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Agenda For the Financial Crisis Inquiry Commission's Telephonic Business Meeting on Monday, December 14th

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**Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting of
Monday, December 14th
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 Closed Session Meeting of November 17, 2009 <i>(Attached)</i> | Chairman Angelides |
| 4) Executive Director's Report; Personnel Update | Tom Greene, Executive Director |
| 5) Update on FCIC Budget | Vice-Chair Thomas |
| 6) Extension of Delegation of Authority <i>(Attached)</i> | Chairman Angelides |
| 7) Protocol for Media Contact <i>(Attached)</i> | Tom Greene/Beneva Schulte Assistant Director |
| 8) Donation of Goods and Services <i>(Attached)</i> | Tom Greene/Gary Cohen, Special Business Counsel |
| 9) Draft Ethical Guidelines for Commission Members <i>(Attached)</i> | Tom Greene/Gary Cohen |
| 10) Recommendation to assume delegation of responsibility from House Committee on Standards of | Tom Greene/Gary Cohen |

Official Conduct

(Attached)

**11) Update re: Archive Requirements
and Mandates**

Tom Greene/ Gary Cohen

**12) Report to Commission re: Legislative
And Regulatory Update**

(Attached)

**Tom Greene/ Scott Ganz, Special
Assistant**

13) Other Items of Business

All Commissioners

14) Adjournment

Chairman Angelides



Financial Crisis Inquiry Commission
Agenda Item 3 for Telephonic Business Meeting of December 14, 2009
Minutes of Closed Session Meeting of
Tuesday, November 17, 2009

Agenda Item 1: Call to Order

Chairman Angelides called the closed session meeting to order.

Agenda Item 2: Roll Call

Chairman Angelides asked Gretchen Newsom to call the roll of the Commissioners: Present were Phil Angelides, Bill Thomas, Brooksley Born, Byron Georgiou, Keith Hennessey, Doug Holtz-Eakin, Heather Murren, John W. Thompson and Peter Wallison. Bob Graham arrived after the approval of the minutes of meeting, October 20, 2009.

Also participating in the meeting: Tom Greene, Executive Director; Gretchen Newsom, assistant to Chairman Angelides; and Scott Ganz, assistant to Vice Chairman Thomas.

Agenda Item 4: Approval of Minutes of Meeting, October 20, 2009

Chairman Angelides introduced the minutes from the FCIC meeting of October 20, 2009.

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

APPROVED: 9-0.

Agenda Item 3: Presentation by/Discussion with Timothy Geithner, Secretary of the Treasury

Chairman Angelides introduced Secretary Geithner and the Secretary gave his presentation to the Commissioners. Secretary Geithner's presentation was followed by questions and discussion with the Commission.

Agenda Item 5: Executive Director's Report; Personnel Update; Introductions of Staff

Mr. Greene provided an update on personnel and general office items. He also introduced recently hired staff to the Commissioners including Marty Biegelman, Assistant Director; Sam Davidson, Information Technology Specialist; Sylvia Boone, Administrative Specialist; Dixie Noonan, Investigative Counsel; Mina Simhai, Investigative Counsel; Gary Cohen, Investigator/Senior Business Counsel; Sarah Zuckerman, Receptionist; Brad Bondi, Assistant Director and Deputy General Counsel; Tom Krebs, Assistant Director and Deputy General Counsel; and Bart Dzivi, Special Counsel.

Agenda Item 6: Review of Draft FCIC Budget

Mr. Greene presented the draft budget. There was broad discussion that included all Commissioners and Mr. Greene. There was general consensus that the Commission's appropriation of \$8 million dollars would not suffice to accomplish the work of the Commission in the manner desired and that an additional allocation should be sought. Vice-Chairman Thomas will take the lead with Congress on this matter.

Agenda Item 7: Updated on Work Plan

There was broad discussion with all Commissioners and Mr. Greene on the updated work plan and timeline. Mr. Greene received comments from the Commission and will incorporate into a revised draft of the work plan.

Agenda Item 8: Legislative Update

Chairman Angelides introduced the legislative update; Commissioners will review on their own.

Agenda Item 9: Other Items of Business

Chairman Angelides, Vice Chairman Thomas and other Commissioners discussed closed versus public meetings and hearings. Also discussed were transcripts and minutes of meetings and hearings.

Agenda Item 10: Break for Lunch

Chairman Angelides recessed the Commission for a brief lunch break.

Agenda Item 11: Presentation by/Discussion with Ben Bernanke, Chairman of the Board of Governors of the Federal Reserve

Chairman Angelides introduced Chairman Bernanke and the Chairman gave his presentation to the Commissioners. Chairman Bernanke's presentation was followed by questions and discussion with the Commissioners.

Agenda Item 12: Adjournment

Chairman Angelides requested a motion to adjourn the meeting.

MOTION: Holtz-Eakin moved and Thompson seconded a motion to adjourn the meeting.

APPROVED: 10-0.

Financial Crisis Inquiry Commission
Agenda Item 3 for Telephonic Business Meeting of December 14, 2009
Minutes of Closed Session Meeting of
Tuesday, November 17, 2009

ATTACHMENT
Approved Minutes of Closed Session Meeting
Tuesday, October 20, 2009

Agenda Item 1: Call to Order

Chairman Angelides called the closed session meeting to order.

Agenda Item 2: Roll Call

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

Also participating in the meeting: Tom Greene, Executive Director; Gretchen Newsom and Rob Bachmann, assistants to Chairman Angelides; and, Scott Ganz and Courtney Mayo, assistants to Vice Chairman Thomas.

Agenda Item 3: Approval of Minutes of Closed Session Meeting, September 16, 2009

Chairman Angelides introduced minutes from the FCIC meeting of September 16, 2009.

MOTION: Thompson moved and Born seconded a motion to adopt the minutes (see attached).

APPROVED: Motion passed 10-0.

Agenda Item 4: Approval of Minutes of Public Meeting, September 17, 2009

Chairman Angelides introduced minutes from the FCIC public meeting of September 17, 2009.

MOTION: Georgiou moved and Holtz-Eakin seconded a motion to adopt the minutes (see attached).

APPROVED: Motion passed 10-0.

Agenda Item 5: Extension of Delegation of Authority

Chairman Angelides requested an extension of delegation of authority through December 31, 2009.

MOTION: Wallison moved and Thompson seconded a motion to adopt the extension of delegation authority (see attached).

APPROVED: Motion passed 10-0.

Agenda Item 6: Report to Commission re: Legislative Calendar and Schedule, Executive Director Tom Greene

Mr. Greene briefed the Commission on possible, upcoming pieces of legislation expected in House and Senate Committees, as well as Congress in general. Mr. Greene also discussed Capitol Hill meetings he attended last week.

Agenda Item 7: Executive Director's Report, Tom Greene

Mr. Greene provided an update on personnel, office furniture, email addresses and the website.

Agenda Item 8: Review and Discussion of Preliminary Draft Work Plan

Chairman Angelides introduced a draft work plan for the FCIC. There was broad discussion with all Commissioners and Mr. Greene.

Commissioners paused this discussion to break for the first panelists and continued this discussion during the lunch break. Commissioners agreed to have their comments and suggestions incorporated into the draft work plan and for Tom Greene to electronically distribute a revised draft for consideration.

Agenda Item 9: Other Items of Discussion or Business

Chairman Angelides brought up inviting Professor David Moss of Harvard Business School and Professor Carmen Reinhart of the University of Maryland to the next Commissioner dinner to discuss historical perspectives of financial crises.

Agenda Item 10: Roundtable I

Chairman Angelides introduced the following panelists: Martin Baily, Senior Fellow in Economic Studies, The Brookings Institution; Simon Johnson, Ronald A. Kurtz Professor of Entrepreneurship, Sloan School of Management, Massachusetts Institute of Technology; and Hal S. Scott, Nomura Professor and Director of the Program on International Financial Systems,

Harvard Law School. The panelists presented their perspectives on the financial crisis and answered questions from the Commission.

Agenda Item 11: Break for Lunch

The Commission had a working lunch and continued discussion of the draft work plan.

Agenda Item 12: Roundtable II

Chairman Angelides introduced the following panelists: Luigi Zingales, Robert C. McCormack Professor of Entrepreneurship and Finance and the David G. Booth Faculty Fellow, Booth School of Business, University of Chicago; John B. Taylor, Mary and Robert Raymond Professor of Economics and the Bowen H. and Janice Arthur McCoy Senior Fellow at the Hoover Institution, Stanford University; and Joseph Stiglitz, Professor, Columbia Business School, Graduate School of Arts & Sciences (Department of Economics) and the School of International and Public Affairs, Columbia University. The panelists presented their perspectives on the financial crisis and answered questions from the Commission.

Agenda Item 13: Adjournment

Chairman Angelides requested a motion to adjourn the meeting.

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

APPROVED: Motion passed 10-0.

Financial Crisis Inquiry Commission
Agenda Item 6 for Telephonic Business Meeting of December 14, 2009

Extension of Delegation Authority

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

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

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

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

Hereby delegated to the Chairman of the Commission the authority to enter into agreements on behalf of the Financial Crisis Inquiry Commission in order to facilitate the work of the Commission. This delegation is effective until March 31, 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 March 31st, 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.

Dated:



MEMORANDUM

To: Commissioners

From: Tom Greene
Executive Director
Financial Crisis Inquiry Commission

Date: December 10, 2009

Re: Additional Materials for FCIC Telephonic Business Meeting of Monday,
December 14, 2009
Agenda Item 7 – Protocol for Media Contact

Please find attached a proposed protocol for media contact commissioners and staff prepared by Assistant Director Schulte in consultation with the chair, vice-chair and me. This provides a practical process for commissioners and appropriate direction to the staff. I recommend approval of this item.

Financial Crisis Inquiry Commission
Agenda Item 7 for Telephonic Business Meeting of December 14, 2009
Protocol for Media Contact

MEMORANDUM

Date: Thursday, December 10, 2009
To: Tom Greene – Executive Director
From: Beneva Schulte – Assistant Director
Subject: Commission Media and Speaking Protocol

Pursuant to your request, please find below a memo on a media and speaking protocol for the Commission. I should note that a critically important part of the public communications policy for the Commission must be a strict, top-to-bottom “no leaks” policy for everyone associated with the Commission and its work. It is my understanding that a discussion of a “disclosure of non-public information” policy will be covered in the proposed ethics guidelines for the Commissioners and in employment policies for the staff.

Commissioner Protocol

As the Commission begins its public hearing schedule in earnest, Commissioners can expect media interviews, appearances and speaking requests to increase. All calls and contacts that are **specifically about the Commission’s work and/or progress** should be directed to the Communications Department for initial vetting by the communications staff. Specifically, you can have them contact me at 202-292-1343 or at bschulte@fcic.gov until a Communications Director is appointed.

This will allow the communications team to stay on top of all potential stories; prepare any materials/background information that a Commissioner might need to effectively respond to the request; and to ensure Commissioners are not caught off guard. All media requests to Commissioners will be given top priority and handled quickly and efficiently.

We would also like to assist Commissioners in any speaking engagement requests that they may get that are, again, specifically about the Commission’s work and/or progress. Communication staff can prepare talking points and/or background materials for these events as well.

Staff Protocol:

Staff for the Financial Crisis Inquiry Commission will also receive press calls. The protocol must be that all press inquiries, calls and requests are to be directed to the Communications Department. Specifically, you can have them contact me at 202-292-1343 or at bschulte@fcic.gov until a Communications Director is appointed. Requests for media appearances and speaking engagements by Commission staff must also be routed through the Communications Department.



MEMORANDUM

To: Commissioners

From: Tom Greene
Executive Director
Financial Crisis Inquiry Commission

Date: December 10, 2009

Re: Additional Materials for FCIC Telephonic Business Meeting of Monday,
December 14, 2009
Agenda Item 8 - Donation of Goods and Services

Please find attached a proposed policy on the donation of goods and services to the Commission. Please note that implementation of this policy requires the commission to seek a delegation of authority from the House of Representatives to be its own ethics authority. I recommend adoption of the proposed solicitation and acceptance guidelines and seeking the delegation necessary to make these guidelines operational.

Financial Crisis Inquiry Commission
Agenda Item 8 for Telephonic Business Meeting of December 14, 2009
Donation of Goods and Services

Privileged and Confidential / Discussion Draft of 12/8/09

MEMORANDUM

To: Tom Greene
Executive Director
Financial Crisis Inquiry Commission

From: Gary J. Cohen
Special Business Counsel
Financial Crisis Inquiry Commission

Date: December 8, 2009

Re: Commission Policy for the Solicitation and Acceptance of Gifts of
Services or Property

Overview

This memorandum has been prepared at the request of the Chairman and the Vice Chairman to provide guidelines for the Commissioners in the solicitation and receipt of gifts of services or property to the Commission.

The Commission has the statutory ability to accept gifts of services or property: “The Commission may accept, use and dispose of gifts or donations of services or property.” (§5(d)(6) of the Fraud Enforcement and Recovery Act of 2009.)

There are also statutory provisions limiting the solicitation and acceptance of gifts in 5 USC §7353, Gifts to Federal employees:

- (a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person—
- (1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual’s employing entity; or
 - (2) whose interests may be substantially affected by the performance or nonperformance of the individual’s official duties.

- (b) (1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate (emphasis added).
- (2) (A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).
- (B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

To allow the Commission to solicit gifts of services or property, the Commission must first request delegation as a supervising ethics office, and then adopt a gift solicitation policy which provides appropriate guidelines to conduct solicitation activities. (According to the Chief Counsel and Staff Director of the House Committee on Standards of Official Conduct, other agencies and federal departments and commissions have sought and received delegation as supervising ethics offices to allow them to adopt policies and rules tailored to their functions.)

Thus, after my review of the statute and past practice of other governmental entities, it is my view that the Commission should request a "delegation of authority" from the House Committee on Standards of Official Conduct to become its own supervising ethics office. (The request will ask that the Commissioners' Financial Disclosure Statements, which they have agreed voluntarily to file, continue to be filed with the Office of the Clerk of the House of Representatives, and reviewed and certified by the House Committee on Standards of Official Conduct.) Status as a supervising ethics office will enable the Commission to administer and interpret 5 USC §7353 in a manner consistent with the Commission's stated purpose.

Based upon my discussions with staff in the House Committee on Standards of Official Conduct, and on internet research, other agencies and federal departments and commissions have adopted policies to allow solicitation of gifts when relevant to their function. The Commission's interpretation of 5 USC §7353 should therefore allow for solicitation of gifts of services or property related to the operation and purpose of the Commission in a manner consistent with the Commission's congressional authority to accept gifts of services or property. (Commissioners should be mindful that the ability to accept gifts of services or property falls to the Commission, and not the individual Commissioners.)

Assuming that the Commission authorizes the request for delegation, and the delegation is granted, I propose that the Commission adopt the Policy for the Solicitation and Acceptance of Gifts of Services or Property on the following pages. (Because the Policy was prepared assuming that the Commission had requested and received a delegation of authority to act as its own supervising ethics office (see below), I recommend that the Commission defer adopting this Policy, if it determines to do so, until after the delegation is accepted.)

Commission Policy for the Solicitation and Acceptance of Gifts of Services or Property

A. Commission Policy Regarding Solicitation of Gifts of Services or Property:

1. No employee of the Commission may solicit gifts of services or property or encourage the solicitation of gifts of services or property to the Commission unless the solicitation has been approved in advance by the Chairman, in consultation with the Vice Chairman, or upon delegation, by the Executive Director.
2. In determining whether to allow solicitation of a gift on behalf of the Commission, the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, shall consider the following criteria:
 - a. Whether the gift to be solicited is appropriate for use by the Commission;
 - b. Whether solicitation of the gift is appropriate and advisable from the perspective of conflict of interest and government ethics guidelines; and
 - c. Under no circumstances will a gift be solicited from entities (or individuals employed by entities) which are the focus of the Commission's work, or which are seeking official action from, or doing business with, the Commission ("Subject Entities").
3. The authority of the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, to approve the solicitation of gifts of services or property is exclusive.

B. Commission Policy Regarding Acceptance of Gifts of Services or Property:

1. The Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, has the authority on behalf of the Commission to accept gifts of services or property in accordance with the criteria set forth below.
2. In determining whether to accept a gift, the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, shall consider the following criteria:
 - a. Whether the gift is appropriate for use by the Commission;
 - b. Whether any condition the donor places on the Commission's acceptance or use of the gift is acceptable to the Commission;

- c. Whether any Commission employee solicited the gift or encouraged its solicitation and, if so, whether the solicitation had the prior approval of the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, if applicable;
 - d. Whether acceptance of the gift is appropriate and advisable from the perspective of conflict of interest and government ethics guidelines; and
 - e. Under no circumstances will a gift be accepted from a Subject Entity.
3. The authority of the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, to accept gifts of services or property is exclusive.



MEMORANDUM

To: Commissioners

From: Tom Greene
Executive Director
Financial Crisis Inquiry Commission

Date: December 11, 2009

Re: Additional Materials for FCIC Telephonic Business Meeting of Monday,
December 14, 2009
Agenda Item 9 - Draft Ethical Guidelines for Commission Members

Please find attached a memorandum prepared by Gary Cohen, Senior Business Counsel, regarding the Commission's consideration of ethics guidelines following up on the Commission's discussions at its August and September meetings. These are draft guidelines provided for discussion purposes only at this point, with formal consideration by the Commission to occur upon delegation of authority for ethics matters from the House Committee on Standards of Official Conduct to the Commission.

MEMORANDUM

To: Tom Greene
Executive Director
Financial Crisis Inquiry Commission

From: Gary J. Cohen
Special Business Counsel
Financial Crisis Inquiry Commission

Date: December 10, 2009

Re: Ethics Guidelines for Commissioners

Overview

Further to discussions among the Commissioners and presentations from the staff of the House Committee on Standards of Official Conduct at Commission meetings in August and September 2009, this memorandum has been prepared at the request of the Chairman and the Vice Chairman to offer for the Commission's review a set of Ethics Guidelines for Commissioners in the performance of their duties.

The Commission is unique among governmental entities in many ways. Its mandate is quite broad:

“to examine the causes, domestic and global, of the current financial and economic crisis in the United States” (§5(a) of the Fraud Enforcement and Recovery Act of 2009, or “FERA.”)

And it is expressly contemplated that the Members will be:

“prominent United States citizens with national recognition and significant depth of experience in such fields as banking, regulation of markets, taxation, finance, economics, consumer protection, and housing” (§5(b)(2)(A) of FERA.)

who voluntarily accept appointment to the Commission.

The statute contemplates that Members of the Commission may have or have had relationships with entities in the financial services and related industries.

The Members are not employees of the House or Senate, nor are they subject to Congressional ethics guidelines (other than those which by statute apply to all government employees). Pursuant to the Commission's prior discussions, I have prepared the attached guidelines for the ethical conduct of the Commission and Commissioners for consideration by the Commissioners.

I have attached to this memorandum a draft "Financial Crisis Inquiry Commission/Ethics Guidelines for Commissioners," proposed to serve as the Commission's ethics policy. If adopted by the Commission, these guidelines are intended to meet those statutory requirements which are applicable to the Commission and Commissioners, and to set forth the Commission's voluntary policy in non-statutorily mandated areas. These Guidelines, if adopted, would apply to all Commissioners.

Because the Guidelines were prepared assuming that the Commission had requested and received a delegation of authority to act as its own supervising ethics office (see below), I recommend that the Commission defer adopting these Guidelines, if it determines to do so, until after the delegation is granted.

A separate memorandum will be prepared for Commission review and approval to guide the Commission's full time staff, consultants and part-time staff.

Because the Commissioners are expected to work on Commission business for no more than 130 days per year, they are "special government employees" ("SGEs") and as such are exempt from certain otherwise applicable statutes. (The Commissioners, on August 19, 2009, resolved to designate themselves as SGEs through August 18, 2010, and should resolve to continue that designation (if the facts so permit) next August.) Should a Commissioner determine that he or she will not qualify as an SGE in the future, the Commission's Ethics Officer (see below) should be notified immediately to determine what additional restrictions might be imposed.

As the Commission was formed in an odd calendar year, those statutes which do apply to the Commission and Commissioners are currently interpreted by the House Committee on Standards of Official Conduct. At the August 19, 2009 Commission meeting the staff of the House Committee on Standards of Official Conduct suggested that the Commission consider requesting a "delegation of authority" from the Committee on Standards of Official Conduct to become its own supervising ethics office to create, interpret and enforce its own ethics guidelines. Status as a supervising ethics office will enable the Commission to administer its own ethics policy in a manner consistent with the Commission's stated purpose, rather than be bound by the statutes as interpreted by the House Committee. (I recommend the Commission limit the request to ask that the Commissioners' Financial Disclosure Statements, which they have agreed voluntarily to file, continue to be filed with the Office of the Clerk of the House of Representatives, and reviewed and certified by the House Committee on Standards of Official Conduct.)

I also suggest that the Commission consider designating a responsible senior staff member as the Commission's Ethics Officer to assist Commissioners and staff members in implementing and administering the Commission's Ethics Guidelines.

On August 18, 2009, the Commission received a memorandum from the staff of the House Committee on Standards of Official Conduct concerning ethical considerations, which memorandum was discussed by the Commission at two Commission meetings thereafter. (Another copy of that memorandum is available to the Commissioners on request.) The key teachings from that memo are incorporated in the Ethics Guidelines proposed below.

Finally, this memorandum and the Guidelines do not touch upon restrictions applicable to Commissioners by virtue of their prior or other government service.

Background of the Ethics Guidelines (the following sections explain the corresponding sections of the Guidelines.)

A. The Code of Ethics for Government Service.

On July 11, 1958, the Congress of the United States adopted the Code of Ethics for Government Service. The Code is now quoted in several portions of the Code of Federal Regulations and has been adopted by many States and other governmental bodies. The Code may be thought of as the Ten Commandments of Government Service.

B. Bribery.

The elements of bribery in respect to public officials are set forth in a number of federal laws, including 18 USC §201(b)(2):

Whoever -- being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

- (A) being influenced in the performance of any official act;
- (B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
- (C) being induced to do or omit to do any act in violation of the official duty of such official or person....

The statutory provision prohibiting bribery of “public officials” applies to “an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof,” and includes SGEs.

C. Gifts to Commissioners.

5 USC §7353, Gifts to Federal employees, provides:

- (a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person—

- (1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or
 - (2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.
- (b) (1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate [emphasis added].
- (2) (A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).
- (B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

In keeping with the focus of the Commission's work, the Commission should consider determining as a policy matter to restrict certain gifts that the Commissioners may receive as set forth in the Guidelines. Given the Commission's mandate, I suggest that the Commission also consider expressly allowing the Commissioners and Commission to receive "informational material," i.e., items which serve primarily to convey information and which are provided for the purpose of assisting the recipient in the performance of his or her official duties. Informational material may include, but is not limited to, books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars and on-site demonstrations, tours, or inspections designed specifically for the purpose of assisting the recipient Commissioners in the performance of their official duties.

D. Financial Disclosure.

While the Commission is not bound by the House of Representatives' financial disclosure process, the Commission has elected voluntarily to file Financial Disclosure Statements on the form prescribed by the House. Each Commissioner shall file with the Clerk of the House the completed initial Financial Disclosure Statement, and file a Financial Disclosure Statement for 2009 on or before May 17, 2010. In addition, an exit filing will be required within 30 days of the end of each Commissioner's service.

E. Conflicts of Interest.

Due to the nature of the Commission's mandate, conflicts of interest may arise during the course of the life of the Commission. Therefore, the Commission should consider adopting a process to deal with conflicts which requires identifying the potential conflict, determining the potential for material financial consequences to the Commissioner, and either creating an ethical wall to insulate the Commissioner from the Commission's work in the area of the conflict, or having the Commissioner dispose of the interest that gives rise to the conflict. (I propose that the Commission consider defining a "Subject Entity" as an individual or entity which is the focus of the Commission's work, or which is seeking official action from, or doing business with, the Commission.)

I do not suggest that the Commission adopt a specific dollar threshold to determine materiality, preferring to leave that to the judgment of each Commissioner in consultation with the Ethics Officer, should he or she so desire.

It should also be noted that a “material financial interest” does not include dealings between the Commissioner and the Subject Entity which are generally available to members of the public similarly situated to the Commissioner (other than his or her status as a Commissioner) on similar terms, such as home or other loans from banks and other financial institutions on terms that are available based on factors other than Commission membership, or opportunities and benefits, including favorable rates and commercial discounts, that are available based on factors other than Commission membership.

F. Public Speaking and Public Statements.

The Commission should consider adopting guidelines concerning speaking engagements of the individual Commissioners which prohibit speaking engagements paid for by Subject Entities, but allow Commissioners to accept other speaking engagements at their discretion with due care in the choice of audience and nature of their presentation.

G. Non-disclosure of Information.

It is expected that the Commission will receive confidential, non-public information from multiple sources, and it will create its own confidential and proprietary information in its work, including information about ongoing investigations, confidential financial and business information, and similar material. It is fundamental that a Commissioner not disclose confidential non-public information created or received by the Commission or use his or her access to such information for personal gain, including any gain that would accrue to the individual in the form of outside investment activities. Due regard should also be given to Rule 10b-5 of the General Rules and Regulations promulgated under the Securities Exchange Act of 1934 concerning the use of material non-public information in the purchase and sale of securities.

The Commission should consider adopting the confidential information policy set forth in the Guidelines.

H. Outside employment and activities.

18 USC §202(a) provides, in part:

“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,

“As used in this chapter, the term ... (3) "legislative branch" means - (A) the Congress;, and any other agency, entity, office, or commission established in the legislative branch.” [such as the Commission]

Classification of a Commissioner as an SGE limits the reach of 18 U.S.C. sections 203, 205, 207, 208, and 209, but parts of those sections have continued applicability. Section 203 refers to compensation to Members of Congress, officers, and others in matters affecting the Government, section 205 refers to activities of officers and employees in claims against and other matters affecting the Government, section 207 refers to restrictions on former officers, employees, and elected officials of the executive and legislative branches, section 208 refers to acts affecting a personal financial interest, and section 209 refers to salary of Government officials and employees payable only by United States.

As noted, since the Commissioners are SGEs, they do not have to comply with a number of the general limitations on income, outside activities and employment imposed on government employees in the above referenced sections. Thus, since it is expected that Commissioners will continue to have outside employment and income, the Commission should consider adopting guidelines dealing with the same as set forth in the Guidelines.

Finally, the Constitution prohibits any federal official from receiving an “emolument” of “any kind whatever” from a foreign government or a representative of a foreign state, without the consent of the Congress (Article I, Section 9, clause 8). As the Comptroller General has noted, “it seems clear from the wording of the Constitutional provision that the drafters intended the prohibition to have the broadest possible scope and applicability.” Thus, an “emolument” has been defined as any “profit, gain, or compensation received for services rendered.”

Any Commissioner who has a question concerning the propriety of potential outside activities and whether compensation and income derived from such employment are consistent with the proposed Guidelines and federal law may wish to consult with the Ethics Officer.

Financial Crisis Inquiry Commission Ethics Guidelines for Commissioners

A. The Code of Ethics for Government Service.

Each Commissioner shall adhere to the Code of Ethics for Government Service (House Concurrent Resolution No. 175, July 11, 1958, 72 Stat. B12). The Code provides:

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.
8. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

B. Bribery.

It is wrongful for a Commissioner in the performance of his or her services on the Commission directly or indirectly, corruptly to demand, seek, receive, accept, or agree to receive or accept anything of value personally or for any other person or entity, in return for being influenced in the performance of any official act, being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or being induced to do or omit to do any act in violation of the official duty of such Commissioner.

C. Gifts to Commissioners

Commissioners may not solicit, accept or receive gifts from entities (or individuals employed by entities) which are the focus of the Commission's work, or which are seeking official action from, or doing business with, the Commission ("Subject Entities"). Such entities may include, but are not limited to, financial services firms, ratings organizations, financial regulatory bodies and providers of professional services to such entities. A rule of reason shall apply.

The prohibitions are not intended to apply to gifts from close relatives who may be otherwise restricted, consistent with past practices, or to de minimis gifts, i.e., under \$50. Nor do they restrict the receipt of "informational material" -- items which serve primarily to convey information and which are provided for the purpose of assisting the recipient in the performance of his or her official duties, including, but not limited to, books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars and on-site demonstrations, tours, or inspections designed specifically for the purpose of assisting the Commissioners in the performance of their official duties.

The United States Constitution prohibits government employees from accepting personal gifts from foreign governments unless consented to by Congress.

D. Financial Disclosure.

Each Commissioner shall file with the Clerk of the House for certification by the House Committee on Standards of Official Conduct and update as required the Financial Disclosure Statement on the form prescribed by the House Committee on Standards of Official Conduct.

E. Conflicts of Interest.

A conflict of interest may arise if a Commissioner has a material financial interest (which may include material stock or other equity ownership or creditor/debtor relationships, profit participations, employment or consulting relationships, or material transactions) in or with a Subject Entity.

1. Once it becomes known to a Commissioner that an entity or individual in which he or she may have a material financial interest is a Subject Entity, the Commissioner shall disclose to the Ethics Officer the existence of the potential conflict and the facts of the relationship between the Commissioner and the Subject Entity.
2. The Commissioner, in consultation with the Ethics Officer, shall determine whether his or her actions as a Commissioner with respect to a Subject Entity could have material financial consequences to the Commissioner, thereby creating a conflict of interest.
3. If it is so determined, then either the Commissioner (a) shall divest him or herself of the interest or relationship with the Subject Entity, or (b)(i) the Ethics Officer will disclose the conflict to the staff and the other Commissioners, (ii) the Commissioner will recuse him or herself from the area of dealing, and (iii) the staff and other Commissioners will create an ethical wall to restrict the affected Commissioner from participating in discussions and viewing Commission work product concerning the Subject Entity.

Pending determination of the potential conflict the Commissioner shall avoid any involvement with the Commission's consideration of matters concerning the Subject Entity

A "material financial interest" does not include dealings between the Commissioner and the Subject Entity which are generally available to members of the public similarly situated to the Commissioner (other than his or her status as a Commissioner) on similar terms, such as home or other loans from banks and other financial institutions on terms that are available based on factors other than Commission membership or opportunities and benefits, including favorable rates and commercial discounts, that are available based on factors other than Commission membership.

F. Public Speaking and Public Statements.

Compensated speaking engagements paid for by Subject Entities should be avoided as inappropriate. Commissioners may accept other speaking

engagements at their discretion with due consideration for the choice of audience and nature of the presentation.

G. Non-disclosure of Information.

All confidential information obtained by the Commission during the course of its investigations, and confidential non-public work product of the Commission, shall be maintained as “Commission Confidential Information,” and shall be held in confidence and not disclosed outside of the Commission.

Information the Commission receives from other persons under confidentiality agreements must also be treated as Commission Confidential Information in accordance with the terms of such agreements.

Exceptions to classification as Commission Confidential Information include:

1. If the Chairman or the Commission authorizes the release of the information; or
2. The information is otherwise publicly available.

H. Outside employment and activities.

In accordance with 18 U.S.C. sections 203, 205, 207, 208, and 209, as modified by the Commissioners’ status as special government employees (“SGEs”), the Commissioners are: (i) prohibited from receiving or sharing in compensation for representational activities, or acting as an “agent or attorney,” with or without compensation, on behalf of private parties before the Federal Government, but only to the extent that the SGE represents someone or shares in fees for representing someone before the Government on a “particular matter involving a specific party or parties” on which the employee had worked “personally and substantially,” or on a matter before the Commission; and (ii) may not “lobby” or try to influence the Commission for one year after leaving Government employment, but are not prevented from lobbying in general. Persons who are covered by this one-year “cooling off” period are also barred for one year from representing any foreign interests before the United States. (A Commissioner should consult with the Ethics Officer if this issue arises and the Commissioner has provided less than 60 days service in the prior year.)

The Commission has also determined that it is improper for a Commissioner to accept new outside employment (arising after the effective date of these Guidelines) from persons known to the Commissioner to be Subject Entities due to the conflicts which may arise. Outside employment should be construed

broadly and includes paid speeches, honoraria, consulting arrangements and the like.

If a Commissioner is already employed by an organization that deals with matters before the Commission, or that deals with Subject Entities on matters before the Commission, the Commissioner shall take steps (in consultation with the Ethics Officer) to ensure that the income from such activities does not inure to the benefit of the Commissioner, or the Commissioner shall treat the matter as a conflict of interest in the manner set forth in Paragraph E above (examples may include a Commissioner who is a partner in a professional services organization and who shares in the profits of that organization, which includes receipts for representing Subject Entities before the Commission).

No Commissioner may receive compensation from a foreign government.



MEMORANDUM

To: Commissioners

From: Tom Greene
Executive Director
Financial Crisis Inquiry Commission

Date: December 10, 2009

Re: Additional Materials for FCIC Telephonic Business Meeting of
Monday, December 14, 2009
Agenda Item 10 - Recommendation to assume delegation of
responsibility from House Committee on Standards of Official
Conduct

Please find attached a draft letter for signature by the chair and vice-chair seeking a delegation from the House of Representatives for the commission to become its own ethics authority. This will make it possible for the commission to tailor ethical rules to its particular needs and circumstances. I recommend approval of this item.

Financial Crisis Inquiry Commission
Agenda Item 10 for Telephonic Business Meeting of December 14, 2009
Recommendation to assume delegation of responsibility from House Committee on
Standards of Official Conduct
draft of 12/9/09

Commission letterhead

December __, 2009

The Honorable Zoe Lofgren,
Chair, Committee on Standards of Official Conduct
HT-2, The Capitol
Washington, DC 20515

Re: Delegation of Authority

Dear Chairperson Lofgren;

Pursuant to the authority set forth in 5 USC Section 7353(d)(1)(E), this letter requests a delegation of authority for the Financial Crisis Inquiry Commission ("FCIC") to become its own Supervising Ethics Office in accordance with that Section. This will enable the FCIC to more efficiently conduct its business, a particular concern to the FCIC given the short time period allowed for it to meet its statutory obligations and the nature of the matters within its purview. We do, however, request that Commissioners' Financial Disclosure Statements (which they have agreed voluntarily to file) continue to be filed with the Office of the Clerk of the House of Representatives, and reviewed and certified by the House Committee on Standards of Official Conduct.

Thank you for your consideration.

Very truly yours,

Phil Angelides
Chairman
Financial Crisis Inquiry Commission

William M. Thomas
Vice Chairman
Financial Crisis Inquiry Commission

cc: Blake Chisam, Esq.
Chief Counsel/Staff Director



MEMORANDUM

To: Commissioners

From: Tom Greene
Executive Director
Financial Crisis Inquiry Commission

Date: December 10, 2009

Re: Additional Materials for FCIC Telephonic Business Meeting of
Monday, December 14, 2009
Agenda Item 12 - Report to Commission re: Legislative and
Regulatory Update

Please find attached this month's summary of legislative and regulatory developments. Note that the month's highlights are reported starting on page 4, and regulatory developments are reported starting on page 21.

Financial Crisis Inquiry Commission
Agenda Item 12 for Telephonic Business Meeting of December 14, 2009
Legislative and Regulatory Update



**SUMMARY OF MAJOR LEGISLATION AND REGULATIONS AS OF
DECEMBER 9, 2009**

Table of Contents

| | |
|--|----|
| In the News | 21 |
| House | 21 |
| Senate | 21 |
| Regulatory Agencies | 22 |
| Summary Table | 24 |
| Financial Firm Regulation | 27 |
| Executive Compensation and Corporate Governance | 27 |
| “Restoring American Financial Stability: executive compensation and corporate governance” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats) | 27 |
| Municipal Securities | 27 |
| “Restoring American Financial Stability: municipal securities” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 27 |
| Private Investment Funds..... | 27 |
| H.R. 3818: “The Private Fund Investment Advisors Registration Act of 2009” | 27 |
| SEC Reform | 28 |
| H.R. 3817: “The Investor Protection Act” | 28 |

| | |
|--|----|
| “Restoring American Financial Stability: SEC and improving investor protections” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 28 |
| Securitization | 29 |
| “Restoring American Financial Stability: securitization” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 29 |
| Financial Market Regulation..... | 30 |
| Competent Staffing..... | 30 |
| “Restoring American Financial Stability: creating a 21st century workforce for 21st century regulators” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 30 |
| Credit Rating Agencies..... | 30 |
| H.R. 3890: “Accountability and Transparency in Rating Agencies Act”..... | 30 |
| “Restoring American Financial Stability: credit rating agencies” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 31 |
| Hedge Funds | 31 |
| “Restoring American Financial Stability: hedge funds” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats) | 31 |
| Insurers..... | 31 |
| H.R. 2069: “Federal Insurance Office Act of 2009” | 31 |
| OTC Derivatives | 32 |
| H.R. 3795: “The OTC Derivatives Markets Act of 2009” | 32 |
| “Restoring American Financial Stability: addressing systemic risks caused by derivatives” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 32 |
| Regulatory Structure | 33 |
| “Restoring American Financial Stability: creating a single federal bank regulator: the financial institutions regulatory administration” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 33 |
| “Restoring American Financial Stability: insurance” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 33 |
| Consumer and Investor Protection..... | 34 |
| Consumer Financial Protection Agency | 34 |
| H.R. 3126: “The Consumer Financial Protection Agency Act of 2009”..... | 34 |

| | |
|---|----|
| “Restoring American Financial Stability: independent consumer financial protection agency” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 34 |
| Credit Cards | 35 |
| H.R. 3639: “The Expedited CARD Reform for Consumers Act of 2009” | 35 |
| Overdraft Protection..... | 35 |
| Government Crisis Response | 36 |
| Systemic Risk Regulation..... | 36 |
| House Financial Services and Treasury Draft Legislation: “Financial Stability Improvement Act of 2009” | 36 |
| “Restoring American Financial Stability: addressing systemic risks: the agency for financial stability” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)..... | 36 |
| “Too Big to Fail” | 36 |
| H.R. 3996: “Financial Stability Improvement Act of 2009” | 36 |
| Investigation..... | 38 |
| House Oversight and Government Reform Committee Hearing: “Bank of America and Merrill Lynch: How Did A Private Deal Turn Into a Federal Bailout? Part V | 38 |
| Regulation..... | 39 |
| Securities Exchange Commission..... | 39 |
| Dark Pools..... | 39 |
| <i>October 21, 2009 (Comment Period)</i> | 39 |
| Money Market Funds | 39 |
| Short Selling..... | 40 |
| “Naked” Short Selling Anti-Fraud Rule | 40 |
| CRA Oversight..... | 40 |
| Federal Reserve..... | 42 |
| CRA Oversight..... | 42 |
| Department of Treasury | 43 |
| Financial Fraud Enforcement Task Force..... | 43 |

In the News

House

On December 2, 2009, the House Financial Services Committee passed H.R. 3996, the Financial Stability Improvement Act of 2009 (31-27); and H.R. 2609, the Federal Insurance Office Act, by unanimous voice vote. Both have been rolled into a large regulatory reform bill, H.R. 4173, that is scheduled to be considered on House Floor the week of December 7, 2009.

H.R. 4173, the Wall Street Reform and Consumer Protection Act, would, among other things, create the Consumer Financial Protection Agency (CFPA), which would assume rulemaking, enforcement and examination duties for products such as home mortgages and credit cards. A council, chaired by the Treasury Department, would be created in this legislation, to monitor threats to financial markets. The CFPA would have the authority to require large systemically important firms to increase their capital, decrease their leverage and reduce their risk, as well as give them the authority to take over firms and place them into receivership, downsize firms and force them to sell off units if determined that the firm's structure could pose a threat to the economy. Firms with more than \$50 billion in assets would also be required to pay into the fund to cover costs.

H.R. 3795, the OTC Derivatives Markets Act of 2009, passed both the HFSC and Agriculture Committees, but due to jurisdictional issues, amendments will be offered to H.R. 4173. Frank will offer an amendment that would required the SEC and CFTC authority to require that commercial firms post margin in trades that do not go through a clearinghouse.

On December 8, 2009, HFSC will hold a hearing on the private sector and government response to the mortgage foreclosure crisis and on December 9, the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises will hold a hearing on additional reforms to the Securities Investor Protection Act.

December 11, 2009, the House Committee on Oversight and Government Reform will hold a hearing, Bank of America and Merrill Lynch: How Did a Private Deal Turn into a Federal Bailout? Part V.

(Updated 12/8)

Senate

In the Senate, the big news is the release of a discussion draft for broad financial services reform by Chairman Christopher Dodd and the Senate Committee on Banking, Housing and Urban Affairs Democrats. The draft was released on November 10 and

touches on many financial regulatory issues. Most significantly, the Dodd plan would create three new regulatory agencies: (1) the Financial Institutions Regulatory Administration, which would serve as a single regulator for banks; (2) the Agency for Financial Stability, which would be in charge of regulating systemic risks, and (3) the Consumer Financial Protection Agency, which would be concerned with consumer finance, including credit card companies and mortgage brokers.

There has not been substantial movement on the bill since the draft release. The Chairman has split the committee into bipartisan working groups in order to revive the Chairman's bill, which has received a cold reception since its release. Dodd and Ranking Member Richard Shelby are working together to tackle banking regulation and consumer protection. Senators Jack Reed and Judd Gregg are working on derivatives regulation. Senators Chuck Schumer and Mike Crapo are in charge of executive compensation and corporate governance. Senators Mark Warner and Bob Corker have been tasked with systemic risk and resolution authority.

Additionally, the Senate Banking Committee held a confirmation hearing for Federal Reserve Chairman Ben Bernanke on December 3. The committee expressed concern with the scope of the powers of the Federal Reserve, and, despite tongue-lashings and threats to hold up the confirmation process from Senators Sanders and Bunning, it seems clear that Bernanke will clear the 60 vote hurdle in the Senate necessary for reconfirmation.

(Updated 12/7)

Regulatory Agencies

At the **SEC**, several proposed rules are under review. On October 21, the Commission voted unanimously to propose measures intended to increase the transparency of *dark pools* so that investors get a clearer view of stock prices and liquidity. Amendments regarding *naked short selling* were proposed, one of which would set an alternative price test that would allow short selling only at a price above the current national best bid (the "alternative uptick rule"). Finally, several rulemaking actions to bolster oversight of *credit rating agencies* remain in their comment period. The actions are designed to enhance disclosure and improve the quality of credit ratings.

On December 4, the **Federal Reserve Board** 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).

On November 17, the Administration announced its establishment of an interagency "Financial Fraud Enforcement Task Force," designed to combat financial crime. The steering committee of the task force, led by DOJ, will also be composed of the Treasury, HUD and the SEC. Working with state and local partners, the task force will "investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, address discrimination in the lending and financial markets and recover proceeds for victims."

Secretary Geithner of the **Treasury** outlined an exit strategy for government bailout funds on Wednesday, December 09, 2009, which included an extension of the \$700 billion stimulus package through October 2010. In a letter to Senate Majority Leader

Reid and House Speaker Nancy Pelosi, Geithner wrote: “While we are extending the \$700 billion program, we do not expect to deploy more than \$550 billion.” Geithner also indicated that the Treasury may increase its commitment to the Term Asset-Backed Securities Loan Facility, but would close its Capital Purchase Program.

Summary Table

| Issue | House | Senate |
|---|--|---|
| <u>Financial Firm Regulation</u> | | |
| <i>Executive Compensation and Corporate Governance</i> (p. 10) | | In Dodd Discussion Draft: “Restoring American Financial Stability: executive compensation and corporate governance” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>Municipal Securities</i> (p. 10) | | In Dodd Discussion Draft: “Restoring American Financial Stability: municipal securities” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>Private Investment Funds</i> (p. 10) | H.R. 3818: “The Private Fund Investment Advisors Registration Act of 2009” (Kanjorski, Passed Financial Services Committee [67-1], October 27, 2009); rolled into regulatory reform legislation, H.R. 4173” The Wall Street and Consumer Protection Act of 2009,” week of December 7, 2009 | |
| <i>SEC Reform</i> (p. 11) | H.R. 3817: “The Investor Protection Act” (Kanjorski, Passed Financial Services Committee [41-28], November 4, 2009); rolled into regulatory reform legislation, H.R. 4173” The Wall Street and Consumer Protection Act of 2009,” week of December 7, 2009 | In Dodd Discussion Draft: “Restoring American Financial Stability: SEC and improving investor protections” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>Securitization</i> (p. 12) | | In Dodd Discussion Draft: “Restoring American Financial Stability: securitization” (Banking, House & Urban Affairs, November 10, 2009) |
| <u>Financial Market Regulation</u> | | |
| <i>Competent Staffing</i> (p. 13) | | In Dodd Discussion Draft: “Restoring American Financial Stability: creating a 21 st century workforce for 21 st century regulators” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>Credit Rating Agencies</i> (p. 13) | H.R. 3890: “Accountability and Transparency in Rating Agencies | In Dodd Discussion Draft: “Restoring American |

| | | |
|--|---|--|
| | Act” (Kanjorski, Passed Financial Services Committee [49-14], October 28, 2009); rolled into regulatory reform legislation, H.R. 4173” The Wall Street and Consumer Protection Act of 2009,” week of December 7, 2009 | Financial Stability: credit rating agencies” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>Hedge Funds</i> (p. 14) | | In Dodd Discussion Draft: “Restoring American Financial Stability: hedge funds” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>Insurers</i> (p. 14) | H.R. 2609: “Federal Insurance Office Act” (Kanjorski, Passed Financial Services Committee [unanimous voice], December 2, 2009); rolled into regulatory reform legislation, H.R. 4173” The Wall Street and Consumer Protection Act of 2009,” week of December 7, 2009 | In Dodd Discussion Draft: “Restoring American Financial Stability: insurance” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>OTC Derivatives</i> (p. 15) | H.R. 3795: “The OTC Derivatives Markets Act of 2009” (Frank, Passed Financial Services Committee [43-26], October 15, 2009; Passed Agriculture Committee [voice vote], October 21, 2009); will be offered as amendments to regulatory reform legislation, H.R. 4173” The Wall Street and Consumer Protection Act of 2009,” week of December 7, 2009 | In Dodd Discussion Draft: “Restoring American Financial Stability: addressing systemic risks posed by derivatives” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>Regulatory Structure</i> (p. 16) | | In Dodd Discussion Draft: “Restoring American Financial Stability: creating a single federal bank regulator” (Banking, House & Urban Affairs, November 10, 2009) |
| <u>Consumer and Investor Protection</u> | | |
| <i>Consumer Financial Protection Agency</i> (p. 17) | H.R. 3126: “The Consumer Financial Protection Agency Act of 2009” (Frank, Passed Financial Services Committee [39-29], October 22, 2009; Passed Energy and Commerce Committee [33-19], October 29, 2009); rolled into regulatory reform legislation, H.R. 4173” The Wall Street and Consumer Protection Act of 2009,” week of December 7, 2009 | In Dodd Discussion Draft: “Restoring American Financial Stability: independent consumer financial protection agency” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>Credit Cards</i> (p. 18) | H.R. 3639: “The Expedited CARD Reform for Consumers Act of 2009” (Frank and Maloney, Passed House | |

| | | |
|---|---|---|
| | [331-92], November 4, 2009) | |
| <i>Overdraft Protection</i> (p. 18) | H.R. 3904: “Overdraft Protection Act” (Frank and Maloney, currently awaiting markup, December 7, 2009) | |
| <u>Government Crisis Response</u> | | |
| <i>Systemic Risk Regulation</i> (p. 18) | 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 and Consumer Protection Act of 2009,” week of December 7, 2009 | In Dodd Discussion Draft: “Restoring American Financial Stability: addressing systemic risks” (Banking, House & Urban Affairs, November 10, 2009) |
| <i>“Too Big to Fail”</i> (p. 18) | 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 and Consumer Protection Act of 2009,” week of December 7, 2009 | In Dodd Discussion Draft: “Restoring American Financial Stability: ending too big to fail” (Banking, House & Urban Affairs, November 10, 2009) |
| <u>Investigation</u> | | |
| <i>Bank of America and Merrill Lynch</i> (p. 20) | Hearing: “Bank of America and Merrill Lynch: how did a private deal turn into a federal bailout? Part V (Oversight and Government Reform, December 11, 2009) | |
| <u>Regulation (SEC)</u> | | |
| <i>Dark Pools</i> (p. 21) | Proposed Rule (October 21, 2009) | |
| <i>Money Market Funds</i> (p. 21) | Proposed Rule (June 24, 2009) | |
| <i>Short Selling</i> (p. 22) | Proposed Rule (September 17, 2009) | |
| <i>CRA Oversight</i> (p. 22) | Adopted Rule - Awaiting comment period (October 5, 2009) | |
| <u>Federal Reserve</u> | | |
| <i>CRA Oversight</i> (p. 24) | Adopted Rule (December 4, 2009) | |
| <u>Treasury</u> | | |
| <i>Financial Fraud Task Force</i> (p. 25) | Establishment of Task Force (November 17, 2009) | |

Financial Firm Regulation

Executive Compensation and Corporate Governance

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

Summary

“Giving shareholders a say on pay and proxy access, ensuring the independence of compensation committees, and requiring public companies to set clawback policies to take back executive compensation based on inaccurate financial statements are important steps in reining in excessive executive pay and can help shift management’s focus from short-term profits to long-term growth and stability.”
(Dodd Discussion Draft Language, November 10, 2009)

Municipal Securities

“Restoring American Financial Stability: municipal securities” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“Municipal securities will have better oversight through the registration of municipal advisers and increased investor representation on the Municipal Securities Rulemaking Board.” (Dodd Discussion Draft Language, November 10, 2009)

Private Investment Funds

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

Summary

“Under this legislation, private investment funds would become subject to more scrutiny by the SEC. It also mandates the registration of private advisers to private pools of capital regulators. New record keeping and disclosure requirements for private advisers. Advisers to hedge funds, private equity firms, single-family offices, and other private pools of capital will have to obey some basic ground rules. Regulators will have the authority to examine the records of these previously secretive investment advisers.” (Rep. Paul Kanjorski Press Release, October 27, 2009; House Financial Services Press Release, October 27, 2009)

Congressional Actions

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

SEC Reform

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

Summary

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

Congressional Actions

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

“Restoring American Financial Stability: SEC and improving investor protections” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“Every investor – from a hardworking American contributing to a union pension to a day trader to a retiree living off of their 401(k) – deserves better protections for their investments. Investors in securities will be better protected by improving the competence of the SEC, creating uniform standards for those providing customers investment advice, and giving investors the right to sue those who commit securities fraud.” (Dodd Discussion Draft Language, November 10, 2009)

Securitization

“Restoring American Financial Stability: securitization” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“Companies that sell products like mortgage-backed securities are required to retain a portion of the risk to ensure they won’t sell garbage to investors, because they have to keep some of it for themselves.” (Dodd Discussion Draft Language, November 10, 2009)

Financial Market Regulation

Competent Staffing

“Restoring American Financial Stability: creating a 21st century workforce for 21st century regulators” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“This bill will take a look at a key hurdle for creating competent regulatory agencies: competent staff.” (Dodd Discussion Draft Language, November 10, 2009)

The bill would set up a panel to look at the staffing needs of the three new regulatory bodies proposed in the Dodd plan: the Financial Institutions Regulatory Administration, the Agency for Financial Stability, and the Consumer Financial Protection Agency.

Credit Rating Agencies

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

Summary

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

Congressional Actions

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

[“Restoring American Financial Stability: credit rating agencies” \(Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats\)](#)

Summary

“Establishes a new Office of Credit Rating Agencies at the Securities and Exchange Commission to strengthen regulation of credit rating agencies. New rules for internal controls, independence, transparency and penalties for poor performance will address shortcomings and restore investor confidence in these ratings.” (Dodd Discussion Draft Language, November 10, 2009)

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

[Hedge Funds](#)

[“Restoring American Financial Stability: hedge funds” \(Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats\)](#)

Summary

“Hedge funds worth over \$100 million will be required to register with the SEC as investment advisers and to disclose financial data needed to monitor systemic risk and protect investors.” (Dodd Discussion Draft Language, November 10, 2009)

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

[Insurers](#)

[H.R. 2069: “Federal Insurance Office Act of 2009”](#)

Summary

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

Congressional Actions

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

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. Parallel’s regulatory frameworks for the regulation of swap markets, dealers and major swap participants. Rulemaking authority is held jointly with the CFTC, which has jurisdiction over swaps, and the SEC, which has jurisdiction over security-based swaps. Treasury is given the authority to issue final rules if the CFTC and SEC cannot decide on a joint approach within 180 days.” (House Financial Services Press Release, October 15, 2009)

Congressional Actions

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

“Restoring American Financial Stability: addressing systemic risks caused by derivatives” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“Common sense safeguards will protect taxpayers against the need for future bailouts and buffer the financial system from excessive risk-taking. Over-the-counter derivatives will be regulated by the SEC and the CFTC, more will be cleared through centralized clearing houses and traded on exchanges, uncleared swaps will be subject to margin and capital requirements, and all trades will be reported so that regulators can monitor risks in this large, complex market.” (Dodd Discussion Draft Language, November 10, 2009)

Regulatory Structure

“Restoring American Financial Stability: creating a single federal bank regulator: the financial institutions regulatory administration” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“The Financial Institutions Regulatory Administration will eliminate the alphabet soup of multiple bank regulators that has led to weak, confusing regulation where it’s easy for problems to fall through the cracks and difficult to know who is responsible.” (Dodd Discussion Draft Language, November 10, 2009)

The agency would have an independent chairman and combine the functions of the Office of the Comptroller of the Currency and the Office of Thrift Supervision, the state bank supervisory functions of the Federal Deposit Insurance Corporation and the Federal Reserve, and the bank holding company authority from the Federal Reserve.

“Restoring American Financial Stability: insurance” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“Creates a new office within the Treasury Department to monitor the insurance industry, coordinate international insurance issues, and requires a study on ways to modernize insurance regulation and provide Congress with recommendations.” (Dodd Discussion Draft Language, November 10, 2009)

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 costumers on products such as credit cards and mortgages.” (House Financial Services Press Release, October 22, 2009; Committee on Energy and Commerce Press Release, October 29, 2009)

Congressional Actions

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

“Restoring American Financial Stability: independent consumer financial protection agency” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“The Consumer Financial Protection Agency will have the sole job of protecting American consumers from fraud and abuse 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. American consumers already have protections against faulty appliances, contaminated food, and dangerous toys. With the creation of the Consumer Financial Protection Agency, they’ll finally have a watchdog to oversee financial products, giving Americans confidence that there is a system in place that works for them – not just big banks on Wall Street.” (Dodd Discussion Draft Language, November 10, 2009)

The agency will consolidated the consumer protection responsibilities currently handled by the Office of the Comptroller of the Currency, Office of Thrift

Supervision, Federal Deposit Insurance Corporation, the Federal Reserve, the National Credit Union Administration, and the Federal Trade Commission.

Credit Cards

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

Summary

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

Congressional Actions

9/24/2009

Introduced in House

10/26/2009

Reported (Amended) by the Committee on Financial Services

11/4/2009

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

11/5/2009

Received in the Senate

Overdraft Protection

H.R. 3904: “Overdraft Protection Act”

Summary

This is the Chairman Barney Frank’s “Too Big to Fail” legislation. *“The House Financial Services Committee and the Treasury Department’s draft legislation addressing systemic risk and “too big to fail” institutions includes creating a mechanism for monitoring and reducing the threats that systemically risky firms pose to the financial system. Establishes a process for winding down large, financially-troubled non-bank financial institutions in a way that protects American taxpayers and minimizes the impact on the financial system, and overhauls and updates the financial regulatory system.” (House Financial Services Press Release, October 27, 2009)*

Congressional Actions

Currently in the House Financial Services Committee Markup awaiting markup.

Government Crisis Response

Systemic Risk Regulation

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

Summary

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

“Restoring American Financial Stability: addressing systemic risks: the agency for financial stability” (Dodd Discussion Draft, Senate Banking, Housing and Urban Affairs Democrats)

Summary

“One financial institution should never be capable of bringing down the entire American economy. The newly created Agency for Financial Stability is an independent agency responsible for identifying, monitoring and addressing systemic risks posed by large, complex companies as well as products and activities that can spread risk across firms. It will discourage companies from getting too large by imposing burdens on them as they grow and give regulators the authority to break up large, complex companies if they pose a threat to the financial stability of the United States.” (Dodd Discussion Draft Language, November 10, 2009)

“Too Big to Fail”

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

Summary

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

transaction at an ATM would trigger an overdraft fee and offer the chance to cancel the transaction before a fee is incurred. Requires that overdraft fees related to the actual cost of processing the overdraft, as defined by bank regulators, and stops the practice of re-ordering transactions posted to accounts in a way that maximizes fee income to the bank.

Congressional Actions

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

Summary

“Preventing another crisis where American taxpayers are forced to bail out financial firms requires strengthening big companies to better withstand stress, putting a price on excessive growth that matches the risks they pose to the financial system, and creating a way to shutdown big companies that fail without threatening the economy.” (Dodd Discussion Draft Language, November 10, 2009)

The legislation would impose heightened capital, leverage, and liquidity requirements as companies grow larger and more complex. It would require companies provide their own insurance to protect against financial shocks through issuance of long-term hybrid debt securities. Further, it would compel companies to permit plans for their rapid and orderly shutdown, and create an FDIC mechanism to unwind systemically significant financial companies.

Investigation

House Oversight and Government Reform Committee Hearing: “Bank of America and Merrill Lynch: How Did A Private Deal Turn Into a Federal Bailout? Part V

December 11, 2009: The House Oversight and Government Reform Committee will hold a joint hearing to examine 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 until December 10, 2008; Charles “Chad” Gifford, Member, Board of Directors; and Thomas May, Member, Board of Directors

Part III: July 16, 2009

Featuring testimony from former Treasury Secretary Henry Paulson

Part II: June 25, 2009

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

Part I: June 11, 2009

Featuring testimony from Bank of America CEO Ken Lewis.

Regulation

Securities Exchange Commission

Dark Pools

October 21, 2009 (Comment Period)

Summary

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

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

Money Market Funds

Summary

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

- 1) Tightening the risk-limiting conditions of rule 2a-7 by (among other things): requiring funds to maintain portion of their portfolios in instruments that can be readily converted to cash.*
- 2) Reducing weighted average maturity of portfolio holdings; limiting funds to investing in the highest quality portfolio securities; and requiring money market funds to report their portfolio holdings monthly to the Commission.*
- 3) Permitting a money market fund that has “broken the buck” (i.e. re-priced its securities below \$1.00 per share) to suspend redemptions to allow for orderly liquidation of fund assets.*

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

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

Short Selling

“Naked” Short Selling Anti-Fraud Rule

September 21, 2009

Summary

These are proposed amendments to Regulation SHO under the Securities Exchange Act of 1934. Two approaches to restrictions on short selling are being proposed:

- 1) *A price test that would apply on a market wide and permanent basis, and would implement short sale restrictions based on either the last sale price or the national best bid.*
- 2) *Considered a "circuit-breaker," the other approach would apply only to a particular security during severe declines in the price of that security. Once triggered, the circuit breaker would impose a short sale halt or short sale restriction based on either the last sale price or the national best bid.*

The alternative uptick rule would not require monitoring of the sequence of bids (that is, whether the current national best bid is above or below the previous national bid).

CRA Oversight

SEC - September 17, 2009 (*60-day comment period reopened on October 5, 2009)

Summary

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

- 1) *Adopt rules to provide greater information concerning ratings histories - and to enable competing credit rating agencies to offer unsolicited ratings for structured finance products, by granting them access to the necessary underlying data for structured products.*

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

Federal Reserve

CRA Oversight

Friday, December 4, 2009

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

Summary

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

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

Department of Treasury

Financial Fraud Enforcement Task Force

November 17, 2009

Summary

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