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Response Group

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Securities Transaction Tax Introduced in the House of Representatives

On December 3, a group of 23 representatives introduced a bill to tax various types of securities transactions. If enacted, the legislation would impose a transaction tax on the following types of securities:

- Shares of common and preferred stock (25 basis points),
- Futures contracts (2 basis points),
- Swap agreements (2 basis points),
- Credit default swaps (2 basis points), and
- Option contracts (taxed at the rate of the underlying asset).

The transaction tax would apply to securities transactions in excess of \$100,000 and would exempt certain types of accounts. The Senate is expected to propose a similar bill next week. The Obama administration has not stated whether it will support the bill; however, Treasury Secretary Geithner previously has expressed concern that such a tax would adversely affect financial markets by increasing the costs of capital and affecting the ability of U.S. companies to compete in international markets.

Federal Reserve Board Adopts Final Rule to Determine Eligibility of Credit Rating Agencies to Issue Credit Ratings on TALF Loans

On December 4, the Federal Reserve Board announced the adoption of a final rule to determine the eligibility of credit rating agencies to issue credit ratings on certain types of asset-backed securities ("ABS") to be accepted as collateral for the Term Asset-Backed Securities Loan Facility ("TALF").

Under the new rule, the Federal Reserve Board will utilize the following criteria: (i) the credit rating agency must be registered with the SEC as a nationally recognized statistical rating organization for issuers of ABS pursuant to the Credit Rating Agency Reform Act of

2006, and (ii) the credit rating agency must have issued ratings on at least ten transactions within the applicable specified asset category since September 30, 2006.

The new rule applies to TALF loans collateralized by the following asset categories:

- Category 1 – auto loans, floorplan loans, and equipment loans,
- Category 2 – credit card receivables and insurance premium finance loans,
- Category 3 – mortgage servicing advance receivables, and
- Category 4 – student loans.

The new rule does not apply to TALF loans collateralized by commercial real estate.

The rule will be effective for all loans issued on or after the February 2010 TALF subscription date.

House Financial Services Committee Passes New Financial Legislation

On December 2, the House Financial Services Committee passed H.R. 3996, the Financial Stability Improvement Act, which covers a broad array of new potential regulation in the financial services industry.

The bill would create an inter-agency financial stability oversight council that would identify and monitor financial firms and activities that could potentially undermine financial stability in the United States, and subject such firms and activities to stricter oversight, standards and regulation. The bill also includes a process for the orderly dismantling of any large failing financial institution. The costs associated with dismantling a failed financial company would be repaid, first, from the assets of the failed firm (at the expense of shareholders and creditors), and, second, from a “dissolution fund” pre-funded by large financial companies with assets of more than \$50 billion and hedge funds with assets of more than \$10 billion.

Under the bill, the Federal Reserve Board would be subject to new oversight by the Government Accountability Office, but the Federal Reserve Board would also gain new oversight authority over systemically risky firms, and some of the constraints on its authority that were imposed by the Gramm-Leach-Bliley Act would be removed.

Congressional Committees Hold Hearings on Regulation of OTC Derivatives

Last week, each of the Senate Agricultural Committee (“Agricultural Committee”), House Energy & Commerce Committee (“Energy Committee”) and Joint Economic Committee (“JEC”) held hearings addressing regulation of OTC derivatives.

The Agricultural Committee heard testimony from Treasury Secretary Geithner and various officers of clearinghouses and large market participants. Mr. Geithner asked the committee to resist the calls from industry representatives to weaken the proposed

regulation of OTC derivatives. The Agricultural Committee also looked at “systemic risk” particularly as affected by OTC derivatives.

The Energy Committee held a hearing titled “Impacts of H.R. 3795, The Over-the-Counter Derivatives Market Act of 2009, on Energy Markets,” particularly focusing on energy hedges and on various bills which take regulation of the hedges of energy producers away from the Federal Energy Regulatory Commission (“FERC”). The FERC and Commodity Futures Trading Commission (“CFTC”) continued their battle over turf.

The JEC held a hearing titled “Unregulated Markets: How Regulatory Reform Will Shine a Light in the Financial Sector.” Various witnesses, including former CFTC Chairman Brooksley Born, testified that strict regulation of OTC derivatives is needed to prevent a recurrence of the recent financial crisis.

Federal Reserve Board Resumes Operation of Reverse Repurchase Agreements

On December 3, the Federal Reserve Board sold \$180 million in the first of several small reverse repurchase agreements planned over coming weeks. The move is a first step toward unwinding the programs used by the Federal Reserve Board to provide liquidity to financial markets since the financial crisis began.

Proskauer's Economic Crisis Response Group includes lawyers with extensive experience representing private and public companies, institutional investors, financial services companies, private equity and hedge funds, lenders, commercial banks and individuals in the complex and interrelated areas impacted by the current financial situation. Our multidisciplinary group brings together the talents of our business and transactional lawyers with our litigation capabilities, particularly as they pertain to acquiring, managing or disposing of distressed assets; issues concerning investments in financial services companies; and complex financial instruments and transactions, including structured finance products; as well as a broad range of other areas such as corporate governance and defense, insurance coverage, reductions in force and other employment and benefit-related issues, securities regulation, and bankruptcy and restructuring matters.

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This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

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