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Alert Memo

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President Obama's Financial Regulatory Reform Plan: A Closer Look

Last Thursday, following the release of the U.S. Treasury's White Paper, we released an Alert Memo entitled "President Obama's Financial Regulatory Reform Plan: Key Issues for Market Participants," a copy of which is available under News & Publications on our website, www.clearygottlieb.com. In that memorandum, we identified those elements of the proposal that we believe may have the greatest consequences for market participants and highlighted the issues we expect to be the most important in the policy and political debate that has already begun on Capitol Hill.

This alert memorandum now considers in greater detail the issues we underscored last week. In particular, the memorandum focuses on seven critical areas: (1) Consumer Protection; (2) Structural Regulatory Reform; (3) Resolution Authority; (4) OTC Derivatives; (5) Harmonization of Futures and Securities Regulation; (6) Securitization; and (7) International Coordination.

I. Consumer Protection

The White Paper calls for the creation of a Consumer Financial Protection Agency ("CFPA") that is "dedicated to protecting consumers in the financial products and services markets." The proposed regulatory powers and responsibilities of the CFPA are very similar to those enumerated in the legislation introduced by Senators Durbin, Kennedy and Schumer and the proposals promulgated by the "Special Report on Regulatory Reform" of the Congressional Oversight Panel chaired by Elizabeth Warren.[1] The CFPA would be a new independent federal regulator. Its jurisdiction would "cover consumer financial services and products such as credit, savings and payment products and related services, as well as the institutions that issue, provide, or service these products and provide services to the entities that provide the financial products." The CFPA would have the power to:

- Promulgate rules designed to provide consumers of credit with information about financial products and to protect such consumers from unfair and deceptive practices;
- Supervise and examine institutions that provide consumer financial products or services to such providers, to ensure compliance with the CFPA's rules and regulations; and
- Administratively enforce violations of its rules and regulations.

[1] COP's "Special Report on Regulatory Reform" is available at http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf.

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This proposal is expected to garner significant support but, at least in some aspects, it is also expected to be controversial. Notably, the proposal would separate consumer protection responsibilities for banking products from bank safety and soundness regulation. Certain of the more significant or potentially controversial aspects of the proposal are discussed below.

Primary Objective of the CFPA

- The CFPA would be required to consider the impact of its regulations on the consumer. It would not be required to consider the impact of its regulations on the institutions upon which such regulation are imposed. (This contrasts with the bank regulatory scheme, which also promotes safety and soundness of financial institutions. It also, however, contrasts with the mandate of the SEC, which, while one of its clearest objectives is investor protection, is also required to consider the impact of its rules on capital formation and orderly markets.)
  - For example, the proposal requires the CFPA to conduct a regulatory study at least every three years of each regulation enacted by it and modify, expand or eliminate the regulation depending on the outcome of its study and public comments. In conducting these studies, the CFPA's objective would be to determine the costs and benefits to the consumer but not the costs and benefits to the service providers (except to the extent such costs unduly limit consumer access to financial products).
  - One of the main reasons cited in the White Paper for removing consumer protection responsibility from existing federal prudential bank regulators is that such "agencies are designed, and their professional staff is trained, to see the world through the lenses of institutions and markets, not consumers." Implicit is a criticism of how the Fed has carried out its consumer protection mandate in specified areas.

Status of Federal Preemption

- Under the proposal, the CFPA's regulatory authority would not preempt state authority to regulate consumer financial products and services. Instead, the regulations and standards promulgated by the CFPA would set a "floor" on consumer protection standards, and states would be free to "adopt stricter laws."
- States would be given the "concurrent authority to enforce regulations of the CFPA." For example, the proposal does not seem to prohibit a state's attorney general or a state's consumer protection regulator from bringing an action to enforce a CFPA regulation in a case where the CFPA has declined to do so.
- States would have the ability to enforce the above-mentioned powers against federally chartered institutions, as well as state-chartered institutions.
- The effect of doing away with the federal preemption of state regulation of national banking activities will be that covered institutions may be faced with having to comply with more than 50 different consumer protection standards. Undoubtedly consumer protection is an important

objective, but there should also be consideration given to whether the benefit of this "regulatory competition" outweighs the possible costs of compliance with so many different standards.

- An alternative approach would be to empower the CFPA to set uniform federal standards. Under this approach, states would not have the power to enact their own consumer protection standards, but they would retain the power to enforce the federal rules, together with the FTC and the CFPA. One could also consider whether, even with modified preemption, independent state rulemaking and enforcement authority should only operate in the case of fraud.
- If states are allowed to act to enforce federal rules, this expanded state enforcement authority runs the risk of inconsistent interpretations of the federal provisions.
- A useful analogy can be found in the National Securities Market Improvement Act of 1996 (the "NSMIA"). The NSMIA provided for federal preemption of state registration requirements for most securities offerings. Nonetheless, under the NSMIA, the states retained their enforcement authority. Similarly, under the Commodity Exchange Act (the "CEA"), states are prohibited from regulating transactions subject to regulation under the CEA, but states retain enforcement authority in the case of fraud.
- Finally, in considering the issue of federal preemption and the enforcement authority to be given to the states, it is instructive to look to how the EU is handling the issue of inconsistent interpretations of EU directives across national jurisdictions. There is currently a proposal to enhance the powers of the Committee of European Securities Regulators to create uniform interpretations. It may be appropriate for the CFPA to have similar ultimate interpretative authority. In addition, the EU is going to create a European System of Financial Supervisors ("ESFS"), which is intended to further a harmonized approach to the interpretation of EU financial services law taken by national regulators across Member States.

Extent of the Federal Regulatory Authority of the CFPA

- The CFPA would be given primary authority to (a) promulgate rules and enforce existing consumer financial services and fair lending statutes, even if currently another federal regulator has this authority, and (b) regulate all entities subject to these statutes and the related rules and regulations.
  - The White Paper specifically lists the following existing statutes over which the CFPA would have primary authority: the Truth in Lending Act (the "TILA"), Home Ownership and Equity Protection Act (the "HOEPA"), Real Estate Settlement and Procedures Act, Community Reinvestment Act, Equal Credit Opportunity Act (the "ECOA"), and Home Mortgage Disclosure Act and the Fair Debt Collection Practices Act (the "FDCPA").
- In addition, the CFPA would be given primary rulemaking authority over any future consumer financial protection laws.
  - Any consumer protection authority currently vested in a federal prudential regulator that supervises banking institutions (*e.g.,* the Fed) would be taken away from such regulator and

given to the CFPA. The result would be to divest bank safety and soundness regulators of all consumer protection authority.

  - The proposal's rationale for this divestiture is that the banking regulators safety and soundness mission potentially conflicts with its consumer protection responsibilities.
  - Even though most jurisdictions typically do not split safety and soundness oversight from business conduct supervision, some countries (for example, Australia and the Netherlands) have chosen to take a split "twin peaks" approach to regulation and others are considering implementing this approach as well. In fact, the Group of 30 has said that the twin peaks approach is the most optimal means of ensuring that market integrity and consumer protection receive adequate attention.

- Under the proposal, the CFPA would have the power to supervise and examine a wide range of institutions that "issue, provide, or service [consumer financial] products and provide services to the entities that provide the financial product."
  - In addition to having regulatory authority over financial institutions (including insured deposit takers), the CFPA would also have regulatory authority (including the right to conduct on-sight examinations and subpoena authority) over a wide range of non-bank institutions, including mortgage brokers, mortgage servicers, credit card servicers, persons providing mortgage modification services and debt counselors.
- Even though regulatory authority under future consumer protection laws would be vested in the CFPA, the Federal Trade Commission (the "FTC") would retain "backup authority with the CFPA for the statutes for which the FTC currently has jurisdiction."
  - Currently, the FTC enforces the TILA, the HOEPA, the Consumer Leasing Act, the FDCPA, the Fair Credit Reporting Act, the ECOA, the Credit Repair Organizations Act, the Electronic Funds Transfer Act and the privacy provisions of the Gramm-Leach-Bliley Act (the "GLBA").
  - With respect to dealing with fraud in the marketplace, the FTC would remain the primary regulator, with the CFPA having concurrent regulatory authority. With respect to matters concerning data security, the FTC would remain the sole federal regulator.
  - In addition to giving the FTC concurrent regulatory authority, the proposal calls for the FTC's capacity to protect consumers to be significantly enhanced. Other than the proposed coordinating council (described below), the White Paper does not provide any detail on how the FTC and the CFPA will coordinate in the exercise of their concurrent regulatory authority. At the very least, enforcement powers with respect to rules adopted by an agency should be vested only in that agency, as is currently the case with the SEC (*i.e.,* the FTC should not have enforcement power over rules promulgated by the CFPA). The agency that adopts the rule generally is in the best position to interpret and enforce it.
- Given that the White Paper proposes taking consumer protection responsibilities away from the federal bank regulators, it is noteworthy that the White Paper does not propose to take consumer protection responsibility away from the SEC or the CFTC.

- The White Paper says specifically that the CFPA would not have regulatory authority over "investment products and services already regulated by the SEC or CFTC." This suggests that "savings" products that are securities would continue to be regulated by the SEC. It would also suggest that similar products that are not securities, such as CDs, would fall under the CFPA's jurisdiction. There may well be a gray area where jurisdiction is not clear or may overlap.

Coordination with Other Federal Regulators

- In order to "address potential gaps in consumer and investor protection and to promote best practices across different markets," the White Paper proposes that there be created a coordinating council that would include the heads of the SEC, the FTC, the DOJ and the CFPA. The coordinating council would be required to meet at least quarterly.
- The purpose of the coordinating council would be to: identify gaps in consumer protection across financial products; ensure that no consumer financial product is unregulated; and to coordinate effectively consumer protection efforts. In addition, the coordinating council would need to develop mechanisms to allow "state attorneys general, consumer advocates, and others to make recommendations to the [coordinating council] on issues to be considered or gaps to be filled."

Regulation of Binding Arbitration

- The White Paper proposed giving both the SEC and the CFPA broad powers to restrict or ban mandatory arbitration clauses in agreements related to consumer financial and investment products. Such clauses are currently common in agreements relating to consumer financial products and in brokerage customer agreements. In both cases, the agencies would have to conduct studies of the effects of such arbitration clauses before promulgating regulations, and the regulations would be required to promote "fair adjudication and effective redress" for consumers.

Funding of the CFPA

- The White Paper calls for the CFPA to be funded in part by "fees assessed on entities and transactions across the financial sector, including bank and nonbank institutions and other providers of covered products and services." The proposal does not provide any more detail about the amount, structure and frequency of these fees.

Related European Union Regulation

- There is no single European Financial Services regulator, and there is no proposal to create a European Consumer Protection Agency. However, as noted above, the EU will be establishing the ESFS, which will be tasked with ensuring a common level of protection throughout the EU for the protection of consumers of financial services.

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II. Structural Regulatory Reform

The proposal would make sweeping and in some cases controversial changes to the structure of the U.S. financial regulatory system. It would significantly expand the power and reach of the Federal Reserve, designating the Fed as systemic risk regulator and granting it new supervisory and regulatory authority over all companies that own banks and bank-like entities. The proposal would as well eliminate the federal thrift charter and abolish the OTS, which today supervises approximately 800 institutions with over $1 trillion in assets.

Although ground-breaking in many respects, the proposal stops short of many reforms that have been suggested, including by former Secretary Paulson in his "Blueprint for Regulatory Reform." For example, the proposal rejects the concept of a single FSA-style regulatory authority for all banks, instead preserving the "dual banking system" that allows institutions to choose between a federal or state bank charter. It similarly preserves the authority of the FDIC and the Federal Reserve to supervise state-chartered banks (and the flexibility of state-chartered banks to choose between FDIC and Federal Reserve supervision).

Dramatic Expansion of the Federal Reserve's Oversight of Financial Firms

- Federal Reserve Named Systemic Risk Regulator. Firms whose failure could threaten systemic financial stability as a result of their size, leverage or interconnectedness, regardless of whether they control a bank or other depository institution, would be designated "Tier 1 Financial Holding Companies" or "Tier 1 FHCs" and would be subject to consolidated supervision and regulation by the Federal Reserve.
  - *Congress Will Establish Criteria for Qualification as a Tier 1 FHC, with Federal Reserve Discretion to Prevent Regulatory Arbitrage.* The basic guidelines to determine which firms become subject to the Tier 1 FHC regulatory regime would be set by Congress, but the Federal Reserve would retain broad discretion to designate firms as Tier 1 FHCs.
    - Consistent with the Administration's focus on eliminating loopholes and reducing regulatory arbitrage, this discretion is described as important to prevent firms from structuring to avoid the definition of a Tier 1 FHC.
  - *Activity Restrictions Applied to All Tier 1 FHCs.* The proposal would subject all Tier 1 FHCs to the same activities restrictions currently imposed on bank holding companies ("BHCs"). Tier 1 FHCs engaged in non-financial activities would have five years to conform to these activities restrictions, which would require them to divest any significant commercial or industrial activities.
    - Although the proposal does not provide any grandfather rights for existing institutions, banking legislation has a long tradition of grandfathering, and grandfather rights are certain to be a focus of debate in this area—and others—when the Congress considers the proposal.

  - In the absence of grandfathering, a commercial firm that is designated as a Tier 1 FHC would need either to eliminate its commercial activities (probably not practical) or divest/eliminate those of its financial activities that make it systemically significant.
  - To the extent a commercial firm is designated a Tier 1 FHC, one possible approach to grandfathering would be to confine the application of activities restrictions, Federal Reserve supervision, prudential standards, etc. to the group of financial companies within the commercial firm (which could be held under a single holding company).
- *Stricter Capital and Liquidity Standards for All Tier 1 FHCs.* Tier 1 FHCs would be subject to more stringent capital, liquidity, leverage and risk management standards than other financial firms. These standards are designed to internalize the "cost" of the greater risk posed by their potential failure.
  - The enhanced standards would apply on a consolidated basis to on- and off-balance sheet exposures.
  - For many firms not currently regulated as BHCs, these requirements could (and probably are intended to) result in significant increased cost in the form of additional required capital.
  - The imposition of leverage requirements is likely to inhibit nontraditional bank activities of Tier 1 FHCs and their clients.
- *Broader Examination Authority.* The Federal Reserve's examination authority would be substantially expanded, permitting it to examine *any* U.S. financial firm over a minimum (yet unspecified) size to determine whether the firm should be classified as a Tier 1 FHC. Currently, the Federal Reserve may only examine BHCs, state member banks and certain international operations of banking entities.
  - *Tier 1 FHCs Subject to Routine Stress Testing*. The proposal would also establish regular, forward-looking stress testing as a regular component of the Federal Reserve's supervision of Tier 1 FHCs and certain other financial institutions.
    - Regular stress testing would represent a significant supplement to the traditional snapshot-style examinations now conducted by regulators.
  - *An End to Functional Regulation?* The proposal would scrap provisions of the GLBA limiting the Federal Reserve's ability to examine and require reports from the functionally regulated subsidiaries of Tier 1 FHCs, such as broker-dealers (now regulated exclusively by the SEC) and banks regulated by other federal banking agencies.
    - Importantly, the Federal Reserve could override the functional regulator and make its own determinations to impose increased capital requirements on functionally regulated subsidiaries.
- *Designation of Non-U.S. Firms as Tier 1 FHCs.* The proposal provides for the identification of non-U.S. financial firms with U.S. operations as Tier 1 FHCs.

    - It is unclear how this new supervisory authority, including the proposed activities restrictions, capital requirements, etc. would be applied in the context of a non-U.S. parent.
    - The determination of Tier 1 FHC status for non-U.S. financial firms is left to the Federal Reserve (in consultation with Treasury), which is instructed to take into consideration the principle of competitive equality between non-U.S. and U.S.-based firms, the principle of national treatment, and the implications of these determinations for international agreements.
    - Implementation will be key in assessing this part of the proposal. It could involve regulation of non-U.S. banks in the United States in a way similar to the status quo, or it could create new regulatory requirements that could raise extraterritorial implications and could be controversial.

- All Companies that Control a Depository Institution Required to Become BHCs. Under the proposal, *any* company that controls an insured depository institution—including a thrift, industrial loan company (an "ILC"), credit card bank, trust company or previously grandfathered "nonbank bank"—would be required to register as a BHC and become regulated by the Federal Reserve. The proposal strongly reaffirms the policy of separating banking from commerce and suggests that past legislative initiatives to provide grandfather or other rights to commercial or industrial firms permitting them to engage in even limited banking activities are "loopholes" that should be closed permanently.
  - *No Relief from Activities Restrictions.* Like Tier 1 FHCs, these BHCs would be subject to the activity restrictions in the BHC Act and therefore would be required to divest or conform their non-financial activities within five years with no grandfather rights for existing companies.
    - In the absence of grandfather rights, commercial firms (including several large manufacturers and retailers) that own an ILC, thrift or credit card bank would need to divest their depository institution in order to preserve their commercial activities.

Restructuring of Federal Banking Regulators

- OCC and OTS Combined to Form National Bank Supervisor. A new agency, the National Bank Supervisor (the "NBS"), would assume the prudential, supervisory and chartering roles of the Office of the Comptroller of the Currency and the Office of Thrift Supervision. The NBS would be the sole source of federal banking charters.
  - The federal thrift charter would be eliminated. The proposal would permit existing thrifts to convert into either national banks or state-chartered banks, although the proposal also would limit the ability of troubled banks to pursue charter conversions.
  - A key advantage of the federal thrift charter—nationwide interstate branching powers—would be extended to national and state-chartered banks.

  - Another important advantage of the federal thrift charter—operating in a holding company structure with a single regulator for the bank and holding company and no generally applicable consolidated capital requirements—would be lost.
  - If there is sufficient political support for preservation of the thrift charter, one possible outcome may be consolidation of the OTS into the NBS, with the NBS having responsibility for the chartering, regulation and supervision of national banks and federal thrifts.
    - On the other hand, if the Federal Reserve is given exclusive authority over holding companies, and national banks are given nationwide branching powers, the practical benefits of the separate thrift charter going forward are less apparent.
- Dual Banking System Preserved. The proposal would preserve state bank chartering authority, and both the Federal Reserve and the FDIC would maintain their respective roles in the regulation of state-chartered banks.
  - Banks would continue to be able to choose between a state and national charter, and state banks would be able to choose whether to be supervised by the FDIC or the Federal Reserve at the federal level.
  - The preservation of the dual banking system appears to represent an early political compromise, in contrast to the proposal's approach of vesting holding company supervision exclusively in the Federal Reserve.
- Elimination of the SEC's Program for Consolidated Supervision. Any investment banking firm seeking consolidated supervision by a U.S. regulator will be supervised and regulated by the Federal Reserve, effectively ending that role for the SEC.

Creation of a New Financial Services Oversight Council

- The proposal would create a new Financial Services Oversight Council (the "FSOC") comprised of the heads of the principal financial regulatory agencies and chaired by the Treasury Secretary.
- The FSOC would have a larger composition than other advocates of a council of regulators had envisioned. The FSOC would include the Treasury Secretary, the Federal Reserve Board Chairman, the NBS Director, the CSPA Director, the SEC Chairman, the CFTC Chairman, the FDIC Chairman and the Director of the Federal Housing Finance Agency (which regulates Fannie Mae, Freddie Mac and the Federal Home Loan Banks).
  - The FSOC would also be supported by a new office within Treasury with full-time staff.
- The FSOC's advisory role will be a subject of ongoing debate. Some regulators believe that an active council of regulators is preferable to giving the Federal Reserve supervisory and regulatory authority over systemically significant institutions.
  - The proposal comes down clearly in favor of giving that authority (and accountability) exclusively to the Federal Reserve.
- The FSOC would have a fairly limited role in the regulation of systemic risk and financial stability.

  - The FSOC would primarily gather information, facilitate information sharing among regulators, provide a forum for discussion of issues that cut across agency jurisdictions and identify gaps in regulation.
  - The FSOC apparently would not have rulemaking, enforcement or direct supervisory authority but could play a role in resolving interagency disputes.
  - The FSOC could recommend firms to be subject to Tier 1 FHC supervision and regulation, and the Federal Reserve would be required to consult with the FSOC in setting material prudential standards for Tier 1 FHCs.
- A key area of debate will be the responsibilities of the FSOC, including whether the FSOC should have a greater role in identifying, regulating and supervising Tier 1 FHCs (vs. the Federal Reserve).
  - If the FSOC's role and responsibilities are expanded to include standalone operating authority, its staffing and composition will also need to be revisited.

Tougher Prudential Standards

- <u>Heightened Capital Requirements for all Financial Firms</u>. A clear message emerges from several aspects of the proposal: higher capital standards are on their way, and not just for Tier 1 FHCs.
  - The proposal calls for a re-examination and heightening of capital standards for banks and BHCs to help address the challenge that liquidity risks have posed in the current crisis. A working group led by Treasury would be charged with making recommendations to increase regulatory capital requirements, specifically focusing on trading exposures, equity investments, and OTC derivatives that are not centrally cleared.
  - The proposal also endorses the imposition of a leverage ratio on banks and BHCs and urges the adoption of a leverage ratio internationally.
    - Historically, with some exceptions in the wake of the current crisis, other countries have resisted the use of a leverage ratio standard (which is not part of existing international capital accords).
  - In a surprising break with banking agency precedent, the proposal encourages consideration of the use of contingent capital instruments, such as convertible debt securities and the purchase of tail insurance against macroeconomic risks, to satisfy capital requirements.
- <u>Liquidity Standards</u>. The proposal reflects a related but separate focus on liquidity risk management, including enhanced Federal Reserve supervision and a call for rigorous standards.
  - In view of the close scrutiny already being applied to liquidity by bank supervisors since the onset of the current financial crisis, standards are unlikely to change dramatically as a result of the proposal.

- Additional Restrictions on Transactions with Affiliates. The proposal would impose more extensive limits on transactions between banks and their affiliates.
  - The proposal would rein in the Federal Reserve's discretion to provide exemptions to the statutory restrictions on transactions with affiliates.
    - The Federal Reserve has granted several critical and unprecedented exemptions to large banks during the financial crisis.
    - Limitations on this authority could include legal requirements that the Federal Reserve consult with other agencies before granting exemptions or more fundamental and substantive limitations on the Federal Reserve's exemptive authority.
  - The proposal asserts that greater restrictions are necessary on transactions between banks and private investment vehicles that they sponsor or advise.
    - This could mean substantial new limitations on the way banks fund asset-backed commercial paper facilities and structured investment vehicles that are generally considered to be part of the bank rather than affiliates.
  - The proposal also calls for greater restrictions on a bank's ability to engage in derivatives and securities financing transactions involving affiliates, although the form or extent of these restrictions is not discussed.

Enhanced Federal Insurance Oversight

- Unlike the Paulson Blueprint, the proposal does not call for a national insurance charter even on an optional basis.
- A new Office of National Insurance would be created at Treasury, responsible for monitoring the insurance industry, representing the U.S. insurance industry internationally, negotiating international agreements and developing policy and expertise at the federal level.
- It is unclear whether the creation of an Office of National Insurance would represent the "camel's nose under the tent" in the gradual development of a national insurance charter and more uniform national standards.

Reform of Government Sponsored Enterprises

- Treasury will work with HUD to develop recommendations for the future of the GSEs, including Fannie Mae and Freddie Mac, which could include winding them down, breaking them up into smaller companies, returning them to the private sector or refashioning them as federal agencies or public utilities.
- Many in Congress are likely to push for more definitive action in relation to the Fannie Mae and Freddie Mac as part of comprehensive reform of financial services regulation.

III. Resolution Authority

The orderly resolution of large, complex financial companies has become a particular focus in the recent financial crisis. Modeled on the Federal Deposit Insurance Act (the "FDIA") resolution provisions for insured depository institutions, the White Paper would allow Treasury to exercise special resolution authority over a bank holding company or other Tier 1 FHC when its insolvency would otherwise have "serious adverse effects on the financial system or the economy." In the absence of such systemic effects, resolution of these companies would, as under current law, be handled in customary proceedings under the Bankruptcy Code.

Pre-Insolvency Provisions

- All Tier 1 FHCs would be subject to a "prompt corrective action" framework similar to that provided for insured depository institutions. This authority would enable regulators to require a firm to take specific actions in the face of deteriorating capital.
- All Tier 1 FHCs would be required to develop and maintain a "rapid resolution plan." In addition to aiding in the resolution of such firms, this requirement is designed to "create incentives" for Tier 1 FHCs to simplify their organizational structure.

Authorizing a Resolution

Exercising powers under the proposed resolution authority would require:

- A written recommendation approved by two-thirds of the Federal Reserve Board;
- A written recommendation approved by two-thirds of the FDIC Board or, where the largest subsidiary of the failing firm is a broker-dealer, the commissioners of the SEC;
  - Where the failing firm is affiliated with an insurer, the newly-created Treasury Office of National Insurance will be consulted on insurance-specific matters.
- Treasury consultation with the President; and
- Treasury's determination that:
  - The firm is in default or in danger of defaulting;
  - The failure of the firm and its resolution under otherwise applicable law would have serious adverse effects on the financial system or the economy; and
  - Use by the government of the special resolution regime would avoid or mitigate these adverse effects.

This authorization process could be initiated by Treasury, the Federal Reserve, the FDIC or, where the largest subsidiary is a broker-dealer or securities firm, the SEC.

Resolution Powers

Treasury would determine how the resolution powers would be exercised. Resolution powers available to Treasury would include:

- Stabilizing the firm by providing loans, purchasing assets, guaranteeing liabilities or making equity investments; and
- Appointing a conservator or receiver for the firm, generally the FDIC, although the SEC could be appointed conservator or receiver where the largest subsidiary of the failing firm is a broker-dealer or securities firm.
  - A receiver would be able to sell or transfer assets of the firm to a new "bridge" institution or a third party.
  - A conservator or receiver would be able to renegotiate or repudiate contracts, including contracts with employees.
    - The ability to renegotiate or repudiate contracts with employees could have significant ramifications for compensation and benefit plans.

Existing state and federal law customer protections for depositors, customers of a broker-dealer or futures commission merchant and insurance policyholders would be preserved under the new resolution authority.

Special Provisions Governing Derivative Contracts

- A conservator or receiver could transfer the firm's portfolio of derivatives to a "bridge" institution and avoid termination by counterparties, notwithstanding any contractual rights of counterparties to terminate the contracts if a receiver is appointed.
- Presumably, counterparties could exercise these contractual termination rights if the receiver does not transfer the contract, but the White Paper is silent on this point. Unless appropriately clarified, this uncertainty could raise a significant concern for derivatives counterparties.
- Although the White Paper describes these special provisions as applying to "derivatives," we expect the implementing legislation to conform to the corresponding provisions of the FDIA by applying these provisions to "qualified financial contracts" (including securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements).

Principles Guiding the Exercise of Resolution Powers

In determining how to exercise resolution powers, Treasury would be required to consider:

- The effects on the financial system and economy;
- The cost to taxpayers; and
- Whether the exercise of a power has the potential to increase moral hazard.

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Like the FDIC acting under the FDIA's "systemic risk" exception, Treasury would not be required to choose the "least cost" method of resolution.

Resolution Costs

- A conservator or receiver would be authorized to borrow from Treasury to finance the resolution of a failed firm. Treasury, in turn, would be authorized to issue public debt to finance this borrowing.
- The cost of this borrowing would be recouped through assessments on bank holding companies.
  - This provision will attract attention and is potentially controversial, as it appears to impose all resolution costs on bank holding companies even though non-bank financial companies (*e.g.,* insurance holding companies, systemically significant hedge funds) could be resolved under this authority.

An Expanded Role for the FDIC

The White Paper envisions a greatly expanded, and likely controversial, role for the FDIC under the new resolution authority. The FDIC would generally serve as conservator or receiver of a failed firm, including non-banking firms outside the FDIC's area of expertise in resolving failed depository institutions. The FDIC also would be granted "back-up examination authority" over bank holding companies and would be entitled to review any bank holding company examination reports prepared by the Federal Reserve.

Critics: "Amend the Bankruptcy Code"

Some have argued that enhanced resolution authority is not necessary and that instead changes should be made to the Bankruptcy Code. The judicial bankruptcy process provided under the Bankruptcy Code differs significantly from the administrative resolution authority described in the White Paper.

- The Bankruptcy Code is narrowly focused on an individual debtor and its individual creditors and does not address wider concerns. By contrast, the proposed resolution authority is focused on protecting the financial system in times of market crisis.
- As a judicial regime, decisions under the Bankruptcy Code are generally made by the bankruptcy court or are subject to judicial approval and appeal. By contrast, decisions under the proposed resolution authority would be made by regulators with responsibility for monitoring the financial companies.
- Bankruptcy proceedings for complex debtors frequently take years to complete and follow a rigid structure. By contrast, the proposed resolution authority provides regulators with multiple resolution options and enables them to take immediate action to protect markets.
- The Bankruptcy Code generally does not come into effect until after a company has failed and does not make available additional resources to facilitate orderly resolution. By contrast, the

proposed resolution authority enables regulators to provide financial and other support to stabilize a firm and prevent it from failing or to facilitate an orderly resolution.

International Coordination

- Treasury calls on the U.S. to work with non-U.S. regulators to create a mechanism for resolving cross-border financial companies, including the immediate authority to resolve a failed institution, predictable and consistent closure thresholds and the ability to transfer assets of a failed company to a "bridge" financial institution.
- Treasury also calls on a conservator or receiver to coordinate with non-U.S. authorities in resolving subsidiaries located in non-U.S. jurisdictions.
- A failure to establish an effective regime for resolving cross-border financial companies could put pressure on U.S. and non-U.S. regulators to ring-fence capital and otherwise hamper the international flow of capital to protect domestic markets.

IV. OTC Derivatives

As first articulated in U.S. Treasury Secretary Timothy Geithner's May 13, 2009 letter addressed to Senate Majority Leader Harry Reid, the White Paper proposes a comprehensive regulatory framework for over-the-counter ("OTC") derivatives, including credit default swaps ("CDS"), and identifies the following four objectives:

1) Preventing OTC derivatives activities from posing risk to the financial system;
2) Promoting the efficiency and transparency of OTC derivatives markets;
3) Preventing market manipulation, fraud and other market abuses; and
4) Ensuring that OTC derivatives are not marketed inappropriately to unsophisticated parties.

Systemic Risk

- Clearing. The Commodity Exchange Act (the "CEA") and the securities laws would be amended to require that all standardized OTC derivatives be cleared[2] through regulated central counterparties (a "CCP") and subject to prescribed "robust" minimum margin requirements. Notably, under the White Paper:
    - Acceptance by one CCP of a product for clearing would create a presumption of standardization for these purposes; and
    - Firms would not be permitted to avoid the proposed clearing requirement by customizing trades.

[2] The White Paper does not, however, indicate which elements of conventional "clearing" would be necessary to satisfy such clearing requirements or how standardization would be established.

The White Paper seems certain to generate significant uncertainty regarding the legitimacy of decisions to customize individual OTC derivatives transactions. It also presents the prospect of effectively concentrating clearing volume in the very first clearinghouse to offer clearing for a product, without regard to considerations such as whether the first-offered clearing solution is the most appropriate or desirable, or whether the product has matured sufficiently that it is ready to become the *de facto* market trading standard.

The White Paper also does not limit the clearing requirement to professional intermediaries or substantial market participants, raising questions as to whether end-users who access the derivatives markets episodically would be required to implement the contractual and operational arrangements necessary to establish and maintain cleared OTC derivatives positions through their counterparties who are clearing participants.

- Prudential supervision. All OTC derivatives "dealers" and all other firms "whose activities in those markets create large exposures to counterparties" would be subject to robust prudential supervision and regulation, including:
  - Conservative capital requirements (more conservative than the existing bank regulatory capital requirements for OTC derivatives);[3]
  - Business conduct standards;
  - Reporting requirements; and
  - Conservative requirements relating to initial margins on counterparty credit exposures.

  The White Paper does not identify the regulatory body(ies) that would promulgate or oversee these prudential requirements or the extent to which new registration requirements would apply to banks or otherwise regulated firms. It is similarly unclear whether the framework would result in duplicative and/or inconsistent regulatory standards administered by multiple regulators.

  The White Paper also does not indicate whether dealers, on the one hand, and non-dealers who are substantial market participants, on the other hand, would be subject to similar regulatory regimes. The White Paper would appear to suggest, for example, that substantial market participants that are not dealers would be subject to conservative capital requirements. If intended, this would represent a significant and consequential departure from current practice and expectations, particularly within the private investment community.

  The White Paper similarly does not address the subject of preemption or the interplay of federal versus state regulation. As a result, the White Paper would not appear to foreclose initiatives, such as the model state insurance law initiative to regulate covered CDS as insurance and prohibit the sale of CDS that do not insure a specific risk, that are potentially inconsistent with the proposed federal framework.

[3] The White Paper recommends that regulatory capital requirements on non-cleared, customized OTC derivatives be increased for all banks and BHCs.

Transparency and Efficiency

- Transaction reporting. The White Paper would require that the CEA and the securities laws be amended to authorize the CFTC and the SEC to impose recordkeeping and reporting requirements (including an audit trail) on all OTC derivatives. Certain of those requirements could be deemed to be satisfied by clearing or, in the case of customized OTC derivatives, by reporting such trades to a regulated trade repository. CCPs and trade repositories would be required to make available to the public aggregate data regarding open positions and trading volumes and make available to regulators on a confidential basis information regarding individual counterparties' trades and positions.

  The White Paper would also require the development of a system for timely reporting of trades and prompt dissemination of prices and other trade information, which is likely to raise some concern among market observers who have ascribed to TRACE reporting (which provides transaction reporting, including price reporting, in the fixed income markets) a significant adverse impact on liquidity in the U.S. corporate debt markets.

- Exchanges and trading. In addition to mandating the clearing of standardized contracts, the White Paper would also require standardized segments of the OTC derivatives markets to be traded on regulated exchanges and regulated, transparent electronic trade execution systems. Financial institutions would additionally be encouraged to make greater use of exchange-traded products.

  The White Paper does not indicate how or by whom electronic trading systems that are not exchanges would be regulated, nor the extent to which such platforms would be required to be open to all potential trading participants, or could be limited to professional or institutional market participants or other distinct market segments.

Agency Antifraud and Antimanipulation Authority

- Generally. The White Paper would require that the CEA and the securities laws be amended as necessary to ensure that the CFTC and the SEC have clear authority to "police" fraud, market manipulation and other market abuses involving all OTC derivatives.

  Given the agencies' existing antifraud and antimanipulation authorities, the White Paper clearly seems designed to expand the agencies' existing antifraud and antimanipulation authorities to include the authority to adopt related prophylactic rulemaking measures.

- CFTC position limits. The White Paper would additionally give the CFTC express authority to establish position limits on OTC derivatives that perform or affect a significant price discovery function with respect to regulated markets.

  The White Paper would have the effect of authorizing the CFTC to impose position limits on OTC derivatives involving foreign exchange, interest rates, U.S. Treasury securities, security indices and other financial products.

- Notably, like the House Agriculture Committee bill, the White Paper would not impose similar position limits on other OTC transactions (*i.e.,* physicals) that may equally (or to an even greater extent than OTC derivatives) perform or affect a significant price discovery function with respect to CFTC-regulated markets.

With European initiatives relating to OTC derivatives imminent, it will also be important to monitor U.S. and European developments in parallel to ensure that disparities do not arise that will distort the competitive landscape.

V. Harmonization of Futures and Securities Regulation

The White Paper does not propose merging the CFTC and the SEC. The basis for the decision not to take this often-suggested and substantively logical step was presumably rooted in a desire to avoid the substantial and distracting political and jurisdictional battle that would have broken out, particularly in Congress. However, in light of the existing gaps and inconsistencies in the regulation of derivative instruments and the proposed overhaul of OTC derivatives regulation, the White Paper calls for the CFTC and the SEC to harmonize futures and securities laws, including, in particular, with respect to "economically equivalent" financial instruments.

- <u>"Economically equivalent" instruments</u>. Noting that many financial instruments with similar characteristics are currently subject to different regulatory regimes and forced to trade on separate exchanges depending on whether under the current federal regulatory structure they are characterized as securities or futures contracts, the White Paper recommends that the CFTC and the SEC harmonize their regulatory regimes in order to ensure that "economically equivalent" financial instruments are regulated in the same manner, regardless of which agency has jurisdiction.

  The White Paper notes that such harmonization would not require elimination or modification of regulatory provisions relating to futures and options contracts on agricultural, energy and other physical commodities.

  The White Paper does not address the fact that many differences in the futures and securities regimes are rooted in fundamental statutory provisions, such as the national market system enshrined in the Securities Exchange Act of 1934. It is, additionally, entirely possible that the process of harmonization will result in the futures regime more closely resembling the securities regime, rather than the converse. It remains unclear precisely how the harmonization exercise will play out in the context of the proposed expansion in each agency's jurisdiction with respect to OTC derivatives.

- <u>Regulatory approach</u>. The White Paper also recommends that harmonization efforts involve striking a balance between the CFTC's "principles-based" and the SEC's "rules-based" regulatory approaches. The White Paper calls for the CFTC and the SEC to develop a common set of principles for market regulation that are "significantly" more precise than the CEA's current core principles, and cites as a potential model the international standards for central counterparty clearing organizations (CPSS-IOSCO standards).

In addition, the White Paper proposes that the agencies develop consistent procedures for reviewing and approving proposals for new products and rulemakings by self-regulatory organizations (an "SRO"), specifically recommending that the SEC's procedures be modified so that it can respond more quickly and that the CFTC's procedures be modified so that it approves more types of SRO rules in advance of implementation.

The White Paper calls for the CFTC and the SEC to submit a report to Congress by September 30, 2009 identifying all existing conflicts in their respective statutes and regulations with respect to similar types of financial instruments, and either explain why such conflicts are necessary to achieve underlying policy objectives, or recommend changes to eliminate the differences. If the two agencies cannot reach agreement by September 30, 2009, the White Paper recommends that their differences be referred to the new Financial Services Oversight Council, which would, in turn, be required to address such differences and provide Congress its recommendations within six months of its formation.

VI. Securitization

To combat the perceived failure on the part of originators and sponsors to maintain robust origination and underwriting standards with respect to mortgage and other loans that were securitized, the White Paper proposes several reforms to the securitization process.

"Skin-in-the-Game"

- The Administration's proposal would require loan originators and sponsors of securitizations to retain at least 5% of the credit risk in a securitization. Federal banking regulators would be empowered to specify the form of required risk retention (*e.g.,* a first loss position or a pro rata slice across the capital structure) and the minimum period that such risk would have to be retained by the originator or sponsor.
  - Although a "skin-in-the-game" requirement was widely expected to be part of securitization reform, the required retention of risk has potentially significant implications for bank balance sheets, capital treatment and the volume of securitizations that can be done.
- Originators and sponsors would be prohibited from hedging or transferring the retained risk during the required retention period. Federal banking regulators, however, would have authority to raise or lower the threshold for risk retention and to provide exemptions from the "no hedging" requirement in certain cases, particularly when the "no hedging" requirement would give rise to safety and soundness concerns.

Increased Transparency

- The White Paper proposes a number of reforms to increase transparency in the securitization market by requiring more robust disclosure from various market participants, including the credit rating agencies, and supporting ongoing SEC efforts to improve and standardize disclosure by issuers of asset-backed securities.

- In particular, ABS issuers would be required to disclose loan-level data (broken down by loan broker or originator), as well as the nature and extent of broker, originator and sponsor compensation and risk retention for each securitization.
- Credit rating agencies would be required to disclose:
  1) Conflicts of interest;
  2) Credit rating performance measures;
  3) The risks their ratings address, as well as material risks not addressed; and
  4) Information about their rating methodology.
- TRACE, the standard electronic trade reporting database for corporate bonds, would be expanded to include ABS.
  - If more disclosure is mandated in the securitization market, this may be an argument against the retention of risk requirement because investors will have more information and be better able to perform their own analysis of the risks of securitized products.

Compensation Reform

- Under the proposal, the compensation of securitization market participants (originators, sponsors, underwriters, brokers and others) would be connected to the long-term performance of asset-backed securities, instead of being based on the volume of securitized products created by such parties. In addition, fees and commissions paid to loan brokers and loan officers would be disbursed over time and would be reduced if underwriting or asset quality problems emerge.
  - The White Paper is silent with respect to how such long-term compensation arrangements should be implemented, and these reforms may affect the types of securitized products available in the marketplace.
- The proposal supports FASB's proposed modification of U.S. GAAP to require originators to recognize gain on sale over time, instead of at the inception of a securitization transaction. The White Paper notes that the modifications also would require many securitizations to be consolidated on the originator's balance sheet and their asset performance to be reflected in the originator's consolidated financial statements.
- Sponsors of securitization would be required to provide standardized representations and warranties to investors regarding the risk associated with the origination and underwriting standards for the underlying loans.

Reduced Reliance on Ratings

- The White Paper recommends that regulators reduce their reliance on credit ratings in regulations and supervisory practices, wherever possible.

- Reducing reliance on ratings could present regulatory challenges and increase the complexity of regulation, as regulators seek to develop appropriate replacements for ratings.

International Coordination

- The EU Capital Requirements Directive (the "CRD"), through which Basel II has been implemented in the European Union, currently permits investment by banks in securitizations only if the originator, sponsor or original lender retains an interest of at least 5% in the securitization. However, the CRD has sought comments as to whether this retention requirement should be increased. Also, the CRD has required that the European Commission decide by the end of 2009 whether to propose an increase in this retention requirement, and whether the methods of calculating the retention requirement have been effective to achieve the intended regulatory goals. One proposal put forth by the Commission supports a 10% retention requirement. Further proposals are expected in near term, which will include legislation to "tackle complex securitization."
- Given that the distribution network for securitized products is international in scope, it is imperative for EU and U.S. regulators (and regulators in other significant jurisdictions) to coordinate and cooperate to harmonize rules across jurisdictions.

VII. International Coordination

There has been widespread agreement that global standards should be adopted in critical areas such as capital, supervision and governance and that those standards should be implemented and enforced by national regulators. The challenge is not only to reach consensus, but also to institute global standards on a timely basis and avoid the adoption by some national jurisdictions of either more onerous or less rigorous standards than the agreed international framework. Although the White Paper highlights the Administration's commitment to adopt and implement international standards, it does little beyond reiterating U.S. support for the principles and initiatives announced by the G-20, the Basel Committee on Banking Supervision (the "BCBS"), and the newly created Financial Stability Board (the "FSB").[4] Moreover, there are some recommendations in the White Paper, which, if adopted without consultation and coordination, could have a potentially negative impact on institutions doing business on a global basis.

Tier 1 FHC Requirements

- The White Paper would empower the Federal Reserve Board to treat large non-U.S. financial firms as Tier 1 FHCs.
  - The significance of this part of the White Paper will depend heavily on how it is implemented. It could involve regulation of non-U.S. banks in the United States in a way similar to the status quo, or it could create new and controversial extraterritorial regulatory requirements.

[4] The G-20 Summit re-established the Financial Stability Forum as the Financial Stability Board, which will hold its inaugural meeting on June 27, 2009.

- The FRB (in consultation with Treasury) would determine if the criteria will be applied to firms' worldwide operations, their U.S. operations, or solely their operations that affect U.S. financial markets.
- Given the potential for conflict, the FRB is instructed to consider the principle of competitive equality between U.S. firms and non-U.S. firms with a U.S. presence, the principle of national treatment and the implications that its determinations would have on international agreements when determining Tier I FHC status.
  - This approach, if not carefully coordinated with home country regulators, risks retaliation against U.S. financial institutions doing business abroad, and could also undermine the goal of uniform international standards. The White Paper does not address this issue.
- Tests applied to make that determination for large non-U.S. financial firms would be similar to those used to determine Tier 1 FHC status of U.S. entities and would take into account the perceived impact of a firms' activity in U.S. markets on financial stability.
- Tier 1 FHCs would be subject to stronger capital, liquidity, leverage and risk management standards among others although the proposal is vague as to the extent of these restrictions.
  - In the case of a non-U.S. Tier 1 FHC, these standards run the risk of being inconsistent with those imposed by the home regulator, thereby raising significant implementation and enforcement issues. Moreover, bank regulators have been hesitant to impose leverage requirements and doing so is likely to inhibit nontraditional bank activities of both clients and the banks themselves.

Strengthening International Capital Requirements

- Although the United States delayed implementing Basel II, the White Paper suggests that the United States will now fully support revision and implement changes on a timely basis in coordination with other countries. The White Paper endorses efforts by the BCBS, which now includes all G-20 countries, to address the following issues and correct weaknesses in the current Basel II framework:
  - Adopt guidelines to improve the quality, quantity and international consistency of the components of capital, including better defining what capital is, specifying which instruments will be included as capital in the calculation and by establishing minimum levels of capital.
  - Require more capital and refine the risk weights for assets in the case of proprietary trading positions, securitizations or off-balance sheet vehicles.
  - Develop a simple, transparent, non-model-based measure of leverage and adopt a leverage ratio internationally.
    - Although the G-20 and the Group of 30 Report supported this idea, it is likely to be controversial, as other countries have historically resisted the use of a leverage ratio standard (which is not part of existing international capital accords).

- Mitigate the pro-cyclicality of the current framework on the global economy, specifically by requiring institutions to build capital buffers during prosperous times to be used in times of financial turmoil.
  - The White Paper calls for these changes to be made in the next 12-24 months; however, the G-20 explicitly stated that changes to capital requirements should not be implemented until the global economy has recovered.

- The EU CRD, through which Basel II has been implemented in the European Union, currently permits investment by banks in securitizations only if the originator, sponsor or original lender retains an interest of at least 5% in the securitization. However, the CRD has sought comments as to whether this retention requirement should be increased. Also, the CRD has required that the European Commission decide by the end of 2009 whether to propose an increase in this retention requirement, and whether the methods of calculating the retention requirement have been effective to achieve the intended regulatory goals. One proposal put forth by the Commission supports a 10% retention requirement. Further proposals are expected in near term, which will include legislation to "tackle complex securitization."

Cross-Border Supervision and Resolution of Failed Financial Companies

- There is no sentiment for an international body to have regulatory oversight of financial institutions doing business on a cross-border basis. The compromise is to create colleges of supervisors to work to oversee critically important financial institutions.
- The White Paper endorses the G-20's creation of supervisory colleges for the 30 most significant global financial institutions, as well as the creation of additional colleges for other significant international firms; all colleges would be subject to review by the FSB.
  - The White Paper is silent as to the paramount challenge of coordinating these colleges, particularly with respect to achieving consensus on and effectuating global standards that would restrict activities, impose leverage requirements and resolve troubled or failing internationally significant institutions.
- Resolution of significant global financial institutions must be better coordinated. The White Paper calls for a flexible set of powers that national resolution authorities should have, including the ability to transfer assets, contracts and operations to a third party or bridge institution; the ability to create and operate bridge institutions; and the authority to immediately resolve a failed financial company.
- Treasury also calls on a conservator or receiver to coordinate with non-U.S. authorities in resolving subsidiaries located in non-U.S. jurisdictions. In addition, there should be mechanisms adopted to enhance sharing of information with respect to global institutions.
  - The White Paper does not set out how agreement will be reached internationally as to which institutions should be considered systemically significant and subject to these enhanced coordinated powers. If the U.S. proceeds without effective coordination, it is likely to lead to increased pressure by national regulators to ring-fence assets and require business to be

done through subsidiaries and not branches, thereby interfering with the international flow of capital.

- The White Paper also calls for strengthening the effectiveness of existing rules for the clearing and settlement of cross-border contracts and settlements.
- The White Paper calls for the FSB to further develop peer reviews to assess compliance with international regulatory standards, particularly with respect to information exchange and international coordination. Furthermore, the U.S. commits to effectuate procedures to address noncompliance with anti-money laundering/terrorist financing standards.
  - In order to prevent inevitable conflict between national regulators, implementation and enforcement of international standards, particularly with respect to transparency and information otherwise governed by bank secrecy laws, is imperative.

Interaction with the Group of 20 Statements and Regulation Elsewhere

- The White Paper reiterates and supports statements previously made by the G-20 regarding coordinated and standardized regulation with respect to:
  - CDS and OTC Derivatives Markets, particularly ensuring the preservation of a competitive landscape as parallel developments occur in the United States and the EU;
  - Improved compensation and governance requirements;
  - Regulation of credit rating agencies;
  - Registration of hedge funds; and
  - The development of a single set of global accounting standards, particularly fair value accounting and loan loss provisioning.
    - However, the White Paper does not acknowledge that markets are moving on parallel tracks in each of these areas, especially in the EU, without the coordination that seems to be called for by the Group of 20. The White Paper does not address the risk or consequences of inconsistent regulation in each of these areas, nor does it address which entity should be the spokesperson for the U.S. Government in each of these areas to achieve implement of standardized global standards.
- The formation of a Consumer Financial Protection Agency will be a contentious issue in the U.S. and although there is no proposal to create a European Consumer Protection Agency, the EU will be establishing the ESFS, which will be tasked with ensuring a common level of protection throughout the EU for consumers of financial services.

- Even though most jurisdictions typically do not split safety and soundness oversight from business conduct supervision, some countries (for example, Australia and the Netherlands) have chosen to take a split "twin peaks" approach to regulation and others are considering implementing this approach as well. In fact, the Group of 30 has said that the twin peaks approach is the most optimal means of ensuring that market integrity and consumer protection receive adequate attention.

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It will be critical for market participants to monitor the White Paper's proposed reforms as they evolve during the legislative process, along with corresponding developments outside the United States. Questions regarding the Administration's White Paper, as well as developments in non-U.S. jurisdictions and their impact on your organization, can be directed to your regular contacts at the firm or to any of our partners and counsel listed under Banking and Financial Institutions or Capital Markets in the Practice Area section of our web site, at www.clearygottlieb.com.

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