

Secretary Geithner Outlines Reform Recommendations

As widely reported, Treasury Secretary Timothy F. Geithner testified today before the House Committee on Financial Services, chaired by Congressman Barney Frank. In his testimony, Geithner commented on Treasury-proposed legislation to expand the government's "resolution" or receivership authority to cover non-bank financial institutions, and provided the broad contours of Treasury's recommendations for other financial regulatory reform. Yesterday, Treasury released the text of its proposed legislation on resolution authority; the details of the other reform recommendations will be provided in the coming weeks. The proposed legislation and other recommendations would significantly affect large non-bank financial institutions, the derivatives markets, and perhaps large hedge funds, and would have a lesser impact on other private investment funds and money market mutual funds. However, it is premature to predict the timing or substance of actual regulatory changes.

Resolution Authority for Systemically Significant Financial Companies Act of 2009

Treasury has made available the text of legislation, expected to be formally introduced in the next few days, that would provide broad governmental emergency authority over troubled financial institutions that pose systematic risk to financial stability or economic conditions. The authority is similar to the FDIC's current emergency authority over banks, and would include the ability to make the FDIC a conservator or receiver for the troubled financial institution. Key points of the proposed legislation include:

- Troubled financial institutions could include bank and thrift holding companies, and holding companies that control an insurance company, broker-dealer, futures commission merchant or commodity pool operator.
- Exercise of the emergency authority would require decision by the Treasury Secretary after the recommendation of the FDIC, SEC or CFTC (as applicable) and consultation with the President. The Secretary would also need to determine that the financial institution is in default or danger of default, and that its failure would have serious adverse effects on U.S. financial stability or economic conditions.
- Emergency measures could include providing financial assistance by making loans to the financial institution, purchasing its obligations or assets, assuming or guaranteeing the institution's liabilities, and purchasing an equity interest in the institution. More draconian measures could include selling or transferring assets or liabilities of the institution, or appointing the FDIC as a conservator or receiver.

Other Treasury Recommendations

In addition to the proposed legislation, Secretary Geithner provided the broad contours of other key areas of recommended financial regulatory reform. All of these would require legislation, and little detail has been provided. The recommendations are:

- Establishing a single entity with regulatory responsibility for "systemically important" firms and payment and settlement systems. Factors in determining a firm to be systemically important would include: size, leverage, interdependence with the financial system, and importance as a source of credit and liquidity. Systemically important firms would be subject to a range of prudential regulation, including capital requirements, liquidity,

counterparty and credit risk management requirements, and standards for executive compensation practices. Systemically important payment and settlement systems and activities (such as for overnight lending markets and OTC derivatives) would also be subject to regulation by the same entity.

- Requiring registration with the SEC for all advisers to private investment funds (e.g., hedge, private equity, venture, debt, etc.) having assets over an unspecified threshold. Funds advised by an SEC-registered investment adviser would be subject to investor and counterparty disclosure requirements and regulatory reporting requirements.
- Establishing an oversight framework for the OTC derivatives markets, including prudential regulation of dealers and other market participants, clearing of all standardized OTC derivative contracts through regulated central counterparties, reporting of all non-standardized derivatives contracts to trade repositories, and public availability of aggregate market data on trading volumes and positions.
- Strengthening the regulatory framework of money market mutual funds, to further reduce the risk of “breaking the buck.”

Further Information

We will continue to monitor regulatory developments in this area, and will provide updates as appropriate. In the meantime, please contact your usual Ropes & Gray attorney with any questions.

Relevant Links

[Secretary Geithner's Written Testimony](#)

[Proposed Resolution Authority for Systemically Significant Companies Act of 2009](#)

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