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## Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting on Tuesday August 17, 2010

Phillip Angelides

Bill Thomas

Wendy Edelberg

Gary Cohen

Brooksley Born

*See next page for additional authors*

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**Author/Creator**

Phillip Angelides, Bill Thomas, Wendy Edelberg, Gary Cohen, Brooksley Born, Byron Stephen Georgiou, Bob Graham, Keith Hennessey, Douglas Holtz-Eakin, Heather Murren, John W. Thompson, and Peter J. Wallison



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**Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting of  
Tuesday August 17, 2010**

**12:00-1:30pm 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 Business Meeting of July 13, 2010 (Attached)</b>	<b>Chairman Angelides</b>
<b>4) Chairman's and Vice Chairman's Report</b>	<b>Chairman Angelides and Vice-Chairman Thomas</b>
<b>5) Executive Director's Report</b>	<b>Wendy Edelberg, Executive Director</b>
<b>6) Update on the Report</b>	<b>Wendy Edelberg, Executive Director</b>
<b>7) Upcoming September 2-3 Meeting</b>	<b>Chairman Angelides and Vice-Chairman Thomas</b>
<b>8) Approval of Continuation of Designation Of Commissioners as Special Government Employees (Attached)</b>	<b>Gary Cohen, General Counsel</b>
<b>9) Revised Future Meeting Schedule (Attached)</b>	<b>Chairman Angelides and Vice Chairman Thomas</b>
<b>10) Comments and Questions from Commissioners</b>	<b>All Commissioners</b>
<b>11) Other Items of Business</b>	<b>All Commissioners</b>
<b>12) Adjournment</b>	<b>Chairman Angelides</b>



**Financial Crisis Inquiry Commission**  
**Agenda Item 3 for Telephonic Business Meeting of August 17, 2010**  
**Minutes of Telephonic Business Meeting of**  
**July 13, 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, Bill Thomas, Brooksley Born, Byron Georgiou, Keith Hennessey, Heather Murren, and Peter Wallison. Commissioner John W. Thompson joined the call midway into Agenda Item 4. Commissioners Bob Graham and Douglas Holtz-Eakin were absent.

Also participating in the meeting were: Wendy Edelberg, Executive Director; Gary Cohen, General Counsel; Gretchen Newsom, assistant to Chairman Angelides; Scott Ganz, assistant to Vice Chairman Thomas; and Shaista Ahmed, assistant to Wendy Edelberg.

**Agenda Item 3: Approval of Minutes of Meeting, June 15, 2010**

Chairman Angelides introduced the minutes from the FCIC meeting of June 15, 2010.

MOTION: Born moved and Murren seconded a motion to adopt the meeting minutes (attached) and addenda (attached – see PDF file) with the correction of a typo.

APPROVED: 6-0 (Commissioners Thompson, Graham and Holtz-Eakin absent; Commissioner Georgiou abstained as he was not present at the June 15<sup>th</sup> meeting).

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

Chairman Angelides and Vice Chairman Thomas briefed the Commissioners on the upcoming field hearings in Bakersfield, Las Vegas, Miami, and Sacramento. Staff will provide Commissioners dates and locations for these hearings. The subject matter of these hearings will be customized to each region and determined by the host Commissioner(s).

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

Executive Director Wendy Edelberg spoke briefly in regard to the upcoming Commissioner retreat in July. In addition to discussing a draft section of the report at the retreat, Edelberg will review with the Commission the takeaways from each working group and a list of institutions to be investigated by FCIC staff.

#### **Agenda Item 6: Update on the Report**

Wendy Edelberg informed the Commission that the writing of the draft report is behind schedule, but staff is making great progress. Section IV of the report will be sent forth shortly for review by the Commission and for discussion at the retreat. It was acknowledged that the Chairman and Vice Chairman would have more time to review and have greater input on subsequent draft sections of the report. Edelberg informed the Commission that she is looking to strengthen the team of writers to supplement current skill sets on staff.

Commissioner Hennessey inquired about a reconciliation process for approval of language that does not meet unanimous concurrence for incorporation into the report. Chairman Angelides noted that based on the Commission's discussion in June, the Commission would proceed to work hard to resolve differences short of casting votes, and if and when a dispute mechanism was needed, we could put this into place during our September Commission meetings. A variety of dispute mechanisms were discussed, as well as Section IX-C of the Commission's Rules of Procedure. The Chairman will conference with the Vice Chairman on this matter and will return to the Commission.

Discussion ensued on the general structure and outline of the report.

#### **Agenda Item 7: Comments and Questions**

Commissioner Georgiou inquired about the status of the Commission being granted a supplement to our original funding amount. Chairman Angelides informed the Commission that there appears to be progress as \$1.8 million has been incorporated for the FCIC in the Senate version of the war supplemental bill.

Commissioner Georgiou inquired about the status of the multi-media production of the report. Chairman Angelides informed the Commission that a literary agent has been retained and will set up meetings with potential publishers, and electronic media/e-book capabilities will be discussed with publishers.

#### **Agenda Item 8: Report to Commission re: Legislative and Regulatory Update**

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

#### **Agenda Item 9: Other Items of Business**

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

#### **Agenda Item 12: Adjournment**

Chairman Angelides requested a motion to adjourn the meeting.

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

APPROVED: 8-0 (Commissioners Graham and Holtz-Eakin absent)

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**Financial Crisis Inquiry Commission  
Agenda Item 3 for Telephonic Business Meeting of August 17, 2010  
Minutes of Telephonic Business Meeting of  
July 13, 2010**

**ATTACHMENT  
Approved Minutes of Telephonic Business Meeting of  
June 15, 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, Douglas Holtz-Eakin, Heather Murren, and Peter Wallison. Commissioner Bob Graham joined the call immediately after Agenda Item 3. Commissioners Byron Georgiou, Keith Hennessey, John W. Thompson were absent.

Also participating in the meeting were: Wendy Edelberg, Executive Director; Gary Cohen, General Counsel; Gretchen Newsom, assistant to Chairman Angelides; and Scott Ganz, assistant to Vice Chairman Thomas. Matt Cooper, Senior Advisor and Greg Feldberg, Research Director joined the meeting for Agenda Item 8.

**Agenda Item 3: Approval of Minutes of Meeting, May 18 2010**

Chairman Angelides introduced the minutes from the FCIC meeting of May 18, 2010.

MOTION: Murren moved and Holtz-Eakin seconded a motion to adopt the meeting minutes (attached) with the correction of a typo.

APPROVED: 6-0 (Commissioners Georgiou, Graham, Holtz-Eakin, and Thompson absent).

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

Chairman Angelides did not make a report.

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

Executive Director Wendy Edelberg noted details of the upcoming hearing on derivatives.

#### **Agenda Item 6: Hearing 5a – Credit Ratings - Debriefing**

Executive Director Wendy Edelberg informed the Commission that staff are reviewing transcripts and compiling a list of materials and items for follow-up requested by the Commission during the hearing. A working group meeting will be scheduled soon to review and discuss main findings.

#### **Agenda Item 7: Commissioner Meeting Schedule**

Chairman Angelides introduced the draft schedule (attached) and requested that Commissioners direct questions or conflicts to him as soon as possible. Commissioner Murren noted a potential conflict during the tail end of the schedule. No other comments were made or concerns raised at this time.

#### **Agenda Item 8: Process for Commission Report**

Chairman Angelides introduced the report outline and process memo for the production of the report (attached). Executive Director Wendy Edelberg noted the proposal includes four broad categories for the report: 1) what created the scene that allowed crisis to occur; 2) the housing crisis; 3) the financial crisis; and, 4) the economic crisis. A broad discussion ensued wherein the outline and memo were discussed and the Commission provided feedback to the staff. Wendy will incorporate suggestions and feedback into a revised draft and circulate to the Commission in the near future (*Ms. Edelberg sent redlines to the Commission on June 28<sup>th</sup> – these are attached as addendums*). The Commission agreed that work and writing of the report should commence.

#### **Agenda Item 9: Comments and Questions from Commissioners**

No comments or questions were brought up by the Commissioners.

#### **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 by the Commissioners.

#### **Agenda Item 12: Adjournment**

Chairman Angelides requested a motion to adjourn the meeting at 1:07pm.

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

APPROVED: 7-0 (Commissioners Byron Georgiou, Keith Hennessey, John W. Thompson were absent.)







**Financial Crisis Inquiry Commission  
Agenda Item 3 for Telephonic Business Meeting of August 17, 2010  
Minutes of Telephonic Business Meeting of  
July 13, 2010**

**ATTACHMENT**

**As part of the Approved Minutes of Telephonic Business Meeting of  
June 15, 2010  
Extension of the Delegation of Authority by Unanimous Consent Via Email  
Unanimously Approved by the Commission**

On Monday, June 21, 2010 an e-mail was sent to all Commissioners by Gary Cohen, General Counsel, requesting their unanimous consent to the following resolution:

**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, pursuant to the unanimous written consent provisions of the Commission's [adopted](#) procedures, 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 September 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 September 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.

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All of the commissioners responded in the affirmative on the dates indicated below, and the resolution was adopted.

Brooksley Born- June 21  
Bob Graham- June 21  
Keith Hennessy- June 21  
Heather Murren- June 21  
Doug Holtz-Eakin- June 21  
Byron Georgiou- June 21  
Bill Thomas- June 22  
John Thompson- June 22  
Phil Angelides- June 22  
Peter Wallison- June 28

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**Financial Crisis Inquiry Commission  
Agenda Item 3 for Telephonic Business Meeting of August 17, 2010  
Minutes of Telephonic Business Meeting of  
July 13, 2010**

**ATTACHMENT**  
**As part of the Approved Minutes of Telephonic Business Meeting of  
June 15, 2010**  
**Revised Outline and Process Memo for Commission Report  
Distributed by Executive Director Wendy Edelberg**

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*See PDF Attachments*



**Financial Crisis Inquiry Commission**  
**Agenda Item 7 for Telephonic Business Meeting of August 17, 2010**  
**Approval of Continuation of Designation Of Commissioners as**  
**Special Government Employees**

FROM: Gary Cohen  
TO: All Commissioners  
DATE: August 9, 2010  
RE: Memo re Special Government Employees

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It is time to renew the Commission's determination that the Commissioners are special Government employees.

On August 19, 2009, the Commission resolved by a vote of 10 to 0 as follows (Graham moved and Holtz-Eakin seconded) as follows:

Whereas, the Commission estimates that no appointed Commissioners of this Commission are expected to perform temporary duties for more than 130 days during the next 365 calendar days; and

Whereas, the Commission expects to hire additional employees to serve as fulltime staff handling the daily operations of the Commission;

I move that all appointed Commissioners of this Commission are hereby designated "special government employees" under 18 U.S.C. § 202(a) for the period of August 19, 2009 to August 18, 2010, and to authorize the Chair and Vice-Chair to notify the Committee on Standards of Official Conduct of such designation in writing.

I recommend that the Commission adopt a new Resolution to the same effect for the period commencing at the end of the prior special Government employee resolution in the form attached. I believe that status as a special Government employee for the period August 19, 2010 to August 18, 2011 is available to the Commissioners despite the fact that some may have

exceeded 130 days of service to the Commission for the period August 19, 2009 to August 18, 2010.

By way of background, 18 U.S.C. § 202(a) provides:

For the purpose of sections 203, 205, 207, 208, and 209 of this title the term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis...

The special Government employee category was created by Congress as a way to apply an important, but limited set of conflict of interest requirements to a group of individuals who provide important, but limited, services to the Government.

The Office of Government Ethics (OGE) has issued a report, Conflict Of Interest And The Special Government Employee, A Summary Of Ethical Requirements Applicable To SGEs, which notes:

The determination of SGE status must be made prospectively, at the time the individual is appointed or retained. Employees should be designated as SGEs only where the agency makes an advance estimate of the number of days the employee is expected to serve during the ensuing 365-day period. This is done so that employees are on notice with respect to the rules that will apply to them. As the Office of Legal Counsel has stated, "as a general matter, employees are presumed to be regular government employees unless their appointing Department is comfortable with making an estimate that the employee will be needed to serve 130 days or less." 7 Op. O.L.C. 123, 126 (1983)(emphasis added). If an agency designates an employee as an SGE, based on a good faith estimate, but the employee unexpectedly serves more than 130 days during the ensuing 365-day period, the individual still will be deemed an SGE for the remainder of that period. However, upon the commencement of the next 365-day period, the agency should reevaluate whether the employee is correctly designated as an SGE, i.e., expected to serve no more than 130 days. Indeed, any time an SGE serves beyond one year, the agency should perform a new estimate of the expected number of days of service for the next 365-day period; this is true whether the employee is actually reappointed for a new one-year term, which is the ordinary procedure, or is merely completing an indefinite or multiyear term. See, e.g., OGE Informal Advisory Letter 81 x 24.

Thus, as long as the resolution by which the Commissioners were designated "special Government employees" under 18 U.S.C. § 202(a) for the prior year, and for the upcoming year, was, and is, adopted based on a good faith estimate of the time expected to be involved by the Commissioners, it is my view that status as a special Governmental Employee for the upcoming 365 day period will be available to the Commissioners regardless of how much time Commissioners worked in the prior 365 day period. (Blake Chisam, Staff Director and Chief Counsel of the House Committee on Standards of Official Conduct, joins me in this view). Since the Commission's report is due on December 15, 2010 (four months away), the determination for

the Commissioners' continued status as a special Government employee for the upcoming 365 day period should be straightforward.

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**Proposed Resolution for Continued Status as Special Government Employees**

WHEREAS, the Commission estimates that no appointed Commissioners of this Commission are expected to perform temporary duties for more than 130 days during the next 365 calendar days; and

WHEREAS, the Commission expects to hire additional employees to serve as fulltime staff handling the daily operations of the Commission;

NOW THEREFORE, BE IT RESOLVED THAT: all appointed Commissioners of this Commission are hereby designated "special government employees" under 18 U.S.C. § 202(a) for the period of August 19, 2010 to August 18, 2011,

AND BE IT RESOLVED THAT, that the Chair and Vice-Chair shall notify the Committee on Standards of Official Conduct of such designation in writing.

4846-5663-0791, v. 2



**Financial Crisis Inquiry Commission**  
**Agenda Item 8 for Telephonic Business Meeting of August 17, 2010**  
**Future Meeting Schedule**  
*(as of 8/10/2010)*

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**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, September 14, 2010**

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

**Tuesday/Wednesday, September 28-29, 2010**

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

**Tuesday, October 12, 2010**

Telephonic Business Meeting  
Location: Teleconference/FCIC Office  
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 26<sup>th</sup>-29<sup>th</sup>; November 2<sup>nd</sup>-5<sup>th</sup>; and November 9<sup>th</sup>-12<sup>th</sup>.

**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