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announced that it was providing direct support to certain commingled funds which held certain securities securities lending collateral.)

- In October 2008, plaintiffs filed suit in state court alleging that they had been defrauded and had suffered Lending Agent investing the plaintiffs' securities lending collateral in illiquid, long-term securities, instead

For more information see: BP Corp. North America Inc. Savings Plan Investment Oversight Committee v. Northern Trust Co. (N.D. Ill.); University of Washington v. Northern Trust Co., No. 08-CV-1458 (W.D. Wash.); Minnesota Workers' Compensation Fund v. Wells Fargo Bank et al. (CV-08-10825 (Ramsey Co. Dist. Ct. Minn.)); and League of Minnesota Cities Insurance Trust v. Northern Trust Co. (CV-05147 (Dist. Minn.))

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***Petition Filed for Writ of Certiorari for Supreme Court Review of Seventh Circuit's Decision in Jones v. Harris***

October 31, 2008 9:43 AM

On November 3, 2008 petitioners filed for a writ of certiorari for Supreme Court review of Jones v. Harris. Associate petitioners seek review of whether the Seventh Circuit erroneously held, in conflict with the decisions of three other circuits, that a fund's investment adviser charged an excessive fee is not cognizable under Section 36(b) of the Investment Company Act of 1940. The response is due December 3, 2008.

For more information see: <http://origin.www.supremecourtus.gov/docket/08-586.htm>



October 31, 2008 9:31 AM

On October 26, 2008, the first nine qualifying financial institutions ("QFIs") entered into letter agreements styled "M" (each a "Letter Agreement") with the Treasury Department ("Treasury") documenting the terms of Treasury's investment Capital Purchase Program ("CPP") of the Troubled Asset Relief Program ("TARP") under the Emergency Economic Stimulus Act of 2008. Nine QFIs entered into a substantively identical Securities Purchase Agreement Standard Terms, which include full designations and warrant. Eight of the nine investments closed on October 28, 2008.

It appears that the Treasury Department intends to take a "one size fits all" approach to CPP documentation for QFI file periodic reports with the SEC. Future participating QFIs that are both bank holding companies and SEC reporting companies will enter into substantively identical agreements to those entered into by the initial participants.

For more information on TARP please see the WilmerHale Client Alert "Troubled Asset Relief Program Update: Treasury's Commitments" at:

<http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8532>

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***SEC Staff Issues No-Action Letters Relating to Affiliated Transactions Involving Certain Assets of Money Managers***

October 31, 2008 9:29 AM

In October, the staff of the SEC's Division of Investment Management issued a number of no-action letters to money managers granting relief to permit such advisers and/or affiliates to engage in certain transactions with the funds. These transactions help maintain a fund's \$1.00 net asset value per share. These affiliated transactions involve different support arrangements between the affiliate of troubled securities in question from the affiliated fund and agreements to purchase the securities in the

For more information please see the SEC No-Action Letters at:

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#### ***Mutual Fund Regulatory Filings to be Available on EDGAR***

October 31, 2008 9:26 AM

The SEC announced that it adopted several amendments to rules regarding the Electronic Data Gathering, Analysis and Retrieval system ("EDGAR"). Specifically, effective January 1, 2009, all applications for exemptive and other orders under any section of the Investment Company Act") as well as Regulation E filings of small business investment companies and business development companies will be available to the public on the EDGAR system. The rule amendments will make exemption unavailable for submission of applications under the Investment Company Act. Finally, the rule amendments will require documents accompanying an application be notarized and the requirement that applicants submit a draft notice of proposed action.

For more information please see Final Rule Release at:

<http://sec.gov/rules/final/2008/33-8981.pdf>

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### ***Director of OCIE Announces SEC Examination Focus for 2009***

October 31, 2008 9:19 AM

On October 21, 2008 Lori Richards, the Director of the SEC's Office of Compliance, Inspections and Examinations for 2009 in a speech to the National Society of Compliance Professionals. Ms. Richards stressed the growing im current market environment and urged firms to resist cutting compliance related budgets. Ms. Richards also high investment advisers that the OCIE staff will be focused on in upcoming examinations, including:

- Portfolio Management: Compliance staffs should be mindful that recent losses may provide an impetus aggressively than they should or to deviate from investment objectives.
- Financial Controls: Advisers in precarious financial condition should be aware that they are obligated to
- Valuation: OCIE examiners will focus on controls and procedures for valuation of illiquid and difficult-to-p
- Structured Products: OCIE examiners will focus on products marketed as being relatively "safe," such as products, and will review the adequacy of disclosures concerning credit risk, liquidity, and investment risl
- Controls and Processes at Recently Merged or Acquired Firms: Compliance staff must help ensure that the cracks in a merged organization.
- Money Market Funds: In examining money market funds and their advisers, OCIE staff will focus on com creditworthiness of portfolio securities, shadow pricing, compliance oversight and, more broadly, whethe themselves to excessive undisclosed risk.
- Short Selling; Market Manipulation: OCIE will focus on compliance with new short sales rules and firms' employees from knowingly creating, spreading, or using false or misleading information to manipulate s
- Other Areas of Focus: OCIE also will continue to focus on other areas such as: suitability and appropriat controls to prevent insider trading; trading, brokerage arrangements and best execution; proprietary and payments; safety of customer assets; anti-money laundering; compliance, supervision and corporate go

*For more information please see Director Richard's Speech at:*

<http://sec.gov/news/speech/2008/spch102108lar.htm>

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#### ***FINRA Announces Consolidated Interpretations Regarding Financial Responsibility, Customer Protection and New Consolidated FINRA Rules***

October 24, 2008 10:24 AM

FINRA published Regulatory Notice 08-56, which announced a consolidated set of interpretations issued by SEC Exchange Act Rules 15c3-1, 15c3-2, 15c3-3, 15c3-4, 17a-3, 17a-4, 17a-5, 17a-11 and 17a-13.

FINRA also published Regulatory Notice 08-57, announcing the SEC's approval for certain consolidated FINRA Rules. FINRA Rules was approved by the SEC in August and September 2008, and will be effective on December 15, 2008. Rules approved by the SEC and effective December 15, 2008 include: Rule 0100 Series (General Standards); Rule 2010 (Principles of Trade); Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices); Rule 2070 (Transactions); Rule 3130 (Annual Certification of Compliance and Supervisory Processes); Rule 3220 (Influencing or Rewarding Employees); Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements); Rule 5130 (Restrictions on Equity Offerings); Rule 5150 (Fairness Opinions); Rule 5190 (Notification Requirements for Offering Participants); Rule 6470 (Extraordinary Market Volatility); Rule 6470 (Withdrawal of Quotations in an OTC Equity Security in Compliance with Rule 7000 Series (generally involving regulatory requirements and fees for quoting, trading, reporting, clearing and custody); Rule 8000 Series (Investigations and Sanctions); Rule 9000 Series (Code of Procedure); and Rule 10000, 12000, 13000 (Resolution procedures).

The FINRA Regulatory Notice 08-56 can be found at: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/08-56>

The FINRA Regulatory Notice 08-57 can be found at: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/08-57>

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#### ***FINRA Requests Comment on Proposed Research Registration and Conflict of Interest Rules***

October 24, 2008 10:13 AM

FINRA published Regulatory Notice 08-55 which requests comment on its proposed consolidated FINRA Rules r replace existing NASD Rule 2711 (Research Analysts and Research Reports) and NYSE Rule 472 (Communicat include certain changes to the existing NASD Rule 2711 and NYSE Rule 472. The proposed Rules would:

- Broaden the obligations on member firms to identify and manage research conflicts;
- Create a more flexible supervisory approach with respect to research analyst account trading in securitie
- Provide additional guidance regarding selective – or tiered – dissemination of a firm’s research reports;
- Extend the exemption for firms with limited investment banking activity to include certain aspects related determination;
- Exempt from the registration and qualification requirements personnel who produce “research reports” t than a research analyst (e.g., a registered representative or trader); and
- Remove the requirement to attest annually that the firm has in place supervisory policies and procedures compliance with the applicable provisions of the rules.

Comments must be received by FINRA by November 14, 2008.

For more information see the FINRA Regulatory Notice at: <http://www.finra.org/web/groups/industry/@ip/@reg/@r>

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***SEC Charges Former Hedge Fund Analyst with Improper Trading***

October 24, 2008 10:10 AM

On October 20, 2008 the SEC charged a former analyst who worked for a hedge fund, with improper trading. With analyst agreed to settle charges that he engaged in unlawful insider trading in connection with a "PIPE" offering. to keep information regarding a PIPE offering confidential; that on the basis of material, non-public information re recommendation that resulted in the hedge fund establishing a short position in the PIPE issuer's shares; and th agreement with respect to the PIPE offering on behalf of his hedge fund, representing that the hedge fund did not the issuer of the PIPE when he knew the fund did hold a short position.

The analyst agreed to an injunction, to disgorge \$13,427 plus prejudgment interest, and to pay a \$317,000 civil pe

For more information see the SEC Litigation Release available at:

<http://sec.gov/litigation/litreleases/2008/lr20784.htm>

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***FTC Suspends "Red Flags Rule" Relating to Identity Theft Until May 1, 2009***

October 24, 2008 10:08 AM

On October 22, 2008, the FTC announced a six-month delay in FTC enforcement of the so-called "Red Flags Rule

August 1, and September 5, 2008 WilmerHale Investment Management News Summaries, the rule requires certain new timetable, mutual funds and other financial institutions and creditors subject to the FTC's enforcement jurisdiction have until May 1, 2009, to achieve compliance. On the other hand, the deadline for other financial institutions and regulatory agencies or the National Credit Union Administration has not been extended by those agencies.

For more information see the FTC materials available at: <http://ftc.gov/opa/2008/10/redflags.shtm>

Also see the WilmerHale Client Alert, "Federal Trade Commission Delays Enforcement of "Red Flags Rule" for C available at: <http://www.wilmerhale.com/about/news/newsDetail.aspx?news=1273>

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***WilmerHale Email Alert: "Short Sellers Beware: Commission Adopts Final Rules to Mirror Emergency Order"***

October 24, 2008 10:04 AM

On October 22, 2008, the FTC announced a six-month delay in FTC enforcement of the so-called "Red Flags Rule" August 1, and September 5, 2008 WilmerHale Investment Management News Summaries, the rule requires certain new timetable, mutual funds and other financial institutions and creditors subject to the FTC's enforcement jurisdiction have until May 1, 2009, to achieve compliance. On the other hand, the deadline for other financial institutions and regulatory agencies or the National Credit Union Administration has not been extended by those agencies.

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***FINRA Announces New Margin Maintenance, Net Capital and Reserve Formula Requirements Related to Money Market Funds***

October 24, 2008 10:01 AM

FINRA published Regulatory Notice 08-60 announcing temporary margin maintenance, net capital and reserve formula requirements for money market funds that have frozen customer redemptions or whose net asset value has declined below \$1.00. The notice is a response to requests for guidance regarding the net capital and customer reserve formula treatment relating to the suspension of redemptions for their customers on their money market fund holdings, despite such funds' suspension of redemptions.

The temporary requirements were effective October 21, 2008.

For more information please see the FINRA Regulatory Notice at:

<http://www.finra.org/Industry/Regulation/Notices/2008/P117276>

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### ***Financial Industry Regulatory Authority ("FINRA") Announces Disclosure Guidance Regarding U.S. Treasury Program for Money Market Funds***

October 24, 2008 9:58 AM

FINRA recently published Regulatory Notice 08-58, which provides guidance on disclosures by member firms reg the U.S. Treasury Department's Temporary Guarantee Program (the "Treasury Program"). FINRA reminded firms t they inform customers of a money market fund's participation in the Treasury Program, any communications with should be fair and balanced, and should disclose the following information:

- The U.S. Treasury Department provides a guarantee to participating money market fund shareholders ba fund at the close of business on September 19, 2008.
- Any increase in the number of shares an investor holds after the close of business on September 19, 20
- If a customer closes his/her account with a fund or broker-dealer, any future investment in the fund will n
- If the number of shares an investor holds fluctuates over the period, the investor will be covered for eithe business on September 19, 2008, or the current amount, whichever is less.
- The Treasury Program expires on December 18, 2008.
- A customer could lose coverage under the Treasury Program if the customer liquidates or transfers its st

*For more information please see the FINRA Regulatory Notice at: <http://www.finra.org/web/groups/industry/@ip/@>*

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party any transaction or matter addressed herein.

***Securities and Exchange Commission (“SEC”) Issues No-Action Guidance Regarding MMIFF***

October 24, 2008 9:53 AM

In a no-action letter dated October 22, 2008, the SEC’s Division of Investment Management stated that it would not recommend enforcement action under the provisions of the Investment Company Act of 1940, as amended (the “Investment Company Act”), and the rules thereunder, with respect to the structuring and referral agent to SPVs under the MMIFF (the “Structuring Agent”), with respect to money market funds. The no-action letter granted the following relief and provided the following guidance for money market funds generally:

- ABCP to be issued by the SPVs under the MMIFF may be treated as “Asset Backed Securities” under Rule 2a-7 of the Investment Company Act.
- A money market fund purchasing any ABCP will not be required to “look through” the SPV issuing the ABCP under Rule 2a-7(c)(4)(ii)(D)(1)(i), provided that the following conditions are met:
  - First, a money market fund may not acquire ABCP if, as a result, all ABCP issued by all SPVs held by the fund exceed 10% of the fund’s total assets;
  - Second, any ABCP acquired by the money market fund must be a “First Tier Security,” as defined in Rule 2a-7 of the Investment Company Act;
  - Third, for purposes of a money market fund making additional purchases of securities of an issuer, the fund must add the entire value of all ABCP it holds to the value of other holdings of securities of the issuer for purposes of the 10% limitation;
  - Fourth, if a money market fund purchases ABCP in the secondary market (i.e., not in connection with the MMIFF), it must treat the ABCP being purchased as set forth in the third condition.
- Based on certain representations in the Structuring Agent’s no-action request and the fact that the MMIFF provides liquidity to money markets, the SEC staff stated it would not recommend enforcement action under the Investment Company Act against money market funds participating in the MMIFF, despite the fact that such money market funds are often owned by persons of financial institutions that have significant securities-related businesses and are major issuers of securities.

The no-action letter also granted specific relief for money market funds advised by the Structuring Agent to allow them to participate in the MMIFF despite the Structuring Agent’s relationships with the SPVs.

*A copy of the SEC no-action letter can be found at:*

<http://www.sec.gov/divisions/investment/noaction/2008/jpmsi102208.pdf>

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#### ***Federal Reserve Board of Governors (“Federal Reserve”) Announces Money Market Investor Funding Facility***

October 24, 2008 9:51 AM

On October 21, 2008, the Federal Reserve announced the creation of the MMIFF to support a private sector initiative in money market funds. Under the MMIFF, a series of private sector special purpose vehicles (“SPVs”) will purchase certain Eligible Assets from money market fund investors – initially only U.S. money market mutual funds. The MMIFF is designed to complement two other Federal Reserve programs that provide liquidity to money markets.

Under the MMIFF, the SPVs may purchase at amortized cost U.S. dollar denominated certificates of deposit, bank deposits, and commercial paper with maturities of 90 days or less, which are issued by one of fifty specific financial institutions with a short-term debt rating of A-1 or better by one of the major nationally recognized statistical rating organizations (“Eligible Assets”). Each SPV is expected to hold securities issued by one or more of the fifty financial institutions. Eligible Assets of any one issuer may not exceed 15% of the assets of an SPV.

The SPVs’ purchases of Eligible Assets will be financed through a combination of the SPVs selling asset-backed securities to the Federal Reserve Bank of New York (“NY Fed”). The SPVs will issue ABCP equal to 10% of the Eligible Assets’ value. The financing for such purchases will be via loans from the NY Fed. These loans will be on an overnight basis, at a rate equal to the applicable SPV, senior to the ABCP, and secured by all of the assets of the SPV.

If assets held by an SPV are downgraded, the SPV will discontinue all asset purchases until all of the SPV’s assets have matured. If assets held by an SPV go into default, the SPV will discontinue all future asset purchases. The proceeds from the maturation of the SPV’s assets will be used to repay the loan from the NY Fed. When all of the proceeds from the maturation of the SPV’s assets have been used to repay principal and interest on the ABCP, the remaining cash will be used to repay principal and interest on the ABCP. Under this repayment structure, the holder of the ABCP will be protected from losses associated with the assets in default held by the SPV, thereby protecting the NY Fed.

For more information see the Federal Reserve press release available at:

<http://www.federalreserve.gov/newsevents/press/monetary/20081021a.htm>

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### ***Department of Labor Issues Final Rule on Cross-Trading Policies and Procedures for ERISA Plans***

October 17, 2008 11:10 AM

On October 7, 2008 the DOL published final regulations to the statutory exemption for cross-trades involving ERISA plans. The regulations address requirements under ERISA §408(b)(19), including the requirement that a plan's independent fiduciary consent to the requirement that an investment manager adopt, and cross-trades be effected in accordance with, written cross-trading policies and procedures. The final regulations are substantially similar to the interim final regulations that were issued in February 2007, with a few

- Pooled Investment Vehicles: Under ERISA §408(b)(19)(E), each plan participating in the transaction must be a hedge fund or other pooled investment vehicle. For hedge funds and other pooled investment vehicles, availability of the exemption is limited to those vehicles with assets of at least \$100 million.
- Effect of Isolated Noncompliance: The DOL states that individual instances of noncompliance with the policies and procedures of an investment manager would not by themselves render the statutory exemption inapplicable to the investment manager's cross-trades, if the other cross-trades did meet all the requirements of §408(b)(19).
- Sampling for Compliance Officer's Review: The DOL notes that nothing in the final regulations would preclude an investment manager from using a sampling methodology based on the universe of cross-trades effected by the investment manager. The sampling methodology is disclosed in the investment manager's policies and procedures.
- Application to Affiliated Investment Managers: The DOL affirms that securities trades executed between an investment manager and an account managed by an affiliate of such manager are beyond the scope of the exemption.

The final regulations are effective on February 4, 2009. An investment manager who has obtained a fiduciary's audit opinion under ERISA §408(b)(19)(D), prior to the effective date based on compliance with the interim final regulations, will not be required to make disclosures that reflect the final regulations.

*The full text of the final regulations is available at:*

<http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=21589>

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#### ***SEC Reaches Two New Settlements in Principle Relating to Auction Rate Securities***

October 17, 2008 10:58 AM

The SEC announced two preliminary settlements in principle with two financial institutions that would provide and small charitable organizations with the opportunity to sell back to the respective financial institutions auction rate securities. Similar to prior settlements between the SEC and other financial institutions, the agreements require the financial institutions to provide liquidity to other businesses, charities, and institutional investors.

The proposed settlement would allege that each financial institution made misrepresentations to its customers with respect to highly liquid cash and money market alternative investments.

For more information see the SEC press releases available at:

<http://www.sec.gov/news/press/2008/2008-247.htm>

<http://www.sec.gov/news/press/2008/2008-246.htm>

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#### ***SEC Requests Public Comment Relating to SEC Study of "mark-to-market" Accounting Applicable to Financial Institutions***

October 17, 2008 10:52 AM

On October 8, 2008 the SEC announced that, pursuant to the Emergency Economic Stabilization Act of 2008, it will study accounting standards as applicable to financial institutions. The SEC requested comments on the study, which starts on October 10, 2008. The study will cover:

- The effect of mark-to-market accounting on a financial institution's balance sheet;
- The impact of mark-to-market accounting on bank failures in 2008;
- The process used by the Financial Accounting Standards Board in developing accounting standards; and
- Alternative accounting standards to those provided in FASB 157.

The SEC also announced that on October 29, 2008, it will host the first of two roundtables on "mark-to-market" accounting.

*For more information see the SEC request for comments available at:*

<http://www.sec.gov/rules/other/2008/33-8975.pdf>

<http://sec.gov/news/press/2008/2008-252.htm>

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***SEC Staff Issues No-Action Letter Regarding the Participation of Money Market Funds in the U.S. Treasury Program***

October 17, 2008 10:48 AM

On October 8, 2008 the staff of the SEC's Division of Investment Management issued no-action assurance that it is not providing no-action assurance pursuant to Section 18(f) of the Investment Company Act against a money market fund if such fund participates in the Program for Money Market Funds (the "Treasury Program"). The Investment Company Institute sought the no-action assurance that a money market fund's participation in the Treasury Program could create "senior securities" as defined in Section 18(g) of the Investment Company Act.

For more information see the SEC no-action letter available at: <http://www.sec.gov/divisions/investment/noaction/20081008mmf.htm>

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***SEC Staff Issues No-Action Letter Allowing Money Market Funds to "Shadow Price" Certain Securities Using Amortized Cost***

October 17, 2008 10:42 AM

The staff of the SEC's Division of Investment Management issued a no-action letter assuring that it would not recommend that a money market fund uses amortized cost value rather than available market quotations in "shadow pricing" its portfolio securities. The staff's no-action position is limited to portfolio securities that:

- Have a remaining maturity of 60 days or less (remaining maturity is measured without regard to paragraph 10 of the prospectus)

- Are First Tier Securities as defined in paragraph (a)(12) of Rule 2a-7; and
- The fund reasonably expects to hold until maturity.

Separately, the Irish Financial Regulator has approved similar more expansive relief for Irish authorized money m

For more information see the SEC no-action letter available at: <http://www.sec.gov/divisions/investment/noaction/>.

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#### ***SEC Reopens the Period for Public Comment on the Proposed New Rules Relating to Indexed Annuities and***

October 17, 2008 10:34 AM

In response to industry and congressional requests, the SEC reopened comment period on new rules relating to insurance contracts. The SEC originally proposed the rules on June 25, 2008 and the original comment period closed. The proposed rule would define the terms “annuity contract” and “optional annuity contract” under the Securities Act and is intended to exempt insurance contracts from registration under the federal securities laws. The proposed rules would also exempt insurance companies from filing reports on indexed annuities and other securities. To qualify for this exemption the securities must be regulated under state law, the insurance company and its financial condition must be subject to supervision and examination by a state insurance regulator, and the securities must be traded.

For more information see the SEC rule release and request for comments available at: <http://sec.gov/rules/proposed>

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#### ***SEC Adopts Rules and Rule Amendments Related to Short Sales***

October 17, 2008 10:30 AM

This week the SEC announced a series of rules and rule amendments related to short sales that: (i) require weekly reporting of short positions by institutional investment managers until August 1, 2009; (ii) eliminate the options market maker exception to the SEC's prohibition of deceptive practices by short sellers regarding their intention and ability to locate and deliver securities at the time of the short sale; and (iii) enhance delivery requirements on sales of equity securities until July 31, 2009.

SEC Adopts Interim Final Temporary Rule 10a-3T Extending the Requirement that Institutional Investment Managers Disclose Short Sales and Short Positions Until August 1, 2009. The SEC adopted interim final temporary Rule 10a-3T under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which extends the requirements established by the SEC Emergency Orders dated September 19, 2008 and September 26, 2008 (the "Emergency Orders") (see the September 19, September 26 and October 2, 2008 WilmerHale Investment Management News Summary for more details of the Emergency Orders) to require institutional investment managers ("Form SH Filers") to file information on Form SH regarding their short positions in Section 13(f) securities. Rule 10a-3T modifies the requirements of the

- The requirement that Form SH Filers file with the SEC reports regarding their short sales and positions on Form SH.
- Beginning on October 18, 2008, the filing deadline for Form SH for each week in which reportable short sales occurred will be extended from the first business day of the calendar week to the last business day of the calendar week, giving the reporting party more time to submit the report.
- Form SH Filers will no longer be required to report the information requested in: (i) column 5 of the current Form SH (the largest intraday short position); (ii) column 7 of the current Form SH (the largest intraday short position); and (iii) column 8 of the current Form SH (the largest intraday short position).
- Form SH Filers will be required to report ALL short positions, including short positions effected prior to September 19, 2008. During a transition period for reports due on October 24, and October 31, 2008, Form SH Filers may exclude short positions effected prior to September 19, 2008.

September 22, 2008.

- The fair market value prong of the de minimis exception to short sale positions will be raised from a fair market value of \$10 million, provided, however, that if a Form SH Filer elects not to report pre-September 22, 2008 short sale positions (i.e., in its October 24, or October 31, 2008 Form SH filings) the existing de minimis threshold of \$10 million begins to report pre-September 22, 2008 short sale positions.
- Regarding confidential treatment, the rule states that all Forms SH filed with the SEC will be “nonpublic” and the release states that a Form SH Filer should not submit a confidential treatment request to the SEC, but must follow the requirements required by the instructions to the form.
- Form SH Filers will be required to submit XML tagged data in its Form SH filings with the SEC.

Rule 10a-3T is effective October 18, 2008 until August 1, 2009. The SEC has also requested comments on Rule 10a-3T received by the SEC within 60 days after publication in the Federal Register.

For more information see the SEC rule release and request for comments available at <http://sec.gov/rules/final/2008/34-58785.pdf>

SEC Adopts Amendments to Regulation SHO Eliminating the Options Market Maker Requirement of Regulation SHO. The SEC adopted amendments to Rule 203(b)(3) of the Securities Exchange Act to eliminate the exception to the “close out” requirement for options market makers required that a participant in an SEC registered clearing agency immediately close out its position in a threshold security that has persisted for 13 consecutive settlement days. Any such participant in a threshold security for 13 consecutive days or longer would be prohibited from entering into orders or effecting any short sales in that particular threshold security unless such participant entered into an arrangement to borrow, such security. The option market maker exception exempts option market makers from the close out requirements of Rule 203(b)(3), provided that such market maker establishes or maintains a hedge on options positions that were created before the underlying security. The amended Rule 203(b)(3) eliminates the exception for options market makers. Amended Rule 203(b)(3) is effective October 17, 2008.

For more information see the SEC rule release and request for comments available at <http://sec.gov/rules/final/2008/34-58775.pdf>

SEC Adopts “Naked” Short Selling Antifraud Rule. The SEC adopted Rule 10b-21 under the Securities Exchange Act of 1934, which is intended to address fails to deliver associated with “naked” short sales. The rule states that if any person deceives a broker or dealer, a participant of a registered clearing agency, or a clearing agency, of its intention or ability to deliver a security on or before the settlement date, and such person

or before the settlement date, such action would constitute a “manipulative or deceptive” action under Section 10(b) of the Exchange Act. The preliminary note to Rule 10b-21 states that Rule 10b-21 restricts, the applicability of the general antifraud provisions of the federal securities law [Exchange] Act or rule 10b-5 thereunder.”

In the Rule 10b-21 adopting release, the SEC provides the following examples of action that may violate Rule 10b-21:

- *Broker-Dealer Trading for Its Own Account.* Under Rule 10b-21 a broker-dealer effecting short sales for its own account does not obtain a valid locate source of the equity security and fails to deliver the securities on the settlement date, the broker-dealer will be liable under Rule 10b-21.
- *Seller Representations to Broker-Dealers.* If a seller deceives a broker-dealer about its holdings in a security, the seller will be similarly liable under Rule 10b-21.
- *Seller Reliance on Broker-Dealer or Easy to Borrow List.* A seller would not violate Rule 10b-21 if the seller is unable to locate and/or deliver and the seller either (i) relies upon the executing broker-dealer to comply with the order or (ii) relies in good faith on a broker-dealer’s “easy to borrow” list.
- *Seller Causing a Broker-Dealer to Enter a “Long Order” for a Security the Seller Does Not Own.* A seller, acting through a broker-dealer, will be liable under Rule 10b-21 if the seller causes a broker-dealer to mark an order to sell a security as “long” or recklessly disregards that it is not deemed to own the security being sold.”

*Aiding and Abetting Liability for Broker-Dealers.* A broker-dealer could be liable for aiding and abetting a customer’s violation of Rule 10b-21. Rule 10b-21 does not impose any additional liability or requirements on any person, including broker-dealers, beyond the liability for the underlying transaction, including aiding and abetting liability.

For more information see the SEC rule release and request for comments available at:

<http://sec.gov/rules/final/2008/34-58774.pdf>

SEC Adopts Interim Final Temporary Rule 204T, Which Extends Enhanced Delivery Requirements for Securities Until July 31, 2009. On September 17, 2008 the SEC adopted temporary Rule 204T under Section 12(k) of the Exchange Act to address abusive “naked” short selling. The SEC adopted Rule 204T as an interim final temporary rule with some modifications to address the concerns. Rule 204T will be effective until July 31, 2009. Rule 204T continues to require an SEC registered clearing agency to deliver securities to an SEC registered clearing agency by the applicable settlement date. If the participant fails to deliver the securities by the settlement date, the participant must close out the fail to deliver position by the beginning of regular trading hours on the settlement date of the fail to deliver position occurred. A participant that does not comply with the Rule 204T requirements may be subject to disciplinary action by the broker-dealer from which such participant receives trades for clearance and settlement.

security in which it has a fail to deliver position, either for itself or for the account of a position is closed out, or it has first arranged to borrow or borrowed the security.

*For more information about the rule, including its various exceptions, see the SEC rule release and request for comment at <http://sec.gov/rules/final/2008/34-58773.pdf>*

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#### ***WilmerHale Holds Market Crisis Webinar***

October 10, 2008 2:13 PM

On October 10, 2008, WilmerHale held a Webinar entitled “Responding to the Market Crisis: Enforcement Activity, Litigation and Regulatory Environment.”

For more information see WilmerHale’s website available at <http://www.wilmerhale.com/about/news/newsDetail.aspx?news=1265>

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#### ***Fed Exempts Purchases of Assets from Money Market Fund***

October 10, 2008 2:10 PM

On October 6, 2008, the Fed published a letter granting a request by a depository institution for an exemption from under Section 23A of the Federal Reserve Act and the Board's Regulation W. The letter allows the depository insti money market fund above the quantitative limits in order to help the money market fund meet its redemption requ illiquid market. The letter imposes the following limits and conditions on the transactions:

- the depository institution may only purchase assets from registered money market funds that operate pu Company Act of 1940.
- the purchase of assets would be limited to the amount necessary to cover net redemptions in the money amount.
- the assets purchased must be externally rated A1/P1 or the credit equivalent thereof.
- the purchase must be made at fair market value as determined by a reliable third-party service.
- the parent of the depository institution must agree to reimburse the depository institution for any losses s connection with the purchased assets.
- the parent of the depository institution and the depository institution must remain "well capitalized."
- the purchases must occur prior to a specific date.

The Fed has stated that it is open to consider similar requests from depository institutions under similar circum

*For more information see the Fed materials available at <http://www.federalreserve.gov/newsevents/press/moneta> <http://www.federalreserve.gov/boarddocs/legalint/FederalReserveAct/2008/20081006/20081006.pdf>*

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#### ***Fed Creates Commercial Paper Funding Facility***

October 10, 2008 2:03 PM

On October 7, 2008, the Fed announced the creation of the Commercial Paper Funding Facility which will provide commercial paper through a special purpose vehicle ("SPV"). The SPV will purchase 3-month unsecured and as eligible US issuers. The Fed will provide financing to the SPV at the target federal funds rate and it will be secured commercial paper that is not asset-backed commercial paper, the SPV will be secured by the retention of up-front security acceptable to the Fed in consultation with market participants.

Commercial paper (including asset-backed commercial paper) purchased by the SPV must be rated at least A1/P Statistical Rating Organization. The maximum amount of commercial paper a single issuer may sell to the SPV v paper the issuer had outstanding in the month of August 2008, less any amount of the issuer's outstanding com the SPV. The SPV will cease to purchase commercial paper on April 30, 2009, unless the Fed agrees to extend th

For more information see the Fed materials available at <http://www.federalreserve.gov/newsevents/press/moneta>  
[http://www.newyorkfed.org/markets/CPFF\\_Terms\\_Conditions.html](http://www.newyorkfed.org/markets/CPFF_Terms_Conditions.html).

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***Interim Guidelines for Conflicts of Interest Issued***

***October 10, 2008 1:39 PM***

The Treasury issued interim guidelines addressing actual or potential conflicts of interest among contractors per the Emergency Economic Stabilization Act of 2008. Below is a summary of several of the guidelines:

- Non-disclosure agreements and conflict of interest agreements should be obtained in advance of supply.
- Prospective offerors must disclose any actual or potential conflicts.
- A solicitation should include an evaluation factor or criteria whereby the Treasury will likely assess the effectiveness of the conflict of interest mitigation plan.
- A solicitation should identify any minimum requirements or standards for the conflict of interest mitigation plan. If a contractor owes a fiduciary duty to the Treasury in performing the contract, this should be disclosed in the resulting contract.
- The solicitation should include non-disclosure provisions which should apply to the prime contractor, at the time of the contract award.
- The solicitation will state that the Treasury will oversee a mitigation plan as part of the contract and the contractor's initial proposal. A conflict of interest may be waived by the Treasury.
- A Treasury official will review and approve all provisions related to conflicts of interest prior to the issuance of the contract. If a conflict of interest is identified, the mitigation plan will be incorporated into the contract.

For more information see the Treasury Press Release available at <http://www.ustreas.gov/press/releases/hp1180.htm>.

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***avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending a transaction or matter addressed herein.***

***Treasury Outlines Asset Manager Selection Process***

October 10, 2008 1:35 PM

On October 6, 2008, the Treasury released information outlining the process for selecting asset managers under the Emergency Economic Stabilization Act of 2008. The process includes the following provisions:

- The Treasury will select asset managers of securities separately from asset managers of mortgage-backed securities.
- Asset Managers will be financial agents of the United States.
- Financial Institutions are eligible to be designated as financial agents of the US.
- Prospective financial agents will be solicited through the issuance of a public notice, posted on the Treasury's website. Qualified Financial Institutions submit a response.
- The Treasury will evaluate the initial response from all interested and qualified Financial Institutions, and the second phase of the financial agent selection process. The Treasury will evaluate responses from the first phase to determine whether a candidate will continue to be considered.
- Financial Institutions selected must sign a Financial Agency Agreement with the Treasury.
- At each stage in the selection process, personnel from various offices will evaluate the candidate submitted. The head of the Office of Financial Stability, who will make the final decisions.
- The Treasury expects to designate multiple asset managers and sub-managers to obtain the proper expertise across segments of the mortgage credit market.
- The Treasury will issue separate notices to identify smaller and minority- and women-owned Financial Institutions.
- The selection process may involve extremely short deadlines for submitting information and for traveling for interviews.
- The Treasury will not reimburse or otherwise compensate a prospective asset manager for expenses or other costs incurred in the selection process.

*For more information see the Treasury materials available at <http://www.ustreas.gov/press/releases/hp1181.htm>; and <http://www.ustreas.gov/press/releases/reports/assetmanagers.pdf>.*

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### ***Treasury Uses Two Mechanisms for Engaging Private-Sector Firms***

October 10, 2008 1:31 PM

The Treasury stated that they have two mechanisms available for engaging private-sector firms in implementing th 2008. Specifically, the Treasury may use the Financial Agent Authority and the procurement under the Federal Acq Financial Agent Authority, the Treasury may retain a broad class of financial agents to provide services on its beha through processes which will be posted on the Treasury's website.

In addition, the Treasury may obtain supplies and services using a procurement contract under the FAR. The Treas be awarded through other than full and open competition, using the previously established provisions of the FAR compelling urgency. Procurement opportunities and information about contracts awarded will be posted at <http://www.oetpe@do.treas.gov> capability statements to the Treasury's Office of Procurement Executive at ootpe@do.treas.gov.

For more information see the Treasury Press Release available at <http://www.ustreas.gov/press/releases/hp1179.htm>.

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### ***Treasury Official Discusses Treasury's Implementation of Emergency Economic Stabilization Act of 2008***

October 10, 2008 1:28 PM

Anthony Ryan, the Treasury's Acting Under Secretary for Domestic Finance, discussed a policy framework and the implementation of the Emergency Economic Stabilization Act of 2008 at the Investment Company Institute's Equity Conference. Mr. Ryan stated that a policy framework that restores the optimal balance between private-sector markets is needed. The Treasury plans to play an important role in the formation of the financial policy and regulatory structure. Mr. Ryan highlighted four recommendations of the President's Working Group on Financial Markets ("PWG"): (1) increased transparency and disclosure, (2) increased risk awareness, (3) improved risk management, and (4) better capitalized and more effective the role of a market stability regulator with broad powers focusing on the overall financial market.

In discussing the practical effects of the recent legislation, Mr. Ryan stated that the flow of credit is vitally important and must be addressed to restore confidence in the economic markets. Mr. Ryan stated that Treasury needs to begin its preparatory legislation. Lastly, he stated that in the coming days, the Treasury will hire the expertise to help them optimally design the legislation.

For more information see the Treasury materials available at <http://www.ustreas.gov/press/releases/hp1182.htm>; and the PWG's statement at <http://www.ustreas.gov/press/releases/hp1177.htm>.

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***SEC Enforcement Manual Posted on Its Website***

October 10, 2008 1:26 PM

On October 6, 2008, the SEC's Division of Enforcement posted its SEC Enforcement Manual on its website. The manual is designed to be a reference for the staff in the Division of Enforcement in the investigation of potential violations of the various general policies and procedures and is intended to provide guidance only to the staff. The manual indicates that it may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter.

For more information see the SEC Enforcement Manual available at <http://www.sec.gov/divisions/enforce/enforce>

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#### ***SEC Appoints James Clarkson as Acting Regional Director of New York Regional Office***

October 10, 2008 1:23 PM

SEC Chairman Christopher Cox announced the appointment of James Clarkson as the Acting Regional Director of the New York Regional Office. Currently, Mr. Clarkson serves as the Division of Enforcement's Director of Regional Office Operations at the SEC. Mr. Clarkson will continue in this position while splitting his time between the two positions. Mr. Clarkson has worked at the SEC for over 10 years. He holds an undergraduate degree from Princeton University, an MBA from Columbia University and his law degree from the New York University School of Law.

For more information see the SEC Press Release available at <http://www.sec.gov/news/press/2008/2008-236.htm>.

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### ***Brokers Charged with Fraud in Sales of Securities Funded Through Subprime Mortgage Refinancings***

October 10, 2008 1:15 PM

On October 3, 2008, the SEC charged five broker-dealer registered representatives with securities fraud for refinancing mortgages that they could not afford in order to sell them unsuitable securities. The SEC alleges that these registered representatives sold universal life policies to clients who were unable to pay for these securities and the subsequent monthly payments. The registered representatives instructed their clients to refinance their fixed rate mortgages into subprime adjustable rate mortgages. The registered representatives were paid from the mortgage refinancing as well as the sale of securities. The SEC alleges that the registered representatives had little education, little prior investment experience, and several did not speak English fluently, if at all.

In making the sales, the registered representatives allegedly misrepresented the expected returns from the securities and terms of the new mortgages while failing to disclose material facts about the products. In addition, the registered representatives falsified customer account forms and prepared order tickets that contained incorrect information. The SEC charged the registered representatives with violations of the antifraud provisions of the securities laws.

For more information see the SEC materials available at  
<http://www.sec.gov/news/press/2008/2008-237.htm>;  
<http://www.sec.gov/litigation/litreleases/2008/lr20768.htm>; and  
<http://www.sec.gov/litigation/complaints/2008/comp20768.pdf>.

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***SEC Short Selling Order Expires***

October 10, 2008 12:44 PM

The SEC's Division of Trading and Markets stated that the SEC's emergency order that prohibited persons from shorting financial institutions expired at 11:59 p.m. ET on Wednesday, October 8, 2008 due to the President's signature of the Emergency Economic Stabilization Act of 2008 (H.R. 1424).

For more information see the SEC Press Release available at <http://www.sec.gov/news/press/2008/2008-238.htm>.

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***IRS Issues Revised Foreign Bank Account Reporting Form, Expands Reporting Obligations***

October 3, 2008 2:58 PM

Without any fanfare, the IRS has released a new Form TD F 90-22.1 (commonly referred to as the "FBAR") and instructions. The new form expands the reporting requirements for taxpayers who have a financial interest in, and signature authority over, foreign financial accounts. Taxpayers are permitted to use the prior version of the form for reporting for 2008. Thus, the new FBAR is relevant to taxpayers who must report their interests in, and signature authority over, foreign financial accounts for 2009. In general, the 2008 FBAR will require reporting by additional persons and disclosure of more information.

Each United States person who has a financial interest in or signature authority over financial accounts, including "jointly owned accounts" in a foreign country must file the FBAR if the aggregate value of the financial accounts exceed \$10,000 at any time during the year.



FBAR must be filed with the Treasury Department by June 30 of the succeeding year. There are significant potential consequences for failing to file an FBAR. Further, federal income tax returns include a question whether the taxpayer owns more than 50% of the foreign bank accounts, or at any time during the year had an interest in or signature authority over a financial account.

The new FBAR contains several notable developments, including:

- Late or Amended FBARs. If a late or amended FBAR is filed, the taxpayer must include a statement explaining the delay.
- Mutual Funds and Debit/Credit Cards. The definition of financial accounts has been clarified to include mutual funds, debit cards and prepaid credit cards. Thus, persons who hold interests in foreign mutual funds are required to report such interests on an FBAR.
- Foreign Persons Required to File. Non-resident aliens and foreign entities doing business in the United States are now required to file an FBAR. A de minimis rule has been provided for foreign persons who do business in the United States.
- Trusts. If a foreign financial account is held through a trust arrangement established by a United States person (or a United States person), the United States person must report the account if a trust protector has been appointed and has the authority to make decisions.
- Limited Employee Reporting Exception. The special rule that exempts employees of a domestic corporation from reporting foreign financial accounts they control but have no financial interest in when they receive written notice from the domestic corporation has been clarified. Such written notice may now be made by the CFO or similar responsible officer. Second, as previously stated, the exception is available only to employees of subsidiaries of the domestic corporation and, based on oral discussions with the IRS, a single-member LLC owned by the domestic corporation may be eligible for the reporting exception.
- Specific Value Required. Taxpayers are required to show the specific dollar value of the foreign financial accounts. Permitted taxpayers may check one of four boxes based on the range of values for the account.
- Joint Accounts. For joint accounts, taxpayers are required to provide the name and address of the other joint account holder (or more than one). For spousal joint accounts, spouses may file a single FBAR. If only one spouse has separate accounts, the combined FBAR is also permitted. Combined reporting is not permitted if both spouses have separate accounts in addition to the joint accounts.
- Recordkeeping. Recordkeeping standards are expressly stated. "Detailed information about each account must be retained for seven years from June 30 of the year following the calendar year reported." This rule does not, however, override any other recordkeeping requirements which generally require information to be retained so long as they may be material to the administration of the account.

*For more information see the IRS Form available at*

<http://www.irs.gov/pub/irs-pdf/f90221.pdf>.

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***Economic Stabilization Act Passes Both Houses of Congress, Includes Provisions Eliminating Most Offshor***

October 3, 2008 2:56 PM

The legislation to eliminate most offshore fee deferral arrangements, which was described in the Investment Ma 26, 2008, has been attached to the version of the 2008 Emergency Economic Stabilization Act (H.R. 1424) that wa 2008, and the U.S. House of Representatives on October 3, 2008.

For more information see the bill (H.R. 1424) available at  
<http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.1424.eas:>.

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***Massachusetts Issues Comprehensive Identity Theft Prevention Regulations for all Businesses***

October 3, 2008 2:54 PM

Final regulations in Massachusetts were issued establishing standards for the protection and storage of consum

Consumer Affairs and Business Regulation ("OCABR") issued standards as a result of legislation that was enacted by the state legislature. The standards require any person who owns, licenses, stores, or maintains "personal information" (first and last name in combination with state identification number, financial account number, or credit/debit card number) about a resident of the Commonwealth of Massachusetts, if the information is owned, licensed, stored, or maintained, the person must have a comprehensive information security system in place that meets the standards. The OCABR issued standards for protecting personal information and computer systems.

These standards appear to be more demanding than the SEC's protection of personal information requirements. The standards require businesses to: (a) develop a security plan, (b) assess internal and external security risks, (c) provide training to employees from gaining access to personal information, (e) ensure that service providers protect personal information, and (f) review security measures annually; and (g) notify customers if a breach occurs. The new regulations also allow residents of Massachusetts to lock their credit reports in order to protect against identity theft. The regulations are set to take effect on January 1, 2009.

*For more information see the materials available at*

[http://www.mass.gov/?](http://www.mass.gov/?pageID=ocapressrelease&L=3&L0=Home&L1=Consumer&L2=Identity+Theft&sid=Eoca&b=pressrelease&f=08090901)

[pageID=ocapressrelease&L=3&L0=Home&L1=Consumer&L2=Identity+Theft&sid=Eoca&b=pressrelease&f=08090901](http://www.mass.gov/?pageID=ocapressrelease&L=3&L0=Home&L1=Consumer&L2=Identity+Theft&sid=Eoca&b=pressrelease&f=08090901)

[http://www.mass.gov/?](http://www.mass.gov/?pageID=ocaterminal&L=3&L0=Home&L1=Consumer&L2=Identity+Theft&sid=Eoca&b=terminalcontent&f=idtheft)

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[http://www.mass.gov/Eoca/docs/idtheft/eo504.pdf;](http://www.mass.gov/Eoca/docs/idtheft/eo504.pdf)

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### ***Treasury Opens Temporary Guarantee Program for Money Market Funds and Issues FAQs***

October 3, 2008 2:49 PM

The Treasury opened its Temporary Guarantee Program for Money Market Funds on September 29, 2008 and issued FAQs regarding the program. Under the program, the Treasury will guarantee the share price of any publicly offered eligible money market fund.

taxable, and tax-exempt) that applies for and pays a fee to participate in the program. Specifically, the guarantee asset value ("NAV") falls below \$0.995, commonly referred to as "breaking the dollar" or "breaking the buck." To be fund must be regulated under Rule 2a-7 under the Investment Company Act of 1940, maintain a stable share price registered with the SEC. The program provides coverage to shareholders for amounts that they held in participating business on September 19, 2008. Money Market Funds with an NAV below \$0.995 as of the close of business on the program.

To participate in the program, money market funds with an NAV per share greater than or equal to \$0.9975 as of the must pay an upfront fee of 0.01 percent (1 basis point) based on the number of shares outstanding on that date. Funds with an NAV equal to \$0.995 and below \$0.9975 as of the close of business on September 19, 2008, must pay an upfront fee on the number of shares outstanding on that date. The program will exist for an initial three month term and the fee Secretary of the Treasury will review the need and terms for extending the program at the end of the initial term. Funds must apply by October 8, 2008, using the forms on the program's webpage. Under Treasury and IRS guidance, funds can participate in the program without treating the program as a federal guarantee that jeopardizes the tax-exempt treatment.

For more information see the Treasury materials available at

<http://www.treasury.gov/press/releases/hp1163.htm>;

<http://www.treasury.gov/press/releases/hp1161.htm>; and

<http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-fund.shtml>

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***Regulators Release Joint Report to Assist Financial Services Firms in Serving Older Investors***

October 3, 2008 2:47 PM

As part of the SEC's Senior Summit, the staff of the SEC, the Financial Industry Regulatory Authority ("FINRA"), and

Administrators Association (“NASAA”) released a joint report discussing practices that financial services firms may use in developing procedures for servicing older investors. The report, entitled Protecting Senior Investors: Compliance, Supervisory Services Firms in Serving Investor, summarizes firms’ practices relating to senior investors in areas such as the compliance structures to meet the changing needs of senior investors, effective communication with senior investors, and ensuring the appropriateness of investments.

For more information see the materials available at

<http://www.sec.gov/news/press/2008/2008-220.htm>; and

<http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf>.

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#### ***SEC Announces Annual CCO Outreach National Seminar for Mutual Fund and Adviser CCOs***

October 3, 2008 2:45 PM

The SEC announced the annual CCO Outreach National Seminar to be held on November 13, 2008, for chief compliance officers of mutual fund investment advisers. The seminar will include panel discussions highlighting various compliance issues for mutual fund advisers, sound practices with respect to valuation, prevention of insider trading, ensuring best execution, and making meaningful disclosures to investors. The seminar will be held at the SEC’s Washington, DC headquarters from 9am ET to 5pm ET. Attendance will be limited and investment adviser CCOs will be given priority on a first-come, first-served basis. A webcast of the seminar will be available. The next SEC/FINRA CCO Outreach National Seminar for broker-dealer CCOs will be held in the spring of 2009.

For more information see the SEC Press Release available at

<http://www.sec.gov/news/press/2008/2008-221.htm>.

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#### ***Adviser Settles SEC Enforcement Case Involving Improper and Undisclosed Use of Funds to Pay Expenses***

October 3, 2008 2:43 PM

An investment adviser settled an SEC enforcement action finding that the adviser defrauded affiliated mutual fund investors. The administrator rebated to the investment adviser some of the administrative fees paid by the funds to pay for expenses of the adviser. The SEC order found that the adviser entered into improper and undisclosed side agreements with the administrator. The administrator rebated approximately 1/3 of its administrative fee to pay for the adviser's marketing and certain expenses. The adviser understood that the administrator would continue to recommend the administrator to the funds' board of directors.

In addition, the SEC order found that the adviser failed to disclose that the administrator rebated to the adviser some of the administrative fees paid by the funds to pay for securities lending services as a consulting fee, in exchange for the adviser recommending to the funds' board of directors that the funds use the administrator's securities lending services to the funds. In settling the charges, the adviser agreed to a cease and desist order, and to pay a civil penalty.

*For more information see the SEC materials available at*

<http://www.sec.gov/news/press/2008/2008-222.htm>; and

<http://www.sec.gov/litigation/admin/2008/ia-2784a.pdf>.

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### ***SEC Charges Investment Adviser With Fraud While Recommending Hedge Fund to Investors***

October 3, 2008 2:41 PM

The SEC charged an investment adviser and its owner with fraud for failing to disclose a material conflict of interest when they recommended that clients invest in a hedge fund when the adviser had a financial interest in making such recommendations. Specifically, the adviser recommended that clients invest in a hedge fund without disclosing that it had a side agreement with the hedge fund's adviser to receive a performance fee. The hedge fund collapsed in 2007 and the investment adviser's clients lost nearly all of the money they invested. The SEC's complaint, filed in federal district court, charges the investment adviser and its owner with violation of the antifraud provisions of the federal securities laws. The SEC is seeking an injunction, disgorgement of the performance fees paid by the hedge fund's adviser and civil penalties. On March 4, 2008, the SEC filed a civil action in federal district court against the hedge fund's adviser and the hedge fund for the collapse of the hedge fund and another hedge fund.

*For more information see the SEC materials available at*  
<http://www.sec.gov/news/press/2008/2008-224.htm>;  
<http://www.sec.gov/litigation/litreleases/2008/lr20737.htm>;  
<http://www.sec.gov/litigation/complaints/2008/comp20737.pdf>; and  
<http://www.sec.gov/news/press/2008/2008-28.htm>.

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***SEC Announces Roundtable to Discuss Modernization of Disclosure System***

October 3, 2008 2:39 PM

The SEC announced that it will hold a roundtable on October 8, 2008, to discuss ways to modernize its disclosure of timely information for investment decision making. The roundtable, part of the SEC's 21st Century Disclosure Initiative, will explore the data, technology, and processes that companies and other filers use in satisfying their SEC disclosure obligations. The SEC will consider how the SEC could better organize and operate its disclosure system so that companies enjoy efficient, high-quality information. The SEC will invite as panelists investor representatives, company officials, information technology experts, and other interested parties. The roundtable will take place at the SEC's Washington DC headquarters from 9am ET to 1pm ET. A webcast of the roundtable will be available on the SEC's website.

For more information see the SEC Press Release available at

<http://www.sec.gov/news/press/2008/2008-227.htm>; and

<http://www.sec.gov/disclosureinitiative>.

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***SEC Wins Major Hedge Fund Fraud Case in District Court***

October 3, 2008 2:37 PM

The SEC announced that a district court judge granted its motion for summary judgment against the sole manager of two hedge funds. The court found that the manager violated the anti-fraud provisions of the federal securities laws. The court found that the manager materially overstated the funds' valuations, manipulated the prices of seven securities in the fund portfolio, failed to provide any basis to substantiate or explain the valuations of shell corporations held in the fund portfolio statements; and falsely represented the funds' portfolio holdings in newsletters. The judge entered a permanent injunction against the manager from committing similar violations in the future.



future violations of several of the federal securities laws and reserved ruling on the SEC's claim for disgorgement manager. The SEC is seeking a financial penalty and disgorgement.

For more information see the SEC materials available at  
<http://www.sec.gov/news/press/2008/2008-225.htm>.

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#### ***SEC Staff Issues No-Action Letter to Merging Advisers***

October 3, 2008 2:35 PM

The SEC staff issued a no-action letter allowing certain transactions between two merging investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"). Specifically, the SEC staff would not recommend enforcement action if the acquiring adviser acquires the assets and liabilities of the acquired adviser as an acquisition and assumption of substantially all of the assets and liabilities of the acquired adviser for purposes of Section 203(g) of the Advisers Act, rule 203-1 thereunder, and Instruction 4.a.(1) for Part 1A of Form ADV. The SEC staff would not recommend enforcement action under Section 206(3) of the Advisers Act if the acquiring adviser engages in certain transactions with clients of the acquired adviser (which client accounts were transferred to the acquiring adviser in connection with the merger) if the following conditions are met: (a) the acquiring adviser makes the disclosures required by Section 206(3) to each client before and after each transaction; (b) each transaction is consistent with the policy of the advisory client participating in the transaction; and (c) the acquiring adviser preserves for a period of not less than 6 years, the first 2 years in an easily assessable place: (1) a written copy of each such transaction and (2) a written record of each such transaction setting forth a description of the instrument purchased or sold, the price paid or received, and the terms of the purchase or sale transaction.

For more information see the SEC No-Action letter available at  
<http://www.sec.gov/divisions/investment/noaction/2008/barclays091908-203.pdf>.

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#### ***No-Action Letter on the Asset-Backed Commercial Paper Money Market Fund Liquidity Facility***

October 3, 2008 2:31 PM

The SEC staff has stated in a no-action letter that it would not recommend enforcement action against any bank that purchases Asset-Backed Commercial Paper Money Market Fund Liquidity Facility without obtaining an exemptive order. The bank holding companies (parent companies or U.S. broker-dealer affiliates), or U.S. branches and agencies of foreign banks, or Federal Reserve Bank of Boston on a nonrecourse basis if they use the proceeds to purchase certain types of asset-backed commercial paper (ABCP) to back a money market fund at the amortized cost value of such ABCP. Specifically, the SEC staff stated that it would not recommend enforcement action under Section 17(a)(2) of the Investment Company Act of 1940 ("Investment Company Act") against any bank that purchases ABCP from an affiliated person of the bank when the amortized cost value of the purchased ABCP is equal to or greater than the fair market value of the ABCP. These transactions include the following characteristics:

- Because each purchase will be effected at the amortized cost of the security, the terms of the program are consistent with the terms of Section 17(a) was designed to prevent.
- The terms of the transaction would comply with the terms of rule 17a-9 under the Investment Company Act of 1940. The ABCP to be purchased will be "eligible securities" as defined in rule 2a-7 under the Investment Company Act.
- The ABCP to be purchased from a money market fund will be determined by the fund's adviser, and must be in the best interest of the fund's shareholders.
- The money market fund will keep and maintain records of these transactions as required by rules 31a-1 and 31a-2 under the Investment Company Act.
- The transactions would meet the standards for the SEC to issue an exemptive order under Section 17(b) of the Investment Company Act of 1940.

For more information see the SEC No-Action letter available at <http://www.sec.gov/divisions/investment/noaction/2008/ici092508.htm>.

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#### ***SEC Staff Issues FAQ about Money Market Funds***

October 3, 2008 2:29 PM

The SEC's Division of Investment Management has issued an FAQ about a money market fund that recently "broke a dollar." In addition to explaining what it means for a money market fund to "break a dollar" or "break a buck," the FAQ also briefly addresses the Treasury's guarantee program and the problems with money market funds.

For more information see the SEC FAQ available at

<http://www.sec.gov/divisions/investment/guidance/reservefundmmfaq.htm>.

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***SEC and FASB Clarify Fair Value Measurements under FAS 157***

October 3, 2008 2:26 PM

The SEC and the Financial Accounting Standards Board ("FASB") provided clarification regarding FAS 157 to help with fair value measurement questions. Specifically, the clarification addresses the following issues: (a) when there is no readily available market for an investment, management estimates that incorporate current market participant expectations of future cash flows, and include (b) broker quotes may be an input when measuring fair value, but are not necessarily determinative if an active market may rely more on models with inputs based on the information available only to the broker); (c) disorderly transactions and orderly transactions in an inactive market should be considered in management's estimate of fair value; (d) determining whether an investment is other-than-temporarily impaired; and (e) clear and transparent disclosures to enhance understanding of the judgments made by management.

For more information see the SEC Press Release available at <http://www.sec.gov/news/press/2008/2008-234.htm>.

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***SEC Staff Guidance on Sale of Loaned But Recalled Securities***

October 3, 2008 2:22 PM

The SEC's Division of Trading and Markets provided guidance on the sale of loaned but recalled securities in an F

that has loaned a security to another person sells the security and a bona fide recall is initiated within 2 business days after the person has loaned the security is deemed to own the security for purposes of Rules 200(g)(1) and 200(b) of Regulation S-X. For short sale for purposes the following emergency orders: Form SH in the order requiring reporting of short sales, the order to protect investors against "naked" short selling abuses. For purposes of these orders, short sales should be marked such orders "long" and the close-out requirement for long sales under Rule 204T would apply to sales of securities.

As discussed above, this guidance has been incorporated and adopted into the SEC's emergency order.

For more information see the SEC FAQ available at  
<http://www.sec.gov/divisions/marketreg/loanedsecuritiesfaq.htm>.

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#### ***SEC Extends Emergency Orders and Enhances Certain Orders***

October 3, 2008 2:20 PM

The SEC issued orders extending the emergency orders it issued on September 17 and September 18, 2008. Order 2008-09-17 extended the emergency order that prohibited short selling of financial companies until three business days after the Economic Stabilization Act of 2008, but in no case later than October 17, 2008. In addition, the SEC issued an order extending the reporting of short sales of certain publicly traded securities by institutional money managers until October 17, 2008. Orders were filed with the SEC under the original emergency order, including those that were due September 29, 2008, and will be enforced by law without the filer needing to submit a confidential treatment request.

Also, the SEC issued an order extending the emergency order that eased restrictions on the ability of securities issuers to sell securities pursuant to Rule 10b-18 under the Securities Exchange Act of 1934 ("Exchange Act"). This emergency order has been filed with the SEC.

The SEC issued an order extending the emergency order aimed at reducing fails to deliver in a "naked" short sale.

short selling in all equity securities. The emergency order has been extended until October 17, 2008, but the SEC continue in effect beyond that date without interruption in the form of an interim final rule. In addition, the SEC order Trading and Markets: Guidance Regarding the Commission's Emergency Order Concerning Rules to Protect Investors and the Division of Trading and Markets Guidance Regarding Sale of Loaned but Recalled Securities (discussed original emergency order: (a) adopted new rule 204T in Regulation SHO, on an emergency basis, requiring that securities by the settlement date (three days after the sale transaction date, or T+3) and imposing penalties for failure market maker exception from the close-out requirement in Rule 203(b)(3) in Regulation SHO; and (c) adopted rule naked short selling anti-fraud rule.

*For more information see the SEC materials available at*

<http://www.sec.gov/news/press/2008/2008-235.htm>;

<http://www.sec.gov/rules/other/2008/34-58711.pdf>;

<http://www.sec.gov/rules/other/2008/34-58703.pdf>;

<http://www.sec.gov/rules/other/2008/34-58723.pdf>; and

<http://www.sec.gov/rules/other/2008/34-58724.pdf>.

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