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Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting on Tuesday June 15, 2010

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**Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting of
Tuesday June 15, 2010
12:00-2:00pm EST
Conference Dial-In Number: 866-692-3582
Participant Access Code: 3387529**

<u>Agenda Item</u>	<u>Presentation</u>
1) Call to Order	Chairman Angelides
2) Roll Call	Chairman Angelides
3) Approval of Minutes of Telephonic Business Meeting of May 18, 2010 (Attached)	Chairman Angelides
4) Chairman's and Vice Chairman's Report	Chairman Angelides and Vice-Chairman Thomas
5) Executive Director's Report	Wendy Edelberg, Executive Director
6) Hearing 5a – Credit Ratings - Debriefing	Wendy Edelberg
7) Commissioner Meeting Schedule (Attached)	Wendy Edelberg
8) Process for Commission Report (Attached)	Chairman Angelides, Vice-Chairman Thomas, and Wendy Edelberg
9) Comments and Questions from Commissioners	All Commissioners
10) Report to Commission re: Legislative And Regulatory Update (Attached)	Wendy Edelberg/ Scott Ganz, Special Assistant

11) Other Items of Business

All Commissioners

12) Adjournment

Chairman Angelides



Financial Crisis Inquiry Commission
Agenda Item 3 for Telephonic Business Meeting of June 15, 2010
Minutes of Telephonic Business Meeting of
May 18, 2010

Agenda Item 1: Call to Order

Chairman Angelides called the telephonic business meeting to order at 12:04pm EST.

Agenda Item 2: Roll Call

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

Also participating in the meeting were: Wendy Edelberg, Executive Director; Beneva Schulte, Chief Deputy 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, April 20, 2010

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

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

APPROVED: 7-0 (Commissioners Thompson and Holtz-Eakin and Vice Chairman Thomas absent).

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

Chairman Angelides reviewed the schedule for the Commission's upcoming hearing in New York on June 2nd and the following retreat in Washington DC on June 3rd and 4th. He next provided a brief update on the Commission's budget and request for an additional appropriation, citing the earnest work of Beneva Schulte. Chairman Angelides briefly touched upon an upcoming informal meeting with delegates of the of the European Parliament CRISIS Committee, wherein all Commissioners are invited to attend.

Agenda Item 5: Executive Director's Report

Executive Director Wendy Edelberg noted organizational changes among staff wherein Chris Seifer will lead a team focused on case study investigations and follow-up from hearing matters, and Brad Bondi will lead a second team focused on cross-cutting horizontal issues with the aid of Tom Krebs. Both teams will work closely with the research unit.

Agenda Item 6: Hearing 4 – Debriefing

Wendy Edelberg will schedule a follow-up meeting with the Shadow Banking working group to finalize takeaways. Public comments on the shadow banking preliminary staff report are being received and compiled and will be posted online in the Commissioner workspace for review.

Agenda Item 7: Process for Referral to the Department of Justice

General Counsel Gary Cohen introduced his memo (attached) outlining a process for referral of criminal matters uncovered by the Commission to the Department of Justice. Mr. Cohen answered questions and concerns, and objections were not raised to the proposed process.

Agenda Item 8: Discussion and Update on Work Plan

This item was placed on the agenda prior to redoing the Commission schedule to make available the Commission retreat; much of this topic will be covered in person at the retreat (materials attached). A broad discussion ensued wherein the work plan was discussed and the Commission debated issues and identified areas that cut across the various research and investigation plans as well as areas of agreement and disagreement. Staff received comments and feedback from the Commission on areas to be presented and covered at the retreat, including hypotheses formation and finalizing the definition(s) of a financial crisis and what would constitute a cause. The Commission agreed to have working groups provide the Commission updates and presentations on their work to date and progress.

Agenda Item 9 - Commission Report Outline and Process

This agenda item was largely covered and discussed during Agenda Item 8 (materials attached). Staff agreed to provide the Commission a process for Commissioner input into the drafting of the final report, as well as a skeleton framework of the report.

Agenda Item 10: Comments and Questions from Commissioners

No comments or questions were brought up by the Commissioners.

Agenda Item 11: Report to Commission re: Legislative And Regulatory Update

Mr. Ganz presented the Commission with an update on legislative and regulatory matters. He noted that during the previous night, Senator Reed filed a closure motion wherein debate could conclude as soon as 10am on Wednesday on the financial regulation legislative package.

Agenda Item 12: Other Items of Business

No other items of business were brought up by the Commissioners.

Agenda Item 13: Adjournment

Chairman Angelides requested a motion to adjourn the meeting.

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

APPROVED: 8-0 (Commissioner Holtz-Eakin and Vice Chairman Thomas absent)



Financial Crisis Inquiry Commission
Agenda Item 3 for Telephonic Business Meeting of June 15, 2010
Minutes of Telephonic Business Meeting of
May 18, 2010

ATTACHMENT
Approved Minutes of Telephonic Business Meeting of
April 20, 2010

Agenda Item 1: Call to Order

Chairman Angelides called the telephonic business meeting to order at 1:06pm 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, Byron Georgiou, Bob Graham, Keith Hennessey, Doug Holtz-Eakin, Heather Murren, John W. Thompson and Peter Wallison.

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, March 16, 2010

Chairman Angelides introduced the minutes from the FCIC meeting of March 16, 2010.

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

APPROVED: 10-0

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

Chairman Angelides spoke on the topic of wrapping up items from Hearing 2/3, specifically that staff would be meeting with the working group to create a list of key takeaways and to identify critical lines of inquiry and research that need additional attention. Staff would also create a grid

of all items or questions to be posed in writing that were raised by Commissioners at the last hearing. Commissioner follow-up questions to ask of witnesses should be routed to Beneva.

Chairman Angelides also noted that staff would distribute a rough outline of the report to the Commission in the very near future, per the Omni Plan.

Agenda Item 5: Hearing 2/3 – Debriefing

As previously noted, staff will create a grid of follow-up questions and items that need further work as part of the research and investigatory efforts; the working group for this hearing will hone in on the important items that need to be pursued.

Vice Chairman Thomas initiated a broader discussion on the merits of holding hearings citing, among other items, limitations of staff resources and that the FCIC would be in competition with Congress, and questioned whether we should continue with our hearings and current investigatory structure. Broad discussion ensued on the merits of holding hearings and the current status of the work plan. Hearing materials and draft questions would cover both the macro and micro levels of each topic and each hearing topic would include an explanation on how it was connected to the financial crisis.

Staff was directed to review the current Omni/business plan with an eye on how it can be improved and to also analyze their time management and staff resources. Staff will return to the Commission with an update. Staff was also directed to renew efforts to find a time wherein the Commissioners would convene to discuss hypotheses and the work plan.

Agenda Item 6: Executive Director's Report

Mr. Greene informed the Commission that staff would be seeking four unpaid summer interns. He asked that Commissioners forward resumes of interested applicants by Wednesday of next week.

Agenda Item 7: Comments and Questions from Commissioners

No comments or questions were brought up by the Commissioners.

Agenda Item 8: Report to Commission re: Legislative Special And Regulatory Update

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

Agenda Item 9: Other Items of Business

a) RESOLUTION: To Establish A Process For Issuance, Execution and Enforcement of Subpoenas

Chairman Angelides and Mr. Cohen introduced the resolution to establish a process for issuance, execution, and enforcement of subpoenas.

MOTION: Born moved and Murren seconded the motion to adopt the resolution (attached) with a ROLL CALL VOTE.

APPROVED: 10-0 (ROLL CALL VOTE: *Born: Aye; Georgiou: Aye; Graham: Aye; Hennessey: Aye; Holtz-Eakin: Aye; Murren: Aye; Thompson: Aye; Wallison: Aye; Thomas: Aye; Angelides: Aye*)

b) RESOLUTION: To Establish A Process For Action By the Commission Without a Meeting

Chairman Angelides and Mr. Cohen introduced the resolution to establish a process for action by the Commission without a meeting.

MOTION: Georgiou moved and Born seconded the motion to adopt the resolution (attached).

APPROVED: 10-0

Agenda Item 10: Adjournment

Chairman Angelides requested a motion to adjourn the meeting.

MOTION: Murren moved and Wallison seconded a motion to adjourn the meeting.

APPROVED: 10-0



Financial Crisis Inquiry Commission
Agenda Item 3 for Telephonic Business Meeting of June 15, 2010
Minutes of Telephonic Business Meeting of
May 18, 2010

ATTACHMENT
Process for Referral to the Department of Justice

Memo to: Commissioners of the Financial Crisis Inquiry Commission

cc: Wendy Edelberg

From: Gary J. Cohen
General Counsel

Re: Criminal Referral Process/Confidential Memorandum

Date: May 15, 2010

On May 20, 2009, the Fraud Enforcement and Recovery Act of 2009 created the Financial Crisis Inquiry Commission. The Commission was established to "examine the causes, domestic and global, of the current financial and economic crisis in the United States." The FCIC is charged with conducting a comprehensive examination of 22 specific and substantive areas of inquiry related to the financial crisis.

Our Commission is authorized to hold hearings; issue subpoenas either for witness testimony or documents; and refer to the Attorney General or the appropriate state Attorney General any person who may have violated U.S. law in relation to the financial crisis. Specifically, Section 5 of the Act states:

(c) Functions of the Commission- The functions of the Commission are--

(4) to refer to the Attorney General of the United States and any appropriate State attorney general any person that the Commission finds may have violated the laws of the United States in relation to such crisis...

The referral function is included within the other Commission functions, including issuing a report by December 15, 2010. Therefore, it is my conclusion that the referral function may be

exercised by the entire Commission, acting by a simple majority vote at a duly constituted meeting of the Commissioners. In addition, Section 5(d)(8) of the Act provides:

Powers of subcommittees, members, and agents.--Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

Thus the referral function could be delegated to the Chairman and/or the Vice Chairman, or a subcommittee, member, or agent of the Commission, if so authorized by the full Commission.

The Act does not provide a mechanism how the referral is to be accomplished.

Upon consultation with the Department of Justice and other counsel, it is my recommendation that the Commission follow the below process for referrals:

1. If any Commissioner or Commission staff member believes that they have credible evidence of a violation of the laws of the United States in relation to the financial crisis, they should discuss the same with the Commission's General Counsel.
2. If after the discussion, the General Counsel, in consultation with the Executive Director, believes that the matter is worthy of follow-up, the General Counsel will prepare, or have prepared by the appropriate staff member, a confidential report outlining the nature of the evidence, and the potential violations of law involved. The report shall include documentary and testimonial evidence, the manner in which the evidence was collected, the person preparing the report's views as to the credibility and strength of the evidence, the laws which may have been violated and such other material as may be appropriate depending upon the circumstances.
3. The person preparing the report should take advantage of the law enforcement expertise within the staff of the Commission.
4. After the report has been completed, unless there are exigent circumstances which require an emergency meeting of the Commissioners, it will be disseminated on a confidential basis to the Commissioners prior to the next regularly scheduled Commission meeting.
5. At the Commission meeting the report will be presented by the General Counsel, along with member of senior staff most closely involved, for consideration by the Commission.
6. If the Commission thereafter determines that a referral is warranted, General Counsel will prepare a referral submission to the Attorney General or, if it appears that state laws may have been violated, the appropriate state attorneys general. The submission will follow the format of the report prepared for the Commissioners with such modifications as to the Commissioners so request.

Please note that the Commission is not acting as a grand jury or the equivalent in complying with its referral obligation, and that the quantum of proof for a referral should be a reasonable belief that a person "may have violated" applicable laws, rather than a belief that rises to the level needed for an indictment, or the "beyond a reasonable doubt" required for a conviction.

Obviously the determination of whether to further investigate, prosecute, and convict, will be made by others.



Financial Crisis Inquiry Commission
Agenda Item 3 for Telephonic Business Meeting of June 15, 2010
Minutes of Telephonic Business Meeting of
May 18, 2010

ATTACHMENT
Discussion and Update on Work Plan

For Discussion Purposes Only

Below are potential ways to facilitate commissioners' ability to discuss, among other things, hypotheses, cross cutting issues, findings to date, areas of agreement and disagreement, and areas needing additional investigation as they relate to the causes of the financial crisis.

- I. Presentations by working group members to the full commission at regular business meetings**
 - i. A designated member or members of each working group would give brief reports to the full commission on working group progress and activities leading up to the working group's hearing date.
 - ii. After each hearing, working group members would meet to identify remaining areas of focus, key takeaways, and findings. The working group would present and discuss with the full commission these findings, including areas of agreement and disagreement. (The macroeconomics working group will determine its date to present findings.)
 - iii. Post-hearing, a designated member or members of each working group will give reports to the commission on high-priority follow-up and wrap-up work being conducted.
 - iv. To facilitate these presentations and discussions as well as the overall work of the commission, staff will be preparing the following materials with respect to each working group: preliminary staff report(s), investigative reports, hearing materials, final transcripts, answers to follow-up questions posed to hearing witnesses, and reports on follow-up and wrap-up work completed by the staff.
- II. Identification of high-priority horizontal/cross-cutting issues that span the various research and investigation plans.** With guidance from commissioners, commission staff would investigate the role of key horizontal issues at institutions and in markets. Staff would present its analysis to the commission at the business meetings or other venues. Possible candidates for these horizontal issues include:
 - i. Regulation (regulatory structures, regulatory arbitrage, effectiveness of oversight...)
 - ii. Risk management
 - iii. Corporate governance
 - iv. Compensation
 - v. Accounting and off-balance sheet entities
 - vi. Transparency, disclosure, and investor protection
 - vii. Financial sector influence
 - viii. Tax treatment of financial products and investments
- III. Two commission retreats before Labor Day.** Potential items for discussion at the first retreat include

- i. Define financial crisis
- ii. Discuss hypotheses
- iii. Raise and discuss cross cutting issues
- iv. Discussions identifying areas of agreement and disagreement among commissioners
- v. Identify high-priority areas requiring further investigation, research, and analysis
- vi. Discuss outline and writing of the report
- vii. Other items of importance to commissioners

Hopefully, these processes will better allow commissioners to absorb, distill, and discuss the information we uncover concurrently with the progress of our research and investigation efforts.



Financial Crisis Inquiry Commission
Agenda Item 7 for Telephonic Business Meeting of June 15, 2010
DRAFT Future Meeting Schedule
(as of 6/14/2010)

****Confidential – Not for Public Distribution****

Tuesday, June 15, 2010

Telephonic Business Meeting
Location: Teleconference/FCIC Office
Time: 12:00-2:00pm EDT

Tuesday/Wednesday/Thursday, June 29-July 1, 2010

Briefing Session and Hearing (Derivatives)
Location: Dirksen Senate Office Building, Room 538, Washington D.C.
Note: Briefing for hearing to take place on Tuesday, June 29th 5:00-8:00pm (approx)

Tuesday, July 13, 2010

Telephonic Business Meeting
Location: Teleconference/FCIC Office
Time: TBA

Wednesday/Thursday, July 28-29

Commission Meeting on the Report
Location: Washington DC
Time: TBA

Tuesday, August 17, 2010

Telephonic Business Meeting
Location: Teleconference/FCIC Office
Time: TBA

Tuesday/Wednesday, August 31-September 1, 2010

Briefing Session and Hearing (Too Big Too Fail)
Location: TBA
Time: TBA
Note: Briefing for hearing to take place on Tuesday, August 31st 5:00-8:00pm (approx)

Thursday/Friday, September 2-3, 2010

Commission Meeting on the Report
Location: Washington DC
Time: TBA

Tuesday/Wednesday, September 28-29, 2010

Commission Meeting on the Report
Location: Washington DC
Time: TBA

Tuesday/Wednesday/Thursday/Friday, October 26-November 12, 2010

Commission Meetings to finalize the Report
Location: Washington DC
Time: TBA

Note: The Commission will meet Tuesday thru Friday during these three weeks: October 26th-29th; November 2nd-5th; and November 9th-12th.

Monday, November 15, 2010

Meeting of the Commission – Approval of the Report
Location: Washington DC
Time: TBA

Wednesday, December 15, 2010

Report released

Note: After the release of the report, there will be Commissioner participation in the roll out of the report between December 15, 2010-Friday, February 11, 2011



Financial Crisis Inquiry Commission
Agenda Item 8 for Telephonic Business Meeting of June 15, 2010
Draft Outline and Process for Review and Approval of the Report

Outline for
Final Report of the
Financial Crisis Inquiry Commission
June 14, 2010
For Discussion Purposes Only

What follows is a summary of the four main sections of the report. Preceding these main sections would be an introductory section discussing the main themes of the report. In addition, a concluding section would come at the end of the report.

Section I. _____

This section is meant to establish the tableau for the financial crisis. Among other things, this section will examine America's financial and economic conditions in the decades leading up to the early 2000s. In these decades, household debt rose dramatically as access to credit increased and costs of borrowing fell. This section will trace the changing structure of the US financial system, including the growth of markets, such as "shadow banking markets" and securitization; financial products, such as over-the-counter derivatives; and the increased use of very short-term funding. This section will explore the degree to which market participants underpriced risks and regulators and policy makers underestimated risks. This section will also discuss ways in which financial institutions took on increasingly risky and nontransparent positions, often with slim capital. This discussion will address the extent to which failures in risk management and corporate governance, including compensation incentives, may have played a role. This section would also include a discussion of the changes in the regulation of the financial system and the broad forces behind those changes, including the influence that the financial sector may have had over financial policy, regulation, and oversight. Many of these trends and changes in financial markets may have been encouraged by the view that the US was experiencing a "great moderation."

Section II. _____

This section will explore the credit boom as well as the historic decline in home prices. As liquidity rose globally, and monetary policy remained accommodative, long- and short-term interest rates were remarkably low. Overall, market participants began aggressively to chase returns and risk premiums fell. Asset bubbles appeared in housing, commercial real estate, and other assets. Among other things, this section will discuss how the housing bubble, with historic

records in home price appreciation, may have been fueled by factors such as the domestic and international investors who desired AAA assets with higher yields, US homeownership policy, aggressive mortgage lending (including the increased offering of exotic and inappropriate mortgages), and securitization. This section will also explore the potential role played by important participants in this bubble, including individuals who borrowed beyond their ability to repay, speculators, mortgage originators, and financial institutions, including the Government-Sponsored Enterprises. This section will examine warning signs that may have been unappreciated, overlooked, or ignored by those in a position to see them and act on them, including regulators, corporate management, and the credit rating agencies. This section will discuss asset bubbles in other countries as well and in what ways the US housing bubble, in particular, was unique.

After historic home price appreciation, home prices fell at historic rates. Losses on mortgage-related assets brought down mortgage originators and major financial institutions including the GSEs. The bursting of the housing bubble and the drying up of mortgage lending generated a devastating foreclosure crisis. The section will trace the extraordinary losses faced across the system (in the US and abroad) resulting from the collapse of the housing bubble.

Section III. _____

This section will discuss the collapse or near-collapse of major financial firms, the freezing of credit, and the drying up of liquidity—exploring how a not-unprecedented collapse of a bubble helped to trigger a crisis in the financial system. Among other things, the section will explore how the crisis spread, including the downward spiral in asset values; what markets (such as securitization markets), products (such as derivatives), and firms (both shadow banking and traditional banking firms) played a key role in the spreading of the crisis; the role played by management at these firms in the crisis; the extent to which contagion put so many markets in crisis; and the reasons and degree to which financial markets, firms, and regulators failed to respond to warning signs, prepare for this decline in value, and act in advance of the crisis. This section will also examine the role of the failure or near-failure of firms considered too big to fail by policy makers, market participants, and the firms themselves. Finally, this section will explore how other countries fared during the depths of this crisis.

Section IV. _____

This section will describe how the foreclosure crisis and ensuing financial crisis led to the economic crisis, a deep recession with ongoing economic pain, exploring how the financial system and the real economy are deeply interrelated. This section will also stress the international interconnectedness of the financial system and the world economy.

Process for Review and Approval of the Report by the Commission
June 14, 2010
For discussion purposes only

Below is an outline of a suggested process for the preparation and consideration of the report by the Commission. The report preparation and consideration will move in parallel with the Commission's consideration of findings and conclusions to be incorporated into the report. In that vein, Commission meetings will be scheduled as needed in addition to the regularly scheduled business meetings and the meetings indicated below. The Executive Director, under the direction of the Chair and Vice Chair, will be responsible for preparing the report for consideration by the Commission.

- **Review of Initial Drafts of Sections of the Report** – The staff will start to draft sections of the report that can be written now, recognizing that they will contain language/preliminary conclusions that will be changed or added as the research and investigation continue and that findings and conclusions will be added as the Commission's deliberative process proceeds.
 - Section 1
 - 1st draft to Commissioners **Due: July 9**
 - Written comments from Commissioners **Due: July 16**
 - 2nd draft to Commissioners with track changes, identification of comments made and disposition of comments (including listing of comments still sought but not yet incorporated) **Due: July 24**
 - Commission meeting to discuss first section of the report, outline for the remaining sections, and other matters related to the report **July 28 – July 29**
 - Section 2
 - 1st draft to Commissioners **Due: July 23**
 - Written comments by Commissioners **Due: July 30**
 - 2nd draft to Commissioners with track changes, identification of comments made and disposition of comments (including listing of outstanding comments not yet incorporated) **Due: August 13**
 - Section 3
 - 1st draft to Commissioners **Due: August 6**
 - Written comments from Commissioners **Due: August 13**
 - 2nd draft to Commissioners with track changes, identification of comments made and disposition of comments (including listing of outstanding comments not yet incorporated) **Due: August 23**

- Section 4
 - 1st draft to Commissioners **Due: August 13**
 - Written comments from Commissioners **Due: August 20**
 - 2nd draft to Commissioners with track changes, identification of comments made and disposition of comments (including listing of outstanding comments not yet incorporated) **Due: August 27**
- Commission meeting to discuss second, third, and fourth sections of the report and other matters related to the report **September 2 – 3**
- **Review of Full Report** - Based on the drafts produced above, additional information received during the research and investigation process, and deliberations to date on findings and conclusions, staff will produce a 1st draft of full report for Commission review and comment.
 - 1st draft of full report to Commissioners with tracked changes against final drafts of sections including comments from commissioners that are not incorporated **Due: September 17**
 - Written comments by Commissioners on 1st draft **Due: September 24**
 - Commission meeting to discuss report **September 28 – 29**
 - 2nd draft to Commissioners with track changes, identification of comments made and disposition of comments (including listing of comments not incorporated) **Due: October 15**
- **Meetings of Commission to consider and approve report** **October 26 thru November 12**
- **Approval of Commission Report** **Due: November 15**

Process Questions

1. Who controls the pen?

The executive director, under the direction of the chair and the vice chair.

2. When do Commissioners see drafts?

Per the above schedule. The chair and the vice chair will review drafts prior to distribution to commissioners. These drafts will go to the remaining eight Commissioners at the same time.

3. How do Commissioners give comments on drafts?

Commissioners send in comments electronically using a process similar to “track changes” in a word processing program. This program can keep track of all ten Commissioners’ comments in the same merged document after all comments are submitted to the staff.

4. How are comments incorporated/not incorporated?

In the “2nd draft” of each section will respond to comments made by Commissioners. This draft will identify changes, identification of comments made and disposition of comments (including listing of outstanding comments not yet incorporated).

The draft sections as well as all comments not yet incorporated into the draft that Commissioners still wish to discuss will be the subject of Commissioner meetings on July 28 - 29 and September 2 - 3. Results of these discussions will be incorporated into the 1st full draft.

Commissioners will submit electronic comments on the 1st full report draft in “track changes” as above. These comments will be discussed at the Commission meeting on September 28 – 29. Results of these discussions will be incorporated into the 2nd full draft.

5. How are disagreements resolved?

[Commissioners will discuss and propose ideas for dispute resolution.]

6. What is the process for the approval of the final report?

The final report will be voted on by the Commission.



Financial Crisis Inquiry Commission
Agenda Item 10 for Telephonic Business Meeting of June 15, 2010
SUMMARY OF MAJOR LEGISLATION AND REGULATIONS AS OF
JUNE 14, 2010

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In the News

House and Senate

On Thursday, June 10, select members of the House and Senate met for the first time in the conference committee to resolve differences between the House and Senate versions of the financial reform bill. The conference committee agreed to work primarily from the Senate bill. The committee will meet several times over the next two weeks and hopes to complete action on its report by June 24. This timetable would give the House and Senate one week to pass the final bill before the July 4 recess, which the majority has targeted as their deadline

The House Democrats in the conference are: Barney Frank (Mass.), Paul Kanjorski (Pa.), Maxine Waters (Calif.), Carolyn Maloney (N.Y.), Luis Gutierrez (Ill.), Mel Watt (N.C.), Gregory Meeks (N.Y.), Dennis Moore (Kan.), May Jo Kilroy (Ohio), Gary Peters (Mich.), Collin Peterson (Minn.), Leonard Boswell (Iowa), Henry Waxman (Calif.), Bobby Rush (Ill.), John Conyers (Mich.), Howard Berman (Calif.), Edolphus Towns (N.Y.), Elijah Cummings (Md.), Nydia Velazquez (N.Y.) and Heath Shuler (N.C.).

The House Republicans in the conference are: Spencer Bachus (Ala.), Ed Royce (Calif.), Judy Biggert (Ill.), Shelley Moore Capito (W.Va.), Jeb Hensarling (Texas), Scott Garrett (N.J.), Frank Lucas (Okla.), Joe Barton (Texas), Lamar Smith (Texas), Darell Issa (Calif.), and Sam Graves (Mo.).

The Senate conferees are: Chris Dodd (D-Conn.), Tim Johnson (D-S.D.), Jack Reed (D-R.I.), Charles Schumer (D-N.Y.), Richard Shelby (R-Ala.), Bob Corker (R-Tenn.), Mike Crapo (R-Idaho) and Judd Gregg (R-N.H.) Blanche Lincoln (D-Ark.) Patrick Leahy (D-Vt.), Tom Harkin (D-Iowa) and Saxby Chambliss (R-Ga.).

A more detailed comparison of the House and Senate financial reform bills is available [here](#).
(Updated 6/14/10)

Regulatory Agencies

On June 7, the **FTC** announced a \$108 million settlement with two Countrywide mortgage servicing companies. The complaint argued that Countrywide's loan-servicing operation deceived homeowners that were behind in their mortgages payments into paying inflated fees for services intended to further lender's interests, such as property inspections and lawn mowing.

(Updated 6/14)

Summary Table

Issue	House	Senate
<u>Financial Firm Regulation</u>		
<i>Executive Compensation and Corporate Governance</i> (p. 9)	H.R. 4173: “Wall Street Reform and Consumer Protection Act of 2009” (Passed the House, December 11, 2009, 223-202) Hearing: “Compensation in the Financial Industry.” (Financial Services Committee, January 22, 2010)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>Municipal Securities</i> (p. 9)		S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>Private Investment Funds/Hedge Funds</i> (p. 10)	H.R. 3818: “The Private Fund Investment Advisors Registration Act of 2009” (Kanjorski, Passed House 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 Hearing: “The Stock Market Plunge: What Happened and What Is Next?” (HFSC Subcommittee on Capital Markets, Insurance and GSEs, May 11, 2010)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>SEC Reform</i> (p. 10)	H.R. 3817: “The Investor Protection Act” (Kanjorski, Passed House 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” (Passed the House December 11, 2009, 223-202)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>Securitization</i> (p. 11)		S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<u>Financial Market Regulation</u>		

<p><i>Credit Rating Agencies</i> (p. 12)</p>	<p>H.R. 3890: “Accountability and Transparency in Rating Agencies Act” (Kanjorski, Passed House Financial Services Committee (49-14), October 28, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009</p>	<p>S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)</p>
<p><i>Insurers</i> (p. 13)</p>	<p>H.R. 2609: “Federal Insurance Office Act” (Kanjorski, Passed House 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</p>	<p>S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)</p>
<p><i>OTC Derivatives</i> (p. 13)</p>	<p>H.R. 3795: “The OTC Derivatives Markets Act of 2009” (Frank, Passed House Financial Services Committee (43-26), October 15, 2009; Passed Agriculture Committee (voice vote), October 21, 2009); rolled into regulatory reform legislation, H.R. 4173: “The Wall Street Reform and Consumer Protection Act of 2009” (Passed the House, December 11, 2009, 223-202)</p>	<p>S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010) “Wall Street Transparency and Accountability Act of 2010” (Lincoln, Introduced to Senate Agriculture, Nutrition and Forestry, April 16, 2010)</p>
<p><i>Regulatory Structure</i> (p. 14)</p>		<p>S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)</p>
<p><u>Consumer and Investor Protection</u></p>		
<p><i>Consumer Financial Protection Agency</i> (p. 16)</p>	<p>H.R. 3126: “The Consumer Financial Protection Agency Act of 2009” (Frank, Passed House 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,” (Passed the House on December 11, 2009, 223-202)</p>	<p>S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)</p>
<p><u>Government Crisis Response</u></p>		

<i>Systemic Risk Regulation</i> (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	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>“Too Big to Fail”</i> (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” (Passed the House on December 11, 2009, 223-202)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<u>Investigation</u>		
<i>AIG</i> (p. 19)	Hearing: “Factors Affecting Efforts to Limit Payments to AIG Counterparties.” (House Oversight and Government Reform, January 27, 2010)	
<i>Bank of America and Merrill Lynch</i> (p. 19)	Hearings: “Bank of America and Merrill Lynch: how did a private deal turn into a federal bailout?” (House Oversight and Government Reform)	
<i>Lehman Brothers</i> (p. 19)	Hearing: “Public Policy Issues Raised by the Report of the Lehman Bankruptcy.” (House Financial Services, April 20, 2010)	
<i>Washington Mutual, OTS, FDIC, Moody’s, Standard and Poor’s, and Goldman Sachs</i> (p. 20)		Hearings: “Wall Street and the Financial Crisis.” (Senate Permanent Subcommittee on Investigations)
<u>Regulation (SEC)</u>		
<i>“Unfiltered” Access</i> (p. 21)	Proposed Rule – Would prohibit naked access to exchanges and ATS	
<i>Alternative Uptick Rule</i> (p. 21)	Adopted Rule (February 24, 2010) – Places certain restrictions on short selling when there is downward price pressure.	

<i>Investor Protections in ABS</i> (p. 21)	Proposed rule - would revise disclosure, reporting, and offering process for ABS to better protect investors.
<i>Large Trader Reporting System</i> (p. 22)	Proposed Rule – would enhance SEC’s ability to oversee markets and protect investors by identifying and tracking “large” traders.
<u>Federal Reserve</u>	
<i>CRA Oversight</i> (p. 22)	Adopted Rule (December 4, 2009)
<u>Treasury</u>	
<i>Financial Crisis Responsibility Fee</i> (p. 24)	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> (p. 25)	Proposed rule - to strengthen resilience of banking sector.
<u>FDIC</u>	
<i>Securitization</i> (p. 26)	Approval of Notice of Proposed Rulemaking (NPR) – Securitization Proposal

Financial Firm Regulation

Executive Compensation and Corporate Governance

H.R. 4173: “Wall Street Reform and Consumer Protection Act of 2009”

Summary

“Applies to public companies. Requires annual shareholder advisory vote on compensation. Requires shareholder advisory vote on golden parachutes. SEC allowed to exempt categories of public companies; in determining exemptions, SEC shall take into account the potential impact on smaller companies. Requires at least one annual reporting of annual say-on-pay and golden parachutes votes by all institutional investors, unless such votes are otherwise required to be reported publicly by SEC rule. Provides that compensation approved by a majority say-on-pay vote is not subject to clawback, except as provided by contract or due to fraud to the extent provided by law.” (House Financial Services, H.R. 4173 Summary)

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

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

“Each publicly traded company would give its shareholders the right to cast advisory votes on whether they approve of its executive compensation. The board committee that sets compensation policy would consist only of directors who are independent. The company would tell shareholders about the relationship between the executive compensation it paid and its financial performance. The company would be required to have a policy to recover money that it erroneously paid to executives based on financials that later had to be restated due to an accounting error.” (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

Municipal Securities

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

“Requires a range of municipal financial advisors to register with the SEC and comply with regulations issued by the Municipal Securities Rulemaking Board (MSRB). The composition of the MSRB will be changed so that representatives of the public—including investors and municipalities—make up a majority of the board. In addition, the title establishes an Office of Municipal Securities within the SEC and contains a number of

studies on ways to improve disclosure, accounting standards, and transparency in the municipal bond market.” (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

Private Investment Funds/Hedge Funds

HFSC Subcommittee on Capital Markets, Insurance, and GSEs Hearing: “The Stock Market Plunge: What Happened and What is Next?” May 11, 2010.

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.”

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

The legislation requires advisers to large hedge funds to register with the Securities and Exchange Commission. In addition to SEC registration private funds—hedge funds with more than \$100 million in assets under management—are required to disclose information regarding their investment positions and strategies to the SEC and the Financial Stability Oversight Council. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

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,” which passed the House on December 11, 2009, with a vote of 223-202.

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

“The SEC would get more power, assistance and money at its disposal to be an effective securities markets regulator. The SEC would have new authority to impose limitation on mandatory arbitration; to bar someone who violated the securities laws while working for one type of registered securities firm, such as a broker-dealer, from working for other types of securities firms, such as investment advisers; to require that securities firms give new disclosures to investors before they buy investment products.” (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

Securitization

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

“Requires securitizers to retain an economic interest in a material portion of the credit risk for any asset that securitizers transfer, sell, or convey to a third party.” (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

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.”

H.R. 4173 passed the House on December 11, 2009, with a vote of 223-202.

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

The legislation requires that each NRSRO [Nationally Recognized Statistical Rating Organization] establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the SEC may prescribe, by rule. In addition, the legislation directs the SEC to write rules preventing sales and marketing considerations from influencing the production of ratings. Further, the legislation establishes the Office of Credit Ratings within the SEC. The Office shall administer the rules of the SEC with respect to NRSROs to protect investors and the public interest, to promote accuracy in credit ratings, and to prevent conflicts of interest from unduly influencing credit ratings. The Director of the Office will report to the Chairman of the SEC.

Additionally, it directs the SEC to require that each NRSRO publicly disclose information on:

- The initial credit ratings published by the NRSRO for each type of obligor, security, and money market instrument and any subsequent changes to such credit ratings; material changes to ratings procedures and methodologies
- Changes to credit ratings when a material change is made to a procedure or methodology or when a significant error is identified in a procedure or methodology that may result in credit rating actions
- Qualitative and quantitative information that is intended to enable investors and users of credit ratings to better understand the main principles and assumptions that underlie the rating.

(Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

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.”

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

Establishes the Office of National Insurance within the Department of the Treasury to (1) monitor all aspects of the insurance industry, (2) recommend to the Financial Stability Oversight Council to designate an insurer a non-bank financial company and (3) coordinate insurance regulation. Authority extends to all lines of insurance except health insurance and crop insurance. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

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.”

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

Over-the-counter derivatives will be regulated by the SEC and the CFTC. More transactions will be required to clear through central clearing houses and trade on exchanges, un-cleared swaps will be subject to margin requirements, swap dealers and major swap participants will be subject to capital requirements and all trades will be reported to regulators. In addition, the Federal Reserve will be granted the authority to regulate systemically important payment, clearing and settlement functions. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

“Wall Street Transparency and Availability Act of 2010” (Dodd-Lincoln Substitute Amendment to S. 3217)

Summary

The proposed legislation give the Commodity Futures Trading Commission exclusive jurisdiction over derivatives regulation and would mandate that all derivatives be traded through a centralized clearinghouse, except for those which are being used to hedge “legitimate commercial risk.” In addition, the bill would prohibit institutions with deposit insurance or access to the Federal Reserve’s discount window from engaging in the derivatives trading business.

Congressional Actions

Offered as an amendment to S. 3217.

Regulatory Structure

S. 3217: “Restoring American Financial Stability Act of 2010”

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: improving bank regulation, 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.

(Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

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,” which passed the House on December 11, 2009, with a vote of 223-202.

S. 3217: “Restoring American Financial Stability Act of 2010”

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: strong consumer financial protection watchdog, 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.

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

Government Crisis Response

Systemic Risk Regulation

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

Summary

The bill creates a Financial Services Oversight Council made up of the Treasury secretary, Federal Reserve chairman and heads of regulatory agencies to monitor the financial markets for potential threats to nation's system.

It would identify firms and activities that should be subject to heightened standards, including requirements that they place more money in reserve. The government could dismantle even healthy firms if they were considered a grave risk to the economy. Large firms with assets of more than \$50 billion, and hedge funds with at least \$10 billion in assets, would pay into a \$150 billion resolution fund that would cover the costs of dismantling such a company. (House Financial Services Press Release, December 11, 2009).

Congressional Actions

Passed House Financial Services Committee on October 22, 2009 (39-29); Passed House 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.”

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

The bill establishes a council of federal financial regulators, the Financial Stability Oversight Council, for systemic risk regulation. The Council would be chaired by the Treasury Secretary and be comprised of key regulators and would monitor emerging risks to U.S. financial stability, recommend heightened prudential standards for large, interconnected financial companies, and require nonbank financial companies to be supervised by the Federal Reserve if their failure would pose a risk to U.S. financial stability. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

“Too Big to Fail”

H.R. 4173: “Wall Street Reform and Consumer Protection Act of 2009”

Summary

“The FDIC will be able to unwind a failing firm so that existing contracts can be dealt with and secured creditors’ claims can be addressed. However, unlike traditional bankruptcy, which does not account for complex interrelationships of such large firms and may endanger financial stability, this process will help prevent contagion and disruption to the entire system and the overall economy. There are no bailouts for failing institutions. If financial assistance is necessary for orderly dissolution, industry will pay for it. A Systemic Dissolution Fund can be used to help wind down failing financial institutions, but not to preserve them. The Fund will be pre-funded by assessments on financial companies with more than \$50 billion in assets and by hedge funds with more than \$10 billion in assets. This authority sunsets on December 31, 2013, unless extended by Congress.”
(House Financial Services Committee, H.R. 4173: “The Wall Street Reform and Consumer Protection Act of 2009,” Summary)

Congressional Actions

Passed the House on December 11, 2009 (232-202).

S. 3217: “Restoring American Financial Stability Act of 2010”

Summary

The legislation would impose heightened capital, leverage, and liquidity requirements as companies grow larger and more complex. In addition, it requires 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. Finally, the legislation would create a \$50 billion “Orderly Liquidation Fund,” which would allow the FDIC to carry out the orderly liquidation of a covered financial company. In addition, the legislation would restrict certain types of financial activity that are high-risk or which create significant conflicts of interest between these institutions and their customers. These prohibitions will reduce the scale, complexity, and interconnectedness of those banks that are now actively engaging in proprietary trading, or have hedge fund or private equity exposure. This will reduce the possibility that they will be too big or too complex to resolve in an orderly manner should they fail. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

Investigations

House Oversight and Government Reform Committee Hearings:

“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 I-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.

House Financial Services Committee Hearings:

“Public Policy Issues Raised by the Report of the Lehman Bankruptcy Examiner”

April 20, 2010: Featuring testimony from Members of Congress Anna Eshoo (D-CA) and Ed Perlmutter (D-CO); Treasury Secretary Timothy F. Geithner; Chairman of the Board of Governors of the Federal Reserve Ben S. Bernanke; Chairman of the U.S. Securities and Exchange Commission Mary L. Schapiro; Anton R. Valukas, Court appointed examiner; Richard S. Fuld, Jr., former Chairman and CEO, Lehman Brothers; Thomas Cruikshank, former member of the Board of Directors and chair of Lehman Brothers’ Audit Committee; William K. Black, Associate Professor of Economics and Law, University of Missouri-Kansas City School of Law; and Matthew Lee, former Senior Vice President, Lehman Brothers.

Senate Permanent Subcommittee on Investigations

“Wall Street and the Financial Crisis”

“The Permanent Subcommittee on Investigations is holding a series of hearings in order to examine some of the causes and consequences of the crisis. The goals of the hearings are threefold: to construct a public record of the facts to deepen public understanding of what happened and to try to hold some of the perpetrators accountable; to inform the current legislative debate about the need for financial reform; and to provide a foundation for building better defenses to protect Main Street from the excesses of Wall Street.”

Hearing One: The Role of High Risk Home Loans: April 13, 2010

Focused on the role of high risk loans, using Washington Mutual Bank as a case history.

Hearing Two: The Role of Bank Regulators: April 16, 2010

Focused on regulators, using as a case study the role of the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation in exercising oversight of Washington Mutual Bank.

Hearing Three: The Role of Credit Rating Agencies: April 23, 2010

Focused on the role of the credit rating agencies, Moody's and Standard and Poor's.

Hearing Four: The Role of Investment Banks: April 27, 2010

Focused on the role of investment banks, using Goldman Sachs as a case study.

Regulation

Securities and Exchange Commission

“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.

Investor Protections in Asset-Backed Securities

April 7, 2010

Summary

The Securities and Exchange Commission proposed rules that would revise the disclosure, reporting and offering process for asset-backed securities (ABS) to better protect investors in the securitization market. The proposed rules seek to “better align the interests of issuers and investors by creating a retention or "skin in the game" requirement for certain public offerings of ABS,” according to the press release issued by the SEC.

The proposed rules would seek to do the following:

- Require the filing of tagged, computer-readable standardized loan-level (as opposed to just pool-level) information.
- Require the filing of a computer program that gives effect to the waterfall, giving a more complete picture to users of how payments and losses would be distributed among investors.
- Provide investors with more time to consider transaction-specific information by imposing limits on the time before a sponsor of an ABS can conduct the first sale in a shelf offering (currently an issuer can sell ABS almost immediately).
- Repeal the investment grade ratings criterion for ABS shelf eligibility → to enhance the type of securities that are being offered and the accountability of participants in that securitization chain.
- Increase transparency in the private structured finance market.
- Make other various revisions to the regulation of ABS.

Large Trader Reporting System

April 14, 2010

Summary

The Securities and Exchange Commission today voted to propose the creation of a large trader reporting system that would enhance its ability to identify large market participants, collect information on their trades, and analyze their trading activity.

"This rule is designed to strengthen our oversight of the markets and protect investors in the process," said SEC Chairman Mary L. Schapiro. "It would give us prompt access to trading information from large traders so we can better analyze the data and investigate potentially illegal trading activity."

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 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.

Federal Deposit Insurance Corporation

Approval of Notice of Proposed Rulemaking to FDIC Securitization Rule

May 11, 2010

Summary

The **FDIC** revamped its securitization proposal, mandating that depositories hold a 5% risk retention piece, but exempting loans sold to the GSEs and into bonds guaranteed by Ginnie Mae.

The initial proposal issued in November required banks to season single-family loans for 12 months before securitization. As a result of industry comments, FDIC dropped the seasoning requirement and is now proposing that banks issuing residential MBS maintain a 5% reserve fund for one year to cover early defaults and breaches of representations and warranties.

The new proposal, which will be published for a 45-day comment period, requires bank issuers to retain 5% of each MBS tranche.