

**SURVEY OF
FINANCIAL SYSTEM REGULATORY REFORM PROPOSALS
AND
LEGISLATION**

as of May 21, 2009

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FOR

**ALI-ABA Broker-Dealer Regulation Seminar
New York, NY
June 18, 2009**

I. PRESIDENT'S WORKING GROUP ON FINANCIAL MARKETS, *POLICY STATEMENT ON FINANCIAL MARKET DEVELOPMENTS (MARCH 2008)*

A. Reform Key Parts of the Mortgage Origination Process

1. States should implement strong nationwide licensing standards for mortgage brokers.
2. Strengthen and make consistent federal and state oversight of entities that originate and fund mortgages and otherwise interface with customers in the mortgage origination process.
3. All states should adopt federal principals for nontraditional and subprime mortgage lending, including effective enforcement mechanisms for noncompliance.
4. The Federal Reserve should issue stronger customer protection rules and mandate enhanced consumer protection disclosures, including disclosures that would make affordability over the life of a mortgage more transparent and facilitate comparison of terms.
5. State and federal authorities should coordinate the enforce rules evenly across all types of mortgage originators.

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B. Improve Investors' Contributions to Market Discipline

1. Institutional investors' regulators (*e.g.*, Department of Labor for private pension funds, state treasurers for public pension funds, and the Securities and Exchange Commission ("SEC") for money market funds) should require these investors, and their asset managers, to obtain better information from sponsors and underwriters of securitized credits about the risk characteristics of such credits, including information about the underlying asset pools, on an initial and ongoing basis.
2. Institutional investors and their asset managers should be required to develop independent assessments of the risk characteristics of their portfolio investments and reduce their reliance on credit ratings.
3. A private sector committee should develop best practices regarding disclosure to investors in securitized credits.

C. Reform the Ratings Processes for and Practices Regarding Structured Credit and Other Securitized Credit Products

1. Require credit rating agencies to disclose what qualitative reviews they perform on originators of assets that collateralize asset-backed securities ("ABS") rated by the credit rating agency.
2. The credit rating agency should require underwriters of ABS to represent the level and scope of due diligence performed on the underlying assets.
3. Credit rating agencies should reform their ratings processes for structured credit products to ensure integrity and transparency.
4. The President's Working Group ("PWG") will facilitate formation of a private-sector group, with representatives of investors, issuers, underwriters and credit rating agencies, to develop recommendations for further steps that issuers, underwriters, credit rating agencies and policymakers could take to ensure the integrity and transparency of ratings, and to foster the appropriate use of ratings in risk assessment.
5. Require PWG member agencies to reinforce steps taken by the credit rating agency through revisions to supervisory policy and regulation, including regulatory capital requirements.
6. The PWG may recommend changes to credit rating agency oversight if industry reforms are not sufficient.

D. Strengthen Global Financial Institutions' Risk Management Practices

1. Global financial institutions should identify and address weaknesses in risk management practices.
2. The PWG supports formation of a private-sector group to reassess implementation of the Counterparty Risk Management Policy Group II's existing guiding principles and recommendations regarding risk management, risk monitoring, and transparency, and to modify or develop new principles and recommendations as necessary to incorporate lessons from the financial crisis, including with respect to valuation practices.
3. Global financial institutions' supervisors should closely monitor the firms; efforts to address risk management weaknesses, taking action if necessary to ensure that weaknesses are addressed.
4. U.S. banking regulators and the SEC should assess current guidance and develop common guidance to address risk management weaknesses, including improvements to:
 - a. management information systems, including procedures that ensure aggregation of exposure across all business lines and ensure rigorous valuations of instruments and exposures;
 - b. risk management practices for *inter alia* concentration risk, liquidity risk, and stress testing, to ensure that liquidity and capital cushions are sufficiently robust to absorb extreme system-wide shocks; and
 - c. governance of the risk management and control framework, including developing and adhering to practices that address incentive problems in compensation practices.
5. U.S. authorities should encourage other supervisors of global firms to make complementary efforts.

E. Enhance Prudential Regulatory Policies

1. Adopt policies that provide incentives for financial institutions to hold capital and liquidity cushions commensurate with firm-wide exposure to severe adverse market events. These cushions should be forward looking and adjust appropriately through peaks and valleys of the credit cycle.
2. Enhance guidance related to pipeline risk management for firms that use an originate-to-distribute model.
3. The Basel Committee on Banking Supervision ("BCBS") should promptly finish updating in 2000 guidance on liquidity management, including

regulated financial institutions' sound practice guidelines and supervisory oversight principles.

4. BCBS and the International Organization of Securities Commissions ("IOSCO") should review and increase capital requirements for ABSs, collateralized debt obligations, other re-securitizations, and off-balance sheet commitments that were the source of recent losses.
5. Require financial institutions to make more detailed and comprehensive disclosures of off-balance sheet commitments, including commitments to support asset-backed commercial paper conduits and other off-balance sheet vehicles.
6. Encourage more detailed and comprehensive disclosure by financial institutions about fair value estimates for complex and other illiquid instruments, including descriptions of valuation methodologies and information regarding the degree of uncertainty associated with such estimates.
7. Review the current use of ratings in regulations and supervisory rules.
8. Encourage the Financial Accounting Standards Board ("FASB") to evaluate the role of accounting standards in the current market turmoil.

F. Enhance Over-the-Counter ("OTC") Derivatives Market Infrastructure

1. Require the industry to promptly set ambitious standards for the accuracy and timeliness of trade data submission and the timeliness of resolutions of trade matching errors for OTC derivatives.
2. Urge industry to amend standard credit derivative trade documentation to provide for cash settlement of obligations stemming from a credit event in accordance with the terms of the cash settlement protocol that has been developed but not yet incorporated into standard documentation.
3. Ask the industry to develop a longer-term plan for an integrated operational infrastructure supporting OTC derivatives that:
 - a. captures all significant processing events over the entire lifecycle of trades;
 - b. delivers operational reliability and scalability;
 - c. maximizes the efficiencies obtainable from automation and electronic processing platforms by promoting standardization and interoperability of infrastructure components;

- d. enhances participants' ability to manage counterparty risk through netting and collateral agreements by promoting portfolio reconciliation and accurate valuation of trades;
- e. address all major asset classes and product types; and
- f. encompass the buy side as well as the dealer community.

II. The Department of the Treasury, *Blueprint for a Modernized Financial Regulatory Structure* (March 2008)

A. Objectives-Based Regulatory Structure: The long-term “optimal regulatory structure” proposed by then-Secretary Paulson called for the U.S. move to an objectives-based regulatory model, which would focus on three key goals:

1. Market stability regulation – To address the overall conditions of financial market stability that could impact the real economy;
2. Prudential financial regulation – To address issues of limited market discipline caused by government guarantees; and
3. Business conduct regulation (linked to consumer protection regulation) – To address standards for business practices.

B. Rationalization of the Chartering of Financial Institutions: The *Blueprint* sets forth a structure rationalizing the chartering of financial systems:

1. Federally Insured Depository Institution (“FIDI”) Charter – For all depository institutions with federal deposit insurance.
2. Federal Insurance Institution (“FII”) Charter – For insurers offering retail products where some type of government guarantee is present.
3. Federal Financial Services Provider (“FFSP”) Charter – For all other types of financial service providers. It would be responsible for creating appropriate national standards for financial capacity, expertise, and other requirements that must be satisfied to enter the business of providing financial services.

C. Regulatory Entities

1. Market Stability Regulator: The Federal Reserve Board of Governors
 - a. The Market Stability Regulator’s primary function would be to focus on the stability of the overall financial sector in an effort to limit spillover effects to the overall economy.
 - b. As market stability regulator, the Federal Reserve would have various authorities over all federally chartered financial institutions.
 - c. In its new role, the Federal Reserve would have the following responsibilities:

- i. Broad authority over the U.S. financial system and the three types of federally chartered institutions – FIIs, FIDIs and FFSPs. These powers would include the authority to collect appropriate information from financial institutions; to disclose such information; to collaborate with other regulators on rulemaking relating to chartering, capital requirements and supervision; and to take corrective actions when necessary in the interest of the overall financial system;
 - ii. Lender of last resort;
 - iii. Oversight of payment and settlement system; and
 - iv. Responsibility for formulating monetary policy.
 2. Prudential Financial Regulatory Agency (“PFRA”)
 - a. The PFRA would be responsible for the financial regulation of FIDIs and FIIs.
 - b. Would focus on financial institutions with some type of explicit government guarantees associated with their business operations (*e.g.*, federal deposit insurance and state-established insurance guarantee funds).
 - c. Would assume the current roles of federal prudential regulators like the Office of the Comptroller of the Currency (“OCC”) and the Office of Thrift Supervision (“OTS”).
 - d. Prudential regulation should focus primarily on individual firms and should employ capital adequacy requirements, investment limits, activity limits, and direct on-site risk management supervision.
 - e. Should have authority to limit affiliate transactions, to require financial support from affiliates and to monitor and examine holding companies and affiliates of FIDIs in connection with such protections.
 3. Business Conduct Regulatory Agency (“CBRA”)
 - a. The CBRA would monitor business conduct regulation across all types of financial firms, including FIIs, FIDIs, and FFSPs.
 - b. Business conduct regulation includes key aspects of consumer protection, including disclosures, business practices, chartering, and licensing of certain types of financial firms.
 - c. The CBRA would provide appropriate standards for firms to meet to be able to enter the financial services industry and sell their products and services to customers.
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- d. The CBRA's responsibilities would be broad and would take the place of those of the Federal Reserve and other insured depository institution regulators, state insurance regulators and most aspects of the SEC's and Commodity Futures Trading Commission's ("CFTC") responsibilities.
 - e. Self-regulation would be important for compliance and enforcement and could be considered for other areas.
 - f. CBRA would set national standards for business conduct across all types of financial institutions. States would generally be preempted, with respect to federally chartered financial services firms.
4. Federal Insurance Guarantee Corporation ("FIGC")
- a. The Federal Deposit Insurance Corporation would be reconstituted as the FIGC to administer deposit insurance as well as the Federal Insurance Guarantee Fund, if established.
 - b. FIGC would act primarily as an insurer and would have the authority to set risk-based premiums, charge ex-post assessments, act as a receiver for failed FIDIs or FIIs and maintain some back-up examination authority over those institutions.
5. Corporate Finance Regulator
- a. The Corporate Finance Regulator would have responsibility for general issues related to corporate oversight in public securities markets, including the SEC's current responsibilities over corporate disclosures, corporate governance, accounting oversight, and similar issues.
6. Government-Sponsored Enterprises ("GSEs") Regulator
- a. For the short term, a separate regulator should conduct prudential oversight of GSEs.
 - b. The market stability regulator should have the same ability to evaluate GSEs as it has for other federally chartered institutions.

III. GAO, A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System (January 2009)

A. Clearly Defined Regulatory Goals

1. Goals should be clearly articulated so that regulators can effectively carry out their missions and be held accountable.
2. Key issues include considering the benefits of re-examining the goals of financial regulation and updating these goals to reflect today's environment.

B. Appropriately Comprehensive

1. Regulations should cover all activities that pose risks or are otherwise important to meeting regulatory goals.
2. Key issues include identifying risk-based criteria, such as the potential systemic risk of a product or institution, and closing gaps in oversight of financial activities and institutions.

C. System-wide Focus

1. Mechanisms should be included for identifying, monitoring, and managing risks to the financial system regardless of the source of the risk.
2. Key issues include determining how to effectively monitor market developments to identify potential risks; the degree, if any, to which regulatory intervention might be required; and who should have such responsibilities.

D. Flexible and Adaptable

1. The regulatory system should be flexible and adaptable to allow regulators to handle market innovations and changes.
2. Key issues include identifying and acting on emerging risks.

E. Efficient and Effective

1. The regulatory system must be effective and efficient and must eliminate overlapping federal regulatory missions where appropriate.
2. Key issues include determining the appropriate role of states and self-regulation.

F. Consistent Consumer and Investor Protection

1. Market participants must receive consistent, useful information, as well as legal protections for similar financial products and services, including disclosures, sales practice standards and suitability requirements.
2. Key issues include determining if consolidation of regulatory responsibilities across consumer protection activities is appropriate.

G. Independent, Prominent, Authoritative and Accountable Regulators

1. Regulators must have independence from inappropriate influence, as well as prominence and authority to carry out and enforce statutory missions.
2. Key issues include the structure and funding of the regulatory agencies.

H. Consistent Financial Oversight

1. Similar institutions, products, risks and services should be subject to consistent regulation, oversight and transparency, which should help minimize negative competitive outcomes while streamlining oversight.
2. Key issues include identifying activities that pose similar risks, and streamlining regulatory activities to achieve consistency.

I. Minimal Taxpayer Exposure

1. A regulatory system should foster financial markets that are resilient enough to absorb failures and thereby limit the need for federal intervention and limit taxpayers' exposure to financial risk.
2. Key issues include identifying safeguards to prevent systemic crises and minimizing moral hazard.

IV. Group of 30, *Financial Reform: A Framework for Financial Stability* (January 15, 2009)

A. Guiding Principles for Financial Reform

1. Public Sector Role in Safeguarding Financial Stability

- a. The primary aim of prudential regulation should be to maintain the health of the system and contain systemic risk by:
 - i. Subjecting the largest and most complex banking organizations deemed to be systemically important to the highest international standards for ongoing close regulation and supervision;
 - ii. Requiring non-bank financial institutions that are deemed to be systemically important to some form of formal prudential regulation and supervision to assure appropriate standards for capital, liquidity, and risk management;
 - iii. Assuring that critical elements of the infrastructure supporting the financial system, including clearing and settlement systems and the related legal frameworks, are sufficiently robust to permit the orderly closing of large, complex financial institutions;
 - iv. Avoiding accounting, regulatory, or other practices that may inadvertently reinforce recurrent tendencies toward excessive exuberance or risk aversion; and
 - v. monitoring systemically significant financial institutions and the infrastructure supporting the financial system.

2. Fair and Effective Competition

- a. To the extent possible, regulatory policies should treat financial services common to different institutions uniformly by seeking:
 - i. A balance between the benefits of open and free competition and the potential for unfair competition arising from government protection, excessive concentration of financial resources, or extensive conflicts of interest; and
 - ii. A balance between the protections implicit in access to central bank liquidity support and restrictions on risk-prone activities or those that raise unmanageable conflicts of interest.

3. Official Oversight and Crisis Response
 - a. Official oversight and crisis response require a strong, professionally managed structure of public agencies, with substantial insulation from particular political or private interests.
4. International Consistency and Coordination
 - a. Effective application of these principles requires a substantial degree of international consistency in approach and coordination.
5. Governance and Risk Management
 - a. High standards of institutional governance and risk management are required, with an emphasis on:
 - i. Engaged and knowledgeable independent boards of directors focused on long-term performance;
 - ii. A corporate governance culture, including well-balanced compensation policies and practices, and incentives for disciplined risk management with strong and independent risk management staffs; and
 - iii. Regulatory and supervisory policies that reinforce those practices and incentives.

B. Four Core Recommendations

1. **Eliminate gaps and weaknesses in the coverage of prudential regulation and supervision.**
 - a. Prudential Regulation and Supervision of Banking Organizations
 - i. Subject the activities of government-insured, deposit-taking institutions to prudential regulation and supervision by a single regulator (*i.e.*, consolidated supervision) enforcing high and common international standards.
 - ii. Restrict large, systemically important banking institutions in undertaking proprietary activities that present particularly high risks and serious conflicts of interest.
 - A. Sponsorship and management of commingled private pools of capital should generally be prohibited.
 - B. Large proprietary trading should be limited by capital and liquidity requirements.

- C. Participation in packaging and sale of collective debt instruments should require the retention of a meaningful part of the credit risk.
 - iii. Prohibit unregulated non-financial organizations from owning and controlling government-insured deposit-taking institutions. Impose strict limits on dealings among banks and partial non-bank owners.
 - iv. Place nationwide limits on deposit concentration.
 - b. Consolidated Supervision of Non-Bank Financial Institutions
 - i. Establish a framework for national-level consolidated prudential regulation and supervision over large internationally active insurance companies.
 - ii. Designate an appropriate prudential regulator for those large investment banks and broker-dealers that are not organized as bank holding companies.
 - c. Money Market Mutual Funds and Supervision
 - i. Require money market mutual funds wishing to continue to offer bank-like services to reorganize as special-purpose banks, with appropriate prudential regulation and supervision, government insurance, and access to central bank lender-of-last resort facilities.
 - ii. Limit institutions remaining as money market mutual funds to offering only a conservative investment option with modest upside potential at relatively low risk. No assurances should be made to investors about the ability to withdraw funds on demand at a stable NAV.
 - d. Oversight of Private Pools of Capital
 - i. Require managers of private pools of capital that employ substantial borrowed funds to register with an appropriate national prudential regulator, subject to minimum size and venture capital exemptions.
 - ii. Grant the prudential regulator of such managers authority to require periodic regulatory reports and public disclosures of appropriate information regarding the size, investment style, borrowing and performance of the funds under management. Disclosure and suitability standards should be reevaluated to counter any false impression of lower investment risk from heightened regulation.
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- iii. Grant the prudential regulator authority to establish appropriate standards for systemically significant firms for capital, liquidity and risk management.
- iv. Base the jurisdiction of the appropriate prudential regulator on the primary business location of the manager of such funds, regardless of legal domicile of the funds themselves. The regulatory framework must be applied on an internationally consistent basis.
- e. Government-Sponsored Enterprises (“GSEs”)
 - i. The U.S. policy resolution of the appropriate role of GSEs in mortgage finance should be on a clear separation of the functions of private sector mortgage finance risk intermediation from government sector guarantees or insurance of mortgage credit risk.
 - ii. Governmental entities providing support for the mortgage market by means of market purchases should have explicit statutory backing and financial support. Hybrids of private ownership with government sponsorship should be avoided.

2. The quality and effectiveness of prudential regulation and supervision must be improved.

a. Regulatory Structure

- i. Countries should eliminate unnecessary overlaps and gaps in coverage and complexity, remove the potential for regulatory arbitrage and improve regulatory coordination.
- ii. Reaffirm the insulation of national regulatory authorities from political and market pressures and reassess the needs for improving the quality and adequacy of resources available to such authorities.

b. The Role of the Central Bank

- i. Give central banks a role in promoting and maintaining financial stability not just in times of crisis, but also in times of rapid credit expansion and increased use of leverage that may lead to crises.
- ii. In countries where the central bank is not the prudential regulator, the central bank should have:
 - a. a strong role on the governing body of the prudential and markets regulator(s);

- b. a formal review role with respect to proposed changes in key prudential policies, especially capital and liquidity policies and margin arrangements; and
 - c. a supervisory role in regard to the largest systemically significant firms and critical payment and clearing systems.
 - iii. Maintain a sharp distinction between regulated banking organizations with normal access to central bank liquidity facilities and other types of financial institutions whose access, if any, should be limited to extreme emergency situations of critical systemic importance.
 - iv. Preserve central bank emergency lending authority for highly unusual and exigent circumstances, but include some authority to extend credit to non-bank institutions.
 - v. Limit central bank liquidity support operations to forms that do not entail lending against or the outright purchase of high-risk assets, or other forms of long-term direct or indirect capital support.
 - c. International Coordination
 - i. Encourage national regulatory authorities and finance ministers to adapt and enhance existing mechanisms for international regulatory and supervisory coordination.
3. **Institutional policies and standards must be strengthened, with particular emphasis on standards for governance, risk management, capital and liquidity.**
- a. Regulatory Standards for Governance and Risk Management. These standards must be raised with particular emphasis on:
 - i. Strengthening boards of directors with greater engagement of independent members having financial industry and risk management expertise;
 - ii. Coordinating board oversight of compensation and risk management policies in order to balance risk taking with prudence and shareholder interests;
 - iii. Ensuring systematic board-level reviews and exercises aimed at establishing the most important parameters for setting the firm's risk tolerance and evaluating its risk profile;
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- iv. Ensuring the independence and adequate resourcing of the firm's risk management and audit functions. The risk management function should report directly to the CEO;
 - v. Conducting periodic reviews of a firm's potential vulnerability to risk arising from credit concentrations, excessive maturity mismatches, excessive leverage, or undue reliance on asset market liquidity;
 - vi. Ensuring that all large firms have the capacity to continuously monitor, within hours, their largest counterparty credit exposures on an enterprise-wide basis, and to make that information available, as appropriate, to its management, its board, and its prudential regulator and central bank; and
 - vii. Ensuring industry wide acceptance of and action on the risk management practice improvements recommended by the Counterparty Risk Management Policy Group and the Institute for International Finance.
- b. Regulatory Capital Standards
- i. Enhance international regulatory capital standards to address tendencies toward pro-cyclicality. Raise benchmarks for being well capitalized.
 - ii. Benchmarks should be expressed as a broad range within which capital ratios should be managed.
 - iii. Align national definitions of capital to achieve an international definition.
 - iv. Revise capital and risk disclosure standards to provide a higher degree of transparency of a firm's risk appetite, its estimated needs for allocation of economic capital, and its valuation practices.
- c. Standards for Liquidity Risk Management
- i. Base-level liquidity standards should incorporate norms for maintaining a sizable diversified mix of long-term funding and an available cushion of highly liquid unencumbered assets.
 - ii. Supervisory guidance for liquidity standards should reflect a more refined analysis of a firm's capacity to maintain ample liquidity under stress conditions.

- iii. Liquidity disclosure standards similar to the Basel Committee Principles, should complement improved disclosure practices for capital and risk profile information
- d. Fair Value Accounting
- i. Reevaluate fair value accounting principles and standards with a view to developing more realistic guidelines for dealing with less-liquid instruments and distressed markets.
 - ii. Develop principles-based standards that better reflect the business model of regulated financial institutions, apply appropriate rigor to valuation and evaluation of intent, and require improved disclosure and transparency.
 - iii. Accounting principles should be made more flexible regarding maintenance of adequate credit-loss reserves.
 - iv. Regardless of accounting standards or market conditions, individual financial institutions must ensure that wholly adequate resources, insulated by fail-safe independent decision-making authority, are at the center of the valuation and price verification process.
4. **Financial markets and products must be made more transparent, with better-aligned risk and prudential incentives. The infrastructure supporting such markets must be made much more robust and resistant to potential failure of even large financial institutions.**
- a. Restoring Confidence in Securitized Credit Markets
- i. *Market Supervision*: Hold securitized and other structured product and derivatives markets to regulatory, disclosure and transparency standards at least comparable to those applied to the public securities markets.
 - ii. *Credit Underwriting Standards*: Require regulated financial institutions to retain a meaningful portion of the credit risk they are packaging into securitized and other structured credit products.
 - iii. *Off-Balance-Sheet Vehicles*: Consider how pending accounting rule changes for the consolidation of many types of off-balance-sheet vehicles will impact efforts to restore the viability of securitized credit markets.
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b. Rating Agency Reforms

- i. Encourage users of risk ratings to restore or acquire the capacity for independent evaluations of the risk of credit products in which they are investing.
- ii. Make risk ratings issued by the nationally recognized statistical rating organizations (“NRSROs”) more robust to reflect the risk of potential valuation losses arising not just from default probabilities and loss in the event of default, but also from the full range of potential risk factors (including liquidity and price volatility).
- iii. Encourage the development of payment models that improve the alignment of incentives among the providers of risk ratings and their clients and users and permit users to hold NRSROs accountable for the quality of their work product.

c. Oversight of Credit Default Swaps (“CDS”) and Over-the-Counter (“OTC”) Markets

- i. Planned improvements to the infrastructure supporting the OTC derivatives markets should be further supported by legislation to establish a formal system of oversight of such markets.
- ii. Establish a consistent global regulatory framework.

d. A Resolution Mechanism for Financial Institutions

- i. In the U.S., legislation should be enacted to establish a process for managing the resolution of failed non-depository financial institutions.
- ii. Apply the regime for non-depository financial institutions only to those few organizations whose failure might reasonably be considered to pose a threat to the financial system.
- iii. Empower a regulatory body having powers comparable to those available for the resolution of banking institutions to act as a receiver or conservator of a failed non-depository institution and to place the institution in liquidation or take action to restore it to a sound and solvent condition.
- iv. The special treatment accorded to various forms of financial contracts under current U.S. law should be examined in light of the financial crisis.

- e. Improving Transparency of Structured Product Markets
 - i. Enhance the disclosure and dissemination regime for asset-backed and other structured fixed income financial products in the public and private markets.
 - ii. Condition transactions in the private and wholesale markets on satisfaction of appropriate information disclosure standards.
- f. Sharing Market Activity and Valuation Information
 - i. Revisit evaluations of the costs and benefits of infrastructure investments that would facilitate a much higher level of transparency around activity levels, traded prices, and related valuations. Part of the cost of such changes is the impact on firm-specific concerns regarding the private nature of their market activity.

V. **Congressional Oversight Panel, *Special Report on Regulatory Reform (January 2009)***

- A. **Systemic Risk Oversight:** Identify and regulate financial institutions that pose systemic risk.
1. Mandate that new or existing agency or an interagency task force regulate systemic risk within the financial system on an ongoing basis, with the authority to:
 - a. Identify the degree of systemic risk posed by financial institutions, products and markets in advance, and regulate them accordingly;
 - b. Require reporting of relevant information from all institutions that may be systemically significant;
 - c. Work with regulatory bodies charged with everyday oversight of the financial system; and
 - d. Address the problems of systemic risk.
 2. Impose heightened regulatory requirements for systemically significant institutions to reduce the risk of financial crisis, such as:
 - a. Relatively stringent capital and liquidity requirements, most likely on a countercyclical basis;
 - b. Overall maximum leverage ratio;
 - c. Well-defined limits on contingent liabilities and off-balance-sheet activity;
 - d. Caps on the proportion of short-term debt on an institution's balance sheet;
 - e. Consider capping any taxpayer guarantee and whether to require systemically significant firms purchase federal capital insurance; and
 - f. Determine whether oversight for systemically significant institutions should be provided by a new systemic regulator or by existing regulatory agencies.
 3. Establish a receivership and liquidation process for systemically significant non-bank institutions.

- B. **Excessive Leverage Limits:** Limit excessive leverage in American financial institutions.
1. Adopt one or more regulatory options to strengthen risk-based capital and curtail leverage.
 - a. Objectives-based capital requirements
 - i. Capital requirements should be applied on the basis of regulatory objectives such as guarding against systemic risk, and not simply according to the type of institution.
 - ii. Capital ratios could be made to increase progressively with the size of the firm's balance sheet so that larger institutions face lower limits on leverage than smaller ones.
 - iii. Required capital ratios could also be made to vary with other variables determined by regulators, such as the proportion of short-term debt on an institution's balance sheet or the identity of the holders of its liabilities.
 - b. Leverage requirements
 - i. Unweighted capital requirements to control overall leverage may be necessary to limit systemic risk by reducing the need for dangerous asset fire sales in a downturn.
 - c. Counter-cyclical capital requirements
 - i. Capital and provisional requirements could be made more stringent when asset prices are rising and less stringent when they are falling.
 - ii. One approach could involve dynamic provisioning, whereby capital adequacy requirements are raised by a ratio linked to the growth of the value of the bank's assets in order to tighten lending and build up reserves when times are good.
 - d. Liquidity requirements
 - i. In addition to capital requirements, firms would have to hold a certain proportion of liquid assets as well as a liquid buffer that could be used in a crisis.

- C. **Shadow Financial System Oversight:** Increase supervision of the shadow financial system.
1. Ensure consistency of regulation for instruments currently operating in the shadow financial system.
 - a. Shift the focus of existing regulation toward a functional approach.
 - i. Managers of hedge funds and private equity funds should be regulated according to the same principles as other money managers. The SEC should have clear authority to require hedge fund managers to register under the Investment Advisers Act of 1940.
 - ii. OTC derivatives should be registered according to what they do and not what they are called.
 - b. Apply capital requirements to firms engaged in making credit or insurance commitments through derivatives.
 - c. Require transparency around derivatives contracts tied to publicly traded securities.
 - d. Hold hedge funds and private equity funds to a single, well-understood federal standard of fiduciary duty as other money managers are.
 2. Increase transparency in OTC derivatives markets.
 - a. Regulated clearinghouses
 - i. Clearinghouses should provide clearance and settlement services for OTC derivatives and take on credit risk.
 - ii. They could provide adequate capital in the event of default; *e.g.*, by taking the margin to secure performance of each trade, requiring daily marks-to-market, or establishing a guaranty fund in which each of the clearing members puts up a deposit to cover its future liabilities or provide mutualization of risk.
 - iii. Inspections by federal regulators to detect fraudulent activity.
 - iv. Public reporting of prices, volumes, and open interests.

- b. Exchange-traded derivatives
 - i. Require standardized OTC derivatives contracts to be traded on regulated derivatives markets. similar to designated contract markets under the CEA.
 - c. Public reporting requirements
 - i. Require CDS market participants to adhere to publicly report OTC transactions to improve transparency and pricing and report to the SEC derivatives position that affect public securities.
- D. **Mortgages and Consumer Credit Products Oversight:** Create a new system for federal and state regulation of mortgages and other consumer credit products.
- 1. Eliminate federal pre-emption of application of state consumer protection laws to national banks.
 - 2. Create a single federal regulator for consumer credit products. The regulator would have the authority to:
 - a. Set minimum standards for disclosure and transparency;
 - b. Review consumer credit products to eliminate unfair practices; and
 - c. Promote practices that encourage responsible use of credit.
 - 3. Options include a new independent agency, or creating a new regulator within the Federal Reserve.
- E. **Executive Pay Restructuring:** Create executive pay structures that discourage excessive risk taking.
- 1. Create tax incentives to encourage long-term-oriented pay packages.
 - 2. Encourage financial regulators to guard against asymmetric pay packages in financial institutions, such as options combined with large severance packages.
 - 4. Require executive pay contracts to provide for clawbacks of bonus compensation for executives of failing institutions.
 - 5. Encourage corporate governance structures with stronger board and long-term investor oversight of pay packages.

- F. **Credit Rating System Reform:** Reform the credit rating system, which is ineffective and plagued with conflicts of interest.
1. Adopt one or more regulatory options to address conflicts of interest and incentives.
 - a. The SEC or a new regulatory body could impose limits on the proportion of revenues of rating agencies that are derived from issuers;
 - b. For each rating, issuers could be required to pay into a pool, from which a rating agency would be chosen at random;
 - c. Introduce grace periods in which credit rating analysts could not take jobs with their clients;
 - d. Increase the number of NRSROs; and/or
 - e. Impose additional disclosure requirements or prohibitions on rating agencies' use of nonpublic information.
 2. Reform the quasi-public role of NRSROs and consider creating a Credit Rating Review Board, possibly modeled as:
 - a. A public entity that would have to approve any rating that would have regulatory significance before any party could rely on and use such rating; or
 - b. A not-for-profit corporation that would audit ratings after-the-fact with respect to adequacy of disclosure of rating methodologies, and soundness of and adherence to such methodologies.
- G. **Establish a Global Financial Regulatory Floor**
1. Build alliances with foreign partners to create a global financial regulatory floor and participate in international organizations designed to strengthen communication and cooperation.
- H. **Plan for the Next Crisis**
1. Create a Financial Risk Council of outside experts to report to Congress and regulators on possible looming challenges.

VI. International Securities Exchange (“ISE”), Regulatory Reform for the U.S. Financial Markets (March 2009)

A. Regulatory Reform: The U.S. system of bifurcated regulation by financial instrument is inefficient and ineffective.

1. Responsibilities should be grouped together so that regulation is comprehensive and includes: financial systemic risk, disclosure/risk analysis for investors, and financial industry operations.
2. Risk based regulation should be adopted.
3. The rules-based regulatory structure of the Securities Exchange Act of 1934 (the “1934 Act”) is outdated and ineffective.
4. The risk-based regulation of the Commodity Exchange Act (the “CEA”) provides closer oversight, more transparency, and more flexibility to regulatory objectives.

B. Regulation of Financial Industry Operations

1. Congress creates a single regulator for the U.S. financial markets, the Financial Markets Commission (the “FMC”).
 - a. Would encompass the current SEC and CFTC as a stand-alone agency or part of a larger agency.
 - b. Would have expanded jurisdiction over all participants in the financial markets, including hedge funds and rating agencies.
2. Congress adopts new, risk-based regulation to replace the 1934 Act and CEA.
3. Congress creates a transitional authority to oversee the transition to a risk-based regulatory structure.
4. The FMC adopts its own risk-based objections.
5. Self-regulatory organizations will continue to play a role, and will be subject to risk-based regulation by the FMC.

VII. Investment Company Institute (“ICI”), *Financial Services Regulatory Reform: Discussion and Recommendations (March 3, 2009)*

- A. **Systemic Risk Regulator:** Designate a new or existing agency or inter-agency body to act as a Systemic Risk Regulator, with responsibility for:
1. Monitoring the financial markets broadly;
 2. Analyzing changing conditions in domestic and overseas markets;
 3. Evaluating the risks of practices as they evolve and identifying those that are of such nature and extent that they implicate the health of the financial system at large; and
 4. Acting to mitigate such risks in coordination with other responsible regulators.
- B. **Capital Markets Regulator:** Establish a new Capital Markets Regulator encompassing the combined functions of the SEC and CFTC, with responsibility for:
2. Setting regulatory standards for all registered investment companies;
 3. Regulating certain areas where there are currently gaps in regulation (*e.g.*, hedge funds and other unregulated private pools of capital, derivatives, and municipal securities) and harmonizing the legal standards that apply to investment advisers and broker-dealers;
 4. Focusing on investor protection and law enforcement;
 5. Considering the impact of its rulemaking activity on efficiency, competition, and capital formation;
 6. Serving as the first line of defense with respect to risks across the capital markets as a whole; and
 7. Maximizing its continuing effectiveness, including:
 - a. establishing the conditions necessary for ongoing dialogue with the regulated industry;
 - b. establishing mechanisms to stay abreast of market/industry developments;
 - c. applying reasonably comparable regulation to like products and services;

- d. developing strong capability to conduct economic analysis to support sound rulemaking and oversight;
 - e. modernizing regulations that no longer reflect current market structures and practices; and
 - f. giving heightened attention to investor education.
- C. **Consolidated Regulatory Structure for the Banking Sector:** Consolidate duplicative regulatory agencies and clarify regulatory missions to rationalize the regulatory system at the national level.
- D. **Optional Federal Charter for Insurance Companies:** Create a federal regulator and charter for insurance companies.
- E. **Enhanced Inter-Agency Coordination and Information Sharing:** Modernize the Executive Order authorizing the PWG to reinforce it's purpose as a mechanism for coordination and communication on financial policy matters and consider:
- 1. The regular exchange of information about the latest market and industry developments;
 - 2. The discussion of policy initiatives that extend across jurisdictional lines;
 - 3. The minimization of regulatory disparities for like financial products and services; and
 - 4. The need to balance financial innovation with appropriate market and investor protection safeguards.

VIII. Treasury Secretary Timothy Geithner, Testimony Before the House Financial Services Committee (March 26, 2009)

A. Broad Components of Comprehensive Regulatory Reform

1. Address Systemic Risk
2. Protect Consumers and Investors
3. Eliminate Gaps in Our Regulatory Structure
4. Foster International Coordination

B. Focus: Addressing Systemic Risk

1. Single Systemic Regulator: Single independent agency with authority over:
 - a. Systemically important firms, determined by the financial system's interdependence with the firm, size, leverage and degree of reliance on short-term funding and importance as a source of credit and liquidity).
 - b. Payment and settlement activities.
2. Higher Standards on Capital and Risk Management: Systemically important firms should be subject to prudential standards, including:
 - a. More robust capital requirements.
 - b. Stricter liquidity, counterparty and credit risk management requirements.
 - c. A prompt-corrective action regime.
3. Hedge Fund and Other Private Fund Registration
 - a. Require SEC registration with all managers of hedge funds and other private pools of capital whose assets under management exceed a certain threshold.
 - b. Mandate investor and counterparty disclosure and regulatory requirements for funds advised by an SEC registered investment adviser.
 - c. Impose confidential regulatory reporting requirements for such funds for information necessary to assess whether the fund or fund family is so large or highly leveraged as to pose a systemic risk.
 - d. SEC should share reports with Systemic Risk Regulator.

4. OTC Derivatives Market Oversight
 - a. Regulate CDS and OTC derivatives.
 - b. Institute a strong regulatory and supervisory regime for dealers in OTC derivatives markets.
 - c. Clear all OTC derivative contracts through designated central counterparties, which will be subject to comprehensive settlement systems supervision and oversight, and encourage greater use of exchange traded instruments.
 - d. Require non-standardized derivatives to be subject to robust standards for trade reporting, documentation, and confirmation; netting, collateral and margin practices; and close-out practices.
 - e. Make aggregate data on trading volumes and positions available to the public, and make individual counterparty trade and position data available on a confidential basis to appropriate federal regulators.
 - f. Apply robust eligibility requirements to all market participants and, where appropriate, standards of care; and subject them to recordkeeping and reporting requirements.
 5. New Requirements for money market funds
 - a. Strengthen the regulatory framework around money market funds to reduce credit and liquidity risk profiles of individual money market funds.
 6. Stronger Resolution Authority to Protect Against the Failure of Complex Institutions
 - a. Cover financial institutions that may pose systemic risks and are not currently subject to the FDIC's resolution authority, through the following process:
 - i. Make a triggering determination in advance that:
 - A. the financial institution is in danger of becoming insolvent;
 - B. its solvency would have serious adverse effects on economic conditions or financial stability in the U.S.; and
 - C. taking emergency action would avoid or mitigate those adverse effects.
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- ii. Choose between financial assistance or conservatorship/
receivership.
- b. Require covered institutions to fund the resolution authority.

IX. FDIC Chairman Shelia Bair, *Federal Deposit Insurance Corporation on Regulating and Resolving Institutions Considered “Too Big to Fail”*; delivered to the Senate Banking Committee (May 2008)

A. **Creating a Safer Financial System:** Create a “fail-safe” system whereby if any one large institutions fails, the system carries on without a breakdown by:

1. Creating disincentives to unchecked growth and increased complexity of institutions:
 - a. Higher capital requirements, liquidity buffers and higher Prompt Corrective Action limits, including with respect to off-balance sheet assets;
 - b. Restrictions on leverage; and
 - c. Risk-based premiums on institutions and their activities.
2. Creating or designating a supervisory framework for regulating systemic risk; and
3. Establishing a comprehensive resolution authority for systemically significant financial companies that makes the failure of any such institution credible and feasible.

B. **Systemic Risk Regulation**

1. Systemic Risk Regulator – Should be responsible for monitoring and regulating the activities of systemically important institutions.
 - a. The Federal Reserve could take this role.
 - b. Focus on the adequacy of complex institutions’ risk measurement and management capabilities.
2. Systemic Risk Council – To handle macro-prudential oversight of developing risks that may pose systemic risks to the U.S. financial firms. It would bring together the Treasury, the FDIC, the Federal Reserve Board and the SEC and would:
 - a. Be responsible for identifying institutions, practices, and markets that create systemic risks, implementing actions to address those risks, ensuring effective information flow, completing analyses and making recommendations on potential system risks, setting capital and other

standards and ensuring that the key supervisors with responsibility for direct supervision apply those standards; and

- b. .Have authority to overrule or force actions on behalf of other regulatory entities, to demand better information from systemically important entities and to ensure that information is shared more readily.

C. **Resolution Authority for Systemically Significant Entities**

1. A legal mechanism is urgently needed for the orderly resolution of any financial institution that becomes a source of systemic risk.
2. Congress should designate one entity to perform the resolution of systemically important institutions, although it should consult closely with the primary regulators.
3. Funds or assessments should be charged to systemically important firms and placed in a Financial Companies Resolution Fund.

D. **Resolution Authority of Non-Systemic Holding Companies**

1. Congress should provide the FDIC with authority to resolve bank and thrift holding companies affiliated with a failed institution in order to achieve the least cost resolution of a failed insured depository institution.

**X. SEC Chairman Mary Schapiro, *Building a Stable and Efficient Financial System*,
Address to the Investment Company Institute (May 8, 2009)**

A. Key Principles of Financial Regulation

1. Investor protection.
 - a. Any system of regulation must take as its touchstone the protection of individual well-being.
 - b. Attention to the safety of institutions, particularly those that are significant to our financial system, is a means to an end and not an end in itself.
2. Facilitation of fair and efficient financial markets.
 - a. A strong and steady regulatory hand is needed, but must not be so intrusive as to supplant competition.
 - b. Accommodate lively competition for capital.
3. Promote and preserve public trust in our financial markets.
 - a. The efficient allocation of capital is simply impossible without transparency.
 - b. Any new regulatory structure must preserve the integrity and independence of those charged with the responsibility for setting standards of financial disclosure.
 - c. Investor confidence depends on orderly markets whose architecture works.
4. Investors must be able to trust intermediaries.

B. The Architecture of the New System

1. Capital Markets Regulator
 - a. A single independent agency focused on investor protection.
 - b. Capital markets regulation should be integrated and include regulation of:
 - i. The processes by which investments are offered and sold;

- ii. The intermediaries who sell investment products or who offer advice;
 - iii. The disclosures that must be made by those whose securities trade in the capital markets; and
 - iv. The exchanges or other facilities on which investment products are traded or through which they are cleared and settled.
- c. All of these must be closely monitored.
 - d. Rules must be aggressively enforced.
2. Banking Institutions Regulator
- a. Banks need to be safe and sound and treat customers fairly.
 - b. When banks are public companies there is a healthy tension between regulatory concerns for the safety and soundness of our capital markets and for investor protection.
3. Systemic Risk Regulator and Resolution Regime
- a. There needs to be a government entity whose responsibilities include monitoring our financial system for system-wide risk, with the tools to forestall emergencies.
 - b. Need to improve our capacity to wind up financial institutions that are no longer able to function.
 - c. No consensus about the precise form (*e.g.*, a single entity, a College of Regulators, a hybrid approach consisting of a single regulator for systemically significant firms coupled with a systemic risk council to provide macro-prudential oversight of risk.)
 - d. Regardless of form, it should have access, largely through the functional regulators, to sufficient information to provide a view of the financial system as a whole.
 - e. Needs to have sufficient power to direct prudential regulators to strengthen capital requirements and to direct institutions they regulate to reduce leverage as circumstances require.

XI. Enacted Legislation

A. *Fraud Enforcement and Recovery Act of 2009* (S. 386, Sen. Patrick Leahy; also see related bill H.R. 1748, Rep. John Conyers; H.R. 1793 Rep. Daniel Lungren; and S. 378 Sen. Patrick Leahy)(May 20, 2009: Signed into law by President Obama.)

1. Establishes a bipartisan Financial Crisis Inquiry Commission in the legislative branch, which will:
 - a. Examine the causes of the current U.S. financial and economic crisis, including the role of:
 - i. fraud and abuse in the financial sector;
 - ii. federal and state financial regulators;
 - iii. the global imbalance of savings, international capital flows, and fiscal imbalances of various governments;
 - iv. monetary policy and the availability and terms of credit;
 - v. accounting practices, including treatment of off- balance sheet vehicles;
 - vi. tax treatment of financial products and investments;
 - vii. capital requirements and regulations on leverage and liquidity, including the capital structures of regulated and non-regulated financial entities;
 - viii. credit rating agencies, including reliance on their credit ratings by financial institutions and use of their ratings in financial regulations;
 - ix. lending practices and securitization, including the originate-to-distribute model for extending credit and transferring risk;
 - x. affiliations between insured depository institutions and securities, insurance and other types of non-banking companies;
 - xi. the concept that certain institutions are “too-big-to-fail” and its impact on market regulation;

- xii. corporate governance, including the impact of company conversions from partnerships to corporations;
 - xiii. compensation structures;
 - xiv. changes in compensation for employees of financial companies, as compared to compensation for others with similar skill sets in the labor market;
 - xv. legal and regulatory structure of the U.S. housing market;
 - xvi. derivatives and unregulated financial products and practices, including CDS;
 - xvii. short-selling;
 - xviii. financial institution reliance on numerical models;
 - xix. the legal and regulatory structure governing financial institutions, including the extent to which the structure creates opportunity for financial institutions to engage in regulatory arbitrage;
 - xx. the legal and regulatory structure governing investor and mortgagor protection;
 - xxi. financial institutions and government-sponsored enterprises; and
 - xxii. the quality of due diligence undertaken by financial institutions.
- b. Examine the causes of the collapse of every major financial institution that failed, was acquired to prevent failure or was likely to have failed if not for the receipt of exceptional government assistance from August 2007 through April 2009.
2. Report its findings to the President and Congress on December 15, 2010.
 3. Refer to the U.S. Attorney General and any appropriate state attorney general any person that it finds may have violated U.S. laws in relation to the crisis.
 4. Has authority to hold hearings and issue subpoenas.

XII. Proposed Legislation

A. *Financial Oversight Commission Act of 2009* (H.R. 74, Rep. Darrell Issa) (January 6, 2009: Introduced and referred to House Committee on Financial Services)

1. Establish the Financial Oversight Commission
 - a. Investigate the financial crisis of 2008, including any relevant legislation, Executive order, regulations, plan, policy, practice or procedure pertaining to:
 - i. GSEs;
 - ii. the stock market;
 - iii. the housing market;
 - iv. credit rating agencies;
 - v. the financial services sector, including hedge funds, private equity funds and the insurance industry; and
 - vi. the role of congressional oversight and resource allocation.
 - b. Identify, review and evaluate lessons learned from the crisis in connection with the structure, coordination, management policies and procedures of governmental and nongovernmental entities regarding crisis detection, prevention and response; and
 - c. Within 12 months of enactment, report findings, conclusions and recommendations to the President and Congress.
2. Commission composition would be 10 members with bi-partisan participation, but not control.
3. Commission's authority would include the ability to hold hearings and issue subpoenas.

- B. ***Financial Crisis Investigation Act of 2009 (S. 400, Sen. Bernard Sanders)***
(February 2, 2009: Introduced and referred to the Senate Committee on Banking, Housing and Urban Affairs) (amending the Emergency Economic Stabilization Act of 2008)
1. Expand the Authority of the Troubled Asset Relief (TARP) Congressional Oversight Panel to:
 - a. Investigate all causes, domestic and global, of the current financial and economic crisis in the U.S.
 - b. Investigate the role in the financial and economic crisis of specified governmental and private sector entities, including:
 - i. Any financial or commercial corporation, partnership, hedge fund, private equity firm or entity, including any of their employees;
 - ii. the SEC;
 - iii. NRSROs;
 - iv. the CFTC;
 - v. the Federal National Mortgage Association of the Federal Home Loan Mortgage Corporation;
 - vi. trading facilities for commodities, and self-regulatory organizations;
 - vii. Federal banking agencies; and
 - viii. all other governmental or nongovernmental entities including any of their employees.
 - c. Review the existing U.S. financial regulatory structure from top to bottom and its contribution to the stability or instability of the markets to develop a comprehensive framework for:
 - i. reinforcing the laws governing the U.S. financial markets;
 - ii. strengthening regulatory agencies; and
 - iii. improving transparency and oversight.
 - d. Review all aspects of financial regulation, including the regulation of bank all variety of financial institutions and their holding companies, payment and settlement systems; private funds and the markets for alternative investments, special purpose vehicles and off-balance sheet financing for financial companies, asset backed securities, derivatives markets, the
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mortgage finance industry, equities markets, including short-selling, and commodity futures markets, and the insurance industry.

- e. Refer to federal and state law enforcement officials any person that the Oversight Panel finds may have violated U.S. law in relation to the crisis; and
- f. Report findings, conclusions and recommendations to the President and Congress within 100 days of enactment.

2. Commission's authority would include the ability to hold hearings and issue subpoenas.

C. *The Financial System Stabilization and Reform Act of 2009* (S. 664, Sen. Susan Collins; see companion bill H.R. 1754, Rep. Michael Castle) (March 23, 2009: Introduced and referred to the Senate Committee on Banking, Housing and Urban Affairs)

1. Establish an independent Financial Stability Council ("FSC") to serve as a systemic-risk moderator and maintain comprehensive oversight of all systemic risks to the financial system.
2. FSC membership would consist of the Chair, who would be appointed by the President, with the advice and consent of the Senate, and have expertise in the financial services industry; the Secretary of the Treasury; and the Chairman of the Federal Reserve, FDIC, National Credit Union Administration, SEC and CFTC.
3. FSC would have responsibility for and authority to:
 - a. Review and approve or prohibit the issuance of, or require modification of, any rule or regulation issued by any federal financial regulator;
 - b. Require each Federal financial regulator to issue or revise its rules and regulations in conformance with the FSC's determination;
 - c. Review new financial products and services and recommend regulations for them to the appropriate Federal financial regulator;
 - d. Direct each Federal financial regulator to impose appropriate solvency requirements, including capital requirements and long-term debt ratios on any financial institution within its jurisdiction;
4. FSC authority would include the ability to:
 - a. hold hearings;
 - b. issue subpoenas; and

- c. impose civil penalties.
- 5. The act would amend the CEA to:
 - a. Require recordkeeping and regular and continuous reporting of positions in CDS.
 - b. Subject each CDS trading clearinghouse to regulation by the CFTC.
 - c. Set forth capitalization, reporting and recordkeeping for positions involving credit-default swaps.
- 6. Require the Board of Governors of the Federal Reserve System to promulgate rules for:
 - a. The examination of the safety and soundness of, and the extent of systemic risk to the U.S. financial system posed by, any investment bank holding company organized in or doing business in the United States; and
 - b. Reasonable reporting of information by each investment bank holding company.
- 7. Direct the SEC to issue final rules that:
 - a. Designate clearinghouses for credit-default swaps;
 - b. Prohibit fraudulent, deceptive or manipulative acts or practices in connection with such swaps;
 - c. Require any person that engages in credit-default swaps to use an SEC-designated clearinghouse; and
 - d. Require that all clearinghouses are:
 - i. capitalized by participants to a level adequate to guarantee payments; and
 - ii. authorized to assess members for a default fund.
- 8. Abolish the OTS and transfer its functions, authorities, personnel and property to the OCC.

D. *Financial Markets Commission Act of 2009 (H.R. 2253, Rep. William Delahunt and Rep. Steven LaTourette) (May 5, 2009: Introduced and referred to the House Committees on Financial Services and Agriculture)*

- 1. Establish a Financial Markets Commission in the legislative branch to examine all causes, domestic and global, of the current U.S. financial and economic crisis.

2. The Commission's functions would be to:
 - a. Investigate the role in the financial and economic crisis of:
 - i. the SEC;
 - ii. NRSROs;
 - iii. the CFTC;
 - iv. the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;
 - v. trading facilities for commodities and self-regulatory organizations;
 - vi. the Federal banking agencies;
 - vii. any financial or commercial corporation, partnership or entity; and
 - viii. any other governmental or non-governmental entity.
 - b. Submit a report to the President and Congress within one year of its first meeting.
 - c. Refer to the U.S. Attorney General 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.
5. The Commission would have authority to hold hearings and issue subpoenas.