Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting of
Wednesday, February 17, 2010
12:00-2:00pm EST
Conference Dial-In Number: 866-692-3582
Participant Access Code: 3387529

Agenda Item	Presentation
1) Call to Order	**Chairman Angelides**
2) Roll Call	**Chairman Angelides**
3) Approval of Minutes of Telephonic Business Meeting of January 20, 2010 *(Attached)*	**Chairman Angelides**
4) Chairman's and Vice Chairman's Report	**Chairman Angelides and Vice-Chairman Thomas**
5) Executive Director's Report	**Tom Greene, Executive Director**
6) Comments and Questions from Commissioners	**All Commissioners**
7) Update re: Archive Requirements and Mandates/Document Preservation Protocol *(Attached)*	**Tom Greene/ Gary Cohen, General Counsel**
8) Delegation to Administer Oaths – Resolution	**Gary Cohen**
9) Delegation to Administer Oaths – Amendment to Rules of Protocol	**Gary Cohen**
10) Report to Commission re: Legislative And Regulatory Update	**Tom Greene/ Scott Ganz, Special Assistant**

(Materials Forthcoming)

11) Other Items of Business	**All Commissioners**
12) Adjournment	**Chairman Angelides**

Financial Crisis Inquiry Commission

Agenda Item 3 for Telephonic Business Meeting of February 17, 2010
Minutes of Telephonic Business Meeting of
January 20, 2010

Agenda Item 1: Call to Order

Chairman Angelides called the telephonic business meeting to order.

Agenda Item 2: Roll Call

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

Also participating in the meeting were: Tom Greene, Executive Director; Beneva Schulte, Deputy Director; Wendy Edelberg, Deputy Director and Research Director; Gary Cohen, General Counsel; Gretchen Newsom, assistant to Chairman Angelides; and Scott Ganz, assistant to Vice Chairman Thomas.

Agenda Item 3: Approval of Minutes of Meeting, December 14, 2009

Chairman Angelides introduced the minutes from the FCIC meeting of December 14, 2009.

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

APPROVED: 9-0 (Graham absent)

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

Chairman Angelides and Vice Chairman Thomas spoke first on the topic of FCIC's upcoming research symposium on February 26th and 27th. This symposium will be open to the public, but the end of the symposium will include a closed session for discussion amongst the Commission and staff.

Chairman Angelides and Vice Chairman Thomas spoke second on the topic of staff updates and revisions to FCIC's staff leadership structure. Beneath Tom Greene are three deputies: Beneva

Schulte as Deputy Director; Wendy Edelberg as Deputy Director and Research Director and Gary Cohen, General Counsel, wherein all matters will flow up to Mr. Greene. This "front office team" meets on a daily basis along with Mr. Ganz and Ms. Newsom. Commissioners will be sent a revised organizational chart.

Chairman Angelides and Vice Chairman Thomas spoke third on the topic of Commissioner requests for information from the staff. To ensure requests are met effectively, Commissioners should contact a member of the front office team and the request will then be tracked until completion.

Final documents and work products will be shared with the Commission on a regular basis. Staff will create and share a consolidated work plan with the Commission as well as a master witness/interview list. A proposal for working groups will be distributed by the Chairman. This will provide an opportunity for Commissioners to provide input and share their expertise in support of the Commission's research, investigations and hearings.

Staff were reminded that document retention letters were scheduled to have been sent to major financial institutions and other entities. Staff will continue to update the Commission on the status of confidentiality agreements and will also create a template letter for acquiring requested information from entities that meets our timeframes, less subpoenas be issued.

Agenda Item 5: Hearing 1 – Debriefing

Tom Greene received feedback and comments from the Commission in regard to the first public hearing. Staff was directed to create a master list of all questions posed by Commission for which written responses were requested as well as requests for additional information. These follow-up questions/requests will be sent to each witness in a formal letter and will be shared with the Commission.

Transcripts of the hearing will be shared with the Commission.

Agenda Item 6: Executive Director's Report

Mr. Greene provided an update on personnel with news that the Research team is filling out. Mr. Greene also provided Commissioners with an update on document requests and confidential agreements with public agencies.

Agenda Item 7: Amendment to Rules of Procedure, Public Notice for Hearings

Mr. Cohen presented an amendment to the Rules of Procedure and noted that this amendment conforms our Rules to the intent of a previously ratified amendment in regard to public notice of meetings.

MOTION: Born moved and Murren seconded the motion to adopt the amendment (attached).

APPROVED: 9-0 (Graham absent)

Agenda Item 8: Commission Policy for the Solicitation and Acceptance of Gifts of Services or Property

Mr. Cohen presented the revised Commission policy for the Solicitation and Acceptance of Gifts of Services or Property for adoption by the Commission. Mr. Cohen was directed to notify the Commission on a weekly basis of outstanding requests as well as requests for witnesses to testify before the Commission.

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

APPROVED: 9-0 (Graham absent)

Agenda Item 9: Ethical Guidelines for Commission Members

Mr. Cohen introduced and presented the revised policy on Ethical Guidelines for Commission Members for adoption by the Commission. Born requested to amend the guidelines to include minor children of Commission members as being subject to conflicts of interest.

MOTION: Georgiou moved and Thompson seconded the motion to adopt the Ethical Guidelines for Commission Members as amended to include minor children as being subject to conflicts of interest (attached) and designate Mr. Cohen as "ethics counsel" to the Commission.

APPROVED: 9-0 (Graham absent)

Agenda Item 10: Ethical Guidelines for Commission Staff

Mr. Cohen introduced and presented the policy on Ethical Guidelines for Commission Staff for adoption by the Commission. Born again requested to amend the guidelines to include minor children of Commission members as being subject to conflicts of interest.

MOTION: Thompson moved and Born seconded the motion to adopt the Ethical Guidelines for Commission Staff as amended to include minor children as being subject to conflicts of interest (attached).

APPROVED: 9-0 (Graham absent)

Agenda Item 11: Update on Confidentiality Agreements

Mr. Greene and Mr. Cohen informed the Commission that confidentiality agreements have been signed by all staff members, consultants, and third party vendors.

Agenda Item 12: Update re: Archive Requirements and Mandates

Mr. Cohen will circulate a document retention policy to staff and Commission members with a summary of what should be included in the archive. The Commission will decide later what is released as a public document and under what time frame.

Agenda Item 13: Report to Commission re: Legislative and Regulatory Update

Mr. Ganz presented the Commission with an update on legislative and regulatory matters and noted that both the House and Senate are out of session and news was therefore minimal.

Agenda Item 14: Other Items of Business

Cohen was directed to determine the next financial disclosure date and issue a notice to the Commission with a link to the new disclosure form.

Staff was directed to develop protocol and a system for responding to emails and public inquiries received by FCIC.

Agenda Item 15: Adjournment

Chairman Angelides requested a motion to adjourn the meeting.

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

APPROVED: 9-0 (Graham absent)

Financial Crisis Inquiry Commission

Agenda Item 3 for Telephonic Business Meeting of February 17, 2010
Minutes of Telephonic Business Meeting of
January 20, 2010

ATTACHMENT
Approved Minutes of Closed Session Meeting of
Monday, December 14, 2009

Agenda Item 1: Call to Order

Chairman Angelides called the telephonic business meeting to order.

Agenda Item 2: Roll Call

Chairman Angelides asked Gretchen Newsom to call the roll of the Commissioners: Present were Phil Angelides, Bill Thomas, Brooksley Born, Byron Georgiou, Bob Graham, Doug Holtz-Eakin, Heather Murren, John W. Thompson and Peter Wallison. Keith Hennessey arrived after agenda item 3 was voted on; John W. Thompson dropped off the call before agenda item 6 was voted on. Mr. Thomas departed at the beginning of agenda item 9.

Also participating in the meeting: Tom Greene, Executive Director; Gretchen Newsom, assistant to Chairman Angelides; Courtney Mayo and Scott Ganz, assistants to Vice Chairman Thomas. Beneva Schulte, Assistant Director, and Wendy Edelberg, Research Director, were introduced to staff, and Ms. Schulte came back to the meeting for discussion of agenda item 7. Gary Cohen, Special Business Counsel, participated in the briefing and discussion from agenda item 8 until the conclusion of the meeting.

Agenda Item 3: Approval of Minutes of Meeting, November 17, 2009

Chairman Angelides introduced the minutes from the FCIC meeting of November 17, 2009. There was discussion among Commissioners about the format of the meeting minutes.

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

APPROVED: 9-0 (Hennessey absent)

Agenda Item 4: Executive Director's Report; Personnel Update

Mr. Greene provided an update on personnel, introducing Beneva Schulte and Wendy Edelberg to the Commissioners. Mr. Greene informed the Commission that Matt Cooper has been hired as Senior Advisor. Mr. Greene also provided Commissioners with an update on office technology and document requests.

The Chairman gave a brief report in which he spoke of assigning Commissioners to working groups based on their individual areas of interest and/or expertise. There was also broad discussion about hearing #1, and a general goal was stated to deliver briefing materials for Hearing 1 to the Commission by January 6th. It was also requested that Mr. Greene develop protocol to inform Commissioners of all communications likely to be of interest in the public domain, such as press releases and hearing invitation letters.

Agenda Item 5: Update on FCIC Budget

Vice Chairman Thomas provided Commissioners with an update on the FCIC budget. The Chairman and Vice Chairman will report back to the Commission with any budget updates.

Agenda Item 6: Extension of Delegation of Authority

Chairman Angelides asked for an extension of the delegation of authority.

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

APPROVED: 9-0 (Thompson absent)

Agenda Item 7: Protocol for Media Contact

Mr. Greene and Ms. Schulte briefed the Commissioners on the proposed FCIC media protocol, which led to discussion among the Commissioners. It was requested that staff draft a one-page media briefing sheet with current message points.

MOTION: Holtz-Eakin moved and Wallison seconded the motion to accept the media protocol proposal as amended (attached).

APPROVED: 9-0 (Thompson absent)

Agenda Item 8: Donation of Goods and Services

Mr. Cohen briefed the Commissioners on the solicitation and donation of goods and services, which led to discussion among Commissioners, giving Mr. Cohen input for the document. The Commissioners will vote on the document for adoption at the next business meeting.

Agenda Item 9: Draft Ethical Guidelines for Commission Members

Mr. Cohen briefed the Commissioners on the draft ethical guidelines for Commission members. The Commissioners discussed the draft document and Mr. Cohen will make the appropriate changes, such as references to travel as payment, spouses and children of Commissioners, and associations. The Commissioners will vote on the document for adoption at the next business meeting.

Agenda Item 10: Recommendation to assume delegation of responsibility for House Committee on Standards of Official Conduct

Chairman Angelides requested a motion for approval of the delegation of responsibility letter for the House Committee on Standards of Official Conduct (attached).

MOTION: Georgiou moved and seconded by Holtz-Eakin for approval of the delegation of responsibility.

APPROVED: 8-0 (Thomas and Thompson absent)

Agenda Item 11: Update re: Archive Requirements and Mandates

Mr. Cohen briefly updated the Commissioners on the archiving requirements that the Commission must follow, including the preservation of all FCIC related emails on both FCIC and personal email accounts, which was followed by a brief discussion among the Commissioners.

Agenda Item 12: Legislative Update

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

Agenda Item 14: Adjournment

Chairman Angelides requested a motion to adjourn the meeting.

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

APPROVED: 8-0 (Thomas and Thompson absent)

Financial Crisis Inquiry Commission

Agenda Item 3 for Telephonic Business Meeting of February 17, 2010
Minutes of Telephonic Business Meeting of
January 20, 2010

ATTACHMENT
Amendment to FCIC Rules of Procedure: Public Notice for Hearings

Pursuant to Rule XIII of the FCIC Rules of Procedure (FCIC Rules), the Commission amends Rule IV(B) 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 IV (B) to read as follows:

IV. Hearings

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 Federal Register or 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.

Financial Crisis Inquiry Commission

Agenda Item 3 for Telephonic Business Meeting of February 17, 2010
Minutes of Telephonic Business Meeting of
January 20, 2010

ATTACHMENT

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

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

1. No employee of the Commission may solicit gifts of services or property or encourage the solicitation of gifts of services or property to the Commission unless the solicitation has been approved in advance by the Chairman, in consultation with the Vice Chairman, or upon delegation, by the Executive Director.

2. In determining whether to allow solicitation of a gift on behalf of the Commission, the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, shall consider the following criteria:

a. Whether the gift to be solicited is appropriate for use by the Commission;

b. Whether solicitation of the gift is appropriate and advisable from the perspective of conflict of interest and government ethics guidelines; and

c. Under no circumstances will a gift be solicited from entities (or individuals employed by entities) which are known to be the focus of the Commission's work, or which are seeking official action from, or doing business with, the Commission ("Subject Entities").

3. The authority of the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, to approve the solicitation of gifts of services or property is exclusive.

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

1. The Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, has the authority on behalf of the Commission to accept gifts of services or property in accordance with the criteria set forth below.

2. In determining whether to accept a gift, the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, shall consider the following criteria:

a. Whether the gift is appropriate for use by the Commission;

b. Whether any condition the donor places on the Commission's acceptance or use of the gift is acceptable to the Commission;

c. Whether any Commission employee solicited the gift or encouraged its solicitation and, if so, whether the solicitation had the prior approval of the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, if applicable;

d. Whether acceptance of the gift is appropriate and advisable from the perspective of conflict of interest and government ethics guidelines; and

e. Under no circumstances will a gift be accepted from a Subject Entity.

3. The authority of the Chairman, in consultation with the Vice Chairman, or upon delegation, the Executive Director, to accept gifts of services or property is exclusive.

APPROVED and RATIFIED: *9-0, January 20, 2010*

Financial Crisis Inquiry Commission

Agenda Item 3 for Telephonic Business Meeting of February 17, 2010
Minutes of Telephonic Business Meeting of
January 20, 2010

ATTACHMENT

Ethical Guidelines for Commissioners

A. The Code of Ethics for Government Service.

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

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

8. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

B. Bribery.

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

C. Gifts to Commissioners

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

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

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

D. Financial Disclosure.

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

E. Conflicts of Interest.

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

1. Once it becomes known to a Commissioner that an entity or individual in which he or she (or his or her spouse and minor children), may have a material financial interest is a Subject Entity, the Commissioner shall disclose to the Ethics Officer the existence of the potential conflict and the facts of the relationship between the Commissioner and the Subject Entity.

2. The Commissioner, in consultation with the Ethics Officer, shall determine whether his or her actions as a Commissioner with respect to a Subject Entity could have material financial consequences to the Commissioner, thereby creating a conflict of interest.

3. If it is so determined, then either the Commissioner (a) shall divest him or herself of the interest or relationship with the Subject Entity, or (b)(i) the Ethics Officer will disclose the conflict to the staff and the other Commissioners, (ii) the Commissioner will recuse him or herself from the area of dealing, and (iii) the staff and other Commissioners will create an ethical wall to restrict the affected Commissioner from participating in discussions and viewing Commission work product concerning the Subject Entity.

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

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

F. Public Speaking and Public Statements.

Compensated speaking engagements paid for by Subject Entities (including reimbursement for travel expenses) should be avoided as inappropriate. Commissioners may accept other speaking engagements at their discretion with due consideration for the choice of audience and nature of the presentation.

G. Non-disclosure of Information.

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

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

Exceptions to classification as Commission Confidential Information include:

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

H. Outside employment and activities.

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

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

If a Commissioner is already employed by an organization that deals with matters before the Commission, or that deals with Subject Entities on matters before the Commission, the Commissioner shall take steps (in consultation with the Ethics Officer) to ensure that the income from such activities does not inure to the benefit of the Commissioner, or the

Commissioner shall treat the matter as a conflict of interest in the manner set forth in Paragraph E above (examples may include a Commissioner who is a partner in a professional services organization and who shares in the profits of that organization, which includes receipts for representing Subject Entities before the Commission).

No Commissioner may receive compensation from a foreign government.

APPROVED and RATIFIED as amended: *9-0, January 20, 2010*

Financial Crisis Inquiry Commission

Agenda Item 3 for Telephonic Business Meeting of February 17, 2010
Minutes of Telephonic Business Meeting of
January 20, 2010

ATTACHMENT

Ethical Guidelines for Commission Staff

A. The Code of Ethics for Government Service.

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

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

8. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

B. Bribery.

It is wrongful for a staff member in the performance of his or her services to the Commission directly or indirectly, corruptly to demand, seek, receive, accept, or agree to receive or accept anything of value personally or for any other person or entity, in return for being influenced in the performance of any official act, being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or being induced to do or omit to do any act in violation of the official duty of such staff member. (18 USC §201(b)(2).)

C. Gifts to Staff members (5 USC §7353**).**

Gifts for the use of the Commission may not be solicited except in compliance with the Commission Policy for the Solicitation and Acceptance of Gifts of Services or Property attached hereto.
Staff members may not solicit, accept or receive personal gifts from entities (or individuals employed by entities) which are or are reasonably likely to be the focus of the Commission's work, or which are seeking official action from, or doing business with, the Commission ("Potentially Subject Entities"). Such entities may include, but are not limited to, financial services firms, ratings organizations, financial regulatory bodies and providers of professional services to such entities. Nor may staff members solicit, accept or receive personal gifts based upon their position with the Commission.

The prohibitions are not intended to apply to gifts from close relatives who may be otherwise restricted, consistent with past practices, or to de minimis gifts, i.e., under $50**.** Nor do they restrict the solicitation or receipt of "informational material" -- items which serve primarily to convey information and which are provided for the purpose of assisting the recipient in the performance of his or her official duties, including, but not limited to, books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars and on-site demonstrations, tours, or inspections designed specifically for the purpose of assisting the recipient public officials in the performance of either their official duties.
The United States Constitution prohibits government employees from accepting personal gifts from foreign governments unless consented to by Congress.

D. Financial Disclosure.

Staff members are not required, and are not being asked, to file Financial Disclosure Statements. (The Executive Director has agreed voluntarily to file the Financial Disclosure Statement.) This does not in any way reduce the obligations on staff members to avoid conflicts of interest.

E. Conflicts of Interest.

A conflict of interest may arise if a staff member (which throughout these Guidelines includes a spouse or minor children) has a material financial interest (which may include material stock or other equity ownership or creditor/debtor relationships, profit participations, employment or consulting relationships, or material transactions outside of the ordinary course of business) in or with a Potentially Subject Entity. (For these purposes, ownership of debt or equity in a Potentially Subject Entity in excess of $15,000 is considered material.)

1. Once it becomes known to a staff member that a person in which he or she may have a material financial interest is a Potentially Subject Entity, the staff member shall disclose to the Ethics Officer the existence of the potential conflict and the facts of the relationship between the staff member and the Potentially Subject Entity.

2. The Ethics Officer, in consultation with the staff member, shall determine whether the staff member's actions could result in a conflict of interest having material financial consequences to the staff member.

3. If it is so determined, then either the staff member (a) shall divest him or herself of the interest or relationship with the Potentially Subject Entity, or (b)(i) the Ethics Officer will disclose the conflict to the Commissioners and the other staff members, (ii) the staff member will recuse him or herself from the area of dealing, and (iii) the staff member and other staff members will create an ethical wall to restrict the affected staff member from participating in discussions and viewing Commission work product concerning the Potentially Subject Entity.

Pending determination of the potential conflict the staff member shall avoid any involvement with the Commission's consideration of matters concerning the Potentially Subject Entity
A "material financial interest" does not include arm's length dealings between the staff member and the Potentially Subject Entity which are generally available to members of the public similarly situated to the staff member (other than his or her status as a staff member) on similar terms, such as home or other loans from banks and other financial institutions on terms that are available based on factors other than staff membership or opportunities and benefits, including favorable rates and commercial discounts, that are available based on factors other than staff membership.

F. Purchase and Sale of Securities.

In keeping with the prohibitions against conflicts of interest, staff members may not purchase or sell short any amount of securities in any Potentially Subject Entities, or sell a material (as defined above) amount of securities in any Potentially Subject Entity. Each staff member must be aware of Rule 10b-5 of the General Rules and Regulations promulgated under the Securities Exchange Act of 1934 which prohibit the purchase and sale of securities while in the possession of material non-public information. This applies to all securities, not just to Potentially Subject Entities.

G. Public Speaking and Public Statements.

Staff members may accept unpaid speaking engagements with the approval of the Executive Director with due consideration for the choice of audience and nature of the presentation. Matters concerning the Commission are not permissible subjects for any speaking engagements, articles or books. Other articles and books may be written and published with the approval of the Executive Director, subject to the limitations on outside employment and compensation (all written material produced by staff members in connection with their work on the Commission are the property of the Commission).

H. Non-disclosure of Information.

All information concerning the internal non-public workings of the Commission, confidential information obtained by the Commission during the course of its investigations, and confidential non-public work product of the Commission, shall be maintained as "Commission Confidential Information," and shall be held in confidence and not disclosed outside of the Commission. The restrictions concerning the use of Commission Confidential Information are contained in a separate Confidentiality and Non-Disclosure Agreement previously executed.

I. Outside employment and activities.

Staff members:

(i) Are generally prohibited from engaging in or accepting outside employment of any type without the express prior written consent of the Executive Director or the Commission, and then only within certain limits as prescribed in the House Ethics Manual (part time staff members and consultants are not subject to this rule, but the conflicts provisions, including Paragraph E, still apply);

(ii) May not accept honoraria for speeches, articles or appearances (part time staff members and consultants are not subject to this rule, but the conflicts provisions, including Paragraph E, still apply);

(iii) Are prohibited from receiving or sharing in compensation for representational activities, or acting as an "agent or attorney," with or without compensation, on behalf of private parties before the Federal Government, or on a matter before the Commission; and

(iv) May not “lobby” or try to influence the Commission for one year after leaving Government employment, but are not prevented from lobbying the Congress as a whole after leaving the Commission’s employment. Persons who are covered by this one-year “cooling off” period are also barred for one year from representing any foreign interests before the United States.

The Commission has also determined that it is improper for a staff member to accept employment from persons known to the staff member to be Potentially Subject Entities due to the conflicts which may arise. Outside employment should be construed broadly.

No staff member may receive compensation from a foreign government.

APPROVED and RATIFIED as amended: *9-0, January 20, 2010*

MEMORANDUM

To: Commissioners

From: Gary Cohen
General Counsel
Financial Crisis Inquiry Commission

Date: February 11, 2010

Re: Agenda Item 7 – Proposed Records Management Policy

Attached please find the Commission's proposed Records Management Policy for adoption next week.

This Policy is presented for review and approval by the full Commission. It has been reviewed and approved by the staff of NARA, the National Archives and Records Administration.

I recommend that the Commission consider approving the Policy at this meeting so that the staff can begin full implementation immediately.

Financial Crisis Inquiry Commission

Agenda Item 7 for Telephonic Business Meeting of February 17, 2010

Proposed Records Management Policy

1. **Purpose.** This guidance contains mandatory Financial Crisis Inquiry Commission ("FCIC" or the "Commission") procedures for managing records effectively and efficiently throughout their life cycle. These procedures will help FCIC successfully accomplish its mission, preserve official records in accordance with applicable statutory and regulatory requirements, and promote access to information by FCIC staff and the public, as appropriate.

2. **Authority.** The FCIC will comply with 44 U.S.C. Chapters 21, 29, 31, and 33 and 18 U.S.C. Chapter 101, and regulations established by the National Archives and Records Administration (NARA) for managing Federal records as stated in 36 C.F.R. parts 1220, 1222, 1228, 1234, and 1236.

3. **FCIC Responsibilities under the Document Retention Policy.** The Executive Director and General Counsel shall establish and maintain an active, continuing program for the economical and management of the records of the FCIC (44 U.S.C. § 3101).

4. **Policy.**

   A. FCIC will establish effective management controls over the creation, maintenance, and use of records in any medium, including electronic and microform media, throughout their life cycle.
   B. The provisions of this directive are mandatory and are applicable to all Commissioners and staff of the FCIC.
   C. All Government employees and contractors are required by law to create and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency. In addition, Federal regulations govern the life cycle of these records: they must be properly stored, preserved, and available for retrieval, and may be disposed of only in accordance with NARA-approved records control schedules.
   D. FCIC will cooperate with NARA and other agencies in applying standards, procedures, and techniques to improve the management of records; promote the maintenance of those records of continuing value (permanent); and facilitate the segregation and disposal of temporary records.

E. All records, including electronic and other forms of information will be systematically identified and appraised.

F. Records are broadly defined by statute and regulation to include all recorded information, regardless of medium or format, made or received by the FCIC under Federal law or in connection with the transaction of public business, either preserved or appropriate for preservation because of their administrative, legal, fiscal or informational value. Records serve as FCIC's memory; they are of critical importance in ensuring that FCIC continues to function effectively and efficiently.

G. FCIC officials are responsible for incorporating into the records of the Commission all essential information on their major actions. Significant decisions and commitments reached orally or by informal electronic mail will be documented and included in the record.

H. Minutes will be taken at all Commission meetings, and these, together with a copy of the agenda and all documents considered at or resulting from such meetings, shall be incorporated into the FCIC's record and made available for public inspection.

I. All Commission meetings shall be transcribed or recorded and the recording or transcript shall be incorporated into the FCIC's records and made available for public inspection.

J. The FCIC will take appropriate action to ensure that all staff and Commissioners are capable of identifying Federal records. For electronic mail systems, the FCIC will ensure that all staff and Commissioners are informed of the potential record status of messages, transmittal and receipt data, directories, and distribution lists.

5. Materials to be managed under this Policy.

A. Determining if Documents are Federal Records, Nonrecords or Personal Papers.

1. Identifying Federal records.

a. Documentary materials are records when they meet both of the following conditions:

i. They are made or received by an agency of the United States Government under Federal law or in connection with the transaction of agency business; and

ii. They are preserved or are appropriate for preservation as evidence of agency organization and activities or because of the value of the information they contain.

b. *Record status.* In addition to the two conditions stated above, use the following criteria as a guide for determining whether or not a document, such as an email message, meets the statutory definition of a Federal record. If the material (whether a document, email, or other recorded information) meets any of the following criteria, it is considered a Federal record and should be preserved in accordance with procedures set forth below:

i. It contains unique, valuable information developed in preparing position papers, reports, studies, etc.

ii. It reflects significant actions taken in the course of conducting FCIC business.

iii. It conveys unique, valuable information about FCIC programs, policies, decisions, or essential actions.

iv. It conveys statements of policy or the rationale for decisions or actions.

v. It documents oral exchanges (in person or by telephone), during which policy is formulated.

vi. It adds to the proper understanding of the formulation or execution of FCIC actions or of FCIC operations and responsibilities.

vii. It documents important meetings.

viii. It makes possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.

ix. It protects the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

x. It documents the persons, places, things, or matters dealt with by the Commission.

xi. It documents the administration of the Commission, such as personnel, procurement, payroll, budget, and other "housekeeping" operations *(See* General Records Schedules for many types of administrative records created by the Commission).

c. *Electronic mail messages.* Messages created or received on electronic mail systems may meet the definition of record in 44 U.S.C. § 3301.

d. *Working files and similar materials.* Working files, such as preliminary drafts and rough notes, emails and other similar materials shall be considered Federal records if:

i. They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with FCIC staff about FCIC business; <u>and</u>

ii. They contain unique information, such as substantive annotations or comments, that add to a proper understanding of the FCIC's formulation and execution of basic policies, decisions, actions, or responsibilities.

e. *Documents circulated to one or more Commissioners, or from a Commissioner to staff.* Drafts, rough notes, emails, or other documents that are circulated to one or more Commissioners, or from a Commissioner to staff, are presumed to be Federal records, because such documents may contain unique information that adds to a proper understanding of the Commission's formulation and execution of basic policies, decisions, actions, or responsibilities. The presumption that such documents are Federal records shall be rebutted (and the document shall be considered a nonrecord) if the document does not contain any information that adds to a proper understanding of the Commission's formulation and execution of basic policies, decisions, actions, or responsibilities. *See infra* 5.A.2.b. <u>For example, a draft version of the final report circulated to Commission members, and the Commissioners' e-mails of substantive changes back to the staff, would be a Federal record</u>.

f. *Documents received from Federal agencies and private and public companies.* Records reviewed by Commissioners and/or staff which are relevant to the

mission of the Commission are Federal records. The records may be referred to in emails, memoranda, white papers, briefings, or reports. Documents received which are irrelevant or not used by the Commission or staff are nonrecords. The FCIC must record all Federal records it receives.

2. Identifying nonrecord materials.

a. *General guidance.* Nonrecord materials are Government-owned informational documents excluded from the definition of "records" or not meeting the requirements of that definition. (*see* 36 C.F.R. §1222.34(b)). Nonrecord material may be disposed of at any time after its purpose has been served. Nonrecord material shall not be interfiled with temporary or permanent record material. The following are specifically excluded from status as records by statute (*see* 44 U.S.C. § 3301):

i. Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes);

ii. Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference).

b. *FCIC policy on identifying nonrecords.* Documents will generally be considered federal records, except when, as set forth above at 5.A.l.e., documents that do not contain unique information that adds to a proper understanding of the FCIC's formulation and execution of basic policies, decisions, actions, or responsibilities. Nonrecord material may be disposed of at any time after its purpose has been served.

i. *Documents circulated among staff.* Drafts, rough notes, emails and other documents circulated internally (among staff only, as contrasted to such items circulated to the Commissioners) may be nonrecords if they do not contain unique information that adds to a proper understanding of the FCIC's formulation and execution of basic policies, decisions, actions, or responsibilities. (It is assumed that substantive actions of the FCIC will have to be approved by the Commission, so the internal staff commentary on memoranda that do not go to the Commissioners or are not released to the public will be considered nonrecords.) *Example:* <u>If a staff member circulates a memorandum among staff, and another staff member makes substantive changes which are incorporated into the final memo, then the original document is nonrecord because the unique information that adds to a proper understanding of the FCIC's actions is incorporated into the new document (also see iii below)</u>.

ii. *Documents circulated to one or more Commissioners, or from a Commissioner to staff.* As provided above in 5.A.l.e., such documents are generally federal records. However, if the document does not contain unique information that adds to a proper understanding of the FCIC's formulation and execution of basic policies, decisions, actions, or responsibilities, it is a nonrecord. *Example:* <u>An email from a Commissioner to staff notifying them that she cannot attend a meeting is a nonrecord.</u>

iii. *Commissioner and staff notes to self.* Personal notes taken during the course of FCIC activities and not circulated to other Commissioners or

staff members are generally considered nonrecords. *Examples:* A Commissioner's notes to self during a team meeting is a nonrecord, but staff notes on a team meeting where official minutes are not kept would be a Federal record as they represent the only source of information regarding the meeting. Similarly, staff notes on a witness interview where an official transcript is not created would be a Federal record.

3. Identifying personal papers.

a. Personal papers are documentary materials of a private or nonpublic character that do not relate to, or have an effect upon, the conduct of FCIC business. Personal papers are excluded from the definition of Federal records and are not owned by the Government. Examples of personal papers include:

i. Materials accumulated by an official before joining Government service that are not used subsequently in the transaction of Government business;

ii. Materials relating solely to an individual's private affairs, such as outside business pursuits, professional affiliations, or private political associations that do not relate to FCIC business; and

iii. Diaries, journals, personal correspondence, or other personal notes that are not prepared or used for, or circulated or communicated in the course of, transacting Government business.

b. If information about private matters and FCIC business appears in the same document, the document shall be copied at the time of receipt, with the personal information deleted, and treated as a Federal record.

c. Materials labeled "personal," "confidential," or "private," or similarly designated, and used in the transaction of public business, are Federal records subject to the provisions of pertinent laws and regulations. The use of a label such as "personal" is not sufficient to determine the status of documentary materials in a Federal office.

d. If personal papers are maintained at the FCIC office, they shall be clearly designated as such and filed or otherwise maintained separately from the official records of the office.

e. FCIC officials may not remove any Federal records from FCIC custody while removing their personal papers and designated nonrecord materials. Before anyone departs from FCIC, they shall consult with the Executive Director or General Counsel to ensure that official records that may be included in personal papers are returned to FCIC files. The Executive Director or General Counsel may approve a request from the departing official to take extra copies of work-related files if the records do not contain national security-classified information or are otherwise restricted (e.g., Privacy Act, etc.).

B. The FCIC has been specifically excluded from the operation of the Federal Advisory Committee Act, thereby eliminating any document management obligations under FACA.

C. Categories of Documents Deemed to be Federal Records

1. *Permanent records.* Permanent records are those records that NARA appraises as having sufficient value to warrant continued preservation by the Federal Government as part of the National Archives of the United States because the records have continuing value as documentation of the organization and functions of the FCIC or because the

records document the nation's history by containing significant information on persons, things, problems and conditions. FCIC records determined by the FCIC and approved by NARA to be permanent must be available in a medium and format that conforms to the standards for permanent records. FCIC permanent records shall be transferred to the National Archives of the United States at the time designated on a NARA-approved Request for Records Disposition (SF 115). When permanent records are transferred to National Archives, legal custody of the records is transferred to NARA at this time. NARA takes measures needed to preserve the records and also provides reference service, including service to FCIC.

2. *Temporary records.* Temporary records are records that are designated for either immediate disposal or for disposal after a specified period of time or an event in accordance with a NARA-approved Request for Records Disposition (form SF 115) or the General Records Schedule. Temporary Records may document FCIC business processes or document legal rights of the government or the public, document government accountability, or contain information of administrative or fiscal value. Records classified as temporary should not be retained beyond their authorized retention period; nor shall they be destroyed or otherwise disposed of prior to the end of their authorized retention period. Temporary records shall be maintained and disposed of only in accordance with the following records control schedule:

a. *Transitory records.* Records of short-term interest (180 days or less), including in electronic form (e.g., e-mail messages), which have minimal or no documentary or evidential value. Included are such records as:

i. Routine requests for information or publications and copies of replies which require no administrative action, no policy decision, and no special compilation or research for reply;

ii. Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as notices of holidays or charity and welfare fund appeals, bond campaigns, and similar records;

iii. Records documenting routine activities containing no substantive information, such as routine notifications of meetings, scheduling of work-related trips and visits, and other scheduling related activities;

iv. Suspense and tickler files or 'to-do' and task lists that serve as a reminder that an action is required on a given date or that a reply to action is expected, and if not received, should be traced on a given date shall be destroyed immediately, or when no longer needed for reference, or under a predetermined schedule or business rule (e.g., implementing the auto-delete feature of "live" electronic mail systems).

b. *Non-transitory records.* All temporary records that are not transitory records shall be retained until the Commission ceases to exist. Non-transitory records shall be destroyed or transferred to GSA (as may be required by GSA regulations) upon termination of the Commission, as appropriate, unless those records otherwise should be retained with NARA as permanent Federal records pursuant to Paragraph 5.A.1.

3. *Unscheduled records.* Records whose final disposition has not been approved by NARA. Unscheduled records are potentially permanent and must be treated as if they are permanent.

6. Records Disposition Program

A. *Goals of the Program.* An effective records disposition program is essential to successful records management and is an integral part of the FCIC's information resources management program. The goals of the records disposition program are to:

1. Maintain adequate and proper documentation and evidence of the FCIC activities for the time required to meet programmatic needs.
2. Retire records requiring longer retention to economical storage facilities, providing savings in space and equipment.
3. Preserve records of continuing or enduring value through transfer to the National Archives.

B. *Records Disposition Authority.* The following are the two basic types of records disposition authorities for FCIC records:

1. *NARA General Records Schedule (GRS).* Disposition requirements for administrative or housekeeping records that are common to most Federal agencies are listed in the GRS published by NARA. The disposition requirements of the GRS, including records retention periods are mandatory FCIC-wide unless an exception is obtained from NARA. The GRS does not cover all FCIC records.

2. FCIC Records Control Schedules. The GRS may be supplemented by FCIC-specific schedules covering records that are unique to program administrations and staff offices. The records series or systems contained in these records schedules are unique to their organization. Disposition instructions and retention periods cited in these schedules are mandatory.

C. Records Management

1. All records maintained by the FCIC shall be reviewed prior to the termination of the Commission. Records that require review by NARA shall be collected at that point, or earlier. Permanent records shall be designated as such and transferred to NARA.
2. Any unlawful or accidental destruction, defacing, alteration or removal of FCIC records must be reported promptly to the Executive Director or General Counsel. The penalty for the willful and unlawful destruction, damage, or alienation of Federal records is a fine under the provisions of Title 18, U.S.C., or 3 years in prison, or both (18 U.S.C. § 2071).

MEMORANDUM

To: Commissioners

From: Gary Cohen
General Counsel
Financial Crisis Inquiry Commission

Date: February 12, 2010

Re: Agenda Items 8 and 9 – Delegation to Administer Oaths
(Resolution and Amendment to Rules of Protocol)

As the interview process has accelerated, the question of administering oaths has been raised. In order to provide clarity and guidance, I propose the Commission adopt the attached resolution and the attached amendment to our rules of protocol.

.

Financial Crisis Inquiry Commission

Agenda Item 8 for Telephonic Business Meeting of February 17, 2010

RESOLUTION: Delegation to Administer Oaths

Delegation of Authority to Senior Staff to Administer Oaths in Connection with Witness Interviews and Depositions.

Among the powers of the Commission are to;

> (A) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and
> (B) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.

It is contemplated that the Commission staff may wish to conduct certain interviews of key witnesses in a deposition like setting rather than the more informal interview setting. In such case the Commission staff may determine that the testimony should be given under oath, and will therefore require the authority to administer oaths on behalf of the Commission.

To enable the senior staff member who is leading the interview in those situations to administer the oath, I recommend that the Commissioners adopt the following resolution to allow this to occur on a case by case basis:

Resolved, that the Commission hereby delegates to the Executive Director or, in his absence, the General Counsel, the power and authority from time to time to grant to an Assistant Director, Executive Director, General Counsel, or court reporter, the power and authority to administer an oath to a Commission witness at a witness interview or deposition in the name and under the authority of the Commission.

Financial Crisis Inquiry Commission

Agenda Item 9 for Telephonic Business Meeting of February 17, 2010

AMENDMENT to FCIC Rules of Protocol: Delegation to Administer Oaths

Pursuant to Section IV C of the FCIC Rules of Procedure (FCIC Rules), the Commission amends Secion IV(C) of the FCIC Rules to read as follows:

> Testimony at hearings before the FCIC **or at FCIC witness interviews or depositions** may be conducted under oath, at the direction of the Presiding Commissioner.

Financial Crisis Inquiry Commission

Agenda Item 10 for Telephonic Business Meeting of February 17, 2010

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

Issue	House	Senate
Financial Firm Regulation		
Executive Compensation and Corporate Governance *(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)
Municipal Securities *(p. 10)*		In Dodd Discussion Draft: "Restoring American Financial Stability: municipal securities" (Banking, Housing & Urban Affairs, November 10, 2009)
Private Investment Funds *(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	
SEC Reform *(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)
Securitization *(p. 11)*		In Dodd Discussion Draft: "Restoring American Financial Stability: securitization" (Banking, Housing & Urban Affairs, November 10, 2009)
Financial Market Regulation		
Competent Staffing *(p. 12)*		In Dodd Discussion Draft: "Restoring American Financial Stability: creating a 21st century workforce for 21st century regulators" (Banking, Housing & Urban

		Affairs, November 10, 2009)
Credit Rating Agencies *(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)
Hedge Funds *(p. 13)*		In Dodd Discussion Draft: "Restoring American Financial Stability: hedge funds" (Banking, Housing & Urban Affairs, November 10, 2009)
Insurers *(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)
OTC Derivatives *(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)
Regulatory Structure *(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>		
Consumer Financial Protection Agency *(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	
Credit Cards *(p. 17)*	H.R. 3639: "The Expedited CARD Reform for Consumers Act of 2009" (Frank and Maloney, Passed House [331-92], November 4, 2009)	
Overdraft Protection *(p. 17)*	H.R. 3904: "Overdraft Protection Act" (Frank and Maloney, currently awaiting markup, December 7, 2009)	
Government Crisis Response		
Systemic Risk Regulation *(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)
"Too Big to Fail" *(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)
Investigation		
AIG *(p. 20)*	Hearing: "Factors Affecting Efforts to Limit Payments to AIG Counterparties." (Oversight and Government Reform, January 27, 2010)	
Regulation (SEC)		
Dark Pools *(p. 21)*	Proposed Rule (October 21, 2009)	
Money Market Funds *(p. 21)*	Proposed Rule (June 24, 2009)	
Short Selling	Proposed Rule (September 17, 2009)	

(p. 22)	
CRA Oversight *(p. 22)*	Adopted Rule - Awaiting comment period (October 5, 2009)
"Unfiltered" Access *(p. 23)*	Proposed Rule – Would prohibit naked access to exchanges and ATS
Federal Reserve	
CRA Oversight *(p. 24)*	Adopted Rule (December 4, 2009)
Treasury	
Financial Fraud Task Force *(p. 25)*	Establishment of Task Force (November 17, 2009)
TARP Executive Compensation Rules *(p. 25)*	Proposed Rules - new round of Executive Compensation Rules that effect AIG, Citigroup, GM and GMAC
Financial Crisis Responsibility Fee *(p. 26)*	Proposed Rule - would require largest and most highly levered Wall St. firms to repay taxpayers for TARP assistance.
Basel Committee	
Basel Committee on Banking Supervision *(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 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.*