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8-16-2010

### Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting on Tuesday March 16, 2010

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Bill Thomas

Gary Cohen

Thomas Greene

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#### Recommended Citation

Angelides, Phillip; Thomas, Bill; Cohen, Gary; Greene, Thomas; Ganz, Scott; Born, Brooksley; Georgiou, Byron Stephen; Graham, Bob; Hennessey, Keith; Holtz-Eakin, Douglas; Murren, Heather; Thompson, John W.; and Wallison, Peter J., "Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting on Tuesday March 16, 2010" (2010). *YPFS Documents (Series 1)*. 7085.

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**Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting of  
Tuesday March 16, 2010**

**12:00-3:00pm EST**

**Conference Dial-In Number: 866-692-3582**

**Participant Access Code: 3387529**

| <b><u>Agenda Item</u></b>  | <b><u>Presentation</u></b>                             |
|--|--|
| <b>1) Call to Order</b>  | <b>Chairman Angelides</b>                              |
| <b>2) Roll Call</b>  | <b>Chairman Angelides</b>                              |
| <b>3) Approval of Minutes of Telephonic<br/>Business Meeting of February 17, 2010<br/>(Attached)</b>                           | <b>Chairman Angelides</b>                              |
| <b>4) Chairman's and Vice Chairman's Report</b>  | <b>Chairman Angelides and<br/>Vice-Chairman Thomas</b> |
| <b>5) Executive Director's Report</b>  | <b>Tom Greene, Executive Director</b>                  |
| <b>6) Comments and Questions<br/>from Commissioners</b>  | <b>All Commissioners</b>                               |
| <b>7) Renewal of Delegation to Execute<br/>Agreements and Contracts on<br/>Behalf of FCIC<br/>(Attached)</b>                   | <b>Tom Greene/ Gary Cohen,<br/>General Counsel</b>     |
| <b>8) Initial Discussion: Hypotheses re: the<br/>Causes of the Crisis<br/>(Materials Sent Previously Under Separate Cover)</b> | <b>All Commissioners</b>                               |
| <b>9) Report to Commission re: Legislative<br/>And Regulatory Update</b>   | <b>Tom Greene/ Scott Ganz, Special<br/>Assistant</b>   |

*(Attached)*

**10) Other Items of Business**

**All Commissioners**

**11) Adjournment**

**Chairman Angelides**



**Financial Crisis Inquiry Commission**  
**Agenda Item 3 for Telephonic Business Meeting of March 16, 2010**  
**Minutes of Telephonic Business Meeting of**  
**February 17, 2010**

**Agenda Item 1: Call to Order**

Chairman Angelides called the telephonic business meeting to order at 12:03pm EST.

**Agenda Item 2: Roll Call**

Chairman Angelides asked Gretchen Newsom to call the roll of the Commissioners: Present were Phil Angelides, Bill Thomas, Brooksley Born, Bob Graham, Doug Holtz-Eakin (joined during Agenda Item 3), Heather Murren, John W. Thompson and Peter Wallison. Commissioners Georgiou and Hennessey were absent.

Also participating in the meeting were: Tom Greene, Executive Director; Beneva Schulte, Deputy Director; Wendy Edelberg, Deputy Director and Research Director; Gary Cohen, General Counsel; Gretchen Newsom, assistant to Chairman Angelides; and Scott Ganz, assistant to Vice Chairman Thomas.

**Agenda Item 3: Approval of Minutes of Meeting, January 20, 2010**

Chairman Angelides introduced the minutes from the FCIC meeting of January 20, 2010.

MOTION: Wallison moved and Born seconded the motion to adopt the meeting minutes (attached).

APPROVED: 8-0 (Georgiou and Hennessey absent)

**Agenda Item 4: Chairman's and Vice Chairman's Report**

Chairman Angelides and Vice Chairman Thomas spoke on the topic of FCIC's upcoming research symposium on February 26<sup>th</sup> and 27<sup>th</sup> to take place at American University Washington College of Law. Logistics and a draft schedule were discussed and support materials will be forthcoming from staff.

Chairman Angelides and Vice Chairman Thomas spoke on the topic of working groups. A memo outlining working group composition was recently distributed to the Commission, and the first working group is currently underway. Ms. Edelberg noted that a suggested reading list for our housing hearing has been distributed and advised the Commission that an online FCIC library will be available to the Commission in the near future. Chairman Angelides informed the Commission that working groups would have initial review and input on research and investigative plans prior to being distributed to the Commission.

Chairman Angelides and Vice Chairman Thomas spoke on the topic of an FCIC master witness/interview list which will soon be distributed to the Commission in a confidential manner (password protected and watermarked) for their review and feedback. This document will be constantly evolving and updated weekly.

On the topics of potential donations to the Commission, Commissioner Wallison brought up the Sloan Foundation which has offered to provide research assistance to FCIC. This matter was referred to Gary Cohen to check for consistency with FCIC's adopted protocol and, in consultation with the front office staff, to make a recommendation on this matter.

#### **Agenda Item 5: Executive Director's Report**

Mr. Greene provided an update on personnel with news that the number of FCIC staff amounts to nearly 50 persons. Mr. Greene also provided Commissioners with an update on document requests, document retention letters, and confidentiality agreements with public agencies. Mr. Greene was directed by the Commission to establish an easy method for the Commissioners to avail themselves of the responses received from the Hearing 1 follow-up letters/questions, as well as other Commission data/reports, by the next business meeting. Mr. Greene noted that the revised Omni Work Plan was recently sent to Commissioners.

#### **Agenda Item 6: Comments and Questions from Commissioners**

Commissioner Wallison inquired about the level of responsiveness to the Hearing 1 follow-up letters/questions. Mr. Greene replied that FCIC had received one response thus far. It was expected that other responses would be received on the due date, February 26<sup>th</sup>, although a few witnesses requested and received brief extensions of time within which to file their responses. Format and protocol were also discussed in regard to these letters.

Commissioner Holtz-Eakin inquired about the plan to write the report. The Chairman referred the Commission to the timeline for drafting the report contained within the Omni Work Plan, and informed Commissioners that they would be privy to drafts of the report and be expected to provide feedback.

#### **Agenda Item 7: Archive Requirements and Mandates/Document Preservation Protocol/ Proposed Records Management Policy**

Mr. Cohen informed the Commission that the draft FCIC Records Management Policy had been approved by the National Archives and Records Administration (NARA). There have been few changes to the information previously given to the Commission previously; changes of note include the conclusions that personal notes to oneself can be discarded, and notes from Commissioners to Staff are treated as records. Mr. Cohen noted that the Commission will decide at a later time what our disclosure schedule will be and what records will be public. Mr. Cohen was instructed by the Commission to add a section to the Records Management Policy concerning FCIC's disclosure schedule and timelines.

MOTION: Holtz-Eakin moved and Murren seconded a motion to adopt the Records Management Policy with the caveat that staff will add a provision making clear that the public disclosure process will be established by the Commission at the end of our work (attached).

APPROVED: 8-0 (Georgiou and Hennessey absent)

*(At this time, Commissioner Graham departs the call)*

#### **Agenda Item 8: Delegation to Administer Oaths – Resolution**

Mr. Cohen introduced both measures regarding the Delegation to Administer Oaths – the resolution and the amendment to the Rules of Procedure. Interview protocol was also discussed.

MOTION: Born moved and Thompson seconded a motion to adopt the Resolution for the Delegation to Administer Oaths with the caveat that a provision be incorporated to the effect that the Chair and Vice Chair be notified when the oath is to be administered (attached).

APPROVED: 7-0 (Georgiou, Graham and Hennessey absent)

#### **Agenda Item 9: Delegation to Administer Oaths – Amendment to Rules of Procedure**

MOTION: Holtz-Eakin moved and Murren seconded a motion to adopt the Amendment to the Rules of Procedure for the Delegation to Administer Oaths (attached).

APPROVED: 7-0 (Georgiou, Graham and Hennessey absent)

#### **Agenda Item 10: Report to Commission re: Legislative and Regulatory Update**

Mr. Ganz presented the Commission with an update on legislative and regulatory matters.

#### **Agenda Item 11: Other Items of Business**

No other items of business were brought up before the Commission

**Agenda Item 12: Adjournment**

Chairman Angelides requested a motion to adjourn the meeting.

MOTION: Thompson moved and Thomas seconded a motion to adjourn the meeting.

APPROVED: 7-0 (Georgiou, Graham and Hennessey absent)





**Financial Crisis Inquiry Commission  
Agenda Item 3 for Telephonic Business Meeting of March 16, 2010  
Minutes of Telephonic Business Meeting of  
February 17, 2010**

**ATTACHMENT  
Approved Minutes of Telephonic Business Meeting of  
January 20, 2010**

**Agenda Item 1: Call to Order**

Chairman Angelides called the telephonic business meeting to order.

**Agenda Item 2: Roll Call**

Chairman Angelides asked Gretchen Newsom to call the roll of the Commissioners: Present were Phil Angelides, Bill Thomas, Brooksley Born, Byron Georgiou, Keith Hennessey, Doug Holtz-Eakin, Heather Murren, John W. Thompson and Peter Wallison. Commissioner Graham was absent.

Also participating in the meeting were: Tom Greene, Executive Director; Beneva Schulte, Deputy Director; Wendy Edelberg, Deputy Director and Research Director; Gary Cohen, General Counsel; Gretchen Newsom, assistant to Chairman Angelides; and Scott Ganz, assistant to Vice Chairman Thomas.

**Agenda Item 3: Approval of Minutes of Meeting, December 14, 2009**

Chairman Angelides introduced the minutes from the FCIC meeting of December 14, 2009.

MOTION: Murren moved and Holtz-Eakin seconded the motion to adopt the meeting minutes (attached).

APPROVED: 9-0 (Graham absent)

**Agenda Item 4: Chairman's and Vice Chairman's Report**

Chairman Angelides and Vice Chairman Thomas spoke first on the topic of FCIC's upcoming research symposium on February 26<sup>th</sup> and 27<sup>th</sup>. This symposium will be open to the public, but the end of the symposium will include a closed session for discussion amongst the Commission and staff.

Chairman Angelides and Vice Chairman Thomas spoke second on the topic of staff updates and revisions to FCIC's staff leadership structure. Beneath Tom Greene are three deputies: Beneva Schulte as Deputy Director; Wendy Edelberg as Deputy Director and Research Director and Gary Cohen, General Counsel, wherein all matters will flow up to Mr. Greene. This "front office team" meets on a daily basis along with Mr. Ganz and Ms. Newsom. Commissioners will be sent a revised organizational chart.

Chairman Angelides and Vice Chairman Thomas spoke third on the topic of Commissioner requests for information from the staff. To ensure requests are met effectively, Commissioners should contact a member of the front office team and the request will then be tracked until completion.

Final documents and work products will be shared with the Commission on a regular basis. Staff will create and share a consolidated work plan with the Commission as well as a master witness/interview list. A proposal for working groups will be distributed by the Chairman. This will provide an opportunity for Commissioners to provide input and share their expertise in support of the Commission's research, investigations and hearings.

Staff were reminded that document retention letters were scheduled to have been sent to major financial institutions and other entities. Staff will continue to update the Commission on the status of confidentiality agreements and will also create a template letter for acquiring requested information from entities that meets our timeframes, lest subpoenas be issued.

#### **Agenda Item 5: Hearing 1 – Debriefing**

Tom Greene received feedback and comments from the Commission in regard to the first public hearing. Staff was directed to create a master list of all questions posed by Commission for which written responses were requested as well as requests for additional information. These follow-up questions/requests will be sent to each witness in a formal letter and will be shared with the Commission.

Transcripts of the hearing will be shared with the Commission.

#### **Agenda Item 6: Executive Director's Report**

Mr. Greene provided an update on personnel with news that the Research team is filling out. Mr. Greene also provided Commissioners with an update on document requests and confidentiality agreements with public agencies.

**Agenda Item 7: Amendment to Rules of Procedure, Public Notice for Hearings**

Mr. Cohen presented an amendment to the Rules of Procedure and noted that this amendment conforms our Rules to the intent of a previously ratified amendment in regard to public notice of meetings.

MOTION: Born moved and Murren seconded the motion to adopt the amendment (attached).

APPROVED: 9-0 (Graham absent)

**Agenda Item 8: Commission Policy for the Solicitation and Acceptance of Gifts of Services or Property**

Mr. Cohen presented the revised Commission policy for the Solicitation and Acceptance of Gifts of Services or Property for adoption by the Commission. Mr. Cohen was directed to notify the Commission on a weekly basis of outstanding requests as well as requests for witnesses to testify before the Commission.

MOTION: Born moved and Holtz-Eakin seconded the motion to adopt the policy (attached).

APPROVED: 9-0 (Graham absent)

**Agenda Item 9: Ethical Guidelines for Commission Members**

Mr. Cohen introduced and presented the revised policy on Ethical Guidelines for Commission Members for adoption by the Commission. Born requested to amend the guidelines to include minor children of Commission members as being subject to conflicts of interest.

MOTION: Georgiou moved and Thompson seconded the motion to adopt the Ethical Guidelines for Commission Members as amended to include minor children as being subject to conflicts of interest (attached) and designate Mr. Cohen as “ethics counsel” to the Commission.

APPROVED: 9-0 (Graham absent)

**Agenda Item 10: Ethical Guidelines for Commission Staff**

Mr. Cohen introduced and presented the policy on Ethical Guidelines for Commission Staff for adoption by the Commission. Born again requested to amend the guidelines to include minor children of Commission members as being subject to conflicts of interest.

MOTION: Thompson moved and Born seconded the motion to adopt the Ethical Guidelines for Commission Staff as amended to include minor children as being subject to conflicts of interest (attached).

APPROVED: 9-0 (Graham absent)

**Agenda Item 11: Update on Confidentiality Agreements**

Mr. Greene and Mr. Cohen informed the Commission that confidentiality agreements have been signed by all staff members, consultants, and third party vendors.

**Agenda Item 12: Update re: Archive Requirements and Mandates**

Mr. Cohen will circulate a document retention policy to staff and Commission members with a summary of what should be included in the archive. The Commission will decide later what is released as a public document and under what time frame.

**Agenda Item 13: Report to Commission re: Legislative and Regulatory Update**

Mr. Ganz presented the Commission with an update on legislative and regulatory matters and noted that both the House and Senate are out of session and news was therefore minimal.

**Agenda Item 14: Other Items of Business**

Cohen was directed to determine the next financial disclosure date and issue a notice to the Commission with a link to the new disclosure form.

Staff was directed to develop protocol and a system for responding to emails and public inquiries received by FCIC.

**Agenda Item 15: Adjournment**

Chairman Angelides requested a motion to adjourn the meeting.

MOTION: Georgiou moved and Born seconded a motion to adjourn the meeting.

APPROVED: 9-0 (Graham absent)

**Financial Crisis Inquiry Commission**  
**Agenda Item 3 for Telephonic Business Meeting of March 16, 2010**  
**Minutes of Telephonic Business Meeting of**  
**February 17, 2010**

**ATTACHMENT**  
**Approved Records Management Policy, as amended**

- 1. Purpose.** This guidance contains mandatory Financial Crisis Inquiry Commission ("FCIC" or the "Commission") procedures for managing records effectively and efficiently throughout their life cycle. These procedures will help FCIC successfully accomplish its mission, preserve official records in accordance with applicable statutory and regulatory requirements, and promote access to information by FCIC staff and the public, as appropriate.
- 2. Authority.** The FCIC will comply with 44 U.S.C. Chapters 21, 29, 31, and 33 and 18 U.S.C. Chapter 101, and regulations established by the National Archives and Records Administration (NARA) for managing Federal records as stated in 36 C.F.R. parts 1220, 1222, 1228, 1234, and 1236.
- 3. FCIC Responsibilities under the Document Retention Policy.** The Executive Director and General Counsel shall establish and maintain an active, continuing program for the economical and management of the records of the FCIC (44 U.S.C. § 3101).
- 4. Policy.**

  - A.** FCIC will establish effective management controls over the creation, maintenance, and use of records in any medium, including electronic and microform media, throughout their life cycle.
  - B.** The provisions of this directive are mandatory and are applicable to all Commissioners and staff of the FCIC.
  - C.** All Government employees and contractors are required by law to create and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency. In addition, Federal regulations govern the life cycle of these records: they must be properly stored, preserved, and available for retrieval, and may be disposed of only in accordance with NARA-approved records control schedules.
  - D.** FCIC will cooperate with NARA and other agencies in applying standards, procedures, and techniques to improve the management of records; promote the maintenance of those records of continuing value (permanent); and facilitate the segregation and disposal of temporary records.

- E.** All records, including electronic and other forms of information will be systematically identified and appraised.
- F.** Records are broadly defined by statute and regulation to include all recorded information, regardless of medium or format, made or received by the FCIC under Federal law or in connection with the transaction of public business, either preserved or appropriate for preservation because of their administrative, legal, fiscal or informational value. Records serve as FCIC's memory; they are of critical importance in ensuring that FCIC continues to function effectively and efficiently.
- G.** FCIC officials are responsible for incorporating into the records of the Commission all essential information on their major actions. Significant decisions and commitments reached orally or by informal electronic mail will be documented and included in the record.
- H.** Minutes will be taken at all Commission meetings, and these, together with a copy of the agenda and all documents considered at or resulting from such meetings, shall be incorporated into the FCIC's record and made available for public inspection at such times determined as part of the conclusion of the FCIC's mandate in accordance with FCIC Records Disposition Policies."
- I.** All Commission meetings shall be transcribed or recorded and the recording or transcript shall be incorporated into the FCIC's records and made available for public inspection at such times determined as part of the conclusion of the FCIC's mandate in accordance with FCIC Records Disposition Policies."
- J.** The FCIC will take appropriate action to ensure that all staff and Commissioners are capable of identifying Federal records. For electronic mail systems, the FCIC will ensure that all staff and Commissioners are informed of the potential record status of messages, transmittal and receipt data, directories, and distribution lists.

## **5. Materials to be managed under this Policy.**

### **A. Determining if Documents are Federal Records, Nonrecords or Personal Papers.**

#### **1. Identifying Federal records.**

a. Documentary materials are records when they meet both of the following conditions:

- i. They are made or received by an agency of the United States Government under Federal law or in connection with the transaction of agency business; and

- ii. They are preserved or are appropriate for preservation as evidence of agency organization and activities or because of the value of the information they contain.

b. *Record status.* In addition to the two conditions stated above, use the following criteria as a guide for determining whether or not a document, such as an email message, meets the statutory definition of a Federal record. If the material (whether a document, email, or other recorded information) meets any of the following criteria, it is considered a Federal record and should be preserved in accordance with procedures set forth below:

- i. It contains unique, valuable information developed in preparing position papers, reports, studies, etc.
- ii. It reflects significant actions taken in the course of conducting FCIC business.
- iii. It conveys unique, valuable information about FCIC programs, policies, decisions, or essential actions.
- iv. It conveys statements of policy or the rationale for decisions or actions.
- v. It documents oral exchanges (in person or by telephone), during which policy is formulated.
- vi. It adds to the proper understanding of the formulation or execution of FCIC actions or of FCIC operations and responsibilities.
- vii. It documents important meetings.
- viii. It makes possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.
- ix. It protects the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.
- x. It documents the persons, places, things, or matters dealt with by the Commission.
- xi. It documents the administration of the Commission, such as personnel, procurement, payroll, budget, and other "housekeeping" operations (*See* General Records Schedules for many types of administrative records created by the Commission).

c. *Electronic mail messages.* Messages created or received on electronic mail systems may meet the definition of record in 44 U.S.C. § 3301.

d. *Working files and similar materials.* Working files, such as preliminary drafts and rough notes, emails and other similar materials shall be considered Federal records if:

i. They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with FCIC staff about FCIC business; and

ii. They contain unique information, such as substantive annotations or comments, that add to a proper understanding of the FCIC's formulation and execution of basic policies, decisions, actions, or responsibilities.

e. *Documents circulated to one or more Commissioners, or from a Commissioner to staff.* Drafts, rough notes, emails, or other documents that are circulated to one or more Commissioners, or from a Commissioner to staff, are presumed to be Federal records, because such documents may contain unique information that adds to a proper understanding of the Commission's formulation and execution of basic policies, decisions, actions, or responsibilities. The presumption that such documents are Federal records shall be rebutted (and the document shall be considered a nonrecord) if the document does not contain any information that adds to a proper understanding of the Commission's formulation and execution of basic policies, decisions, actions, or responsibilities. See infra 5.A.2.b. For example, a draft version of the final report circulated to Commission members, and the Commissioners' e-mails of substantive changes back to the staff, would be a Federal record.

f. *Documents received from Federal agencies and private and public companies.* Records reviewed by Commissioners and/or staff which are relevant to the mission of the Commission are Federal records. The records may be referred to in emails, memoranda, white papers, briefings, or reports. Documents received which are irrelevant or not used by the Commission or staff are nonrecords. The FCIC must record all Federal records it receives.

2. Identifying nonrecord materials.

a. *General guidance.* Nonrecord materials are Government-owned informational documents excluded from the definition of "records" or not meeting the requirements of that definition. (*see* 36 C.F.R. §1222.34(b)). Nonrecord material may be disposed of at any time after its purpose has been served. Nonrecord material shall not be interfiled with temporary or permanent record material. The following are specifically excluded from status as records by statute (*see* 44 U.S.C. § 3301):



i. Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes);

ii. Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference).

b. *FCIC policy on identifying nonrecords.* Documents will generally be considered federal records, except when, as set forth above at 5.A.1.e., documents that do not contain unique information that adds to a proper understanding of the FCIC's formulation and execution of basic policies, decisions, actions, or responsibilities. Nonrecord material may be disposed of at any time after its purpose has been served.

i. *Documents circulated among staff.* Drafts, rough notes, emails and other documents circulated internally (among staff only, as contrasted to such items circulated to the Commissioners) may be nonrecords if they do not contain unique information that adds to a proper understanding of the FCIC's formulation and execution of basic policies, decisions, actions, or responsibilities. (It is assumed that substantive actions of the FCIC will have to be approved by the Commission, so the internal staff commentary on memoranda that do not go to the Commissioners or are not released to the public will be considered nonrecords.) *Example: If a staff member circulates a memorandum among staff, and another staff member makes substantive changes which are incorporated into the final memo, then the original document is nonrecord because the unique information that adds to a proper understanding of the FCIC's actions is incorporated into the new document (also see iii below).*

ii. *Documents circulated to one or more Commissioners, or from a Commissioner to staff.* As provided above in 5.A.1.e., such documents are generally federal records. However, if the document does not contain unique information that adds to a proper understanding of the FCIC's formulation and execution of basic policies, decisions, actions, or responsibilities, it is a nonrecord. *Example: An email from a Commissioner to staff notifying them that she cannot attend a meeting is a nonrecord.*

iii. *Commissioner and staff notes to self.* Personal notes taken during the course of FCIC activities and not circulated to other Commissioners or staff members are generally considered nonrecords. *Examples: A Commissioner's notes to self during a team meeting is a nonrecord, but staff notes on a team meeting where official minutes are not kept would be a Federal record as they represent the only source of information regarding the meeting. Similarly, staff notes on a witness interview where an official transcript is not created would be a Federal record.*

3. Identifying personal papers.
  - a. Personal papers are documentary materials of a private or nonpublic character that do not relate to, or have an effect upon, the conduct of FCIC business. Personal papers are excluded from the definition of Federal records and are not owned by the Government. Examples of personal papers include:
    - i. Materials accumulated by an official before joining Government service that are not used subsequently in the transaction of Government business;
    - ii. Materials relating solely to an individual's private affairs, such as outside business pursuits, professional affiliations, or private political associations that do not relate to FCIC business; and
    - iii. Diaries, journals, personal correspondence, or other personal notes that are not prepared or used for, or circulated or communicated in the course of, transacting Government business.
  - b. If information about private matters and FCIC business appears in the same document, the document shall be copied at the time of receipt, with the personal information deleted, and treated as a Federal record.
  - c. Materials labeled "personal," "confidential," or "private," or similarly designated, and used in the transaction of public business, are Federal records subject to the provisions of pertinent laws and regulations. The use of a label such as "personal" is not sufficient to determine the status of documentary materials in a Federal office.
  - d. If personal papers are maintained at the FCIC office, they shall be clearly designated as such and filed or otherwise maintained separately from the official records of the office.
  - e. FCIC officials may not remove any Federal records from FCIC custody while removing their personal papers and designated nonrecord materials. Before anyone departs from FCIC, they shall consult with the Executive Director or General Counsel to ensure that official records that may be included in personal papers are returned to FCIC files. The Executive Director or General Counsel may approve a request from the departing official to take extra copies of work-related files if the records do not contain national security-classified information or are otherwise restricted (e.g., Privacy Act, etc.).
- B. The FCIC has been specifically excluded from the operation of the Federal Advisory Committee Act, thereby eliminating any document management obligations under FACA.

## C. Categories of Documents Deemed to be Federal Records

1. *Permanent records.* Permanent records are those records that NARA appraises as having sufficient value to warrant continued preservation by the Federal Government as part of the National Archives of the United States because the records have continuing value as documentation of the organization and functions of the FCIC or because the records document the nation's history by containing significant information on persons, things, problems and conditions. FCIC records determined by the FCIC and approved by NARA to be permanent must be available in a medium and format that conforms to the standards for permanent records. FCIC permanent records shall be transferred to the National Archives of the United States at the time designated on a NARA-approved Request for Records Disposition (SF 115). When permanent records are transferred to National Archives, legal custody of the records is transferred to NARA at this time. NARA takes measures needed to preserve the records and also provides reference service, including service to FCIC.

2. *Temporary records.* Temporary records are records that are designated for either immediate disposal or for disposal after a specified period of time or an event in accordance with a NARA-approved Request for Records Disposition (form SF 115) or the General Records Schedule. Temporary Records may document FCIC business processes or document legal rights of the government or the public, document government accountability, or contain information of administrative or fiscal value. Records classified as temporary should not be retained beyond their authorized retention period; nor shall they be destroyed or otherwise disposed of prior to the end of their authorized retention period. Temporary records shall be maintained and disposed of only in accordance with the following records control schedule:

a. *Transitory records.* Records of short-term interest (180 days or less), including in electronic form (e.g., e-mail messages), which have minimal or no documentary or evidential value. Included are such records as:

i. Routine requests for information or publications and copies of replies which require no administrative action, no policy decision, and no special compilation or research for reply;

ii. Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as notices of holidays or charity and welfare fund appeals, bond campaigns, and similar records;

iii. Records documenting routine activities containing no substantive information, such as routine notifications of meetings, scheduling of work-related trips and visits, and other scheduling related activities;

iv. Suspense and tickler files or 'to-do' and task lists that serve as a reminder that an action is required on a given date or that a reply to action

is expected, and if not received, should be traced on a given date shall be destroyed immediately, or when no longer needed for reference, or under a predetermined schedule or business rule (e.g., implementing the auto-delete feature of "live" electronic mail systems).

b. *Non-transitory records.* All temporary records that are not transitory records shall be retained until the Commission ceases to exist. Non-transitory records shall be destroyed or transferred to GSA (as may be required by GSA regulations) upon termination of the Commission, as appropriate, unless those records otherwise should be retained with NARA as permanent Federal records pursuant to Paragraph 5.A.1.

3. *Unscheduled records.* Records whose final disposition has not been approved by NARA. Unscheduled records are potentially permanent and must be treated as if they are permanent.

## **6. Records Disposition Program**

A. *Goals of the Program.* An effective records disposition program is essential to successful records management and is an integral part of the FCIC's information resources management program. The goals of the records disposition program are to:

1. Maintain adequate and proper documentation and evidence of the FCIC activities for the time required to meet programmatic needs.
2. Retire records requiring longer retention to economical storage facilities, providing savings in space and equipment.
3. Preserve records of continuing or enduring value through transfer to the National Archives.

B. *Records Disposition Authority.* The following are the two basic types of records disposition authorities for FCIC records:

1. *NARA General Records Schedule (GRS).* Disposition requirements for administrative or housekeeping records that are common to most Federal agencies are listed in the GRS published by NARA. The disposition requirements of the GRS, including records retention periods are mandatory FCIC-wide unless an exception is obtained from NARA. The GRS does not cover all FCIC records.
2. *FCIC Records Control Schedules.* The GRS may be supplemented by FCIC-specific schedules covering records that are unique to program administrations and staff offices. The records series or systems contained in these records

schedules are unique to their organization. Disposition instructions and retention periods cited in these schedules are mandatory.

C. Records Management

1. All records maintained by the FCIC shall be reviewed prior to the termination of the Commission. Records that require review by NARA shall be collected at that point, or earlier. Permanent records shall be designated as such and transferred to NARA for preservation by NARA and eventual public disclosure at such times as may be determined by the FCIC in accordance with NARA regulations at the conclusion of the FCIC's mandate.

2. Any unlawful or accidental destruction, defacing, alteration or removal of FCIC records must be reported promptly to the Executive Director or General Counsel. The penalty for the willful and unlawful destruction, damage, or alienation of Federal records is a fine under the provisions of Title 18, U.S.C., or 3 years in prison, or both (18 U.S.C. § 2071).

4846-2264-0133, v. 1

**Financial Crisis Inquiry Commission**  
**Agenda Item 3 for Telephonic Business Meeting of March 16, 2010**  
**Minutes of Telephonic Business Meeting of**  
**February 17, 2010**

**ATTACHMENT**

**Approved Resolution: Delegation to Administer Oaths, as amended**

**Delegation of Authority to Senior Staff to Administer Oaths in Connection with Witness Interviews and Depositions.**

Among the powers of the Commission are to;

(A) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.

It is contemplated that the Commission staff may wish to conduct certain interviews of key witnesses in a deposition like setting rather than the more informal interview setting. In such case the Commission staff may determine that the testimony should be given under oath, and will therefore require the authority to administer oaths on behalf of the Commission.

To enable the senior staff member who is leading the interview in those situations to administer the oath, I recommend that the Commissioners adopt the following resolution to allow this to occur on a case by case basis:

**Resolved**, that the Commission hereby delegates to the Executive Director or, in his absence, the General Counsel, the power and authority from time to time to grant to an Assistant Director, Executive Director, General Counsel, or court reporter, the power and authority to administer an oath to a Commission witness at a witness interview or deposition in the name and under the authority of the Commission.

**Resolved Further**, should the Executive Director or the General Counsel exercise such power and authority, the Chairman and the Vice Chairman shall be promptly in writing notified of such exercise.

*Approved by the Commission on February 17, 2010, 7-0*

**Financial Crisis Inquiry Commission  
Agenda Item 3 for Telephonic Business Meeting of March 16, 2010  
Minutes of Telephonic Business Meeting of  
February 17, 2010**

**ATTACHMENT**

**Approved Amendment to FCIC Rules of Procedure: Delegation to Administer Oaths**

Pursuant to Section IV C of the FCIC Rules of Procedure (FCIC Rules), the Commission amends Section IV(C) of the FCIC Rules to read as follows:

Testimony at hearings before the FCIC **or at FCIC witness interviews or depositions** may be conducted under oath, at the direction of the Presiding Commissioner.

*Approved by the Commission on February 17, 2010, 7-0*



**Financial Crisis Inquiry Commission  
Agenda Item 7 for Telephonic Business Meeting of March 16, 2010**

**Delegation to execute agreements and contracts  
on behalf of the Financial Crisis Inquiry Commission**

Pursuant to the authority set forth in Public Law 110-21(d)(3) that allows the Financial Crisis Inquiry Commission to enter into contracts to enable the Commission to conduct its business; and,

Now after a quorum of the Financial Crisis Inquiry Commission has been established; and,

After a vote of the Commissioners present and voting; it is

Hereby delegated to the Chairman of the Commission the authority to enter into agreements on behalf of the Financial Crisis Inquiry Commission in order to facilitate the work of the Commission. This delegation is effective until June 30, 2010, unless revoked earlier.

The Chairman may delegate this authority to the Vice-Chairman in order to expedite the business of the Commission. If the Chairman does delegate to the Vice-Chairman, the delegation shall remain in effect until June 30<sup>th</sup>, unless revoked earlier.

In addition, any actions taken by the Chairman and the Vice-Chairman in order to establish the Commission, and agreements signed by the Chairman or the Vice-Chairman, are hereby ratified by the Commission.





**Financial Crisis Inquiry Commission  
Agenda Item 9 for Telephonic Business Meeting of March 16, 2010**

**SUMMARY OF MAJOR LEGISLATION AND REGULATIONS AS OF  
MARCH 16, 2010**

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## In the News

### House

On March 3, 2010, the House Agriculture Committee's Subcommittee on General Farm Commodities and Risk Management held a hearing to review the implementation of changes to the Commodity Exchange Act which is contained in the 2008 Farm Bill. Testifying before the Subcommittee was U.S. Commodity Futures Trading Commission Chairman Gary Gensler.

On March 11, 2010, the House Financial Services Committee's Subcommittee on Housing and Community Opportunity will hold a hearing on the FHA Reform Act of 2010. Witnesses include David Stevens, Assistant Secretary for Housing and Federal Housing Administration Commissioner, HUD; Mike Anderson, President, Essential Mortgage and Vice Chair of Government Affairs, National Association of Mortgage Brokers; Graciela Aponte, Legislative Analyst, Wealth Building Policy Project, National Council of La Raza; Andrew Caplin, Professor of Economics, Co-Director of the Center for Experimental Social Science, NYU; John Courson, President and Chief Executive Officer, Mortgage Bankers Association; Charles McMillian, President, National Association of Realtors; John Taylor, President and CEO, National Community Reinvestment Coalition; and Mark Alston, First VP, Consolidated Board of Directors on behalf of the National Association of Real Estate Brokers

On March 17, 2010, the House Financial Services Committee will hold a hearing examining the link between Fed Bank supervision and Monetary Policy. Witnesses are yet to be announced.

(Updated 3/11)

### Senate

On March 15, Senator Dodd, Chairman of the Committee on Banking, Housing and Urban Affairs, introduced revised financial reform legislation. The legislation ends a protracted discussion period during which Dodd and Ranking Member Richard Shelby (and then Senator Bob Corker) were unable to reach consensus on a number of key issues. The current proposal differs from the original Legislation in a number of ways, including: (1) creating a Consumer Financial Protection Bureau housed in the Federal Reserve; (2) defining specific responsibilities for the FDIC, OCC and Federal Reserve (and folding the OTS into the OCC); and (3) the implementation of a "Volcker Rule" limiting the types of activities permissible for banks and bank holding companies.

Senator Dodd has announced that he would like to begin formal committee consideration of the bill next week. Senator Dodd has stated that he hopes to gain bipartisan support before the bill leaves committee.

(Updated 3/15)

## **Regulatory Agencies**

On Wednesday, February 24, the SEC voted to adopt a new rule to place certain restrictions on short selling when a stock is experiencing significant downward price pressure. Otherwise known as the “alternative uptick rule,” the design is to restrict short selling from further driving down the price of a stock that has triggered a circuit breaker by dropping more than 10% in a day. The Commission voted 3-2 in favor of the rule.

\*On March 4, the Congressional Oversight Panel held a hearing examining the government’s assistance to Citigroup under TARP. Witnesses included CEO, Vikram Pandit and Assistant Secretary of Treasury for Financial Stability, Herbert Allison.

(Updated 3/11)

## Summary Table

| Issue   | House   | Senate  |
|---|---|---|
| <u>Financial Firm Regulation</u>                                  |   |   |
| <i>Executive Compensation and Corporate Governance</i><br>(p. 10) | Hearing: “Compensation in the Financial Industry.” (Financial Services Committee, January 22, 2010)   | In Dodd Legislation: “Restoring American Financial Stability: executive compensation and corporate governance” (Banking, Housing & Urban Affairs, March 15, 2010) |
| <i>Municipal Securities</i><br>(p. 10)                            |   | In Dodd Legislation: “Restoring American Financial Stability: municipal securities” (Banking, Housing & Urban Affairs, March 15, 2010)                            |
| <i>Private Investment Funds</i><br>(p. 10)                        | H.R. 3818: “The Private Fund Investment Advisors Registration Act of 2009” (Kanjorski, Passed Financial Services Committee (67-1), October 27, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009 |   |
| <i>SEC Reform</i><br>(p. 11)                                      | H.R. 3817: “The Investor Protection Act” (Kanjorski, Passed Financial Services Committee (41-28), November 4, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009                                  | In Dodd Legislation: “Restoring American Financial Stability: SEC and improving investor protections” (Banking, Housing & Urban Affairs, March 15, 2010)          |
| <i>Securitization</i><br>(p. 11)                                  |   | In Dodd Legislation: “Restoring American Financial Stability: securitization” (Banking, Housing & Urban Affairs, March 15, 2010)                                  |
| <u>Financial Market Regulation</u>                                |   |   |
| <i>Credit Rating Agencies</i><br>(p. 12)                          | H.R. 3890: “Accountability and Transparency in Rating Agencies Act” (Kanjorski, Passed Financial Services Committee (49-14), October 28, 2009); rolled into regulatory  | In Dodd Legislation: “Restoring American Financial Stability: credit rating agencies” (Banking, Housing & Urban Affairs,  |

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|  | reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009   | March 15, 2010)  |
| <i>Hedge Funds</i><br>(p. 13)                          |  | In Dodd Legislation: “Restoring American Financial Stability: hedge funds” (Banking, Housing & Urban Affairs, March 15, 2010)  |
| <i>Insurers</i><br>(p. 13)                             | H.R. 2609: “Federal Insurance Office Act” (Kanjorski, Passed Financial Services Committee (unanimous voice), December 2, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009  | In Dodd Legislation: “Restoring American Financial Stability: insurance” (Banking, Housing & Urban Affairs, March 15, 2010)  |
| <i>OTC Derivatives</i><br>(p. 13)                      | H.R. 3795: “The OTC Derivatives Markets Act of 2009” (Frank, Passed Financial Services Committee (43-26), October 15, 2009; Passed Agriculture Committee (voice vote), October 21, 2009); will be offered as amendments to regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009 | In Dodd Legislation: “Restoring American Financial Stability: creating transparency and accountability for derivatives” (Banking, Housing & Urban Affairs, March 15, 2010) |
| <i>Regulatory Structure</i><br>(p. 14)                 |  | In Dodd Legislation: “Restoring American Financial Stability: improving bank regulation” (Banking, Housing & Urban Affairs, March 15, 2010)                                |
| <u>Consumer and Investor Protection</u>                |  |  |
| <i>Consumer Financial Protection Agency</i><br>(p. 15) | H.R. 3126: “The Consumer Financial Protection Agency Act of 2009” (Frank, Passed Financial Services Committee (39-29), October 22, 2009; Passed Energy and Commerce Committee (33-19), October 29, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009      | In Dodd Legislation: “Restoring American Financial Stability: strong consumer protection watchdog” (Banking, Housing & Urban Affairs, March 15, 2010)                      |
| <i>Credit Cards</i>                                    | H.R. 3639: “The Expedited CARD Reform for Consumers Act of 2009”   |  |

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|---|--|--|
| (p. 15)   | (Frank and Maloney, Passed House (331-92), November 4, 2009)   |  |
| <i>Overdraft Protection</i><br>(p. 16)              | H.R. 3904: “Overdraft Protection Act” (Frank and Maloney, currently awaiting markup, December 7, 2009)   |  |
| <u>Government Crisis Response</u>                   |  |  |
| <i>Systemic Risk Regulation</i><br>(p. 17)          | H.R. 3996: “Financial Stability Improvement Act of 2009” (Frank, Passed House Financial Services Committee (31-27), December 2, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009   | In Dodd Legislation: “Restoring American Financial Stability: looking out for the next big problem: addressing systemic risk” (Banking, Housing & Urban Affairs, March 15, 2010) |
| <i>“Too Big to Fail”</i><br>(p. 17)                 | House Financial Services and Treasury Draft Legislation: “Financial Stability Improvement Act of 2009” (Frank, Passed House Financial Services Committee (31-27), December 2, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009 | In Dodd Legislation: “Restoring American Financial Stability: ending too big to fail bailouts” (Banking, Housing & Urban Affairs, March 15, 2010)                                |
| <u>Investigation</u>                                |  |  |
| <i>AIG</i><br>(p. 19)                               | Hearing: “Factors Affecting Efforts to Limit Payments to AIG Counterparties.” (Oversight and Government Reform, January 27, 2010)  |  |
| <i>Bank of America and Merrill Lynch</i><br>(p. 19) | Hearing: “Bank of America and Merrill Lynch: how did a private deal turn into a federal bailout?”  |  |
| <u>Regulation (SEC)</u>                             |  |  |
| <i>Dark Pools</i><br>(p. 20)                        | Proposed Rule (October 21, 2009)   |  |
| <i>Money Market Funds</i><br>(p. 20)                | Proposed Rule (June 24, 2009)  |  |
| <i>CRA Oversight</i>                                | Adopted Rule - Awaiting comment period (October 5, 2009)   |  |



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| (p. 21)  |  |
| <i>“Unfiltered” Access</i><br>(p. 21)                    | Proposed Rule – Would prohibit naked access to exchanges and ATS   |
| <i>Alternative Uptick Rule</i><br>(p. 22)                | Adopted Rule (February 24, 2010) – Places certain restrictions on short selling when there is downward price pressure. |
| <u>Federal Reserve</u>                                   |  |
| <i>CRA Oversight</i><br>(p. 22)                          | Adopted Rule (December 4, 2009)  |
| <u>Treasury</u>  |  |
| <i>Financial Fraud Task Force</i><br>(p. 24)             | Establishment of Task Force (November 17, 2009)  |
| <i>TARP Executive Compensation Rules</i><br>(p. 24)      | Proposed Rules - new round of Executive Compensation Rules that effect AIG, Citigroup, GM and GMAC                     |
| <i>Financial Crisis Responsibility Fee</i><br>(p. 25)    | Proposed Rule - would require largest and most highly levered Wall St. firms to repay taxpayers for TARP assistance.   |
| <u>Basel Committee</u>                                   |  |
| <i>Basel Committee on Banking Supervision</i><br>(p. 26) | Proposed rule - to strengthen resilience of banking sector.  |

## Financial Firm Regulation

### Executive Compensation and Corporate Governance

**House Financial Services Committee Hearing: “Compensation in the Financial Industry,” January 22, 2010.**

**“Restoring American Financial Stability: executive compensation and corporate governance” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

#### Summary

*“Giving shareholders a say on pay and proxy access, ensuring the independence of compensation committees, and requiring public companies to take back executive compensation based on inaccurate financial statements are important steps in reining in excessive executive pay and can help shift management’s focus from short-term profits to long-term growth and stability.” (Dodd Legislation Summary, March 15, 2010)*

### Municipal Securities

**“Restoring American Financial Stability: municipal securities” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

#### Summary

*“Municipal securities will have better oversight through the registration of municipal advisers and increased investor representation on the Municipal Securities Rulemaking Board.” (Dodd Legislation Summary, March 15, 2010)*

### Private Investment Funds

**H.R. 3818: “The Private Fund Investment Advisors Registration Act of 2009”**

#### Summary

*“Under this legislation, private investment funds would become subject to more scrutiny by the SEC. It also mandates the registration of private advisers to private pools of capital regulators. New record keeping and disclosure requirements for private advisers. Advisers to hedge funds, private equity firms, single-family offices, and other private pools of capital will have to obey some basic ground rules. Regulators will have the authority to*

*examine the records of these previously secretive investment advisers.” (Rep. Paul Kanjorski Press Release, October 27, 2009; House Financial Services Press Release, October 27, 2009)*

## **Congressional Actions**

Passed House Financial Services Committee on October 27, 2009 (67-1); has been rolled into H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009.”

## **SEC Reform**

### **H.R. 3817: “The Investor Protection Act”**

#### **Summary**

*“Regulatory bill that reforms the SEC to strengthen its powers, better protect investors, and regulate securities markets. Independent and comprehensive study of the entire securities industry by a high caliber body to identify reforms and force the SEC and other entities to put in place further improvements designed to ensure investor protection. Doubles SEC funding over 5 years and provides dozens of new enforcement powers and regulatory authorities. Creates a whistleblower bounty program and ends mandatory arbitration, giving the SEC power to bar these clauses in customer contracts. Also closes loopholes and shortcomings in the Public Company Accountability Oversight Board and in the Securities Investor Protection Act, the law that returns money to the customers of insolvent fraudulent broker-dealers.” (Rep. Paul Kanjorski Press Release, November 4, 2009; House Financial Services Press Release, November 4, 2009)*

## **Congressional Actions**

Passed House Financial Services Committee on November 4, 2009, (41-28); has been rolled into H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009.”

### **“Restoring American Financial Stability: SEC and improving investor protections” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

#### **Summary**

*“Every investor – from a hardworking American contributing to a union pension to a day trader to a retiree living off of their 401(k) – deserves better protections for their investments. Investors in securities will be better protected by improving the competence of the SEC.” (Dodd Legislation Summary, March 15, 2010)*

## **Securitization**

**“Restoring American Financial Stability: securitization” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

**Summary**

*“Companies that sell products like mortgage-backed securities are required to retain a portion of the risk to ensure they won’t sell garbage to investors, because they have to keep some of it for themselves.” (Dodd Legislation Summary, March 15, 2010)*

## Financial Market Regulation

### Credit Rating Agencies

#### **H.R. 3890: “Accountability and Transparency in Rating Agencies Act”**

##### **Summary**

*“Expands on the initial credit rating agency legislation proposed by the Obama Administration in that it creates accountability by imposing liability by enhancing the accountability of Nationally Recognized Statistical Rating Organizations (NRSROs) by clarifying the ability of individuals to sue NRSROs. Duty to supervise an NRSRO’s employees and authorizes the SEC to sanction supervisors to failing to do so. Requires each NRSRO to have a board with at least one-third independent directors to oversee policies and procedures aimed at preventing conflicts of interest and improving internal controls. Also contains new requirements to mitigate conflicts of interest that arise out of the issuer-pays model for compensating NRSROs. Investors will gain access to more information of NRSRO operations, and will learn more about how they get paid. NRSROs will be required to conduct a 1-year look-back into the ratings which the employee was involved to make sure that its procedures were followed and proper ratings were issued. NRSROs will be required to report to the SEC and for the SEC to make such reports public”. (Rep. Paul Kanjorski Press Release, October 28, 2009; House Financial Services Press Release, October 28, 2009)*

##### **Congressional Actions**

Passed House Financial Services Committee on October 28, 2009 (49-14); has been rolled into H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009.”

#### **“Restoring American Financial Stability: credit rating agencies” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

##### **Summary**

*“Establishes a new Office of Credit Rating Agencies at the Securities and Exchange Commission to strengthen regulation of credit rating agencies. New rules for internal controls, independence, transparency and penalties for poor performance will address shortcomings and restore investor confidence in these ratings.” (Dodd Legislation Summary, March 15, 2010)*

A new Office of Credit Ratings at the SEC would be established to supervise and will be given the authority to fine agencies. Additionally, the SEC will examine NRSROs at least annually and make key findings public.

## Hedge Funds

### **“Restoring American Financial Stability: hedge funds” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

#### **Summary**

*“Hedge funds worth over \$100 million will be required to register with the SEC as investment advisers and to disclose financial data needed to monitor systemic risk and protect investors.” (Dodd Legislation Summary, March 15, 2010)*

The bill would require hedge funds to register with the SEC as investment advisers and provide information about their trades and portfolios necessary to assess systemic risk. Additionally, it would shift regulation from the federal to state level for medium size funds.

## Insurers

### **H.R. 2069: “Federal Insurance Office Act of 2009”**

#### **Summary**

Introduced by Rep. Paul Kanjorski, this legislation would create a Federal Insurance Office to provide policymakers with access to information and resources needed to respond to crises and mitigate systemic risk. It will also provide a unified voice on insurance matters of the United States in global deliberations.

#### **Congressional Actions**

Passed House Financial Services Committee on December 2, 2009, by unanimous voice vote; has been rolled into H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009.”

### **“Restoring American Financial Stability: insurance” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

#### **Summary**

*“Office of National Insurance: Creates a new office within the Treasury Department to monitor the insurance industry, coordinate international insurance issues, and requires a study on ways to modernize insurance regulation and provide Congress with recommendations.” (Dodd Legislation Summary, March 15, 2010)*

## OTC Derivatives

## **H.R. 3795: “The OTC Derivatives Markets Act of 2009”**

### **Summary**

*“All standardized swap transactions between dealers and large market participants would have to be cleared and must be traded on an exchange or electronic platform. Parallels regulatory frameworks for the regulation of swap markets, dealers and major swap participants. Rulemaking authority is held jointly with the CFTC, which has jurisdiction over swaps, and the SEC, which has jurisdiction over security-based swaps. Treasury is given the authority to issue final rules if the CFTC and SEC cannot decide on a joint approach within 180 days.”* (House Financial Services Press Release, October 15, 2009)

### **Congressional Actions**

Passed House Financial Services and Agriculture Committees and OTC Derivatives Market legislation will be offered as an amendment to regulatory reform legislation, H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009.”

## **“Restoring American Financial Stability: creating transparency and accountability for derivatives” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

### **Summary**

*“Common sense safeguards will protect taxpayers against the need for future bailouts and buffer the financial system from excessive risk-taking. Over-the-counter derivatives will be regulated by the SEC and the CFTC, more will be cleared through centralized clearing houses and traded on exchanges, uncleared swaps will be subject to margin and capital requirements, and all trades will be reported so that regulators can monitor risks in this large, complex market.”* (Dodd Legislation Summary, March 15, 2010)

The draft notes that Senators Jack Reed (D-RI) and Judd Gregg (R-NH) are working on a substitute amendment to this title that may be offered at full committee.

## **Regulatory Structure**

### **“Restoring American Financial Stability: improving bank regulation” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

### **Summary**

*“The bill will streamline bank supervision with clear lines of responsibility, reducing arbitrage and improve consistency and accountability. For the first time there will be clear lines of responsibility among bank regulators.”* (Dodd Legislation Summary, March 15, 2010)

FDIC will regulate banks and thrifts of all sizes and bank holding companies of state banks with assets below \$50 million.

OCC will regulate national banks and federal thrifts of all sizes and the holding companies of national banks and federal thrifts with assets below \$50 million. The Office of Thrift Supervision is eliminated, existing thrifts will be grandfathered in, but no new charters will be given to federal thrifts.

Federal Reserve will regulate bank and thrift holding companies with assets of over \$50 billion, where the Fed's capital market experience will enhance its supervision. The Vice Chair of the Federal Reserve will be responsible for supervision and will report semi-annually to Congress.



## Consumer and Investor Protection

### Consumer Financial Protection Agency

#### H.R. 3126: “The Consumer Financial Protection Agency Act of 2009”

##### Summary

*“Transfers consumer protection authority from the Federal Reserve and other banking regulators to the Consumer Financial Protection Agency (CFPA), which would be created in this legislation. The CFPA will closely monitor the marketplace for any new financial products or services that could potentially harm consumers as well as the larger economy. Once the agency identifies these threats or abuses, it will have the power to write rules that can regulate, restrict or ban them. The CFPA will also have the power to establish guidelines so that companies issue clear and fair disclosures to customers on products such as credit cards and mortgages.”* (House Financial Services Press Release, October 22, 2009; Committee on Energy and Commerce Press Release, October 29, 2009)

##### Congressional Actions

Passed House Financial Services Committee on October 22, 2009 (39-29), and passed Energy and Commerce Committee on October 29, 2009 (33-19); has been rolled into H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009.”

#### **“Restoring American Financial Stability: strong consumer financial protection watchdog” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

##### Summary

*“The new independent Consumer Financial Protection Bureau will have the sole job of protecting American consumers from unfair, deceptive and abusive financial products and practices and will ensure people get the clear information they need on loans and other financial products from credit card companies, mortgage brokers, banks and others.”* (Dodd Legislation Summary, March 15, 2010)

The bureau will be housed at the Federal Reserve and will consolidate the consumer protection responsibilities currently handled by the Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, the Federal Reserve, the National Credit Union Administration, and the Federal Trade Commission.

## Credit Cards

## H.R. 3639: “The Expedited CARD Reform for Consumers Act of 2009”

### Summary

*“Originally passed last by Congress and signed by the President in the spring, the Credit CARD Act had three staged implementation dates: August 2009, February 2010 and August 2010. H.R. 3639 moves up the remaining dates by which banks and credit card issues would have to comply and applies to the largest credit card issuers that control over 80% of the credit card market. Bill has been sent to the Senate.”* (Bill Summary Language)

### Congressional Actions

**9/24/2009**

Introduced in House

**10/26/2009**

Reported (Amended) by the Committee on Financial Services

**11/4/2009**

Passed/agreed to in House: On passage Passed by recorded vote: 331 – 92.

**11/5/2009**

Received in the Senate

## Overdraft Protection

[H.R. 3904: “Overdraft Protection Act”](#)

### Summary

This legislation would require *“banks to receive consumer’s permission before charging overdraft fees, and cap the number of overdrafts banks can charge consumers if they opt-in to just six overdraft fees per year. It would amend the Truth in Lending Act to require notification if a transaction at an ATM would trigger an overdraft fee and offer the chance to cancel the transaction before a fee; would require that overdraft fees relate to the ‘actual cost’ of processing the overdraft, as defined by bank regulators; and would stop the ‘re-ordering’ of transactions in a way that maximizes fees to the financial institution.”* (Rep. Carolyn Maloney Press Release, October 22, 2009)

### Congressional Actions

Currently in the House Financial Services Committee Markup awaiting markup.

## Government Crisis Response

### Systemic Risk Regulation

#### House Financial Services and Treasury Draft Legislation: “Financial Stability Improvement Act of 2009”

##### Summary

*“Creates the Financial Services Oversight Council to monitor systemic risks. Subjects firms or activities that pose significant risks to the system to heightened, comprehensive scrutiny by Federal regulators. Provides for the orderly wind-down of failing firms and ends “too big to fail” to ensure that industry and shareholders absorb the risks and costs of failure. Provides new accountability for the Fed when it addresses short-term credit market disruptions in emergency situations. Directs the federal banking regulators and the SEC to jointly write rules to require creditors to retain 10% or more of the credit risk associated with any loans that are transferred or sold, including for the purpose of securitization.”* (House Financial Services Press Release, October 27, 2009)

#### “Restoring American Financial Stability: addressing systemic risks” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)

##### Summary

*“The newly created Financial Stability Oversight Council will focus on identifying, monitoring and addressing systemic risks posed by large, complex financial firms as well as products and activities that spread risk across firms. It will make recommendations to regulators for increasingly stringent rules on companies that grow large and complex enough to pose a threat to the financial stability of the United States.”* (Dodd Legislation Summary, March 15, 2010)

### “Too Big to Fail”

#### H.R. 3996: “Financial Stability Improvement Act of 2009”

##### Summary

Introduced by Chairman Barney Frank and Rep. Carolyn Maloney. This legislation aims to help consumers by bringing overdraft plans under the purview of the Truth in Lending Act, to require financial institutions to get the permission of consumers before enrolling them in any overdraft program. Caps the number of overdraft fees banks can charge at one per month and six per year. Requires notification if a transaction at an ATM would trigger an overdraft fee and offer the chance to cancel the transaction before a fee is

incurred. Requires that overdraft fees related to the actual cost of processing the overdraft, as defined by bank regulators, and stops the practice of re-ordering transactions posted to accounts in a way that maximizes fee income to the bank.

## **Congressional Actions**

Passed House Financial Services Committee on December 2, 2009 (31-27); has been rolled into H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009.”

## **“Restoring American Financial Stability: ending too big to fail bailouts” (Dodd Legislation, Senate Banking, Housing and Urban Affairs)**

### **Summary**

*“Preventing another crisis where American taxpayers are forced to bail out financial firms requires strengthening big companies to better withstand stress, putting a price on excessive growth that matches the risks they pose to the financial system, and creating a way to shutdown big companies that fail without threatening the economy.”* (Dodd Legislation Summary, March 15, 2010)

The legislation would impose heightened capital, leverage, and liquidity requirements as companies grow larger and more complex. In addition, it require regulators to implement regulations for banks, their affiliates and bank holding companies, to prohibit proprietary trading, investment in and sponsorship of hedge funds and private equity funds, and to limit relationships with hedge funds and private equity funds. Further, it would compel companies to submit plans for their rapid and orderly shutdown and create an FDIC mechanism to unwind systemically significant financial companies.

## Investigations

### House Oversight and Government Reform Committee Hearing:

#### “Factors Affecting Efforts to Limit Payments to AIG Counterparties”

January 27, 2010

#### “Bank of America and Merrill Lynch: How Did A Private Deal Turn Into a Federal Bailout? Parts 1-V”

**Part V: December 11, 2009:** Examined events surrounding Bank of America’s acquisition of Merrill Lynch and receipt of billions of dollars of Federal financial assistance.

**Part IV: November 17, 2009:** Featuring testimony from Bank of America employees: Brian Moynihan, President, Consumer and Small Business Banking; Timothy J. Mayopoulous, General Counsel; Charles “Chad” Gifford, Member, Board of Directors; and Thomas May, Member, Board of Directors

**Part III: July 16, 2009**

Featuring testimony from former Treasury Secretary Henry Paulson

**Part II: June 25, 2009**

Featuring testimony from Chairman of the Federal Reserve, Ben Bernanke.

**Part I: June 11, 2009**

Featuring testimony from Bank of America CEO Ken Lewis.

## Regulation

# Securities and Exchange Commission

## Dark Pools

*October 21, 2009 (Comment Period)*

### Summary

*The SEC's proposals would require that information about an investor's interest in buying or selling a stock be made available to the public instead of just a select group operating within a dark pool. The proposals would address three specific concerns related to dark pools:*

- 1) The first proposal would require actionable Indications of Interest (IOIs) – which are similar to a typical buy or sell quote – to be treated like other quotes and subject to the same disclosure rules.*
- 2) The second proposal would lower the trading volume threshold applicable to alternative trading systems (ATS) for displaying best-priced orders. Currently, if an ATS displays orders to more than one person, it must display its best-priced orders to the public when its trading volume for a stock is 5 percent or more. Today's proposal would lower that percentage to 0.25 percent of ATS, including dark pools that use actionable IOIs.*
- 3) The third proposal would create the same level of post-trade transparency for dark pools (and other ATS) as for registered exchanges. Specifically, the proposal would amend existing rules to require real-time disclosure of the identity of the dark pool that executed the trade.*

## Money Market Funds

*September 23, 2009*

### Summary

*The SEC is proposing amendments to certain rules that govern money market funds under the Investment Company Act (1940). The amendments would have the effect of:*

- 1) Tightening the risk-limiting conditions of rule 2a-7 by (among other things): requiring funds to maintain portion of their portfolios in instruments that can be readily converted to cash.*
- 2) Reducing weighted average maturity of portfolio holdings; limiting funds to investing in the highest quality portfolio securities; and requiring money market funds to report their portfolio holdings monthly to the Commission.*

- 3) *Permitting a money market fund that has “broken the buck” (i.e. re-priced its securities below \$1.00 per share) to suspend redemptions to allow for orderly liquidation of fund assets.*

*The proposed amendments are designed to make money market funds “more resilient” to short-term market risks and to provide greater protections for investors in a money market fund that is unable to maintain a stable net asset value per share.*

*\*The SEC was also seeking comment on certain other potential changes to its regulation of money market funds, such as whether or not these funds should effect shareholder transactions at the market-based net asset value (like other types of mutual funds).*

## **CRA Oversight**

*SEC - September 17, 2009 (\*60-day comment period ended December 14, 2009 – SEC is in the process of reviewing comments).*

### **Summary**

*In order to create a stronger, more robust regulatory framework for Credit Rating Agencies (CRAs), the SEC voted to take the following actions:*

- 1) *Adopt rules to provide greater information concerning ratings histories and to enable competing credit rating agencies to offer unsolicited ratings for structured finance products by granting them access to the necessary underlying data for structured products.*
- 2) *Propose amendments that would seek to strengthen compliance programs through requiring annual compliance reports and enhance disclosure of potential sources of revenue-related conflicts.*
- 3) *Adopt amendments to the Commission's rules and forms to remove certain references to credit ratings by nationally recognized statistical rating organizations.*
- 4) *Propose new rules that would require disclosure of information including what a credit rating covers and any material limitations on the scope of the rating and whether any "preliminary ratings" were obtained from other rating agencies - in other words, whether there was "ratings shopping."*
- 5) *Seek public comment on whether to amend Commission rules to subject NRSROs to liability when a rating is used in connection with a registered offering by eliminating a current provision that exempts NRSROs from being treated as experts when their ratings are used that way.*

## **“Unfiltered” Access**

*January 13, 2010*

## Summary

*The Securities and Exchange Commission voted unanimously to propose a new rule that would effectively prohibit broker-dealers from providing customers with "unfiltered" or "naked" access to an exchange or alternative trading system (ATS).*

*The SEC's proposed rule would require brokers with market access, including those who sponsor customers' access to an exchange, to put in place risk management controls and supervisory procedures. Among other things, the procedures would help prevent erroneous orders, ensure compliance with regulatory requirements, and enforce pre-set credit or capital thresholds.*



## “Alternative Uptick Rule”

*February 24, 2010*

### **Summary**

*On Wednesday, February 24, the SEC voted to adopt a new rule to place certain restrictions on short selling when a stock is experiencing significant downward price pressure. Otherwise known as the “alternative uptick rule,” the design is to restrict short selling from further driving down the price of a stock that has triggered a circuit breaker by dropping more than 10% in a day. The Commission voted 3-2 in favor of the rule.*

*The rule includes the following features:*

- *Short Sale-Related Circuit Breaker: The circuit breaker would be triggered for a security any day in which the price declines by 10 percent or more from the prior day's closing price.*
- *Duration of Price Test Restriction: Once the circuit breaker has been triggered, the alternative uptick rule would apply to short sale orders in that security for the remainder of the day as well as the following day.*
- *Securities Covered by Price Test Restriction: The rule generally applies to all equity securities that are listed on a national securities exchange, whether traded on an exchange or in the over-the-counter market.*
- *Implementation: The rule requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the execution or display of a prohibited short sale.*

## **Federal Reserve**

### **CRA Oversight**

*December 4, 2009*

Adoption of final rule establishing a process to determine the eligibility of Credit Rating Agencies for the Term Asset-Backed Securities Loan Facility (TALF).

## Summary

*The Federal Reserve Board on Friday, December 4 announced the adoption of a final rule that would establish a process by which the Federal Reserve Bank of New York may determine the eligibility of credit rating agencies for the Term Asset-Backed Securities Loan Facility (TALF).*

*The rule establishes criteria for determining the eligibility of agencies to issue credit ratings on asset-backed securities (ABS), other than those backed by commercial real estate, to be accepted as collateral for the TALF. The criteria include registration as a nationally recognized statistical rating organization (NRSRO) with the Securities and Exchange Commission and experience issuing credit ratings specific to the types of assets accepted as collateral in the TALF. The final rule is substantively the same as the proposed rule announced on October 5, 2009.*

# Department of Treasury

## Financial Fraud Enforcement Task Force

*November 17, 2009*

### Summary

*The Obama Administration has established by Executive Order an interagency Financial Fraud Enforcement Task Force to strengthen efforts to combat financial crime. The Department of Justice will lead the task force, and the Department of Treasury, HUD, and the SEC will serve on the steering committee. The task force's leadership, along with representatives from a broad range of federal agencies, regulatory authorities and inspectors general, will work with state and local partners to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, address discrimination in the lending and financial markets and recover proceeds for victims.*

## Special Master for TARP Executive Compensation Rules on Compensation Structures

*December 11, 2009*

### Summary

*The Special Master for TARP Executive Compensation, Kenneth R. Feinberg, released his second round of rulings on executive compensation packages for firms that received exceptional Troubled Asset Relief Program (TARP) assistance. These determinations cover compensation structures for the 26 – 100 most highly compensated employees plus executive officers who were not subject to the Special Master's October 22, 2009, decisions. Unlike the October rulings, which addressed specific amounts payable to "Top 25" executives, Treasury regulations require the Special Master to address compensation structures for executives in this second round of decisions.*

*The determinations cover four companies: AIG, Citigroup, GM, and GMAC. Chrysler and Chrysler Financial were exempt from the Special Master's review during this round because total pay for their executives does not exceed the \$500,000 "safe harbor" limitation in Treasury's compensation regulations. Because Bank of America repaid its TARP obligations on December 9, 2009, its 26 – 100 most highly compensated employees plus additional executive officers are not subject to the Special Master's review.*

*The following are the basic features of this second round of rulings:*

- *Reform compensation to protect long-term value creation and financial stability*

- *Restrict the use of short-term cash compensation*
- *Forbid incentive compensation without real achievement of objective goals*
- *Restructure pay to focus executives on the long term*
- *End pay practices that are not aligned with shareholder and taxpayer interests*

## **Financial Crisis Responsibility Fee**

*January 14, 2010*

### **Summary**

*The President announced his intention to propose a Financial Crisis Responsibility Fee that would require the largest and most highly levered Wall Street firms to pay back taxpayers for the extraordinary assistance provided so that the TARP program does not add to the deficit. The fee the President is proposing would:*

- *Require the Financial Sector to Pay Back For the Extraordinary Benefits Received*
- *Responsibility Fee Would Remain in Place for 10 Years or Longer if Necessary to Fully Pay Back TARP*
- *Raise Up to \$117 Billion to Repay Projected Cost of TARP*
- *Apply to the Largest and Most Highly Levered Firms*

*\*The fee would be applied to only firms with more than \$50 billion in consolidated assets. It would cover banks and thrifts, insurance and other companies that own insured depository institutions, and broker-dealers.*

# Basel Committee on Banking Supervision

## Proposals to Strengthen Resilience of Banking Sector

December 17, 2009

### Summary

*The Basel Committee on Banking Supervision (the Committee) released for comment new proposals that aim to strengthen the resiliency of the banking sector through new capital and liquidity standards. Following the Basel II enhancements released in July 2009, these proposals represent part of the Committee's ongoing effort to apply lessons learned from recent market events to enhance regulation, supervision, and risk management of global banks. Proposed changes include introduction of new standards for liquidity risk management, the addition of a leverage ratio to the Basel II framework, improvements to the quality and consistency of capital, and strengthening of capital requirements for counterparty credit risk.*

*\*The Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, which are members of the Committee, encourage interested persons to review and comment on the proposals.*