Contributing Authors

Charlotte M. Bahin
202-521-4106
cbahin@lockelord.com

Douglas P. Faucette
202-521-4101
dfaucette@lockelord.com

John C. Gurley
312-443-0318
jgurley@lockelord.com

William J. Kelty
202-521-4109
wkelty@lockelord.com

Treasury Blueprint for Regulatory Reform

On March 31, 2008, Treasury Secretary Henry Paulson unveiled a Blueprint for a Modernized Financial Regulatory Structure. The document reflects the comments received in response to the advance notice of proposed rulemaking issued in the fall of 2007 soliciting input on a wide range of structural and substantive issues involving the current and optimal organization of the financial services regulators. Further, the document reflects suggested changes to the structure of the regulatory agencies as a result of the problems in the mortgage market and investment banking industry in the past nine months. A final impetus to the study was the desire by Treasury and the Administration to address the global competitiveness of the US financial markets.

The Blueprint contains recommended actions that can be accomplished in the short term and additional recommendations for longer term action. The recommendations for short term actions respond to the current market situation and specially address concerns about the mortgage market and the ongoing liquidity functions of the Federal Reserve. The medium and long term recommendations address possible structural and organizational changes to the financial services regulatory scheme as it currently exists.

The following are some of the highlights of the Blueprint.

Short Term Recommendations

- Adoption of consistent national standards and enforcement for mortgage originators. The establishment of a Mortgage Origination Commission, a federal commission that would develop uniform minimum qualifications for state mortgage market participant licensing (including mortgage brokers) is recommended. Treasury also recommends that state agencies be given clear authority to enforce compliance with the Truth in Lending Act and that the Federal Reserve retain the authority to promulgate regulations implementing national mortgage lending laws.

- Enhancing the process of expanding access to the Federal Reserve lending facilities. These changes would address access to liquidity for nondepository institutions and would include additional transparency and examinations for nondepository institutions with access to the Federal Reserve's liquidity facility.

- Expansion and modernization of the President's Working Group. This group will evaluate the optimal structure for the Federal Reserve's liquidity function and act as an ongoing mechanism for interagency communication and coordination on financial policy matters.

Medium Term Recommendations

- Establishment of a federal insurance regulatory structure to provide for the creation of an optional federal charter issued by an Office of National Insurance within the Department of Treasury. The ONI would focus on solvency regulation, market competition, and consumer protection. Recognizing the ongoing debate over federal regulation of insurance is likely to delay implementation of this recommendation, Treasury also recommends the establishment of a federal Office of Insurance Oversight in the interim. The OIO would be granted statutory authority to deal with international issues, such as reinsurance collateral, and would advise the Secretary of the Treasury on various insurance policy matters.

- Merging the Office of Thrift Supervision and the Office of the Comptroller of the Currency. Elimination of the federal thrift charter with a transition to a national bank charter over a two-year period. As a result, thrifts would lose the benefit of savings and loan holding company regulation and be subject to bank holding company requirements.

- Study and recommend streamlined federal regulation of state chartered banks.

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- Creation of a federal charter for payment and settlement systems with Federal Reserve oversight.

- Merging the Securities and Exchange Commission and the Commodity Futures Trading Commission. Additional recommendations include the adoption of core principles for exchanges and clearing agencies, expansion of current law to permit a new global investment company, an exemption for already actively traded exchange traded funds and coordination of regulation and oversight of broker dealers and investment advisers offering similar retail services.

Long Term Recommendations

- Establishment of a regulatory approach to address three goals: market stability, prudential regulation and consumer and investor protection.

- The Federal Reserve would have authority to gather and disclose information to ensure overall market stability. The Federal Reserve would monitor risks across the financial system.

- The prudential regulator would focus on safety and soundness of firms with federal guarantees. The regulated entities would be required to meet capital adequacy requirements, activity limits, investment limits and have direct onsite risk management supervision. This regulator would assume the role of the current OCC, OTS and National Credit Union Administration.

- A new business conduct regulator would be established to charter a variety firms, including private equity and venture capital firms and hedge funds, and monitor business conduct regulation across all entities. This regulator would assume the current roles of the SEC and the CFTC and would have authority over rules for consumer protection, investor protection and mortgage disclosure.

Locke Lord Bissell & Liddell LLP is in the process of reviewing the Blueprint and will prepare detailed industry specific information on Treasury recommendations in the banking, insurance and securities areas. For more information on the Blueprint, please contact any of the authors.

ABOUT THE AUTHORS

Charlotte M. Bahin is a partner with more than 16 years of experience as a regulatory and banking lawyer.

Douglas P. Faucette is a banking attorney with more than 30 years of experience representing publicly and privately held companies in a variety of corporate and securities transactions.

John C. Gurley is a partner with more than 30 years of extensive experience in all areas of corporate insurance, including regulatory issues.

William J. Kelty has extensive experience in a wide range of insurance regulatory and transactional issues, with particular concentration in mergers and acquisitions, financings, corporate governance and other general corporate matters and related regulatory and judicial proceedings.