossed markets. However, as part of the proposed rule banning flash orders, the SEC would fully apply the provisions of Rule 610 that prohibit locked and crossed markets to flash orders. As a result, orders with marketable prices could no longer be flashed because, if displayed, they would be subject to the locking and crossing restrictions in Rule 610(d).

The [proposing release](#) is available on the SEC website. Comments on the proposal are due by November 23, 2009.

NYSE Proposes Amendments to Listed Company Governance Requirements

On August 26, 2009, the New York Stock Exchange (the “NYSE”) filed with the SEC a proposal (the “Proposal”) to modify certain of the corporate governance listing standards in Section 303A of the NYSE’s Listed Company Manual. Section 303A, which was added to the Listed Company Manual in 2003, imposes corporate governance requirements on NYSE-listed companies and focuses mainly on director independence and the duties of the audit, nomination and compensation committees of the board. The Proposal would amend Section 303A to clarify certain disclosure requirements, codify certain interpretations, and replace certain disclosure requirements by incorporating into the NYSE’s rules the applicable disclosure requirements of Regulation S-K. Below is a description of the principal elements of the Proposal that would apply to closed-end funds and exchange traded funds (“ETFs”).

Audit Committees. The Proposal would amend the Commentary to Section 303A.07 to provide that, if a closed-end fund “voluntarily include[s] the section ‘Management’s Discussion of Fund Performance’ in its Form N-CSR,” the fund’s audit committee is required to meet to review and discuss it. In addition, Commentary to Section 303A.07 would be revised to clarify that telephonic conference calls may satisfy the audit committee meeting requirements under Section 303A.07 if allowed by applicable corporate law, but that polling directors is not allowed in lieu of a meeting. The Proposal would also clarify the application of Section 303A.07’s requirements for closed-end funds regarding audit committee members that serve on the audit committees of more than three public companies.

Website Posting. The Proposal would specify that closed-end funds are not subject to the requirement to post their audit committee charter on their website.

Shareholder Approval of Equity Compensation Plans. The Proposal would make closed-end funds subject to Section 303A.08, the provision requiring shareholder approval of equity compensation plans.

Certifications. The Proposal would eliminate the Section 303A.12(a) requirement that a listed company disclose whether it filed the certifications required by the NYSE and Section 302 of the Sarbanes-Oxley Act. In addition, under the Proposal, a listed company would be required to notify the NYSE in writing after any executive officer of the listed company became aware of any non-compliance with Section 303A. Currently, notification is required only in the event of any executive officer becoming aware of material non-compliance. This change would apply to both closed-end funds and ETFs.

Public Comments/Effectiveness. Comments on the Proposal are due to the SEC no later than October 5th. If approved by the SEC, the proposed changes to the Listed Company Manual will become effective on January 1, 2010. For more information visit the NYSE website at [Proposed Rule NYSE-2009-89](#).

SEC Takes Additional Action on Credit Rating Agency Regulation

At its meeting on September 17, 2009, the SEC voted to (a) adopt several existing proposals that modify its rules regulating credit rating agencies, (b) propose additional changes to those rules and (c) issue a concept release exploring the possibility of removing a current exemption for NRSROs from the registration statement consent and liability provisions of

the Securities Act of 1933, as amended (the “1933 Act”). The SEC’s rules apply to credit rating agencies registered as Nationally Recognized Statistical Rating Organizations (“NRSROs”).

Final Rules - Additional Form NRSRO disclosures. The rule changes adopted by the SEC will result in (a) disclosure by NRSROs regarding ratings activity history (including upgrades, downgrades, affirmations and withdrawals), (b) the availability to other NRSROs of the information about a structured finance product being used by an NRSRO engaged to rate that product and (c) changes to Regulation FD designed to enable issuers to provide NRSROs with information they use to determine credit ratings.

Proposed Rules - Annual compliance reports. The SEC proposed a rule that would require NRSROs to provide the SEC with a report on their compliance reviews for the most recently ended fiscal year, amend Form NRSRO to (a) require disclosure about the percentage of an NRSRO’s net revenue attributable to the 20 largest users of its credit rating services and the percentage of an NRSRO’s net revenue attributable to other services and products it provides and (b) require an NRSRO to make publicly available information about each person that paid for a credit rating in a consolidated report posted on the NRSRO’s website at the end of each fiscal year and provide the web address for this information whenever the NRSRO publishes a credit rating.

Proposed Rules - References to credit ratings in SEC rules and forms. The SEC proposed to eliminate references to NRSRO credit ratings in certain SEC rules and forms under the Securities Exchange Act of 1934, as amended (the “1934 Act”), and the Investment Company Act of 1940, as amended (the “1940 Act”). Among the provisions affected are (i) the look-through provisions of Rule 5b-3 under the 1940 Act, which allows an investment company (“fund”) to treat a refunded bond it acquires as the U.S. Government securities that refund the payments due to investors under the bond and (ii) the ratings requirements for municipal bonds a fund purchases in reliance on Rule 10f-3 under the 1940 Act, which allows a fund to purchase securities in an underwritten offering in which a fund affiliate is a member of the underwriting syndicate. The SEC also reopened the comment period on certain existing proposed rule changes that would eliminate references to NRSROs in other rules and forms under the 1934 Act, the 1940 Act, the Investment Advisers Act of 1940, as amended, and the 1933 Act. Additional details of these changes and proposed changes are available in a [list of rules and forms affected](#) on the SEC website.

Proposed Rules - Ratings information in issuer registration statements. The SEC proposed new rules that would require background information on ratings and the ratings process in a registration statement that uses ratings in connection with selling registered securities, including (a) the scope of the credit rating and any material limitations on that scope; (b) the party that paid for the credit rating; (c) whether the credit rating agency or its affiliates provided other services to the registrant or its affiliates, and the fees for those services; and (d) any “preliminary ratings” obtained from other rating agencies.

Proposed Rules – Current disclosure by issuers of ratings changes. Under the proposed amendments, an issuer would have to disclose any changes in a credit rating in a filing on Form 8-K.

Concept Release- Elimination of exemptions for NRSRO registration statement consents and liability. The SEC voted to issue a concept release that seeks public comment on whether to eliminate Rule 436(g) under the 1933 Act, which currently provides that a credit

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rating is not considered a part of an issuer's registration statement prepared or certified by a person within the meaning of (a) Section 7 of the 1933 Act, which, in general terms, requires an issuer's registration statement to include the consent of an expert cited in the registration statement, and (b) Section 11 of the 1933 Act, which addresses liability for a false registration statement.

The SEC has not issued formal releases describing the final and proposed rule changes, or the concept release. This description is based on information about the meeting made available on the SEC website. Comments on the proposed amendments must be received within 60 days after their publication in the *Federal Register*.

FRB Adopts Program under which it will Issue Compliance Ratings to Nonbank Subsidiaries of Bank Holding Companies and Foreign Banking Organizations

The FRB established a new Consumer Compliance Supervision Program (the "Program") for nonbank subsidiaries of bank holding companies and foreign banking organizations. Under the Program, the FRB will monitor compliance of activities covered by consumer protection laws and regulations, establish a new rating system, and investigate consumer complaints.

The Program formally implements a pilot program that was launched by the FRB in conjunction with the FTC and the OTS in 2007. The pilot program, however, was not as extensive as the Program currently being implemented. Under the Program, the FRB, through targeted and full scope examinations, will compile risk profiles of, and issue compliance ratings to, nonbank subsidiaries. A nonbank subsidiary's compliance will be rated as Strong, Satisfactory, Fair, Marginal or Unsatisfactory. Results of these examinations together with any recommendations for corrective actions will be transmitted by the FRB in writing to senior management of the nonbank subsidiary and the bank holding company. [Click here](#) for the FRB's letter announcing the Program.

OTHER ITEM OF NOTE

SEC and UK FSA Discuss Approaches to Global Regulation of Hedge Funds and their Advisers

It was announced that the SEC and UK Financial Services Authority ("FSA") will explore common approaches to reporting and other regulatory requirements for key market participants such as hedge funds and their advisers with a particular goal of identifying a common, coherent set of data to collect from hedge fund advisers to help the SEC and FSA identify risks to their regulatory objectives and mandates. The announcement followed one of a series of periodic meetings between the SEC and FSA at which the two regulators also discussed over-the-counter derivatives markets and central clearing, accounting issues, regulatory reform, credit rating agency oversight, short selling, and corporate governance and compensation practices.