



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

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## In the News

### House

On January 22, 2010, the House Financial Services Committee held a hearing on Compensation in the Financial Industry with Lucian Bebchuk, Professor of Law, Economics, and Finance, and Director of the Program on Corporate Governance, Harvard Law School; Nell Minow, Editor and Founder, the Corporate Library; and Joseph Stigilitz, University Professor, Columbia Business School, as witnesses.

On January 27, 2010, the House Oversight and Government Reform Committee held a hearing on the federal bailout of AIG with Treasury Secretary Timothy Geithner; Former Treasury Secretary Hank Paulson; Neil Barofsky, Special Inspector General, TARP; Thomas Baxter, Executive VP and GC, Federal Reserve Bank of New York; Elias Habayeb, Former Sr. VP of CFO, Financial Services Division, AIG, Inc.; and Stephan Friedman, Former Chairman, Federal Reserve Bank of New York, as witnesses.

Because of the snow the last couple of weeks and the President's Day recess, all committee business had been cancelled, and has yet to be rescheduled.

(Updated 2/16)

### Senate

Following reports from early February that Senate Banking, Housing and Urban Affairs Chairman Chris Dodd and Ranking Member Richard Shelby had reached an "impasse," Dodd has begun talks with Senator Bob Corker in hopes of passing a bipartisan bill through committee. Dodd expressed willingness in early February to pass a bill through committee without bipartisan support. Corker and Dodd have agreed during their early discussions to set aside consumer protection issues, which were one of the hot-button issues which divided Dodd and Shelby and seem to be a major area of disagreement between Corker and Dodd as well.

In addition, the Senate Banking, Housing and Urban Affairs Committee held a series of hearings on President Obama's recent proposals to restrict the size and scope of financial institutions. Witnesses from the administration included Paul Volcker of the President's Economic Recovery Advisory Board and Deputy Secretary of the Treasury Neil S. Wolin.

Further, on January 28, Federal Reserve Chairman Ben Bernanke was confirmed for a second term by the Senate, 70-30.

(Updated 2/16)

### Regulatory Agencies

In what is being referred to generally as the "Volcker Rule," the Obama administration has called for new restrictions on the size and scope of financial institutions to with the purpose of reining in excessive risk-taking and protecting tax-payers. The rule aims to restrict commercial

banks from making speculative investments as well as limit the ability of the largest banks to use borrowed money to fund expansion plans.

(Updated 2/15)

## Summary Table

<b>Issue</b>	<b>House</b>	<b>Senate</b>
<u>Financial Firm Regulation</u>		
<i>Executive Compensation and Corporate Governance</i> (p. 10)	Hearing: “Compensation in the Financial Industry.” (Financial Services Committee, January 22, 2010)	In Dodd Discussion Draft: “Restoring American Financial Stability: executive compensation and corporate governance” (Banking, Housing & Urban Affairs, November 10, 2009)
<i>Municipal Securities</i> (p. 10)		In Dodd Discussion Draft: “Restoring American Financial Stability: municipal securities” (Banking, Housing & 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 Reform 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 Reform 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, Housing & Urban Affairs, November 10, 2009)
<i>Securitization</i> (p. 11)		In Dodd Discussion Draft: “Restoring American Financial Stability: securitization” (Banking, Housing & Urban Affairs, November 10, 2009)
<u>Financial Market Regulation</u>		
<i>Competent Staffing</i> (p. 12)		In Dodd Discussion Draft: “Restoring American Financial Stability: creating a 21 <sup>st</sup> century workforce for 21 <sup>st</sup> century regulators” (Banking, Housing & Urban

		Affairs, November 10, 2009)
<i>Credit Rating Agencies</i> (p. 12)	H.R. 3890: "Accountability and Transparency in Rating Agencies Act" (Kanjorski, Passed Financial Services Committee [49-14], October 28, 2009); rolled into regulatory reform legislation, H.R. 4173 "The Wall Street Reform and Consumer Protection Act of 2009," week of December 7, 2009	In Dodd Discussion Draft: "Restoring American Financial Stability: credit rating agencies" (Banking, Housing & Urban Affairs, November 10, 2009)
<i>Hedge Funds</i> (p. 13)		In Dodd Discussion Draft: "Restoring American Financial Stability: hedge funds" (Banking, Housing & Urban Affairs, November 10, 2009)
<i>Insurers</i> (p. 13)	H.R. 2609: "Federal Insurance Office Act" (Kanjorski, Passed Financial Services Committee [unanimous voice], December 2, 2009); rolled into regulatory reform legislation, H.R. 4173 "The Wall Street Reform and Consumer Protection Act of 2009," week of December 7, 2009	In Dodd Discussion Draft: "Restoring American Financial Stability: insurance" (Banking, Housing & Urban Affairs, November 10, 2009)
<i>OTC Derivatives</i> (p. 14)	H.R. 3795: "The OTC Derivatives Markets Act of 2009" (Frank, Passed Financial Services Committee [43-26], October 15, 2009; Passed Agriculture Committee [voice vote], October 21, 2009); will be offered as amendments to regulatory reform legislation, H.R. 4173 "The Wall Street Reform and Consumer Protection Act of 2009," week of December 7, 2009	In Dodd Discussion Draft: "Restoring American Financial Stability: addressing systemic risks posed by derivatives" (Banking, Housing & Urban Affairs, November 10, 2009)
<i>Regulatory Structure</i> (p. 14)		In Dodd Discussion Draft: "Restoring American Financial Stability: creating a single federal bank regulator" (Banking, Housing & Urban Affairs, November 10, 2009)
<u>Consumer and Investor Protection</u>		
<i>Consumer Financial Protection Agency</i> (p. 16)	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	In Dodd Discussion Draft: "Restoring American Financial Stability: independent consumer financial protection agency" (Banking, Housing & Urban Affairs, November 10, 2009)

	legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009	
<i>Credit Cards</i> (p. 17)	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. 17)	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 Reform and Consumer Protection Act of 2009,” week of December 7, 2009	In Dodd Discussion Draft: “Restoring American Financial Stability: addressing systemic risks” (Banking, Housing & 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 Reform 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, Housing & Urban Affairs, November 10, 2009)
<u>Investigation</u>		
<i>AIG</i> (p. 20)	Hearing: “Factors Affecting Efforts to Limit Payments to AIG Counterparties.” (Oversight and Government Reform, January 27, 2010)	
<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>	Proposed Rule (September 17, 2009)	



(p. 22)	
<i>CRA Oversight</i> (p. 22)	Adopted Rule - Awaiting comment period (October 5, 2009)
<i>“Unfiltered” Access</i> (p. 23)	Proposed Rule – Would prohibit naked access to exchanges and ATS
<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)
<i>TARP Executive Compensation Rules</i> (p. 25)	Proposed Rules - new round of Executive Compensation Rules that effect AIG, Citigroup, GM and GMAC
<i>Financial Crisis Responsibility Fee</i> (p. 26)	Proposed Rule - would require largest and most highly levered Wall St. firms to repay taxpayers for TARP assistance.
<u>Basel Committee</u>	
<i>Basel Committee on Banking Supervision</i> (p. 27)	Proposed rule - to strengthen resilience of banking sector.

## **Financial Firm Regulation**

### **Executive Compensation and Corporate Governance**

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

“Restoring American Financial Stability: executive compensation and corporate governance” (Dodd 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. Parallels regulatory frameworks for the regulation of swap markets, dealers and major swap participants. Rulemaking authority is held jointly with the CFTC, which has jurisdiction over swaps, and the SEC, which has jurisdiction over security-based swaps. Treasury is given the authority to issue final rules if the CFTC and SEC cannot decide on a joint approach within 180 days.”* (House Financial Services Press Release, October 15, 2009)

#### *Congressional Actions*

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

“Restoring American Financial Stability: 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, coordinates 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 2010 and August 2010. H.R. 3639 moves up the remaining dates by which banks and credit card issues would have to comply and applies to the largest credit card issuers that control over 80% of the credit card market. Bill has been sent to the Senate.”* (Bill Summary Language)

#### *Congressional Actions*

**9/24/2009**

Introduced in House

**10/26/2009**

Reported (Amended) by the Committee on Financial Services

**11/4/2009**

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

**11/5/2009**

Received in the Senate

## Overdraft Protection

### H.R. 3904: “Overdraft Protection Act”

#### *Summary*

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

#### *Congressional Actions*

Currently in the House Financial Services Committee Markup awaiting markup.

## Government Crisis Response

### Systemic Risk Regulation

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

##### *Summary*

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

#### “Restoring American Financial Stability: addressing systemic risks: 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.

## Investigations

### House Oversight and Government Reform Committee Hearing:

“Factors Affecting Efforts to Limit Payments to AIG Counterparties”

**January 27, 2010**

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

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

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

**Part III: July 16, 2009**

Featuring testimony from former Treasury Secretary Henry Paulson

**Part II: June 25, 2009**

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

**Part I: June 11, 2009**

Featuring testimony from Bank of America CEO Ken Lewis.

## Regulation

### Securities and Exchange Commission

#### Dark Pools

October 21, 2009 (Comment Period)

##### *Summary*

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

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

#### Money Market Funds

September 23, 2009

##### *Summary*

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

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

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

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

### Short Selling: “Naked” Short Selling Anti-Fraud Rule

*SEC - September 21, 2009 (Re-opened comment period)*

#### *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 ended December 14, 2009 – SEC is in the process of reviewing comments).*

#### *Summary*

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

- 1) Adopt rules to provide greater information concerning ratings histories and to enable competing credit rating agencies to offer unsolicited ratings for structured finance products by granting them access to the necessary underlying data for structured products.*
- 2) Propose amendments that would seek to strengthen compliance programs through requiring annual compliance reports and enhance disclosure of potential sources of revenue-related conflicts.*
- 3) Adopt amendments to the Commission's rules and forms to remove certain references to credit ratings by nationally recognized statistical rating organizations.*
- 4) Propose new rules that would require disclosure of information including what a credit rating covers and any material limitations on the scope of the rating and whether any "preliminary ratings" were obtained from other rating agencies - in other words, whether there was "ratings shopping."*

- 5) *Seek public comment on whether to amend Commission rules to subject NRSROs to liability when a rating is used in connection with a registered offering by eliminating a current provision that exempts NRSROs from being treated as experts when their ratings are used that way.*

### “Unfiltered” Access

*January 13, 2010*

#### *Summary*

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

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

## Federal Reserve

### CRA Oversight

*December 4, 2009*

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

#### *Summary*

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

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



## Department of Treasury

### Financial Fraud Enforcement Task Force

November 17, 2009

#### *Summary*

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

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

December 11, 2009

#### *Summary*

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

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

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

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

## Financial Crisis Responsibility Fee

January 14, 2010

### *Summary*

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

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

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

## Basel Committee on Banking Supervision

### Proposals to Strengthen Resilience of Banking Sector

December 17, 2009

#### *Summary*

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

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