



**CONFIDENTIAL - NOT FOR PUBLIC DISTRIBUTION**

**Agenda for Financial Crisis Inquiry Commission Telephonic Business Meeting of  
Tuesday May 18, 2010**

**12:00-2:30pm EST**

**Conference Dial-In Number: 866-692-3582**

**Participant Access Code: 3387529**

- | <b><u>Agenda Item</u></b> | <b><u>Presentation</u></b> |
|---------------------------|----------------------------|
| <b>1) Call to Order</b>   | <b>Chairman Angelides</b>  |
| <b>2) Roll Call</b>       | <b>Chairman Angelides</b>  |

<b>Name</b>	<b>Roll Call</b>
<b>Phil Angelides</b>	<b>X</b>
<b>Bill Thomas</b>	<b>NO</b>
<b>Brooksley Born</b>	<b>X</b>
<b>Byron Georgiou</b>	<b>X</b>
<b>Robert Graham</b>	<b>X</b>
<b>Keith Hennessey</b>	<b>X</b>
<b>Doug Holtz-Eakin</b>	<b>NO</b>
<b>Heather Murren</b>	<b>X</b>
<b>John Thompson</b>	<b>X</b>
<b>Peter Wallison</b>	<b>X</b>

- 3) Approval of Minutes of Telephonic Business Meeting of April 20, 2010** **Chairman Angelides**  
*(Attached)*

Born first, Wallison second. Aye 7-0 (JWT absent at the time)

- 4) Chairman's and Vice Chairman's Report** **Chairman Angelides and Vice-Chairman Thomas**

Sunday – basic schedule for June 1<sup>st</sup> -4<sup>th</sup>. Briefing session 5-7:30, hearing in New York, Retreat on Thursday and Friday in DC – location TBA. Block of hotel rooms tomorrow. 7:15 Acela train back – make your reservations.

Budget – Beneva working very hard. In line to get supplemental funding in the upcoming supplemental appropriations bill – targeted for passing before Memorial Weekend. House (\$2.7 million) and Senate (\$1.8 million) – now go to conference. Beneva: nothing less than what is in the Senate, but House wants to slim down since.

European Union – formed a crisis committee. Available for a meeting on June 8<sup>th</sup> at 3:15pm. If Commissioners want to attend – hear their perspectives – not an official meeting – in the event you want to attend that meeting, PA will notice.

Thank the staff and Brooksley and Doug for Shadow Banking hearing.

**5) Executive Director’s Report**

**Wendy Edelberg, Executive Director**

Organizational changes among staff. Created one large team that will work on case study investigations and following up on hearings. Headed by Chris Seefer. Created another team that will focus on cross-cutting/horizontal issues – Bondi and Krebs. Both teams working closely with research team.

**6) Hearing 4 Debriefing**

**Wendy Edelberg**

Need to schedule a follow-up meeting with Shadow Banking working group re: finalize wrap-up in the next week or so.

Born: staff did a wonderful job under very tight time frame. Staff should take a stab at preliminary knowledge from H4 – takeaways. Wendy: yes, this will be incorporated.

Phil: Dow Jones article – quoted. “yes, this boring as is the Commission’s *staff* report...required reading”

Comments on PSR’s being received – PA : post on Commissioner workspace.

**7) Process for Referral to the Department of Justice**

**Gary Cohen, General Counsel**

*(Attached Memo forthcoming)*

Gary: may refer criminal matters to DOJ – flexible and fluid mandate without many requirements. See memo re: 6 step process to refer matters to DOJ. Just bring to attention to appropriate authorities, not prosecuting

**8) Discussion and Update on Work Plan**

**Chairman Angelides,  
Vice-Chairman Thomas, and  
Wendy Edelberg**

*(Materials forthcoming Attached)*

This item place on the agenda prior to us redoing schedule to make available the Commission retreat. Some items may be appropriate for face to face meeting on June 3<sup>rd</sup>

and 4<sup>th</sup>. Work plan – chair and staff promised update to work plan as to processes and to debate issues and facts and identify issues that cut across the various research and investigation plans. Attempt to be responsive some mechanical processes by which the Commission can start to discuss issues and facts before us to identify hypotheses, findings to date, and areas of agreement and disagreement.

Item II – staff talked about putting together process for putting together cross cutting issues. Ideas presented by staff not exclusive, but to spur discussion. Come away with today: Item III – two commission retreats – commissioner thoughts on this matter so staff can receive feedback to make retreat productive and form agenda.

Wendy: working group members do presentations and facilitate discussion for the full Commission. Progress reports to full Commission leading up to a hearing, and afterward – conclusions drawn – what needed for follow-up.

Heather: starting now? Reviewing former hearings? PA: yes – where are the agreements and disagreements and what needs more info. Wendy: H2/3 has had this initial discussion – but how to present at the retreat.

Heather: is the introduction written yet? Starting point. PA: no, at retreat we will have discussion on defining the crisis.

Peter: memo on his concerns. Retreat should identify hypotheses. Before we start hypotheses, we must identify define the crisis. (Wendy confirmed) . PW: define first and then identify what staff should investigate and identify.

PA: potential hypotheses – missing 2 (Keith and Bill) – please send it before the retreat – by Friday

Definition of the crisis and what would constitute a cause – PA missing – everyone else needs to submit by COB on Thursday. (missing Byron, Phil, Keith, and Bill)

Bob Graham: definition of a crisis – further from right of a continuum of events. Superior or good condition, average, declining position – far right is crisis. What would be financial conditions that justify placing it in financial category.

Keith: could you relay to the group what PA said offline about report – agenda Item 9 – production and process of report. Report writing, under Wendy’s direction, will kick into gear – at the end of this week, due Friday, outline to the Commission re: the process for Commissioner input and skeleton for framework for the book to be discussed at the retreat. Keith: in terms of producing the document – how to you find agreement where there is disagreement – for process, include – one person has pen and others suggest changes to draft. – who has the pen? Majority votes? What is process for irreconcilable differences?

9/11 and WMD – every member had opportunity on page by page difference in same physical location. Keith: key concern is to have a set of rules if we aren't unanimous. Understand how process move forward.

JWT: identify core set of issues that are root causes of the crisis and potentially add tangential items a subsequent meetings – rather than having a exhaustive list.

PA: identify unanimity core issues.

Heather: what will be our objective at retreat – find 7 causes? PA: come to a common agreement on definition of financial and economic crisis and come out with Commission views on core issues and non-issues and where agreement is. PA: *agree with Peter - do core after hypotheses???*

Byron: inadequate capital/capital arbitrage. Wendy: this would be subsumed in regulatory arbitrage. On liquidity ... Byron – worthy of its own cross cutting issue by itself.

PA: as we focus, continue to review facts before us – keep minds open.

**Resend Buckets/hypotheses list – include Senator Graham's hypotheses today -.**

**9) Commission Report Outline and Process**      **Chairman Angelides,**  
**Vice-Chairman Thomas, and**  
**Wendy Edelberg**

Covered

**9)10) Comments and Questions**      **All Commissioners**  
**from Commissioners**

None

**10)11) Report to Commission re: Legislative**      **Wendy Edelberg/ Scott Ganz,**  
**Special**  
**And Regulatory Update**      **Assistant**  
**(*ForthcomingAttached*)**

Last night, Senator Reed filed a closure motion – debate could end as soon as 10am on Wednesday. Not necessarily definitive on if or when it will pass. Is closure vote likely to succeed? Not clear.

**11)12) Other Items of Business**      **All Commissioners**

None

**12)13) Adjournment**      **Chairman Angelides**

Byron first, Second by Bob. Motion passes 8-0



**Financial Crisis Inquiry Commission**  
**Agenda Item 3 for Telephonic Business Meeting of May 18, 2010**  
**Minutes of Telephonic Business Meeting of**  
**April 20, 2010**

**Agenda Item 1: Call to Order**

Chairman Angelides called the telephonic business meeting to order at 1:06pm EST.

**Agenda Item 2: Roll Call**

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

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, March 16, 2010**

Chairman Angelides introduced the minutes from the FCIC meeting of March 16, 2010.

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

APPROVED: 10-0

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

Chairman Angelides spoke on the topic of wrapping up items from Hearing 2/3, specifically that staff would be meeting with the working group to create a list of key takeaways and to identify critical lines of inquiry and research that need additional attention. Staff would also create a grid of all items or questions to be posed in writing that were raised by Commissioners at the last hearing. Commissioner follow-up questions to ask of witnesses should be routed to Beneva.

Chairman Angelides also noted that staff would distribute a rough outline of the report to the Commission in the very near future, per the Omni Plan.

#### **Agenda Item 5: Hearing 2/3 – Debriefing**

As previously noted, staff will create a grid of follow-up questions and items that need further work as part of the research and investigatory efforts; the working group for this hearing will hone in on the important items that need to be pursued.

Vice Chairman Thomas initiated a broader discussion on the merits of holding hearings citing, among other items, limitations of staff resources and that the FCIC would be in competition with Congress, and questioned whether we should continue with our hearings and current investigatory structure. Broad discussion ensued on the merits of holding hearings and the current status of the work plan. Hearing materials and draft questions would cover both the macro and micro levels of each topic and each hearing topic would include an explanation on how it was connected to the financial crisis.

Staff was directed to review the current Omni/business plan with an eye on how it can be improved and to also analyze their time management and staff resources. Staff will return to the Commission with an update. Staff was also directed to renew efforts to find a time wherein the Commissioners would convene to discuss hypotheses and the work plan.

#### **Agenda Item 6: Executive Director's Report**

Mr. Greene informed the Commission that staff would be seeking four unpaid summer interns. He asked that Commissioners forward resumes of interested applicants by Wednesday of next week.

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

No comments or questions were brought up by the Commissioners.

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

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

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

##### **a) RESOLUTION: To Establish A Process For Issuance, Execution and Enforcement of Subpoenas**

Chairman Angelides and Mr. Cohen introduced the resolution to establish a process for issuance, execution, and enforcement of subpoenas.

MOTION: Born moved and Murren seconded the motion to adopt the resolution (attached) with a ROLL CALL VOTE.

APPROVED: 10-0 (ROLL CALL VOTE: *Born: Aye; Georgiou: Aye; Graham: Aye; Hennessey: Aye; Holtz-Eakin: Aye; Murren: Aye; Thompson: Aye; Wallison: Aye; Thomas: Aye; Angelides: Aye*)

**b) RESOLUTION: To Establish A Process For Action By the Commission Without a Meeting**

Chairman Angelides and Mr. Cohen introduced the resolution to establish a process for action by the Commission without a meeting.

MOTION: Georgiou moved and Born seconded the motion to adopt the resolution (attached).

APPROVED: 10-0

**Agenda Item 10: Adjournment**

Chairman Angelides requested a motion to adjourn the meeting.

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

APPROVED: 10-0





**Financial Crisis Inquiry Commission  
Agenda Item 3 for Telephonic Business Meeting of May 18, 2010  
Minutes of Telephonic Business Meeting of  
April 20, 2010**

**ATTACHMENT  
Approved Minutes of Telephonic Business Meeting of  
March 16, 2010**

**Agenda Item 1: Call to Order**

Chairman Angelides called the telephonic business meeting to order at 12:06pm EST.

**Agenda Item 2: Roll Call**

Chairman Angelides asked Gretchen Newsom to call the roll of the Commissioners: Present were Phil Angelides, Bill Thomas, Brooksley Born, Byron Georgiou, Doug Holtz-Eakin, Heather Murren, John W. Thompson and Peter Wallison. Commissioner Graham was absent, and Commissioner Hennessey did not join the call until Agenda Item 8.

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, February 17, 2010**

Chairman Angelides introduced the minutes from the FCIC meeting of February 17, 2010.

MOTION: Thompson moved and Holtz-Eakin seconded the motion to adopt the meeting minutes.

APPROVED: 7-0 (Georgiou abstained (he was absent from the meeting on February 17<sup>th</sup>) and Graham and Hennessey were absent.)

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

Chairman Angelides and Vice Chairman Thomas spoke on the topic working groups – at the moment all Commissioners are involved in at least one working group and Commissioner feedback on the proceedings of the working groups has been generally positive.

On a related topic, staff was directed to keep working group members apprised of upcoming witness interviews – also, staff will continue to update the master witness list on a regular basis. Should a Commissioner wish to join an interview, he/she should inform Beneva or Wendy. The time, place, and manner of each interview will be set by staff. Commissioners can provide suggested interview questions to Wendy or Beneva to be included in the overall questioning. If one working group member decides to join a witness interview, a notice will be sent to other members on working group. The Chairman noted that he is personally not inclined to join an interview wherein the witness will also appear at an upcoming hearing.

#### **Agenda Item 5: Executive Director’s Report**

Mr. Greene informed the Commission that there have been no major changes in personnel. Mr. Greene also provided Commissioners with an update on document requests (a total of 75 requests which has yielded over 583,000 documents thus far), document retention letters, and confidentiality agreements with public agencies (HUD).

Mr. Greene informed the Commission of their “work space” and “upload space” on NetDocuments and the types of FCIC documents to be found within this online data storage system. Mr. Cohen was directed to notice the Commissioners on a weekly basis of significant uploads/changes to NetDocuments, and to provide a folder for legislative links and matters pertinent to the Commission.

Mr. Greene referenced the ongoing dialogue with the Sloan Foundation and their donation of services to FCIC. Mr. Cohen has informed the Commission with a summary email on this matter, and he noted that it is within our policy for the Chair, in consultation with Vice Chair, to act upon this matter.

Mr. Greene and Mr. Cohen spoke of a potential leak of sensitive information to the press. Mr. Cohen will investigate this matter and will remind all staff of the strict confidentiality policy of FCIC.

#### **Agenda Item 6: Executive Director’s Report Comments and Questions from Commissioners**

Commissioner Holtz-Eakin noted that he has received feedback from various industry contacts informing him that our document requests are onerous and unreasonable. Commissioner Born noted that she has heard similar grumblings, but noted that they subsided after FCIC staff was in direct contact. Chairman Angelides asked that these notices be sent to Mr. Cohen.

Commissioner Born requested that future FCIC media advisories include a standard paragraph on what areas/topics will be the subject of future hearings.

**Agenda Item 7: Renewal of Delegation to Execute Agreements and Contracts on Behalf of FCIC** *(Attached)*

Mr. Greene and Mr. Cohen introduced the delegation (attached).

MOTION: Holtz-Eakin moved and Wallison seconded the motion to adopt the delegation.

APPROVED: 8-0 (Graham and Hennessey absent)

**Agenda Item 8: Initial Discussion: Hypotheses re: the Causes of the Crisis**

Chairman Angelides stated that this agenda item is a start to building consensus around hypotheses on the causes of the crisis. Each Commissioner discussed their goals and insights for this item of discussion and staff provided input on where they saw broad lines of consensus. An in-person meeting was requested as the next step to this discussion. Commissioners agreed to individually submit a paragraph description on the definition of the crisis and what would constitute a cause and to share their initial hypotheses with one another.

**Agenda Item 9: Report to Commission re: Legislative And Regulatory Update**

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

**Agenda Item 10: Other Items of Business**

No other items of business were brought up before the Commission

**Agenda Item 11: Adjournment**

Chairman Angelides requested a motion to adjourn the meeting.

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

APPROVED: 8-0 (Graham and Thomas absent)



**Financial Crisis Inquiry Commission  
Agenda Item 3 for Telephonic Business Meeting of May 18, 2010  
Minutes of Telephonic Business Meeting of  
April 20, 2010**

**ATTACHMENT**

**Approved RESOLUTION To Establish A Process For Issuance, Execution and  
Enforcement of Subpoenas**

Delegation of Authority to Senior Staff to Execute Previously Approved Subpoenas on Behalf of the Commission.

Among the powers of the Commission are to require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers and documents. Such compulsory process may be issued by the agreement of the Chairman and the Vice Chairman, or by the affirmative vote of a majority of the Commission, including the affirmative vote of at least one member appointed by the House or Senate minority leadership. The Commission has authority to enforce its subpoenas in any United States district court by counsel designated by it.

It is contemplated that our investigators may find it necessary to use compulsory process to obtain information required to fulfill our mandatory statutory investigatory mission in a timely fashion. To assure that such information is expeditiously available, I recommend that the Commission adopt the following resolution:

**RESOLVED**, That the Chairman and the Vice Chairman, acting together, or the Commission, by majority vote including the affirmative vote of at least one member appointed by the House or Senate minority leadership, have the power to delegate to the Executive Director or the General Counsel the power to execute, on behalf of the Commission, subpoenas approved as above, such power to be exercised only upon written or e-mail confirmation by the Chairman and Vice Chairman to the Executive Director or the General Counsel, as applicable, on a case-by-case basis; and

**RESOLVED, FURTHER**, That the Executive Director or the General Counsel shall be allowed to authorize a staff member or an agent of the Commission to serve an approved subpoena; and

**RESOLVED, FURTHER,** That the Commission authorizes the Executive Director or the General Counsel to request the General Counsel of the House of Representatives to render assistance and represent the Commission, on a continuing basis, in enforcing and defending a previously approved subpoena.

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*Approved 10-0 on April 20, 2010*



**Financial Crisis Inquiry Commission  
Agenda Item 3 for Telephonic Business Meeting of May 18, 2010  
Minutes of Telephonic Business Meeting of  
April 20, 2010**

**ATTACHMENT  
Approved RESOLUTION To Establish A Process For Action By the Commission  
Without a Meeting**

Occasions may arise where it is necessary for the Commission to take action promptly, but where due to scheduling or other matters, all or a quorum of the Commissioners cannot be secured for a meeting in a timely manner. On those occasions it may be appropriate to adopt a resolution or approve a Commission action by unanimous written consent of all of the Commissioners.

Therefore it is recommend that the following resolution be adopted:

**RESOLVED**, that the Commission's Rules of Procedure be amended to add the following:

ACTION WITHOUT MEETING. Any action required or permitted to be taken by the Commission at a duly called meeting may be taken without a meeting if all Commissioners shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Commission. Such action by written consent shall have the same force and effect as a unanimous vote of such Commissioners at a duly called meeting.

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*Approved 10-0 on April 20, 2010*



**Agenda Item 7 for Telephonic Business Meeting of May 18, 2010  
Process for Referral to the Department of Justice**

Memo to: Commissioners of the Financial Crisis Inquiry Commission

cc: Wendy Edelberg

From: Gary J. Cohen  
General Counsel

Re: Criminal Referral Process/Confidential Memorandum

Date: May 15, 2010

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On May 20, 2009, the Fraud Enforcement and Recovery Act of 2009 created the Financial Crisis Inquiry Commission. The Commission was established to "examine the causes, domestic and global, of the current financial and economic crisis in the United States." The FCIC is charged with conducting a comprehensive examination of 22 specific and substantive areas of inquiry related to the financial crisis.

Our Commission is authorized to hold hearings; issue subpoenas either for witness testimony or documents; and refer to the Attorney General or the appropriate state Attorney General any person who may have violated U.S. law in relation to the financial crisis. Specifically, Section 5 of the Act states:

(c) Functions of the Commission- The functions of the Commission are--

(4) to refer to the Attorney General of the United States and any appropriate State attorney general any person that the Commission finds may have violated the laws of the United States in relation to such crisis...

The referral function is included within the other Commission functions, including issuing a report by December 15, 2010. Therefore, it is my conclusion that the referral function may be exercised by the entire Commission, acting by a simple majority vote at a duly constituted meeting of the Commissioners. In addition, Section 5(d)(8) of the Act provides:

Powers of subcommittees, members, and agents.--Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

Thus the referral function could be delegated to the Chairman and/or the Vice Chairman, or a subcommittee, member, or agent of the Commission, if so authorized by the full Commission.

The Act does not provide a mechanism how the referral is to be accomplished.

Upon consultation with the Department of Justice and other counsel, it is my recommendation that the Commission follow the below process for referrals:

1. If any Commissioner or Commission staff member believes that they have credible evidence of a violation of the laws of the United States in relation to the financial crisis, they should discuss the same with the Commission's General Counsel.
2. If after the discussion, the General Counsel, in consultation with the Executive Director, believes that the matter is worthy of follow-up, the General Counsel will prepare, or have prepared by the appropriate staff member, a confidential report outlining the nature of the evidence, and the potential violations of law involved. The report shall include documentary and testimonial evidence, the manner in which the evidence was collected, the person preparing the report's views as to the credibility and strength of the evidence, the laws which may have been violated and such other material as may be appropriate depending upon the circumstances.
3. The person preparing the report should take advantage of the law enforcement expertise within the staff of the Commission.
4. After the report has been completed, unless there are exigent circumstances which require an emergency meeting of the Commissioners, it will be disseminated on a confidential basis to the Commissioners prior to the next regularly scheduled Commission meeting.
5. At the Commission meeting the report will be presented by the General Counsel, along with member of senior staff most closely involved, for consideration by the Commission.
6. If the Commission thereafter determines that a referral is warranted, General Counsel will prepare a referral submission to the Attorney General or, if it appears that state laws may have been violated, the appropriate state attorneys general. The submission will follow the format of the report prepared for the Commissioners with such modifications as to the Commissioners so request.

Please note that the Commission is not acting as a grand jury or the equivalent in complying with its referral obligation, and that the quantum of proof for a referral should be a reasonable belief that a person "may have violated" applicable laws, rather than a belief that rises to the level needed for an indictment, or the "beyond a reasonable doubt" required for a conviction.



Obviously the determination of whether to further investigate, prosecute, and convict, will be made by others.



## **Agenda Item 8 for Telephonic Business Meeting of May 18, 2010** **Discussion and Update on Work Plan**

*For Discussion Purposes Only*

Below are potential ways to facilitate commissioners' ability to discuss, among other things, hypotheses, cross cutting issues, findings to date, areas of agreement and disagreement, and areas needing additional investigation as they relate to the causes of the financial crisis.

- I. Presentations by working group members to the full commission at regular business meetings**
  - i. A designated member or members of each working group would give brief reports to the full commission on working group progress and activities leading up to the working group's hearing date.
  - ii. After each hearing, working group members would meet to identify remaining areas of focus, key takeaways, and findings. The working group would present and discuss with the full commission these findings, including areas of agreement and disagreement. (The macroeconomics working group will determine its date to present findings.)
  - iii. Post-hearing, a designated member or members of each working group will give reports to the commission on high-priority follow-up and wrap-up work being conducted.
  - iv. To facilitate these presentations and discussions as well as the overall work of the commission, staff will be preparing the following materials with respect to each working group: preliminary staff report(s), investigative reports, hearing materials, final transcripts, answers to follow-up questions posed to hearing witnesses, and reports on follow-up and wrap-up work completed by the staff.
- II. Identification of high-priority horizontal/cross-cutting issues that span the various research and investigation plans.** With guidance from commissioners, commission staff would investigate the role of key horizontal issues at institutions and in markets. Staff would present its analysis to the commission at the business meetings or other venues. Possible candidates for these horizontal issues include:
  - i. Regulation (regulatory structures, regulatory arbitrage, effectiveness of oversight...)
  - ii. Risk management
  - iii. Corporate governance
  - iv. Compensation
  - v. Accounting and off-balance sheet entities
  - vi. Transparency, disclosure, and investor protection
  - vii. Financial sector influence
  - viii. Tax treatment of financial products and investments
- III. Two commission retreats before Labor Day.** Potential items for discussion at the first retreat include
  - i. Define financial crisis
  - ii. Discuss hypotheses
  - iii. Raise and discuss cross cutting issues
  - iv. Discussions identifying areas of agreement and disagreement among commissioners

- v. Identify high-priority areas requiring further investigation, research, and analysis
- vi. Discuss outline and writing of the report
- vii. Other items of importance to commissioners

Hopefully, these processes will better allow commissioners to absorb, distill, and discuss the information we uncover concurrently with the progress of our research and investigation efforts.



**Agenda Item 11 for Telephonic Business Meeting of May 18, 2010**  
**SUMMARY OF MAJOR LEGISLATION AND REGULATIONS AS OF**  
**MAY 17, 2010**

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## In the News

### House

On April 20, the House Financial Services Committee held a hearing on “Public Policy Issues Raised by the Report of the Lehman Bankruptcy Examiner,” which included the following witnesses: Representatives Anna Eshoo (D-CA) and Ed Perlmutter (D-CO); Treasury Secretary Timothy Geithner; Chairman of the Federal Reserve Ben Bernanke; Chairman of the SEC Mary Schapiro; Anton Valukas, Jenner & Block LLP, Court Appointed Examiner; Richard Fuld, former Chairman and CEO, Lehman Brothers; Thomas Cruikshank, former member of the Board of Directors and chair of the Lehman Brothers Audit Committee; William Black, Professor of Economics and Law, University of Missouri-Kansas City School of Law; and Matthew Lee, former Senior VP, Lehman Brothers.

On May 11, the HFSC Subcommittee on Capital Markets, Insurance, and GSEs held a hearing on “The Stock Market Plunge: What Happened and What Is Next?” and had the following witnesses: Chairman of the SEC Mary Schapiro; Chairman of the CFTC Gary Gensler; Lawrence Leibowitz, COO, NYSE Euronext; Eric Noll, Executive VP, NASDAQ Transaction Services; and Terrence Duffy, Executive Chairman, CME Group Inc.

(Updated 5/14/10)

### Senate

The Senate is currently debating amendments to the financial reform legislation which was reported out of the Senate Banking, Housing and Urban Affairs Committee in April. Major amendments which have passed include an amendment to strengthen the commitment to avoid utilizing taxpayer funds to prevent the liquidation of a financial company and the elimination of the proposed \$50 billion resolution fund. Amendments which may be considered over the next few days include an amendment to reinstate of certain Glass-Steagall-like restrictions on activities of banks and an amendment prohibiting proprietary trading at banks that have access to federal deposit insurance.

It remains unclear when the bill will come to a vote, but it is reported that Majority Leader Harry Reid will file a cloture motion on Monday, which will set up a vote to end the debate on Wednesday.

Additionally, the Senate Permanent Subcommittee on Investigations completed its series of hearings on Wall Street and the financial crisis. The hearings focused on, among other topics, the role that bad loans played in the financial crisis, the regulation of firms with large exposure to the housing market, the credit rating agencies, and the investment banks.

(Updated 5/16/10)

## Regulatory Agencies

*May 11, 2010*

The **SEC** and **CFTC** announced the creation of a joint CFTC-SEC advisory committee on emerging regulatory issues. The joint committee will develop recommendations on emerging and ongoing issues that relate to both agencies, the first of which will include conducting a review of the market events of May 6<sup>th</sup> as well as general market volatility.

*April 23, 2010*

The **Federal Reserve Board** on Friday announced that it will hold four public hearings, beginning in July, on potential revisions to Regulation C, which implements the Home Mortgage Disclosure Act. The act requires mortgage lenders to provide detailed annual reports of their mortgage lending activity to regulators and the public. Consumers, community and consumer organizations, mortgage lenders, and other interested parties will be invited to participate in the hearings.

The hearings will serve three objectives. First, the Board will gather information to evaluate whether the 2002 revisions to Regulation C, which required lenders to report mortgage pricing data, helped provide useful and accurate information about the mortgage market. Second, the hearings will provide information that will help the Board assess the need for additional data and other improvements. Finally, the hearings will help identify emerging issues in the mortgage market that may warrant additional research.

(Updated 5/14)



## Summary Table

Issue	House	Senate
<u>Financial Firm Regulation</u>		
<i>Executive Compensation and Corporate Governance</i> (p. 10)	H.R. 4173: “Wall Street Reform and Consumer Protection Act of 2009” (Passed the House, December 11, 2009, 223-202)  Hearing: “Compensation in the Financial Industry.” (Financial Services Committee, January 22, 2010)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>Municipal Securities</i> (p. 10)		S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>Private Investment Funds/Hedge Funds</i> (p. 11)	H.R. 3818: “The Private Fund Investment Advisors Registration Act of 2009” (Kanjorski, Passed House 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  Hearing: “The Stock Market Plunge: What Happened and What Is Next?” (HFSC Subcommittee on Capital Markets, Insurance and GSEs, May 11, 2010)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>SEC Reform</i> (p. 11)	H.R. 3817: “The Investor Protection Act” (Kanjorski, Passed House 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” (Passed the House December 11, 2009, 223-202)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>Securitization</i> (p. 12)		S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)

<u>Financial Market Regulation</u>		
<i>Credit Rating Agencies</i> (p. 13)	H.R. 3890: “Accountability and Transparency in Rating Agencies Act” (Kanjorski, Passed House 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	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>Insurers</i> (p. 14)	H.R. 2609: “Federal Insurance Office Act” (Kanjorski, Passed House 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	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>OTC Derivatives</i> (p. 14)	H.R. 3795: “The OTC Derivatives Markets Act of 2009” (Frank, Passed House Financial Services Committee (43-26), October 15, 2009; Passed Agriculture Committee (voice vote), October 21, 2009); rolled into regulatory reform legislation, H.R. 4173: “The Wall Street Reform and Consumer Protection Act of 2009” (Passed the House, December 11, 2009, 223-202)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)  “Wall Street Transparency and Accountability Act of 2010” (Lincoln, Introduced to Senate Agriculture, Nutrition and Forestry, April 16, 2010)
<i>Regulatory Structure</i> (p. 15)		S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<u>Consumer and Investor Protection</u>		
<i>Consumer Financial Protection Agency</i> (p. 17)	H.R. 3126: “The Consumer Financial Protection Agency Act of 2009” (Frank, Passed House Financial Services Committee (39-29), October 22, 2009; Passed Energy and Commerce Committee (33-19), October 29, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” (Passed the House on December 11, 2009, 223-202)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)

<u>Government Crisis Response</u>		
<i>Systemic Risk Regulation</i> (p. 18)	H.R. 3996: “Financial Stability Improvement Act of 2009” (Frank, Passed House Financial Services Committee (31-27), December 2, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009,” week of December 7, 2009	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<i>“Too Big to Fail”</i> (p. 18)	House Financial Services and Treasury Draft Legislation: “Financial Stability Improvement Act of 2009” (Frank, Passed House Financial Services Committee (31-27), December 2, 2009); rolled into regulatory reform legislation, H.R. 4173 “The Wall Street Reform and Consumer Protection Act of 2009” (Passed the House on December 11, 2009, 223-202)	S. 3217: “Restoring American Financial Stability Act of 2010” (Dodd, Passed Senate Banking, Housing & Urban Affairs Committee (13-10), April 15, 2010)
<u>Investigation</u>		
<i>AIG</i> (p. 20)	Hearing: “Factors Affecting Efforts to Limit Payments to AIG Counterparties.” (House Oversight and Government Reform, January 27, 2010)	
<i>Bank of America and Merrill Lynch</i> (p. 20)	Hearings: “Bank of America and Merrill Lynch: how did a private deal turn into a federal bailout?” (House Oversight and Government Reform)	
<i>Lehman Brothers</i> (p. 20)	Hearing: “Public Policy Issues Raised by the Report of the Lehman Bankruptcy.” (House Financial Services, April 20, 2010)	
<i>Washington Mutual, OTS, FDIC, Moody’s, Standard and Poor’s, and Goldman Sachs</i> (p. 20)		Hearings: “Wall Street and the Financial Crisis.” (Senate Permanent Subcommittee on Investigations)
<u>Regulation (SEC)</u>		
<i>“Unfiltered” Access</i> (p. 22)	Proposed Rule – Would prohibit naked access to exchanges and ATS	

<i>Alternative Uptick Rule</i> (p. 22)	Adopted Rule (February 24, 2010) – Places certain restrictions on short selling when there is downward price pressure.	
<i>Investor Protections in ABS</i> (p. 22)	Proposed rule - would revise disclosure, reporting, and offering process for ABS to better protect investors.	
<i>Large Trader Reporting System</i> (p. 23)	Proposed Rule – would enhance SEC’s ability to oversee markets and protect investors by identifying and tracking “large” traders.	
<u>Federal Reserve</u>		
<i>CRA Oversight</i> (p. 23)	Adopted Rule (December 4, 2009)	
<u>Treasury</u>		
<i>Financial Crisis Responsibility Fee</i> (p. 25)	Proposed Rule - would require largest and most highly levered Wall St. firms to repay taxpayers for TARP assistance.	
<u>Basel Committee</u>		
<i>Basel Committee on Banking Supervision</i> (p. 26)	Proposed rule - to strengthen resilience of banking sector.	
<u>FDIC</u>		
<i>Securitization</i> (p. 27)	Approval of Notice of Proposed Rulemaking (NPR) – Securitization Proposal	

## Financial Firm Regulation

# Executive Compensation and Corporate Governance

## H.R. 4173: “Wall Street Reform and Consumer Protection Act of 2009”

### *Summary*

*“Applies to public companies. Requires annual shareholder advisory vote on compensation. Requires shareholder advisory vote on golden parachutes. SEC allowed to exempt categories of public companies; in determining exemptions, SEC shall take into account the potential impact on smaller companies. Requires at least one annual reporting of annual say-on-pay and golden parachutes votes by all institutional investors, unless such votes are otherwise required to be reported publicly by SEC rule. Provides that compensation approved by a majority say-on-pay vote is not subject to clawback, except as provided by contract or due to fraud to the extent provided by law.” (House Financial Services, H.R. 4173 Summary)*

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

## S. 3217: “Restoring American Financial Stability Act of 2010”

### **Summary**

*“Each publicly traded company would give its shareholders the right to cast advisory votes on whether they approve of its executive compensation. The board committee that sets compensation policy would consist only of directors who are independent. The company would tell shareholders about the relationship between the executive compensation it paid and its financial performance. The company would be required to have a policy to recover money that it erroneously paid to executives based on financials that later had to be restated due to an accounting error.” (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)*

### **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## Municipal Securities

## S. 3217: “Restoring American Financial Stability Act of 2010”

### **Summary**

*“Requires a range of municipal financial advisors to register with the SEC and comply with regulations issued by the Municipal Securities Rulemaking Board (MSRB). The composition of the MSRB will be changed so that representatives of the public—including*

*investors and municipalities—make up a majority of the board. In addition, the title establishes an Office of Municipal Securities within the SEC and contains a number of studies on ways to improve disclosure, accounting standards, and transparency in the municipal bond market.”* (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

### **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## **Private Investment Funds/Hedge Funds**

**HFSC Subcommittee on Capital Markets, Insurance, and GSEs Hearing: “The Stock Market Plunge: What Happened and What is Next?” May 11, 2010.**

**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.”

**S. 3217: “Restoring American Financial Stability Act of 2010”**

### **Summary**

The legislation requires advisers to large hedge funds to register with the Securities and Exchange Commission. In addition to SEC registration private funds—hedge funds with more than \$100 million in assets under management—are required to disclose information regarding their investment positions and strategies to the SEC and the Financial Stability Oversight Council. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

### **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## **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,” which passed the House on December 11, 2009, with a vote of 223-202.

## **S. 3217: “Restoring American Financial Stability Act of 2010”**

### **Summary**

*“The SEC would get more power, assistance and money at its disposal to be an effective securities markets regulator. The SEC would have new authority to impose limitation on mandatory arbitration; to bar someone who violated the securities laws while working for one type of registered securities firm, such as a broker-dealer, from working for other types of securities firms, such as investment advisers; to require that securities firms give new disclosures to investors before they buy investment products.”* (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

### **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## **Securitization**

## **S. 3217: “Restoring American Financial Stability Act of 2010”**

### **Summary**

*“Requires securitizers to retain an economic interest in a material portion of the credit risk for any asset that securitizers transfer, sell, or convey to a third party.”* (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

## **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).



## Financial Market Regulation

### 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.”

H.R. 4173 passed the House on December 11, 2009, with a vote of 223-202.

#### S. 3217: “Restoring American Financial Stability Act of 2010”

##### Summary

The legislation requires that each NRSRO [Nationally Recognized Statistical Rating Organization] establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the SEC may prescribe, by rule. In addition, the legislation directs the SEC to write rules preventing sales and marketing considerations from influencing the production of ratings. Further, the legislation establishes the Office of Credit Ratings within the SEC. The Office shall administer the rules of the SEC with respect to NRSROs to protect investors and the public interest, to promote accuracy in credit ratings, and to prevent conflicts of interest from unduly influencing credit ratings. The Director of the Office will report to the Chairman of the SEC.

Additionally, it directs the SEC to require that each NRSRO publicly disclose information on:

- The initial credit ratings published by the NRSRO for each type of obligor, security, and money market instrument and any subsequent changes to such credit ratings; material changes to ratings procedures and methodologies
- Changes to credit ratings when a material change is made to a procedure or methodology or when a significant error is identified in a procedure or methodology that may result in credit rating actions
- Qualitative and quantitative information that is intended to enable investors and users of credit ratings to better understand the main principles and assumptions that underlie the rating.

(Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

## **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## **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.”

### **S. 3217: “Restoring American Financial Stability Act of 2010”**

#### **Summary**

Establishes the Office of National Insurance within the Department of the Treasury to (1) monitor all aspects of the insurance industry, (2) recommend to the Financial Stability Oversight Council to designate an insurer a non-bank financial company and (3) coordinate insurance regulation. Authority extends to all lines of insurance except health insurance and crop insurance. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

## **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## **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.”

### **S. 3217: “Restoring American Financial Stability Act of 2010”**

#### **Summary**

Over-the-counter derivatives will be regulated by the SEC and the CFTC. More transactions will be required to clear through central clearing houses and trade on exchanges, un-cleared swaps will be subject to margin requirements, swap dealers and major swap participants will be subject to capital requirements and all trades will be reported to regulators. In addition, the Federal Reserve will be granted the authority to regulate systemically important payment, clearing and settlement functions. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

## **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

### **“Wall Street Transparency and Availability Act of 2010” (Dodd-Lincoln Substitute Amendment to S. 3217)**

#### **Summary**

The proposed legislation give the Commodity Futures Trading Commission exclusive jurisdiction over derivatives regulation and would mandate that all derivatives be traded through a centralized clearinghouse, except for those which are being used to hedge “legitimate commercial risk.” In addition, the bill would prohibit institutions with deposit

insurance or access to the Federal Reserve's discount window from engaging in the derivatives trading business.

## **Congressional Actions**

Offered as an amendment to S. 3217.

## **Regulatory Structure**

### **S. 3217: "Restoring American Financial Stability Act of 2010"**

#### **Summary**

*"The bill will streamline bank supervision with clear lines of responsibility, reducing arbitrage and improve consistency and accountability. For the first time there will be clear lines of responsibility among bank regulators."* (Dodd Legislation Summary: improving bank regulation, March 15, 2010)

- FDIC will regulate banks and thrifts of all sizes and bank holding companies of state banks with assets below \$50 million.
- OCC will regulate national banks and federal thrifts of all sizes and the holding companies of national banks and federal thrifts with assets below \$50 million. The Office of Thrift Supervision is eliminated, existing thrifts will be grandfathered in, but no new charters will be given to federal thrifts.
- Federal Reserve will regulate bank and thrift holding companies with assets of over \$50 billion, where the Fed's capital market experience will enhance its supervision. The Vice Chair of the Federal Reserve will be responsible for supervision and will report semi-annually to Congress.

(Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

## **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## 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 customers 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,” which passed the House on December 11, 2009, with a vote of 223-202.

#### S. 3217: “Restoring American Financial Stability Act of 2010”

##### Summary

*“The new independent Consumer Financial Protection Bureau will have the sole job of protecting American consumers from unfair, deceptive and abusive financial products and practices 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.”* (Dodd Legislation Summary: strong consumer financial protection watchdog, March 15, 2010)

The bureau will be housed at the Federal Reserve and will consolidate 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.

##### Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## Government Crisis Response

# Systemic Risk Regulation

## H.R. 3126: “The Consumer Financial Protection Agency Act of 2009”

### Summary

*The bill creates a Financial Services Oversight Council made up of the Treasury secretary, Federal Reserve chairman and heads of regulatory agencies to monitor the financial markets for potential threats to nation's system.*

*It would identify firms and activities that should be subject to heightened standards, including requirements that they place more money in reserve. The government could dismantle even healthy firms if they were considered a grave risk to the economy. Large firms with assets of more than \$50 billion, and hedge funds with at least \$10 billion in assets, would pay into a \$150 billion resolution fund that would cover the costs of dismantling such a company. (House Financial Services Press Release, December 11, 2009).*

### Congressional Actions

Passed House Financial Services Committee on October 22, 2009 (39-29); Passed House 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.”

## S. 3217: “Restoring American Financial Stability Act of 2010”

### Summary

The bill establishes a council of federal financial regulators, the Financial Stability Oversight Council, for systemic risk regulation. The Council would be chaired by the Treasury Secretary and be comprised of key regulators and would monitor emerging risks to U.S. financial stability, recommend heightened prudential standards for large, interconnected financial companies, and require nonbank financial companies to be supervised by the Federal Reserve if their failure would pose a risk to U.S. financial stability. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

### Congressional Actions

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## “Too Big to Fail”

## **H.R. 4173: “Wall Street Reform and Consumer Protection Act of 2009”**

### **Summary**

*“The FDIC will be able to unwind a failing firm so that existing contracts can be dealt with and secured creditors’ claims can be addressed. However, unlike traditional bankruptcy, which does not account for complex interrelationships of such large firms and may endanger financial stability, this process will help prevent contagion and disruption to the entire system and the overall economy. There are no bailouts for failing institutions. If financial assistance is necessary for orderly dissolution, industry will pay for it. A Systemic Dissolution Fund can be used to help wind down failing financial institutions, but not to preserve them. The Fund will be pre-funded by assessments on financial companies with more than \$50 billion in assets and by hedge funds with more than \$10 billion in assets. This authority sunsets on December 31, 2013, unless extended by Congress.”*  
(House Financial Services Committee, H.R. 4173: “The Wall Street Reform and Consumer Protection Act of 2009,” Summary)

### **Congressional Actions**

Passed the House on December 11, 2009 (232-202).

## **S. 3217: “Restoring American Financial Stability Act of 2010”**

### **Summary**

The legislation would impose heightened capital, leverage, and liquidity requirements as companies grow larger and more complex. In addition, it requires regulators to implement regulations for banks, their affiliates and bank holding companies, to prohibit proprietary trading, investment in and sponsorship of hedge funds and private equity funds, and to limit relationships with hedge funds and private equity funds. Further, it would compel companies to submit plans for their rapid and orderly shutdown and create an FDIC mechanism to unwind systemically significant financial companies. Finally, the legislation would create a \$50 billion “Orderly Liquidation Fund,” which would allow the FDIC to carry out the orderly liquidation of a covered financial company. In addition, the legislation would restrict certain types of financial activity that are high-risk or which create significant conflicts of interest between these institutions and their customers. These prohibitions will reduce the scale, complexity, and interconnectedness of those banks that are now actively engaging in proprietary trading, or have hedge fund or private equity exposure. This will reduce the possibility that they will be too big or too complex to resolve in an orderly manner should they fail. (Senate Banking, Housing & Urban Affairs, Wall Street Reform Bill – Committee Report)

### **Congressional Actions**

Passed Committee on Banking, Housing, and Urban Affairs on April 15, 2009 (13-10).

## Investigations

### House Oversight and Government Reform Committee Hearings:

#### “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 I-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.

### House Financial Services Committee Hearings:

#### “Public Policy Issues Raised by the Report of the Lehman Bankruptcy Examiner”

**April 20, 2010:** Featuring testimony from Members of Congress Anna Eshoo (D-CA) and Ed Perlmutter (D-CO); Treasury Secretary Timothy F. Geithner; Chairman of the Board of Governors of the Federal Reserve Ben S. Bernanke; Chairman of the U.S. Securities and Exchange Commission Mary L. Schapiro; Anton R. Valukas, Court appointed examiner; Richard S. Fuld, Jr., former Chairman and CEO, Lehman Brothers; Thomas Cruikshank, former member of the Board of Directors and chair of Lehman Brothers’ Audit Committee; William K. Black, Associate Professor of Economics and Law, University of Missouri-Kansas City School of Law; and Matthew Lee, former Senior Vice President, Lehman Brothers.

### Senate Permanent Subcommittee on Investigations

#### “Wall Street and the Financial Crisis”

*“The Permanent Subcommittee on Investigations is holding a series of hearings in order to examine some of the causes and consequences of the crisis. The goals of the hearings are threefold: to construct a public record of the facts to deepen public understanding of what happened and to try to hold some of the perpetrators accountable; to inform the current*



*legislative debate about the need for financial reform; and to provide a foundation for building better defenses to protect Main Street from the excesses of Wall Street.”*

**Hearing One: The Role of High Risk Home Loans: April 13, 2010**

Focused on the role of high risk loans, using Washington Mutual Bank as a case history.

**Hearing Two: The Role of Bank Regulators: April 16, 2010**

Focused on regulators, using as a case study the role of the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation in exercising oversight of Washington Mutual Bank.

**Hearing Three: The Role of Credit Rating Agencies: April 23, 2010**

Focused on the role of the credit rating agencies, Moody's and Standard and Poor's.

**Hearing Four: The Role of Investment Banks: April 27, 2010**

Focused on the role of investment banks, using Goldman Sachs as a case study.

## Regulation

# Securities and Exchange Commission

### “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.

### “Alternative Uptick Rule”

*February 24, 2010*

#### Summary

On Wednesday, February 24, the SEC voted to adopt a new rule to place certain restrictions on short selling when a stock is experiencing significant downward price pressure. Otherwise known as the “alternative uptick rule,” the design is to restrict short selling from further driving down the price of a stock that has triggered a circuit breaker by dropping more than 10% in a day. The Commission voted 3-2 in favor of the rule.

The rule includes the following features:

- **Short Sale-Related Circuit Breaker:** The circuit breaker would be triggered for a security any day in which the price declines by 10 percent or more from the prior day's closing price.
- **Duration of Price Test Restriction:** Once the circuit breaker has been triggered, the alternative uptick rule would apply to short sale orders in that security for the remainder of the day as well as the following day.
- **Securities Covered by Price Test Restriction:** The rule generally applies to all equity securities that are listed on a national securities exchange, whether traded on an exchange or in the over-the-counter market.
- **Implementation:** The rule requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the execution or display of a prohibited short sale.

## **Investor Protections in Asset-Backed Securities**

*April 7, 2010*

### **Summary**

The Securities and Exchange Commission proposed rules that would revise the disclosure, reporting and offering process for asset-backed securities (ABS) to better protect investors in the securitization market. The proposed rules seek to “better align the interests of issuers and investors by creating a retention or "skin in the game" requirement for certain public offerings of ABS,” according to the press release issued by the SEC.

The proposed rules would seek to do the following:

- Require the filing of tagged, computer-readable standardized loan-level (as opposed to just pool-level) information.
- Require the filing of a computer program that gives effect to the waterfall, giving a more complete picture to users of how payments and losses would be distributed among investors.
- Provide investors with more time to consider transaction-specific information by imposing limits on the time before a sponsor of an ABS can conduct the first sale in a shelf offering (currently an issuer can sell ABS almost immediately).
- Repeal the investment grade ratings criterion for ABS shelf eligibility → to enhance the type of securities that are being offered and the accountability of participants in that securitization chain.
- Increase transparency in the private structured finance market.
- Make other various revisions to the regulation of ABS.

### **Large Trader Reporting System**

*April 14, 2010*

#### **Summary**

The Securities and Exchange Commission today voted to propose the creation of a large trader reporting system that would enhance its ability to identify large market participants, collect information on their trades, and analyze their trading activity.

"This rule is designed to strengthen our oversight of the markets and protect investors in the process," said SEC Chairman Mary L. Schapiro. "It would give us prompt access to trading information from large traders so we can better analyze the data and investigate potentially illegal trading activity."

## **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 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.

# Federal Deposit Insurance Corporation

## Approval of Notice of Proposed Rulemaking to FDIC Securitization Rule

*May 11, 2010*

### Summary

The **FDIC** revamped its securitization proposal, mandating that depositories hold a 5% risk retention piece, but exempting loans sold to the GSEs and into bonds guaranteed by Ginnie Mae.

The initial proposal issued in November required banks to season single-family loans for 12 months before securitization. As a result of industry comments, FDIC dropped the seasoning requirement and is now proposing that banks issuing residential MBS maintain a 5% reserve fund for one year to cover early defaults and breaches of representations and warranties.

The new proposal, which will be published for a 45-day comment period, requires bank issuers to retain 5% of each MBS tranche.