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Agenda for Financial Crisis Inquiry Commission Closed Session Meeting on Tuesday, October 20, 2009

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Phillip Angelides, Bill Thomas, Thomas Greene, Martin Neil Baily, Simon Johnson, Hal S. Scott, Brooksley Born, Byron Stephen Georgiou, Bob Graham, Keith Hennessey, Douglas Holtz-Eakin, Heather Murren, John W. Thompson, and Peter J. Wallison

**Agenda for Financial Crisis Inquiry Commission Closed Session Meeting of
Tuesday, October 20, 2009
9:00am-3:30pm EDT
FCIC Offices
1717 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20006**

9:00-10:45am	FCIC Business Matters
10:45-12:30pm	Roundtable I
12:30-1:30pm	Lunch
1:30-3:15pm	Roundtable II

Agenda Item

Presentation

- | | |
|---|---|
| 1) Call to Order | Chairman Angelides |
| 2) Roll Call | Chairman Angelides |
| 3) Approval of Minutes of Closed Session Meeting of September 16, 2009 <i>(Attached)</i> | Chairman Angelides |
| 4) Approval of Minutes of Public Meeting of September 17, 2009 <i>(Attached)</i> | Chairman Angelides |
| 5) Extension of Delegation of Authority <i>(Attached)</i> | Chairman Angelides & Vice Chair Thomas |
| 6) Report to Commission re: Legislative Calendar and Schedule | Executive Director Tom Greene |
| 7) Executive Director's Report | Tom Greene |
| 8) Review and Discussion of Preliminary Draft Work Plan <i>(Materials forthcoming)</i> | Tom Greene |
| 9) Other Items of Business | All Commissioners |
| 10) Roundtable I (10:45-12:30pm) with: <i>(Materials forthcoming)</i> | |
| a. <u>Martin Baily</u>, Senior Fellow in Economic Studies, Brookings Institution. | |
| b. <u>Simon Johnson</u>, Ronald A. Kurtz Professor of Entrepreneurship, Sloan School of Management, Massachusetts Institute of Technology. | |
| c. <u>Hal S. Scott</u>, Harvard Law School, Nomura Professor and Director of the Program on International Financial Systems at Harvard Law School. | |
| 11) Break for Lunch | |

12) Roundtable II (1:30-3:15pm) with:

(Materials forthcoming)

- a. **Joseph Stiglitz**, Professor, Columbia Business School, Graduate School of Arts & Sciences (Department of Economics) and the School of International and Public Affairs.
- b. **John Taylor**, Stanford University, Mary and Robert Raymond Professor of Economics at Stanford University, and the Bowen H. and Janice Arthur McCoy Senior Fellow, Hoover Institution.
- c. **Luigi Zingales**, Robert C. McCormack Professor of Entrepreneurship and Finance and the David G. Booth Faculty Fellow, University of Chicago Booth School of Business

13) Adjournment

Chairman Angelides

Financial Crisis Inquiry Commission
Agenda Item 3 for Closed Session Meeting of October 20, 2009

DRAFT Minutes of Closed Session Meeting
Wednesday, September 16, 2009

Agenda Item 1: 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, Doug Holtz-Eakin, Heather Murren, John Thompson, and Peter Wallison. Keith Hennessey was absent.

Also participating in the meeting were: Irv Nathan, General Counsel to the House of Representatives, Ariel Waldman, and other staff; Tim Blodgett, Chief Administrative Counsel, and Walt Edwards, Deputy Chief Administrative Officer, of the House Chief Administrative Officer; Blake Chisam, Staff Director and Chief Counsel, and Peg Perl, Stan Simpson, and Donald Sherman of the House Committee on Standards of Official Conduct; Thomas Greene, Executive Director, FCIC; Gretchen Newsom, assistant to Chairman Angelides; and Scott Ganz, assistant to Vice Chairman Thomas.

Chairman Angelides and Vice Chairman Bill Thomas made welcoming remarks, brief introductions, and opening comments about the work of the Commission.

Agenda Item 2: Approval of Minutes of Meeting, August 19, 2009

Chairman Angelides introduced minutes from the FCIC meeting of August 19, 2009.

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

APPROVED: 9-0.

Agenda Item 3: Ratification of Commission Rules and Procedures

Chairman Angelides proposed ratifying the rules and procedures (attached), which were tentatively adopted at the August 19, 2009 meeting, with a proposed, technical amendment (attached). Mr. Nathan explained the amendment to the Commissioners.

MOTION: Holtz-Eakin moved and Georgiou seconded a motion to accept the proposed rules with the amendment.

APPROVED: 9-0.

Agenda Item 4: Proposed Whistle Blower Protections

Chairman Angelides, at the request of Keith Hennessey, proposed rules for Whistle Blower Protection (attached). Mr. Nathan explained the proposed rules to the Commissioners.

MOTION: Murren moved and Graham seconded the motion to accept the rules on Whistle Blower Protection.

APPROVED: 9-0.

Agenda Item 5: Administrative and Personnel Update

Chairman Angelides and Vice Chairman Thomas provided an update on the FCIC Office location; the organization of the Commission; and future FCIC meetings.

Chairman Angelides introduced Executive Director, Thomas Greene, to the Commissioners. Tom Greene introduced himself and addressed the Commissioners and touched on his outlook for FCIC in the next 30-90 days.

Agenda Item 6: Extension of Delegation Authority

Chairman Angelides asked for an extension of delegation authority through October 31, 2009.

MOTION: Graham moved and Holtz-Eakin seconded to approve the extension of delegation authority (attached).

APPROVED: 9-0.

Agenda Item 7: Donations of Goods and Services – Legal Opinion and Delegation of Authority

Chairman Angelides introduced Peg Perl of House Committee on Standards of Official Conduct and Tim Blodgett who addressed the Commissioners on federal solicitation rules. Chairman Angelides indicated that Mr. Greene would return with specific recommendations on this item once a General Counsel was in place.

Agenda Item 8: Initial Discussion of Ethics Rules

Chairman Angelides and Commissioners continued their ethics discussion and will follow-up on this topic in the future. Chairman Angelides indicated that Mr. Greene would return with specific recommendations on this item once a General Counsel was in place.

Agenda Item 9: Other Items of Business

No other items of business were presented before the Commission.

Agenda Item 10: Recess until Dinner at 7PM

Chairman Angelides called for a recess of meeting, at 5:56PM, until the 7PM dinner.

Agenda Item 11: Dinner and Agenda Item 12: Discussion of Commission Scope of Work, Work Plan, and Timeline

The Commission met over dinner and discussed the Commission's scope of work, work plan, and timeline.

Agenda Item 13: Adjournment

Chairman Angelides adjourned the meeting without any dissent from the Commission.

Financial Crisis Inquiry Commission
Agenda Item 3 for Closed Session Meeting of October 20, 2009
Minutes of Closed Session Meeting of September 16, 2009

ATTACHMENT
Minutes of Closed Meeting of Wednesday, August 19, 2009

Agenda Item 1: Call to Order

Chairman Angelides called the closed session meeting to order at 12:02pm EDT.

Agenda Item 2: Roll Call

Chairman Angelides called the roll of 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 joined the call at the top of discussion of Agenda Item 3.

Also participating on the call were: Irv Nathan, General Counsel to the House of Representatives, Ariel Waldman, and other staff; Tim Blodgett, Chief Administrative Counsel, and Walt Edwards, Deputy Chief Administrative Officer, of the House Chief Administrative Officer; Blake Chisam, Staff Director and Chief Counsel of the House Committee on Standards of Official Conduct and his staff; Gretchen Newsom, assistant to Chairman Angelides; and, Alex Brill and Scott Ganz, assistants to Vice Chairman Thomas.

Chairman Angelides and Bill Thomas, Vice Chairman, made welcoming remarks, brief introductions, and opening remarks about the work of the Commission.

Agenda Item 3: Consideration of Commission Rules

Chairman Angelides introduced draft Rules of Procedures for the Commission and Mr. Nathan provided an overview and answered questions from Commissioners. The draft rules were reviewed section by section and amendments were proposed.

MOTION: Born moved and Wallison seconded a motion to adopt the proposed rules, as amended (see attached); to have the rules be brought back at the September meeting for purposes of confirming agreed upon language; and to request that Mr. Nathan draft an amendment pertaining to whistle blowers and related protections.

APPROVED: Motion passed 10-0.

Agenda Item 4: Update on Administrative/Personnel Matters

Chairman Angelides and Vice Chairman Thomas gave an update on administrative matters; including the procurement of office space; the execution of the MOU with the General Services Administration (GSA); and swearing-in procedures.

Chairman Angelides and Vice Chairman Thomas reported on the progress made thus far on the selection of an executive director for FCIC. Chairman Angelides requested that Commissioners forward resumes to himself and a copy to Ms. Newsom.

Agenda Item 5: Consideration of Delegation Authority

Chairman Angelides introduced the proposed delegation authority and gave an overview.

MOTION: Holtz-Eakin moved and Graham seconded a motion to adopt the proposed delegation authority (see attached).

APPROVED: Motion passed 10-0.

Agenda Item 6: Briefing on Legal Matters, including Record Retention and Donations of Goods and Services

Mr. Nathan briefed the Commission on current statutes that are and are not applicable to the Commission. Mr. Nathan advised that Commission is not subject to FOIA or sunshine laws, but advised Commissioners to keep all emails and correspondence pertaining to FCIC until such a time that the Executive Director develops a record retention plan with the National Archivist. All official documents of the Commission must be retained and archived.

For the September Commission meeting, Mr. Blodgett will prepare a memo on rules and parameters for the acceptance of goods and services by the Commission

Agenda Item 7: Briefing on Financial Disclosure, Statutory Ethics Requirements, and Commission Ethics Code

Chairman Angelides informed the Commission that at the conclusion of the FCIC meeting on September 17th, Mr. Chisam will provide a voluntary workshop on ethics for interested commissioners.

Mr. Chisam led a discussion on financial disclosure statements and the status of Commissioners as special government employees (those who work 130 days or fewer in a 365 day period).

Although it is the opinion of the House Committee on Standards of Official Conduct that Commissioners are not obligated to file financial disclosures, it was recommended by Mr. Chisam that Commissioners do so. Mr. Chisam offered the assistance of his office in completing these documents by pre-screening the documents for completeness; Stan Simpson will provide this assistance and is reachable at 202-225-7103 or stan.simpson@mail.house.gov.

Chairman Angelides and Vice Chairman Thomas requested that Mr. Chisam create a working draft of ethics rules to be discussed at the September 16th meeting.

MOTION: Born moved and Thompson seconded a motion to indicate that although the House Committee on Standards of Official Conduct has advised Commissioners that they are not required to file financial disclosures, the Commission chooses to file disclosures voluntarily.

APPROVED: Motion passed 10-0.

MOTION: Graham moved and Holtz-Eakin seconded a motion as follows:

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

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

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

APPROVED: Motion passed 10-0.

Agenda Item 8: Briefing on Travel Reimbursement, Per Diem, and Compensation

Chairman Angelides reviewed with Commissioners the briefing on travel, per diem, and Commissioner compensation.

Agenda Item 9: Commission Meeting of September 16 and 17

Chairman Angelides and Vice Chairman Thomas reviewed logistics of the upcoming September FCIC meetings and requested that each Commissioner prepare a brief opening statement. Chairman Angelides welcomed input on the structure of the meeting and what matters should be covered during the public meeting of September 17th.

Agenda Item 10: Future Commission Meetings for 2009

The Commission agreed to meet on Tuesday, October 20th and Tuesday, November 17th, and to meet every third Tuesday of the month through June 2010, with the exception of December wherein two Commissioners voiced conflicts with December 15th, and also where holidays prevent the normal meeting schedule.

It was suggested that some future FCIC public meetings be located outside of Washington D.C.

Agenda Item 11: Other Items of Discussion or Business

Hennessey requested that once the Commission staff is hired, a general email account be created for the public to deliver feedback and input to the Commission.

Agenda Item 12: Adjournment

Chairman Angelides thanked the Commissioners for their participation; and thanked Mr. Blodgett, Mr. Edwards, Mr. Nathan, Mr. Chisam and their staffs for their work; and adjourned the meeting at 2:06pm EDT.

APPROVED: 9-0, September 16, 2009

Financial Crisis Inquiry Commission
Agenda Item 3 for Closed Session Meeting of October 20, 2009
Minutes of Closed Session Meeting of September 16, 2009

ATTACHMENT
FCIC Rules of Procedure and Technical Amendment

Financial Crisis Inquiry Commission Rules of Procedure

I. Authority Governing the Commission's Operations

The FCIC was established by the Fraud Enforcement and Recovery Act of 2009 ("FERA"), P.L. 111-21, 123 Stat. 1617. The FCIC's operations shall comply with the FERA, as amended, and with these FCIC Rules of Procedure (FCIC Rules), as adopted and amended. To the extent the FCIC Rules conflict with the FERA or any provision of federal law, federal law controls. When the FCIC encounters in an official meeting or hearing a situation for which specific rules are not provided for in the FERA or in these FCIC Rules, the FCIC shall adhere to the provisions of Robert's Rules of Order, as applicable.

II. Conducting Commission Business

At meetings or hearings of the Commission, there shall be a presiding Commissioner. The Chairman shall be the presiding Commissioner when he is present. In the Chairman's absence, the Vice-Chairman shall be the presiding Commissioner. If neither is present, then a member of the Commission designated by the Chair will serve as the presiding Commissioner.

The presiding Commissioner has the authority to ensure the orderly conduct of the Commission's business. This power includes, without limitation, recognizing members of the public to speak, imposing reasonable limitations on the length of time a speaker may hold the floor, determining the order in which members of the Commission may speak or question witnesses, conducting votes of members of the Commission, and designating Commissioners to conduct specified functions in connection with meetings or hearings.

III. Meetings

A. Generally

The Commission may conduct either open or closed meetings, as the Chairman and Vice Chairman, acting jointly, may determine at their discretion. For meetings designated as open, the Commission may, in its discretion, elect to have all or a portion of the meeting be closed.

Under the FERA, the Commission is not subject to the Federal Advisory Committee Act. The Commission is also not subject to the Freedom of Information Act or the Government in Sunshine Act.

B. Notice to Commissioners

All meetings shall be noticed by email to each Commissioner by the Chairman or his designee. Meetings held in the regular course must be noticed at least seven (7) days in advance. Meetings held pursuant to exigent circumstances must be noticed at least forty-eight (48) hours in advance. Whether exigent circumstances exist will be determined jointly by the Chairman and Vice Chairman. Meeting notices shall provide the time and place of the meeting and an agenda. Meetings may include sessions with selected individuals or groups, in addition to Commissioners.

C. Revised Agenda

Commissioners wishing to add or delete items from a meeting agenda shall notify the Chairman and Vice Chairman of the proposed change or changes to the agenda not less than forty-eight (48) hours before the scheduled meeting (or for a meeting held pursuant to exigent circumstances not less than twenty-four (24) hours before the scheduled meeting), and in any event should take good-faith steps to provide such notice as soon as possible. The Chairman and Vice Chairman, acting jointly, shall make an agreed-upon determination as to any additions or deletions to the agenda.

D. Public Notice

If all or part of a regularly-scheduled meeting is to be open to the public, notice will be provided at least seven (7) days in advance by publication in the Federal Register or the Congressional Record ~~and~~ any other publications selected by the Commission, and shall include notice of agenda items open to the public. Meetings held pursuant to exigent circumstances must be noticed at least forty-eight (48) hours in advance.

E. Minutes

Minutes of each meeting shall be prepared by the FCIC Director or the Director's designee, distributed to each Commissioner, and maintained with official records of the Commission. The minutes will include a record of the persons present (including the names of Commission members, staff and witnesses), and a description of the matters discussed and conclusions reached, and all copies of reports received, issued or approved by the FCIC.

IV. Hearings

A. Generally

Hearings shall be open to the public except such portions as the Commission or the Chairman and the Vice Chairman acting jointly determine to be closed.

B. Notice of Hearing

If all or part of a regularly-scheduled hearing is to be open to the public, notice shall be provided at least seven (7) days in advance in the Congressional Record and other publications selected by the Commission, and shall include a listing of the agenda items open to the public. Hearings held pursuant to exigent circumstances must be noticed at least forty-eight (48) hours in advance.

C. Witness Statements

For the benefit of the members of the Commission and staff, witnesses who are to appear before the FCIC who wish to provide an opening statement should endeavor to file with the Commission at least three (3) business days in advance of their appearance (and in any event shall file with the Commission no less than two (2) days in advance of their appearance, or 24 hours in advance of a meeting scheduled under exigent circumstances) twenty (20) copies of a written statement of their testimony and proposed exhibits. Witnesses' opening statements and exhibits shall be kept non-public by the Commission until no earlier than the day of the witnesses' testimony. Witnesses' oral testimony may be limited to a brief summary of their submission.

Testimony at hearings before the FCIC may be conducted under oath, at the direction of the Presiding Commissioner. The FCIC may question witnesses, who may be represented by counsel at FCIC hearings.

D. Public Participation

Members of the public may attend any portion of a hearing that is not closed to the public. The Chairman may decide to exclude oral comment periods during a hearing. Members of the public may, at the discretion and direction of the Chairman or presiding Commissioner, offer oral comment. Members of the public may submit written statements to the FCIC at any time.

E. Transcripts

A transcript of each FCIC hearing shall be made and retained by the FCIC in the official Commission records. The Director shall review and correct the transcript before distribution. Copies of transcripts of open and closed meetings shall be provided to each Commissioner upon request. Copies of transcripts of all open hearings or open portions of hearings shall be made available to the public upon request.

V. Commissioner Voting at Meetings and Hearings

To transact business at a meeting or hearing, as required by the FERA, § 5(b)(4)(B), a quorum of the FCIC shall consist of six (6) Commissioners. Once a quorum is present, any motion at a meeting shall require a majority of those present and voting, so long as the quorum remains; at a hearing, procedural motions related to the Commission's conduct of the hearing shall not require a quorum and may be carried by a majority of the Commissioners present.

There shall be no proxy voting.

VI. Eligibility to Vote

At a meeting or hearing of the Commission, when a decision or recommendation of the Commission is required, the presiding Commissioner will request a motion for a vote. Any member, including the presiding Commissioner, may make a motion for a vote. So long as a quorum is present, Commission business shall be transacted by a majority vote of the members present, except for the issuance of subpoenas under Section 5(d)(2)(B)(iii). Each Commissioner shall have a single vote and, for votes requiring a majority vote as referenced above, his or her vote shall be entered by roll call during meetings or by written document outside of ongoing meetings.

VII. Staff

All staff shall be appointed and terminated by the Chairman and Vice Chairman, acting jointly.

VIII. Subcommittees and Agents of the Commission

The FERA requires the Commission to address twenty-two (22) specific causes of the current financial and economic crisis, § 5(c)(1)(A)-(V), and to address the causes of the collapse of each major financial institution that failed or was likely to have failed if not for the receipt of government assistance, *id.* § 5(c)(2). The statute further provides that any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under § 5(d)(8) of the FERA. To address this complex set of assignments, at the direction of the Chairman, any subcommittee on any topic may be formed by the FCIC.

The Chairman, in consultation with the Vice Chairman, shall propose the creation, charter, and membership of subcommittees. The Commission shall promptly after such a proposal vote on the existence, charter, and membership of the proposed subcommittee. Each subcommittee must have two or more Commissioners, with staff as may be appropriate. Any Commissioner that is not a member of a given subcommittee may participate in the business of that subcommittee as a member *ex officio* and without voting rights.

At meetings or hearings of a subcommittee, the Chair of the given subcommittee shall preside. In the absence of the Chair of the subcommittee, a designee of the subcommittee Chair shall preside.

FCIC subcommittees shall be subject to the FCIC Rules to the same extent as the full Commission, except that subcommittees may pass any motion by a majority of the Commissioners present regardless of whether a quorum of the Commission is present.

A subcommittee may not issue a subpoena. If a subcommittee wishes to have a subpoena issued, the subcommittee shall request that the full Commission issue the subpoena and the Commission may in its discretion issue the requested subpoena pursuant to Section 5(d)(2)(B)(iii) of the FERA.

IX. Reporting to the President and Congress

A. Submission of Report and Testimony

The report of the Commission and appearance before and consultations with Congress are governed by FERA § 5(h), which provides that the FCIC's report is due to the President and Congress on December 15, 2010, and that the Chairperson shall, within 120 days after the date of the report's submission, appear before the Senate Banking, Housing and Urban Affairs Committee and the House Financial Services Committee.

B. Vote on Report

The full Commission shall vote on approval and submission to the President and Congress of the Commission's report. The Chairman shall set the time and date for a meeting of the Commission for the purpose of voting on approval and submission of the report, which date shall be no later than 30 days before its due date. Notice of this meeting must be provided to all Commissioners no less than one week prior to the date of the meeting. Commissioners who are unable to attend the meeting at

which the vote on approval and submission is scheduled may vote telephonically or by email by transmitting their vote in either manner to a staff member designated by the Chairman. Approval and submission requires a majority of the votes of those Commissioners physically present and voting and those who vote telephonically or by email.

C. Additional or Dissenting Views

Commissioners may submit additional or dissenting views for publication in the report submitted to the President and Congress. They may be submitted by one or more Commissioners. They are to be provided to the staff member designated by the Chairman by a time designated by the Chairman (that shall be prior to the final deadline for completion of all report material), and the staff member shall promptly circulate to all Commissioners all additional and dissenting views that are received. Additional or dissenting views not provided by the time specified by the Chairman will not be included in the report submitted to the President and Congress.

X. Budget

Under the FERA, § 5(j): “There is authorized to be appropriated to the Secretary of the Treasury such sums as are necessary to cover the costs of the Commission.” The Commission’s fiscal year spending plan approved by the Commission shall govern the Commission’s activities and expenditures. Spending deviations exceeding \$50,000, or reprogramming of more than \$50,000 from one of the plan's spending categories to another, shall be approved by the Chairman and Vice Chairman and noticed to all Commissioners.

XI. Non-staff Expenditures and Contracting

No consultants or other outside personnel, whether their services are obtained by contract, detail, volunteering, or a remunerative agreement, may be hired by the Commission without the approval of the Commission or approval of a person delegated by the Commission to exercise such authority, and all such proposed arrangements shall be noticed to all Commissioners.

XII. Record Keeping

A. Governing Law

The FCIC is a “federal agency” for purposes of the federal records management provisions at 44 U.S.C. § 2901, *et seq.*, and therefore is subject to certain record-keeping requirements. *See* 44 U.S.C. § 2901(14) (defining federal agency to include, among other things, “any establishment in the legislative . . . branch” except the Senate or House of Representatives); FERA, § 5(a) (providing that the FCIC is “established in the legislative branch”).

B. Scope of Record-Keeping Obligations

The FCIC does not need to preserve every document; rather, the FCIC “shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and [its] essential transactions.” 44 U.S.C. § 3101.

C. Record-Keeping Program Requirements

The FCIC will “establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.” *Id.* § 3102. The program must provide for “effective controls over the creation and over the maintenance and use of records in the conduct of current business,” *id.* at § 3102(1); must establish safeguards against the removal or loss of records, including making it known to FCIC officials and employees “that records in the custody of the agency are not to be” destroyed except in accordance with 44 U.S.C. §§ 3301-3314 (and therefore should only be destroyed after consultation with counsel), *see id.* § 3105(1); and must inform employees of penalties provided by law for the unlawful removal or destruction of records, *see id.* § 3105(2).

D. Cooperation with National Archivist

The National Archivist has certain oversight authority over the FCIC’s record-keeping, including but not limited to, that the FCIC is required to notify the Archivist of “any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in [the FCIC’s] custody,” *id.* § 3106, and the Archivist may inspect the FCIC’s “records management programs and practices,” *id.* §§ 2904(c)(7) & 2906, and may report to congressional committees and OMB on its evaluations of the FCIC’s compliance in this regard, *id.* § 2904(c)(8). The FCIC will comply with federal law in its record-keeping practices and interactions with the Archivist.

XIII. Modification of Existing Rules

These FCIC Rules may be amended by a majority vote of the Commissioners serving at the time. Any changes proposed to these FCIC Rules shall be reviewed by counsel and staff as directed by the Commission, for their legality, soundness, sufficiency, and appropriateness prior to their adoption or approval unless a majority of Commissioners determines that such a review is not necessary.

APPROVED and RATIFIED with below technical amendment: 9-0, September 16, 2009

Pursuant to Rule XIII of the FCIC Rules of Procedure (FCIC Rules), the Commission amends Rule III(D) of the FCIC Rules so as to replace the phrase “Congressional Record and” with the phrase “Federal Register or,” thus causing the as-amended Rule III(D) to read as follows:

D. Public Notice

If all or part of a regularly-scheduled meeting is to be open to the public, notice will be provided at least seven (7) days in advance by publication in the Federal Register or any other publications selected by the Commission, and shall include notice of agenda items open to the public. Meetings held pursuant to exigent circumstances must be noticed at least forty-eight (48) hours in advance.

Financial Crisis Inquiry Commission
Agenda Item 3 for Closed Session Meeting of October 20, 2009
Minutes of Closed Session Meeting of September 16, 2009

ATTACHMENT
Proposed Whistleblower Protections

Pursuant to Rule XIII of the FCIC Rules of Procedure (FCIC Rules), the Commission amends the FCIC Rules by adding the following after FCIC Rule XIII:

XIV. Policy of Encouraging Knowledgeable Individuals to Share Relevant Information with the Commission.

In the interests of securing access to the most complete source of information on topics critical to the work of the Commission, it shall be the Commission's policy to encourage persons with relevant information to provide such information to the Commission under terms and conditions which are beneficial to the Commission and protective of such persons' rights and interests. Accordingly, the Commission shall accommodate, consistent with legal obligations, reasonable requests for anonymity and confidentiality by those providing information (including but not limited to witness testimony) to the Commission.

Further, the Commission shall take appropriate steps to help ensure that no corporation, partnership, union, or other institution will retaliate or discriminate against any current or former employee or agent thereof as a result of providing information to the Commission. It shall be the practice of the Commission to cooperate fully with any law enforcement agency or other investigation, regulatory or other, brought under applicable law against those who allegedly take retaliatory or other adverse action against any persons for providing information to the Commission.

APPROVED: 9-0, September 16, 2009

Financial Crisis Inquiry Commission
Agenda Item 3 for Closed Session Meeting of October 20, 2009
Minutes of Closed Session Meeting of September 16, 2009

ATTACHMENT
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 October 31, 2009, 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 October 31, 2009, 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.

APPROVED: 9-0, September 16, 2009

Financial Crisis Inquiry Commission
Agenda Item 4 for Closed Session Meeting of October 20, 2009

Minutes of Public Meeting
Thursday, September 17, 2009
9:00-11:30am EDT
Longworth House Office Building, Hearing Room 1310, Washington, DC

Agenda Item 1: Roll Call

Chairman Angelides called the meeting to order. All Commissioners were present, including Commissioners Born, Hennessey, Georgiou, Graham, Vice Chairman Thomas, Murren, Holtz-Eakin, Thompson, and Wallison.

Agenda Item 2: Welcome and Introductions

Chairman Angelides gave opening remarks about the Commission's work and mission, and acknowledged Vice Chairman Thomas for his efforts to date.

Agenda Item 3: Announcements

Chairman Angelides announced the Commission's appointment of Thomas Greene (present) as Executive Director of the Commission.

Chairman Angelides stated that the Commission has adopted rules of procedures, which specifically include whistleblower protections.

Agenda Item 4: Statements by Commissioners

Each commissioner gave individual opening remarks.

Agenda Item 5: Discussion of Commission Scope of Work, Work Plan, and Timeline

Chairman Angelides emphasized the urgency of the work, noting the importance of the commission's work for policy makers and the public.

Chairman Angelides noted that he and Vice Chairman Thomas have met with the chairs and ranking members of the relevant committees of jurisdiction in the House and Senate.

Vice Chairman Thomas introduced Gretchen Newsom and Scott Ganz as members of the commission's staff. The Vice Chairman also stated that the commission's office in Washington, DC will soon be up and running with a website, contacts, and information.

Chairman Angelides and Vice Chairman Thomas expressed thanks to the staff of the Chief Administrative Office of the House, the House Counsel, the House Committee on Standards of Official Conduct, and the staff of the commission.

Chairman Angelides outlined part of the commission's schedule, highlighting the end of October as the goal for having in place key leadership staff, and noting that in the next 30 days, the commission's staff will present the commission with a fuller timeline that, once complete, will be presented to the public.

The Chairman stated that it is expected that, before the end of this year, the inquiry will be fully underway, with public hearings to be held by December.

Agenda Item 6: Other Items of Business

There were no other items of business.

Agenda Item 7: Adjournment

Chairman Angelides requested a motion to adjourn the meeting.

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

APPROVED: 10-0.

Financial Crisis Inquiry Commission
Agenda Item 5 for Closed Meeting of October 20, 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 December 31, 2009, 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 December 31, 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:

Financial Crisis Inquiry Commission
Agenda Item 8 for Closed Session Meeting of October 20, 2009

**Preliminary Draft Work Plan for
the Report of the Financial Crisis Inquiry Commission**

I. Principles

The following are the principles that should guide the work of the commission as it undertakes its inquiry.

- The commission should provide the public, policy makers, regulators, and market participants with a better understanding of the causes of the financial crisis.
- The work of the commission should be based on facts, not opinion, with a rigorous process to ensure the validity and accuracy of facts and evidence.
- The report of the commission should be an unbiased historical accounting of the policies, events, and practices that contributed to the financial crisis. It will be based on a thorough review and analysis of all known, credible sources and work already done coupled with an aggressive investigation which uncovers new, critical facts and evidence.
- The commission will pursue facts and evidence as needed to conduct a full and thorough inquiry through strategic investigative techniques, including if necessary, the use of compulsory process.
- The commission will present its work in a clear, understandable, and compelling manner. That work will include a treatment of the larger forces that drove the crisis as well as real and tangible examples of the practices that existed in the marketplace that also helped bring about the crisis.
- The products of the inquiry will include the final report, interim reports, public hearings, and video materials. The commission will use traditional media, new media, and the web to maximize the accessibility to its work.

II. Outline of the Commission's Report

What follows is a working outline of the Commission's report. This outline is designed to provide a logical sequence of chapters and to logically categorize the specific areas of examination called out in the statute. Specific examples of the practices and actions taken by institutions and individuals at all levels of the marketplace will be woven throughout the narrative.

It should be noted that while each specific statutory study area is listed once, a number of areas of examination will in all probability be covered in more than one section, given the interconnected nature of the issues to be examined. In

addition, this outline is not meant to draw conclusions but rather attempts to create an initial structure for the ultimate framework of the report. Further, as indicated in Section III, while this outline suggests an initial conceptual approach to the report, staff will move forward on the various “chapters” of this report concurrently given the timeframe for completion of the Commission’s work. Indeed, the commission’s hearings and interim reports may not proceed in the same sequence as the outline. Finally, it is recognized that this work plan will evolve as the inquiry proceeds and as investigative results warrant.

- **The Crisis.** This section will describe the nature of the financial and economic crisis - from the cataclysmic events of 2007 and 2008 to the downward spiral in the financial sector to the economic and social consequences of the crisis, in relation to both its impact on the macroeconomy and on individual households. This includes widespread housing defaults and foreclosures; failure and near failure of financial institutions; impairment of credit markets; loss of asset values; and dramatic increases in unemployment.

After describing the crisis, the report would go back to “trace the fuses that set off the explosion.”

- **The Backdrop.** This section would examine the underlying macroeconomic, policy, and regulatory framework as it existed and evolved over the past three decades, with a particular focus on the period of _____ to _____. It would examine, among other things, the changing contour of the U.S. and global economies, monetary policy, the changing shape of the financial system, changes in financial market and business practices and associated changes in financial incentives, and changes in law and regulation affecting the financial sector. The statutory provisions examined in this section would include:
 - i. “The global imbalance of savings, international capital flows, and fiscal imbalances of various governments” (Public Law 111-21, § 5(c)(1)(c));
 - ii. “Monetary policy and the availability and terms of credit” (Public Law 111-21, § 5(c)(1)(d));
 - iii. “Affiliations between insured depository institutions and securities, insurance, and other types of nonbanking companies” (Public Law 111-21, § 5(c)(1)(j));
 - iv. “Tax treatment of financial products and investments” (Public Law 111-21, § 5(c)(1)(f)); and
 - v. “The concept that certain institutions are ‘too-big-to-fail’ and its impact on market expectations” (Public Law 111-21, § 5(c)(1)(k)).
- **Home Mortgages/Real Estate Lending.** This section would examine the development and evolution of the single family housing/mortgage market, including but not limited to the dramatic explosion of subprime lending;

the role of Fannie Mae, Freddie Mac, investment banks, and other home mortgage lending entities; practices ranging from origination through securitization; and fraud in this sector. For the purposes of this initial outline, this section would also examine the commercial real estate sector, although this subject would probably be treated separately in the final report. This section would cover the following statutory sections:

- i. “Fraud and abuse in the financial sector, including fraud and abuse towards consumers in the mortgage sector” (Public Law 111-21, § 5(c)(1)(a));
- ii. “Lending practices and securitization, including the originate-to-distribute model for extending credit and transferring risk” (Public Law 111-21, § 5(c)(1)(i));
- iii. “The legal and regulatory structure of the United States housing market” (Public Law 111-21, § 5(c)(1)(o)); and
- iv. “Financial institutions and government-sponsored enterprises” (Public Law 111-21, § 5(c)(1)(u)).

- **Financial Products and Practices** This section will look at the financial market practices and financial products, beyond those covered in the section above, which may have driven, contributed to, or amplified the financial crisis. This section will examine, among other things, derivatives including credit default swaps, compensation practices, leverage, creation of off-balance sheet entities, short selling, and fraud. This section will also examine the breakdown of corporate risk management mechanisms and practices and how they might have exacerbated the crisis. This section will be closely related to the above section on housing and commercial real estate given the interconnection between the subject matters. Statutory provisions covered would include:

- i. “Derivatives and unregulated financial products and practices, including credit default swaps” (Public Law 111-21, § 5(c)(1)(p));
- ii. “Financial institution reliance on numerical models, including risk models and credit ratings” (Public Law 111-21, § 5(c)(1)(r));
- iii. “Short-selling” (Public Law 111-21, § 5(c)(1)(q));
- iv. “Compensation structures” (Public Law 111-21, § 5(c)(1)(m));
- v. “Changes in compensation for employees of financial companies, as compared to compensation for others with similar skill sets in the labor market” (Public Law 111-21, § 5(c)(1)(n));
- vi. “Corporate governance, including the impact of company conversions from partnerships to corporations” (Public Law 111-21, § 5(c)(1)(l)); and
- vii. “The quality of due diligence undertaken by financial institutions” (Public Law 111-21, § 5(c)(1)(v)).

- **The Backstops.** This section will examine the role of regulators as the crisis developed and gained steam. It will investigate the actions or inactions of key public entities charged with regulating the marketplace

including, but not limited to, the Federal Reserve, the SEC, the various bank and thrift regulators, OFHEO/FHFA, and the CFTC – looking at how such regulatory bodies may have failed or been derelict in their duties, been constrained from fulfilling their responsibilities, or acted in a manner that may have contributed to the crisis. It will analyze a range of matters including the legal authority of such entities, the effectiveness and independence of enforcement, the adequacy of resources, the structural deficiencies in the regulatory regime, and the knowledge and actions of the regulators as the crisis unfolded. Statutory areas of study would include:

- i. “Federal and State financial regulators, including the extent to which they enforced, or failed to enforce statutory, regulatory, or supervisory requirements” (Public Law 111-21, § 5(c)(1)(b));
- ii. “Capital requirements and regulations on leverage and liquidity, including the capital structures of regulated and non-regulated financial entities” (Public Law 111-21, § 5(c)(1)(g));
- iii. “The legal and regulatory structure governing financial institutions, including the extent to which the structure creates the opportunity for financial institutions to engage in regulatory arbitrage” (Public Law 111-21, § 5(c)(1)(s)); and
- iv. “The legal and regulatory structure governing investor and mortgagor protection” (Public Law 111-21, § 5(c)(1)(t)).

In addition to the examination of regulatory bodies, this section will probe the role of third party entities such as credit rating agencies, accounting firms, and law firms with key marketplace responsibilities. This would encompass the following statutory provisions:

- i. “Credit rating agencies in the financial system, including reliance on credit ratings by financial institutions and Federal financial regulators, the use of credit ratings in financial regulation, and the use of credit ratings in the securitization markets” (Public Law 111-21, § 5(c)(1)(h)); and
- ii. “Accounting practices, including, mark-to-market and fair value rules, and treatment of off-balance sheet vehicles” (Public Law 111-21, § 5(c)(1)(e)).

- **The Fate of Major Financial Institutions** After tracing the course of the financial crisis, the report will catalogue the fate of major financial institutions in the context of the crisis. This examination is consistent with the statutory mandate “to examine the causes of the collapse of each major financial institution that failed (including institutions that were acquired to prevent their failure) or was likely to have failed if not for the receipt of exceptional Government assistance from the Secretary of the Treasury during the period beginning in August 2007 through April 2009.”

- **The Aftermath.** This section will provide an update, as of the final writing of the report, on the status of the practices and policies identified in the report as key contributors to the financial and economic crisis. For example, this section would identify the change or lack of change in areas such as regulations, compensation practices, risk management practices, and financial products to the extent those items were identified as factors in the crisis.
- **Conclusions and Recommendations.** The commission is not required to make recommendations. However, to the extent that the Commission chooses to do so, we can conclude our report with a set of recommendations.

III. Preliminary Work Plan

Below is a preliminary overview of the Commission's work plan.

- **Strategy.** The commission is charged with the obligation to review and report on twenty-two specific issues that may have helped trigger or accelerate the financial crisis. The commission is also obligated to examine the "causes of the collapse of each major financial institution that failed (including institutions that were acquired to prevent failure) or was likely to have failed if not for the receipt of exceptional Government assistance" (Public Law 111-21, § 5(c)(2)). This suggests that the commission should pursue a parallel, two-track approach to its work. Track one would focus on the larger trends and developments that drove the crisis. Track two would focus on specific institutions that contributed to the crisis.

Squaring these two approaches is possible by examining specific institutions and their actions, while putting those actions in the broader context of the factors that appear to have triggered and accelerated the crisis. Although not without challenges, an institution-centric track has at least four major advantages: (1) major questions about the causes of the crisis will be examined in the real world of real companies, allowing the commission to test common assumptions about the crisis; (2) the issues will be dramatically illuminated by the actions and testimony of real actors in the marketplace; (3) a series of case studies of specific institutions, private and public, will allow the commission to uncover common threads of causation; and (4) such an approach will illustrate how firms operated in their regulatory environment.

- **Investigative Steps.** Practically, the commission does not have enough time to do full-blown examinations of a large number of entities that may be within its purview so it should begin by profiling the most important entities for examination. This should start with a searching profile of what

is publicly known about each firm. As patterns emerge by firm or regulatory entity, e.g., the effect of compensation practices on risk-taking in the case of firms or potentially inadequate disclosures of risk in the case of a regulator, further investigative steps can be implemented. These steps may include, among other things, targeted document retention letters; interviews of risk officers; interviews of current and former high-level officials or executives; letter requests for documents and e-mails followed, if necessary by subpoenas for these materials and testimony.

Against these profiles, we will want to lay information on what the respective boards of selected companies were doing; what the accountants were saying and doing; what the company was disclosing; and what regulators were doing or not doing. Throughout this process, we will take advantage of work that has already been done by, among others, congressional committees, GAO, financial regulators, scholars and the press.

- **Hearings.** Based on the examinations above, the commission should select firms and regulatory (or quasi-regulatory) entities for case studies in public hearings. Once a specific firm or combination of firms has been selected to illustrate activities in a particular part or multiple parts of the market, we will want to put this firm in the context of its business and regulatory environment.

This examination should include testimony on the nature of the business, including suppliers and customers; rating agencies; accountants and regulators. Although it is too early to forecast the contours of specific hearings, possible examples include:

- i. A mortgage originator/bundler and a securitizer;
- ii. A national bank or banks;
- iii. An investment bank or banks;
- iv. One or both major government-sponsored home lending institutions ; and
- v. A risk insurer.

In addition to examinations of firms at different levels of the financial system, we also need to more deeply examine the “backstops” that had independent obligations to protect the financial system. This suggests additional hearings on:

- i. Rating agencies;
- ii. Accountants/Auditors; and
- iii. Regulators.

This means that the commission will be conducting as many as eight major hearings within approximately nine months. At the same time, our writing staff, including our researchers, will be generating first drafts of chapters for the report and supplying information to the public in the form of interim reports and a robust Web presence.

This is ambitious but it does square the circle of our need to answer specific questions and our need to examine specific firms. More generally, our goal is to look at the broad drivers of the crisis but also conduct a “deep dive” into specific institutions to determine the ground truths of the crisis.

- **Schedule.** This plan means that we will be conducting hearings every 4-6 weeks starting in December 2009. Our investigative teams and our writers/editors will be concurrently preparing rough chapters. Hearings would conclude by mid-August 2010.

The commission will conduct its inquiries, hearings and reports mindful of the schedule of the Congress in addressing legislation related to the financial crisis, subject to the commission’s own independent mandate and a commitment to highest quality products.

A draft report would be presented to the commission by mid-September 2010. It is assumed that the Government Printing Office will need the final version for printing by November 1, 2010 to make our statutory deadline for presentation of our report.

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