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G20 가

- -

박 선 욱



한국법제연구원
KOREA LEGISLATION RESEARCH INSTITUTE

G20 가

- -

The Study on the Legal System of Exit
Strategy in G20

- U. S. A. -

연구자 : 박선욱(경원대학교)

Park, Seon-Uk

2010. 10. 20.



한국법제연구원
KOREA LEGISLATION RESEARCH INSTITUTE

국문 요약

2001 , (Federal Reserve) . 2008 가

가

“ 가 ”

(Prudential regulation)

가

Federal Reserve
SEC, CFTC, CFPA

가

. , “ 가 ”
,

※ : 가 , , ,

Abstract

The overall policy directives of the US government, and the its Federal Reserve to boost the US economy, put into action after the year of 2001, had driven its housing market to be overblown in price. The financial crisis of 2008, derived from the collapse of the housing sector, and the financial industry, was eventually led to the dramatic recess of the whole economy, not only of the US, but in the entire globe.

The recent focus on the so-called exit strategy mainly draws on the restoration of the financial industry, and the protection of the interests of tax payers, while taking cautions not to cause moral hazards among the market participants. It is imperative that the exit strategy should be flexibly conducted in conformity with the changes in economy. Premature implementation of exit methods would bring about insecurity onto the whole economy, while delayed. or prolonged exercises have the danger of harming the sound and robust growth of the economy in the long term time frame.

"The Wall Street Reform and Consumer Protection Act" has become effective with the main purpose of enhancing the effectiveness of the regulation mechanism over the financial market through taking such measures as expanding the scope of financial institutions under supervision, streamlining the regulatory and supervisory functions at the federal level, and securing the interests of financial consumers. The Act, in general, is supposed to secure the stability of the financial industry through applying stricter rules of prudential regulation, and extending its application to the financial institutions and their activities, formerly left outside the supervision of the federal regulation.

Many of the policy methods of the Act have been subjected to criticisms for its lack of clarity and consistency, and its failure to address the issues of responsibility in adequate terms. Although the Federal Reserve has gained the power and status of the primary regulator, it still suffers from the overlap of supervisory functions among other supervisory organs as SEC, CFTC, and CFPB. Despite concerns and criticisms, the Act rightly enjoys and merits the attention of the participants in the world economy, as it has pioneered in the expansion of the regulation over diverse financial institutions, and their business activities, and in the enhancement of the protection of the financial consumers.

※ Key Words : The Wall Street Reform and Consumer Protection Act, The Exit Strategy in the US, The Financial Reform in the US, Federal Reserve, FRB, Financial Crisis

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XVI.		110
XVII.	가	110
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제 1 장 서 론

1

2009

regulation)

(Prudential

(, ,)

IT

가 가

가

(Federal Reserve) 2001 1%

2005

. 2009 6 가

가

가

1

,

,

,

1)

가

,

가

.

가

,

, 가

. 2009 2 10

①

, ②

, ③

(MBS)

.

,

,

,

1)

1970

,

, 2 (2009. 12.).

.

,

,

15 (2009. 11.)

. 가

:

,

,

, 21 (2010. 7.).

.2) MBS

“ 가 ”

가

2

<input type="checkbox"/>	
<input type="radio"/>	
<input type="radio"/>	
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<input type="radio"/>	
<input type="radio"/>	
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<input type="checkbox"/>	
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2) Ben Bernanke, The Fed's Exit Strategy, Op-ed, Wall Street Journal, July 21, 2009

제 2 장 금융위기와 경제위기의 원인

가

3)

가

가

1

4)

(securitization)가 가

(underwriting)

(MBS)

3) Task Force on the Causes of the Financial Crisis, The Financial Crisis of 2007-2009: Causes and Contributing Circumstances, American Bar Association (Banking Law Committee, Business Law Section), September, 2009 (Task Force).

4) Id., at 9.

,
 , CDS (Credit Deault
 Swap) 가 AAA ,
 MBS ,
 .
 ,
 ,
 ,
 .

I .

가 ,
 가 .

II .

가 .
 , 가
 가 . 2000 2007 8
 가 , 80%

(securitization) .5)

5) Gary B Gorton, The Subprime Panic, National Bureau of Economic Research Working

III.

IV.

V.

(“anti-deficiency laws”) 가

(default)

.6)

Paper No. 14938, at 3 (October, 2008).

6) Task Force, at 11.

VI.

VII.

VIII.

IX.

2 %

.7)

, Federal Reserve

가
가

7) Id., at 12.

X. (MBS: Mortgage-Backed Securities)

MBS , MBS
 가 .
 , 가
 , 가 가
 ,
 가 MBS
 가
 ,
 , , , , ,

XI.

MBS
 CDOs SIVs

XII. 가

가 가 , 가

가 ,

가
MBS 가 .

XIII.

MBS
가 ,

XIV.

MBS ,
(Lehman Brothers) (Bear Sterns)
.8) 30 MBS
가 1
(overnight repurchase market)

8)

. Task Force, at 14.

XV.

가

가

XVI.

가

가

SIV

- - (Mark-to-Market)

(loss)

XVII.

2

가

(conservancy)

(Countrywide), (IndyMac),
(Washington Mutual), (Wachobia) 2008

XVII.

2008 Federal Reserve (JP
Morgan/Chase & Co.) ,

(Fannie Mae:
Federal National Mortgage Association) (Freddie Mac:
Federal Home Loan Mortgage Corporation)

, 가
AAA

(Reserve Fund)
가 (commercial paper)

, 가 ,

, Federal Reserve

. 가 Federal Reserve

.9)

9) Task Force, at 15.

가

XX.

AIG

. AIG

CDSs (Credit Default Swaps)

가

AIG

가

가

AIG

,

가

, AIG

AIG

가

2,000

.10)

AIG

.11)

가

(Merrill Lynch)가

2008 9 15 Federal Reserve

(Bank

of America)

.12) 가

2

10) Task Force, at 16.

11) AIG, Barbara Black, The U.S. as "Reluctant Shareholder": Government, Business, and the Law (forthcoming in Entrepreneurial Business Law Journal), available at <http://ssrn.com/abstract=1646943>; Andrew P. Atkins, Note and Comment: III. Troubled Asset Relief Program: The AIG Bailout: Constraining the Fed's Discretion, 14 N.C. Banking Inst. 335 (March, 2010).

12) CRS Report R40975, Financial Regulatory Reform

(Goldman Sachs)

(Morgan Stanley)

Federal Reserve

2008 10 가

XX.

가

Federal Reserve 7,000

가

8,00

2008 10 3

2

가

and the 111th Congress, by Baird Webel et. al, June 1, 2010, at 2

Federal Reserve가 가
 . 1994 Federal Reserve
 , (Home
 Owner Equity Protection Act)
 ,
 , Federal Reserve 2008

II. 가

가 MBS 가
 가 MBS 가
 가 . 가
 가 ,
 ,
 . 가 MBS CDO
 가 가 ,

.17)

SEC 가 1975 “ 가
 가 (NRSROs: nationally recognized statistical
 rating organizations)”

가 , , ,

17) Securities and Exchange Commission, Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies (July 2008).

.18) 가
 , Basel I , II
 .
 가 .
 가 가
 2007
 . 2007 SEC 가
 (The Credit Rating Agency Reform Act of 2006)¹⁹⁾
 . 가
 “ 가 ,
 , 가
 ” .20) SEC 가가 “ 가
 가 (NRSROs: nationally recognized statistical
 rating organizations)” 가
 가
 . 2009 9 10 가
 .21)
 가 MBS 가 가
 SEC 가 ,
 가 , 가
 .22)

18) Task Force, at 19.

19) Pub. L. No. 109-291 (2006).

20) Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850, Credit Rating Agency Reform Act of 2006, S. Report No. 109-326, 109th Cong., 2d Sess. (Sept. 6, 2006).

21) Task Force, at 20.

22) 74 Fed. Reg. 6456 (Feb. 9, 2009).

III. CDSs (Credit Default Swaps)

CDS , - , MBS -
 가 (fee) ,
 가 가 .
 (institutional investors) 가
 . ,
 가 , 가
 가 . AIG가 가
 . 95 %
 CDS .²³⁾
 CDS 가 AIG
 가 . AIG 가가
 , AIG ,
 AIG , 2,000
 (clearing house) (swap)
 AIG가
 (over-the-counter derivative contracts) . CFTC (

: The Commodity Futures Trading Commission) 1993
 (the Commodity Futures Trading Act)

.²⁴⁾ 1998 CFTC

23) Testimony of Robert Pickel, International Swaps and Derivatives Association, before the Senate Subcommittee on Securities, Insurance and Investments, July 9, 2008.

24) Exemption for Certain Swap Agreements, 58 Fed. Reg. 5587, 5589 (Jan. 22, 1993).

25),
 , 가 , 가
 .
 , Federal Reserve, SEC CFTC
 ,
 . 2008 (the Commodity Futures
 Modernization Act of 2008)²⁶⁾ CFTC
 CDS .

IV.

SEC가
 .
 ,
 .
 SEC 2004 2008
 (CSE: a consolidated-supervised entity program)
 (voluntary),
 EU 27) EU ,
 . 2004
 SEC - (the
 normal broker-dealer net capital rules) ,

25) 63 Fed. Reg. 26114-26127 (May 12, 1998).

26) Commodity Modernization Act of 2000, P. L. No. 106-554.

27) Directive 2002187/EC of the European Parliament and of the Council of 16 December 2002.

5 가 . , , ,

15-1 30-1
가 .
, SEC 28) CSE

○ CSE Basel II

○ SEC 가 CSE
, 가 MBS

①

②

○ CSE CSE
SEC

○ SEC 가

① MBS

가

②

③

28) Securities and Exchange Commission, Office of Inspector General, SEC's Oversight of Bear Sterns and Related Entities: The Consolidated Supervised Entity Program, Report No. 446-A (Sept. 25, 2008).

④

가가

⑤

가

⑥

가

가

SEC

○ SEC

. SEC

○

BASEL II

, SEC

가

○ SEC

가

○ SEC

CSE

, CSE

가

○ SEC

CSE

CSE

가

3

가

(GAO: Government Accountability Office)

.29)

.30) Federal Reserve

(Greenspan) 가

.31)

I .

1990

가

가

가

29) , Testimony of Roger T. Cole, Director, Division of Banking Supervision and Regulation, Federal Reserve Board, before the Senate Subcommittee on Securities, Insurance, and Investment, March 18, 2009.

30) Speech of Timothy K. Geithner before the Council on Foreign Relations, March 25, 2009, TG-68.

31) Statement by Alan Greenspan before the House Committee of Government Oversight and Reform, Oct. 23, 2008.

, 2008

,

.32)

○

:

,

○

가

○

가

.33)

II.

GAO

,

,

○

가

가

32) Review of Regulator's Oversight of Risk Management Systems at a Limited Number of Large, Complex Financial Institutions, Testimony of Orice M. Williams, Director, Financial Markets and Community Investment, Government Accountability Office, before the Senate Committee on Banking, Housing and Urban Affairs, March 18, 2009.

33) Id.

2

○

○

○ 2008 Federal Reserve

가

가

○ 2007 10

가

SEC

가

가

가

.

가

CDOs

가

가

CDOs

가

가

.³⁴⁾

III.

34) Id.

○

. 2006 Federal Reserve

가

○

○

, 가

, 가

“ (the worst case scenario)”

○

가가

,35)

IV.

가 가

V.

OTS (: Office of Thrift Supervision)
(Savings Association)

OTS 가 ,

AIG , OTS
. OTS AIG

,36)

35) Id.

36) Statements and Testimony of Scott M. Polakoff, Acting Director, Office of Thrift Supervision, "American International Group: What Went Wrong, Government Intervention, and Implications for the Future", March 5, 2009.

VI.

○

가

.37)

○ BASEL II

가

가

2004 , 5 SEC
 BASEL II -Federal Reserve OCC
 BASEL I -,
 (net capital requirements) ,
 BASEL II 가 .38)

37) Testimony of Treasury Secretary Timothy Geithner before the House Financial Services Committee, March 26, 2009.

38) Comments by Jamie Dimon, Chief Executive Officer, J.P. Morgan/Chase & Co. in 2008 Letter to Shareholders.

4

I .

가

가

. Federal Reserve

가

, CDSs,

가

.39)

II .

Federal Reserve가 1999 - - (Gramm-Leach-Biley Act of 1999)

, Federal Reserve

(subsidiary)

39) Task Force, at 33.

Federal Reserve

가

. , AIG

, Federal Reserve

III.

- -

SEC가,

가

SEC

40),

가

IV.

가

.41) 가

40) , President's Working Group on Financial Markets.

41) Statements and Testimony of Scott M. Polakoff, Acting Director, Office of Thrift Supervision, "American International Group: What Went Wrong, Government Intervention, and Implications for the Future", March 5, 2009 (OTS가 AIG).

5

I.

, 가,
 , 가 , 가

II.

가
 가 가 (GSE) 가
 가 가 ,
 가 ,
 . Federal Reserve, 가
 (GSE)

,
,42)

III.

MBS

가 가 가 가 ,
가 가 ,
가
가 ,
, MBS 가

IV.

가 가 가
가 ,
가 ,
가 ,

42) John W. Snow, Testimony before the House Financial Services Committee, April 13, 2005.

. Federal Reserve

,

.

제 3 장 경제위기 대응과 경제부양정책

1

가 가

가

가

2007 10 9

14,164

, 2009 3 9 6,440 55% 가

.43)

44), 2008

가 2008 3

43) Christian A. Johnston, The Federal Reserve and the U.S. Financial Crisis, available at <http://ssrn.com/abstract=1584731>, at 3. wsjonline.com .

44) II.

1 Federal Reserve
 , FDIC, SEC . ,
 Federal Reserve
 .
 2008 (the Economic Stimulus Act of
 2008)⁴⁵⁾
 1,520 .⁴⁶⁾ 2008 7 30
 (the Housing and Economic Recovery Act of
 2008)⁴⁷⁾ ,
 . 48) 49)
 가 50).
 2008 10 3 (the Emergency
 Economy Stabilization Act of 2008) ,
 TARP (Troubled Asset Recovery Program) 7,000
 .⁵¹⁾ TARP
 가

45) Pub. L. No. 110-185, signed into law by the President Bush on Feb. 13, 2008.

46) , 40-55 (2009.7.13) .

47) Pub. L. No. 110-289.

48) 1968 가 가 가

49) 1970 가 가

50) CRS Report RS21663, Government-Sponsored Enterprises: An Institutional Overview, by Kevin R. Cosar; CRS Report RS22950, Fannie Mae and Freddie Mac in Conservatorship, by Mark Jickling; CRS Report R40800, Options to Restructure Fannie Mae and Freddie Mac, by N. Eric Weiss .

51) Pub. L. No. 110-343.

가 . 2009 2 17 ,
 (the American Recovery and Reinvestment Act of 2009)⁵²⁾
 7,870 .
 (equity investment) (lending)
 AIG, TARF
 (GSE: Government-Sponsored-
 Enterprises) .⁵³⁾
 (Fund Stabilization
 Program)⁵⁴⁾, (Financial Stability Plan)⁵⁵⁾,
 (the Federal Homeowners Stability Plan)⁵⁶⁾,
 (Auto Supplier Support Program)⁵⁷⁾,
 (Public-Private Investment Program for Legacy Assets)⁵⁸⁾,
 .
 FDIC
 10 2008 10 7
 25 .⁵⁹⁾ 1

52) Pub. L. No. 111-5. Elmendorf, D.W. Estimated Macroeconomic Impacts of the American Recovery and Reinvestment Act of 2009, Congressional Budget Office (March 2, 2009) .

53) U.S. Treasury Press Release, July 13, 2008, HP-1079, Paulson Announces GSE Initiatives.

54) U.S. Treasury Press Release, September 19, 2008, HP-1147, Treasury Announces Guaranty Program for Money Market Fund.

55) U.S. Treasury Press Release, February 10, 2009, TG-18, Secretary Geithner Introduces Financial Stability Plan.

56) U.S. Treasury Press Release, February 18, 2009, TG-33, Homeowner Affordability and Stability Plan.

57) U.S. Treasury Press Release, March 19, 2009, TG-64, Treasury Announces Auto Supplier Support Program.

58) U.S. Treasury Press Release, Treasury Department Releases Details on Public Private Partnership Investment Program.

59) FDIC Press Release, Emergency Economic Stabilization Act of 2008 Temporarily

(the Temporary Liquidity Guarantee Program) .60)

2 Federal Reserve

- Federal Reserve 6 가 .
- 0 % .
- TAF (Term Auction Facility)
- .
- (The Federal Reserve Act) Section 13(3) .
- Section 13(3)
- Federal Reserve가 MBS .
- 1.
- 2007 Federal Reserve . 2009
- 1 0 % .

Increases Basic FDIC Insurance Coverage from US\$100,000 to US\$250,000 per Depositor (October 7, 2008), www.FederalReserve.gov .

60) FDIC Press Release, FDIC Announces Plan to Free Up Bank Liquidity: Creates New Program to Guarantee Bank Debt and Fully Insure Non-Interest Bearing Deposit Transaction Accounts (October 14, 2008), available at FDIC.gov.

			(%) ⁶¹⁾
2009	12	16	0% - .25 %
2009	8	11-12	0% - .25 %
2009	6	24	0% - .25 %
2009	1	16	0% - .25 %
2008	12	16	0% - .25 %
2008	10	29	1%
2008	10	8	1.5%
2008	4	30	2.0%
2008	3	18	2.25%
2008	1	30	3.0%
2008	1	22	3.5%
2007	12	11	4.25%
2008	10	31	4.5%
2008	9	18	4.75%

2.

, Federal Reserve

Federal Reserve Act 10B “Discount Window”

. Federal Reserve Act 10B

.”

Federal Reserve

Federal Reserve

Federal Reserve

4

, Federal Reserve

Federal Reserve 1 4

61) Christian A. Johnston, The Federal Reserve and the U.S. Financial Crisis, available at <http://ssrn.com/abstract=1584731>, at 8-9.

가

가

Federal Reserve

(Any Federal Reserve bank, under rules and regulations prescribed by the Board of Governors of the Federal Reserve System, may make advances to any member bank on its time or demand notes having maturity of not more than four months and which are secured to the satisfaction of such Federal Reserve bank. Notwithstanding the foregoing, any Federal Reserve bank, under rules and regulations prescribed by the Board of Governors of the Federal Reserve System, may make advances to any member bank on its time notes having such maturities as the Board may prescribe and which are secured by mortgage loans covering a one-to-four family residence. Such advances shall bear interest at a rate equal to the lowest discount rate in effect at such Federal Reserve bank on the date of such note.)

Federal Reserve

, 2007 9 , Citi,

, BOA

, 2007 12 Federal Reserve “TAF (Term Auction Facility)”⁶²⁾

TAF 가 , 28

84 가 가 .⁶³⁾

62) 28

(2007 12 14 , 2010 3 8).

63) Term Auction Facility, www.federalreserve.gov/monetarypolicy/taf.htm

TAF 2009 3 4,900 ,
가 .

3.

2007 가 , Federal Reserve 2007 12 12 the Federal Reserve Act Section 14 .64)
가 , , , , , , , 가 , , .65) 2010 2 1 .66)

4. Federal Reserve Act Section 13(3)

Section 13(3) Federal Reserve . 13(3)
Federal Reserve가 가
“
(Systematically Important Non-Depository Institutions)”
가 . Federal Reserve
2008 , AIG
. Citi BOA

64) www.federalreserve.gov/monetarypolicy/bst_liquidityswaps.htm
65) Id.
66) Jane Wardell, Central Banks End US Dollar Emergency Swap Lines, January 27, 2010. www.businessweek.com/ap/financialnews/D9DGBJL00.htm .

Federal Reserve

Section 13(3)

Primary Dealers Credit Facility (PDCF)⁶⁷, Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (AMLF)⁶⁸, Commercial Paper Funding Facility (CPFF)⁶⁹, Money Market Investor Funding Facility (MMIFF)⁷⁰, Term Asset Backed Securities Loan Facility (TALF)⁷¹
⁷²

5.

Federal Reserve

MBS

-
- 67) Primary , MBS 1
 2010 2 1
 (2008 3 17). (Primary Dealer)
 BNP Paribas , Bank of America
 , Credit Suisse , Barclay Capital, Cantor Fitzgerald & Co. , Daiwa ,
 Deutsche Bank , Goldman, Sachs & Co., Citigroup Global Market, HSBC ,
 Jeffries & Co., J. P. Morgan , Mizuno , Morgan Stanley & Co. , Nomura
 , RBC Capital Market, RBS , UBS . [www.newyorkfed.org/
 markets/pridealers_current.html](http://www.newyorkfed.org/markets/pridealers_current.html) .
- 68) , Money Market
 ABCP (2008 9 18
 , 2010 2 1).
- 69) Primary 3 CP
 (2008 10 7 , 2010 2
 1).
- 70)
 (2009 10).
- 71) , , , (AAA)
 ABS . (2008 11 15 , 2010 10 3
 2010 6 30 ,
 , 2010 3 31).
- 72) (SWAP Facility with Foreign central
 bank), Primary Dealers Credit Facility (PDCF), Commercial Paper Funding Facility (CPFF),
 Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (AMLF)
 . John B. Taylor, An Exit Rule for Monetary Policy, Feb. 10, 2010.

가 .
MBS 가 .
Federal Reserve , ,
(Ginnie Mac) MBS .

제 4 장 금융개혁

가

가

가가

가

1 2008 3

(Henry Paulson, Jr)

“

(Blueprint For a Modernized Financial Regulatory Structure)”

①

, ②

(market stability regulator),

(prudential financial regulator),

(business conduct regulator)

, ③

(Federal Insurance Guarantee Corporation)

, ④ CFTC SEC

(corporate finance

regulator)

2 2008 7 73)

가 (mortgage originator)

가 ,

2 가

(FHFA)

3 2008 10 74)

(MBS: Mortgage-Based

Securities)

7,000 - 2,500 -

가

(TARP: Troubled Assets Relief Program)

(Office of Financial Stability)

. TARP ,

, 3 .

73) Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289 (2008).

74) Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 (2008).

4 2009 2 10 “ (Financial Stability Plan)”

TARP

(warrant)

(financial warrant)

100,000

250,000

4 2009 2 10 “ (Financial Stability Plan)”⁷⁵⁾

2009 2 10 , 6

, / / /

가

가

. 1 1

- 19 -

가

(Mandatory

Convertible Preferred Stock)

75) U. S. Dept. of Treasury, Financial Stability Plan-Fact Sheet, 2009.2.10.

TALF 1

, MBS ,

5 “ :

(A New Foundation: Rebuilding Financial Supervision and Regulation)”⁷⁶⁾

, 2009 6 17 , “

: ”

, 5 .

가

I .

(Promote robust supervision and regulation of financial firms)

① (FSOC: Financial Services Oversight Council)

, FRB

76) U. S. Dept. of Treasury, Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation, Washington, D.C, June 2009, at 85.

②

(National Bank Supervisor)

③ Federal Reserve

가

④

SEC

II.

(Establish comprehensive supervision of financial markets)

(issuer)

가

Default Swap)

(CDS: Credit

, Federal Reserve

(CCPs: Central Counterparts)

Federal Reserve

(Tier 1

)

SEC

Federal

Reserve

(National Bank Supervisor)

가

가

SEC

(Office of National Insurance)

III.

(Protect consumers and investors from financial abuse)

(Consumer Financial Protection Agency)

(Financial Consumer Coordinating Council)

, SEC

(Investor Advisory Committee)

(Transparency),

(Simplicity),

(Fairness),

(Access)

IV.

(Provide the government with the tools it needs to manage financial crisis)

Federal Reserve

.

V.

(Raise international regulatory standards
and improve international cooperation)

,

,

.

제 5 장 월가 개혁 및 소비자보호법 (2010)

1 Bernanke Federal Reserve

2010 6 16

(CFR: Council on Foreign Relations) The Squam Lake Report
.77)

①

가,

②

, , ,) (

③

가

(shadow banking system)

, , 가 가

가

○ , ○
, ○ , ○

77) Remarks on the Squam Lake Report - Fixing the Financial System: Working Paper Series 1-9: February 2009-April 2010.

5 가 (2010)

, ○

2 가 (2010)⁷⁸⁾

I .

2010 3 15 (Christopher Dodd) (Barney Frank)

“ - 가

(Dodd-Frank Wall Street Reform and Consumer Protection Act)”

(Bank Holding Company Act of 1956), (Securities Exchange Act of 1934), (Federal Reserve Act), , 2317

(Financial Stability Improvement Act), (Corporate and Financial Institution Compensation Fairness Act)⁷⁹⁾, (Over-the-Counter Derivatives Markets Act)⁸⁰⁾, (Consumer Financial Protection Agency Act)⁸¹⁾, (Private Fund Investment Advisers Registration Act)⁸²⁾

78) Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, H.R. 4173.

79) H.R. 4173 S. 1074, H.R. 3269 .

80) H.R. 4173 H.R. 3795 .

81) H.R. 4173 H.R. 3126 .

82) H.R. 3818 .

2 가 (2010)

가 (Accountability and Transparency in Rating Agencies Act)⁸³⁾ (Investor Protection Act)⁸⁴⁾, (Federal Insurance Office) 8 .⁸⁵⁾

2009 6 17 , 12 2

“ 가 (Wall Street

Reform and Consumer Protection Act of 2009)”

.⁸⁶⁾

2010 1

“ (Volcker Rule)”

.⁸⁷⁾ “ ” , ()

BOA

3 %

3 % 1

Federal Reserve

83) H.R. 4173 H.R. 3890 .

84) H.R. 4173 H.R. 3817 .

85) H.R. 1728, H.R. 2571, H.R. 2609, H.R. 3126, H.R. 3269, H.R. 3817, H.R. 3818, H.R. 3890, H.R. 3996 .

86) H.R. 4173, The Wall Street Reform and Consumer Protection Act (December 11, 2009, passed by the House).

87) CRS Report R41298, The "Volcker Rule": Proposals to Limit Speculative Proprietary Trading by Banks, by David H. Carpenter, M. Maureen Murphy, June 30, 2010 .

5 가 (2010)

가 .

10 % , 가

“ ” “

(Restoring American Financial Stability Act of 2010)⁸⁸⁾

“ 가 ”

2010 6 29 7 15

2010 7 21 .

II.

“ 가 (가)”

가 가 FRB

가

FRB ,

가 , SEC

가 .

88) S. 3217.

○ (FSOC: Financial Stability Oversight Council)
가 , FRB

(Office of Financial Research)

가

○ 500

FSOC

○ (Savings & Loan
Holding Companies) Federal Reserve

○ FRB가 가

○ FRB “ ”

○

○

가

○ 가

5 가 (2010)

○ , , FRB
(proprietary trading)

○ .

○ SEC CFTC
가 .

○ SEC - 가

○ SEC 가 .

○ ,

가 .

○ (the Office of Thrift Supervision) ,
(OCC)

가 가

○ (Bureau of Consumer Protection) .

III. (FSOC: Financial Stability Oversight Council)⁸⁹⁾

FSOC 가 , (Secretary of Treasury), (Chairman of the Federal Reserve Board),

(OCC: Office of the Comptroller of the Currency), (Chairman of the Federal Trade Commission),

(Director of the Bureau of Consumer Protection),

(CFTC: Chairman of the Commodity Futures Trading Commission), (FDIC: Chairperson of the Federal

Deposit Insurance Corporation), (FHFA: Director of

⁸⁹⁾ Title I of the Wall Street Reform and Consumer Protection Act.

the Federal Housing Finance Agency),

(NCUA:

Chairman of the National Credit Union Administration),

가

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가

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1

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1. FSOC

FSOC

가

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FSOC

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○

(Office of Financial Research)

○

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5 가 (2010)

○

○

. FRB

(risk-based capital requirements),

(leverage limits), (liquidity requirement),

(concentration requirements), (credit exposure

reports), (prompt corrective action),

(enhanced public disclosures), (resolution plan

requirements),

(overall risk management)

○

○ SEC (review), SEC

○

○

○

○

2.

FSOC

Federal Reserve

FSOC 2/3

FRB

.90)

가

가

○

○

(off-balance sheet)

○

○

가 가 , ,

가

○

가 , ,

가

, 가

○

○

, , , ,

90) Melanie Fein, Implications for Securities Activities of Banks and Their Affiliates, July, 2010, ssrn.com/abstract=1657637, at 5.

5 가 (2010)

○

○

○

○ FSOC가

가 , FSOC FRB
 FRB 가
 . FSOC FRB
 , FRB
 가 , 가 .

3.

“ (predominantly engaged in financial activities)” . “ ”

85 %

85 %

가 (85 percent or more of the company's consolidated annual gross revenues, or 85 percent or more of the company's consolidated assets)

4.

FSOC “

(in order to prevent or mitigate risks to the financial stability of the United States that could

arise from the material financial distress, failure, or ongoing activities of large, interconnected financial institutions)”, FRB가

FSOC (risk-based capital requirements),
 (leverage limits), (liquidity requirement),
 (concentration requirements), (credit exposure reports),
 (prompt corrective action), (enhanced public disclosures), (resolution plan requirements),
 (overall risk management)

5.

FSOC (safeguards)
 FSOC가
 가 ,

6.

FSOC
 FSOC 가 1
 가 ,

IV.

1. “ (Systematically Important Financial Institution)”

FSOC Federal Reserve

“ ”

, Federal Reserve, FDIC, FSOC

“ ”

“ ”

(risk-based capital requirements),

(leverage limits),

(liquidity requirement),

(concentration requirements),

(prompt corrective action),

(resolution plan

requirements),

(overall risk management)

FSOC

“ ”

Federal Reserve

2.

Federal Reserve

. Federal Reserve

500

, FSOC가

가

. 2010 3 36

91). Federal Reserve

가

FRB

(functionally regulated subsidiary)

“

”

1

SEC

3.

FRB

100

(risk committee)

가

4.

FRB

가

FRB

FRB

25 %

91) Melanie L. Fein, Dodd-Franck Act: Implications for Securities Activities of Banks and Their Affiliates, <http://ssrn.com/abstract=1657367>, July 2010, at 9.

5 가 (2010)

5.

FRB , FRB 가 .

6.

FRB FRB .

7.

FRB 12 U.S.C. § 1818 .

FRB , , FRB .
1
, 60 ,

8.

FRB
(financial distress), (failure) ,
FRB, FSOC FDIC
가
, Federal Reserve

(divestiture)

.92)

9.

(remediation)

FRB

FRB

,

,

가

,

가

10.

FRB

FRB

, FSOC 2/3

,

,

,

,

,

11.

FRB

the BHC Act (

) Sec. 3

.

5 %

FRB

92) Id., at 13.

5 가 (2010)

FRB ,
100 가 , FRB
. FRB
,

V. FRB

1.

FRB가 FSOC 가 7
FRB “ (Vice Chairman for
Supervision)” , FRB

2.

FRB가 , FRB

- .
- , ,
- , 가
- , 가 .

3. “ (functionally regulated)”

- - (Gramm-Leach-Bliley Act)
, FRB “ (functionally regulated)”
-SEC 가 1
- FRB 1

FRB 가

가

10(A) , FRB

가

가

FRB

1

가

VI.

1. (FIO: Federal Insurance Office)

가

, FSOC , (FIO: Federal Insurance Office)

(FIO: Federal Insurance Office)

. FIO

2. FIO

FIO

○

가

○

○

(Terrorism Risk Insurance Act)

○

○

VII.

1.

FRB

,

. FRB

-

-

,

,

,

가

2.

가

10 %

, FRB

, FDIC

가

가

FSOC

가 ,

가

3.

100

가

, FRB

4.

가

(The Federal Deposit Insurance Act)

FRB

S & L

5 가 (2010)

가

. FRB

“ (source of financial strength)”

가

가,

,

5.

가

가

FRB

2010 1 1

500

2008

(The Emergency Economic Stability Act)

TARP

가

FRB

FSOC

, 가

가

VIII.

1. (Cyclical Capital Rules)

가 FRB

가 FRB

(countercyclical)

2. (Risk-Based Capital and Leverage Limits)

FRB FRB

FRB

“ ”

3.

가 FRB (FDIC OCC)

, FRB (on a consolidated basis)

FRB
 ,
 ,
 ,
 .
 ,
 ,
 .

4. (Contingent Capital)

FSOC FRB
 가 ,
 .
 .
 ○ ,
 ,
 가.
 ○ 가.
 ○ 가 (equity)
 가
 가
 .
 ○ ,
 ,
 가.

○ 가 ,
가 가.

○ .

FSOC FRB FRB
가 ,
(equity)

IX.

가 FRB

FDIC 가 , ,
가,

FRB FDIC, SEC , ,

○ , 가 .

○ 가 ,

가 .

○ 가 가

○ 가

X. (S & L)

가

가

(the Office of Thrift Supervision)

93),

(OCC)

가 가

FRB

. FRB

○

○ S & L

가

가

○ S & L

S & L

, FRB가

, FRB

93) 313 .

(intermediate holding company)

S & L

S & L

GAO (The Government Accountability Office:

)

(Savings Associations)

(Bank)

S & L

가

GAO

가

GAO

가

○ 가

○

○

○

XI.

가 FRB

“

(securities holding company)”

SEC

, FRB

EU

. 가 SEC

, 가

, “

(consolidated supervised entity)”

. 가 - - 가

가 SEC

가

, FRB
FRB , FRB
. FRB

XII. : (: proprietary trading)

가 가 (“banking entities”)

FRB (Volker) “ ”

,94)

94) CRS Report R41298, The “Volcker Rule”: Proposals to Limit Speculative Proprietary Trading by Banks, by David H. Carpenter, M. Maureen Murphy, June 30, 2010 .

가 .

,

TARP

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,

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가

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가

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가

.

,

.

,

,

3%

(1),

3%

.

FRB 가

.

10%

,

가

.

1. (Proprietary Trading)

(“banking entities”)

(engaging as a principal for the trading account of the banking entities, or financial company), , ,

, , (in any transaction to purchase or sell. or otherwise, acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument)

“

(any account used for acquiring or taking positions in securities and instruments... principally for the purchase of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movement)”

가 .

2.

○

○ (Government-Sponsored Entities)가

○

○

-
-
-

가

4(c)(6)

5%

가

3.

가

가

12 , 가

(2012 7 21) 2

2

, FRB 1

3

FRB가

(private equity fund)

가

4.

FRB, SEC, CFTC

FSOC

FSOC

- (banking entities)

-

5 가 (2010)

○

○

○

○

FRB, FDIC, OCC
(banking entities)

가

. GAO

가

XIII.

1.

, 가 , ,

(sponsor) , , ,

○ (banking entities)

○ 가 ,

○ ,

,

-
-
-
-

, 3%
 (1),
 3%

가

2.

1940 (The Investment Company
 Act of 1940) 3(c)(1) 3(c)(7)
 , SEC, CFTC

가

가 (sponsor)

3.

FRB 가 ,
 ,

5 가 (2010)

(banking entity and any of its affiliates)

(The Federal Reserve Act) 23A

23B

4.

가 “ (Private Fund Investment Advisers Registration Act of 2010)”

1940 “ (the Investment Adviers Act of 1940)”

가

가 1 5 가

SEC

SEC

SEC

Federal

Reserve

1 5

(commodity pool advisers)

가

SEC

가 “ (private fund)” 1940
 (The Investment Company Act of 1940) 3(c)(1), 3(c)(7)
 .
 SEC 가
 , 가
 , , , , ,
 , 가 , SEC
 가 가 .
 GAO
 (self-regulatory organization) 가
 .

XIV.

1. (custody provisions)
 , 가
 (custody)
 가 . SEC가 ,
 -
 - .
 SEC (anti-fraud clause)
 ,
 가 . GAO 2009
 .

5 가 (2010)

2. SEC

가 , SEC
(enforcement resources)

3.

가 , - , SEC
(retail customer)

(standard of care) 가

SEC

, 가

“ (best interest)”

. 6 SEC

XV. -

1. SEC (SEC Study on Standard of Care)

가 SEC , 6

○ SEC, , ,

:

, , , -
 ,
 , (the effectiveness
 of existing legal or regulatory standards of care for brokers, dealers,
 investment advisers, persons associated with brokers or dealers, and
 persons associated with investment advisors for providing personalized
 investment advice and recommendations about securities to retail
 customers imposed by the Commission and a national securities
 association, and other Federal and State legal or regulatory standards);

○

,
 , , : , ,
 , -

(whether there are legal or regulatory gaps, shortcomings, or
 overlaps in legal or regulatory standards in the protection of retail
 customers relating to the standards of care for brokers, dealers,
 investment advisers, persons associated with brokers or dealers, and
 persons associated with investment advisers for providing personalized
 investment advice about securities to retail customers that should be
 addressed by rule or statute).

SEC

, -
 가 .

SEC

5 가 (2010)

- SEC, , , , , : , , - , , .
- , , , , : , , , - .
- , - : , , .
- , , , - .
- , , , - , , , , SEC, , (resource), , (a) , , .

, (b) , (c)

○

, , ,

가

○

-

(a)

, (b)

○

,

○

,

,

,

(a) SEC

, 1940

(b) 1940

○

, 1940

202(a)(11)(c)

:

5 가 (2010)

(a)

, 가
,
,

(b) 1940

가 가 ,
, ,

: 가, ,
가 ; 가

가 ,

(c)

,
, 1940

SEC

○ , , , -
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, , ,
, - ,

○ , , , -
,
,

:

(a)

,

(b)

,

(c)

가 .

○

가

-

(a)

:

(b)

,

,

:

가

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○

SEC가

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2.

SEC

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. SEC

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,

.

가

SEC

,

.

SEC

,

,

.

3.

SEC -
FINRA

. SEC

가 .

XVI.

(CDS: Credit Default Swap)

,
(Standardized OTC Derivatives) (Clearing House)
, 가

1. SEC CFTC

가 (security-based swap) SEC가,
CFTC가

2.

가 CFTC ,
, SEC
. SEC ,
CFTC

3.

CFTC SEC

4.

CFTC SEC

(security-based swap)

5.

CFTC SEC가

6.

가

7.

가

5 가 (2010)

가

, 가 CFTC

8.

가 , , CFTC

(Commodity Exchange Act)

CFTC

가

9.

○ “ (swap entity)”

(swap dealer), (security-based

swap dealer), (major swap participants),

(major security-based swap participant)

(Commodity Exchange Act) 1934 (Securities Exchange

Act of 1934)

○

(hold out),

○

가 . SEC

FCTC

10. (Prohibition on Federal Assistance)

가

“ (Federal Assistance)” Federal Reserve
 (credit facility)
 , (Federal Reserve Act) 13(3)
 (facility) , FDIC
 : (a)
 , (b)
 , (c)
 , (d)

(the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13 (3) of the Federal Reserve Act, FDIC insurance or guarantees for the purpose of (a) making any loan to or purchasing any stock debt or equity of any swaps entity, (b) purchasing the assets of any swaps entity, (c) guaranteeing any loan or debt issuance of any swaps entity, or (d) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity).

FDIC

-500

, FDIC 가

가

11. “ (Push Out)”

가 ,

○

가

○ 12 U.S.C § 24(7th)

○ , ,
 ,
 ,

. FDIC ,
 ,
 , , FDIC , 2/3 .

12. ()

가 .

13.

가 , 가
 ,

:

- (a) ,
- (b) ,
- (c) ,
- (d) .

14.

가

. CFTC SEC
1

가

가

15.

CFTC

○

가

○

○

가

○

○

1

가

,
,

16.

가 , CFTC

CFTC 1,000

가

17.

CFTC SEC 가 , ,

가

18.

가

. CFTC

. SEC

가

XVI.

, 가 , “ 가 ”

○ (creditor) (securitizer)

○ SEC

, 가 , 가 (rating agency) (representations and warranties) 가

XVII. 가 95)

가 (rating agency) 가

95) 가 , Claire A. Hill, Why Did Rating Agencies Do Such A Bad Job Rating Subprime Securities, 71 U. Pitt. L. Rev. 585 (Spring, 2010)

SEC 가
 가 2 가
 1/3
 ,
 , 가 가 가
 ,

XIX.

(Consumer Financial Protection Agency)

5

(Consumer Financial Protection Oversight Board)가

5 가 (2010)

가 가 .

가 .

,

,

가 . , “ ”

SEC CFTC가

“ 가 ”

,

. ,

,

SEC

제 6 장 결 론

가 ,
 ,
 가 ,
 ,
 Federal Reserve
 ,
 SEC, CFTC, CFPA 가
 ,
 ,
 가 , “ 가
 ” ,

관련법률들과 법률안들

(1)

Economic Stimulus Act of 2008, February 13, 2008,
Housing and Economic Recovery Act of July 30, 2008
Emergency Economic Stabilization Act of October 3, 2008 :Troubled
Asset Recovery Program (“TARP”)

American Recovery and Reinvestment Act of 2009.

H.R. 1207

Mortgage Reform and Anti-Predatory Lending Act of 2007

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L.
111-203, H.R. 4173

H.R. 3269

H.R. 3795

H.R. 3126

H.R. 3818

H.R. 3890

H.R. 3817

H.R. 1728

H.R. 2571

H.R. 2609

H.R. 3126

H.R. 3269

H.R. 3817

H.R. 3818

H.R. 3890

H.R. 3996

(2)

H.R. 833, 111th Cong. (2009)
H.R. 1207, 111th Cong. (2009)
H.R. 1348, 111th Cong. (2009)
H.R. 2251, 111th Cong. (2009)
H.R. 3858, 111th Cong. (2009)
H.AMDT.7 to H.R. 384, 111th Cong. (2009)
S.513, 111th Cong. (2009)
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S. 1457, 111th Cong. (2009)
S.1803, 111th Cong. (2009)
S.AMDT.875 to S.CON.RES.13, 111th Cong. (2009)
S.AMDT.913 to S.CON.RES.13, 111th Cong. (2009)
S.AMDT.1021 to S.896, 111th Cong. (2009)
S.AMDT.1367 to H.R.2918, 111th Cong. (2009)

(3)

10/7/2008: Emergency Economic Stabilization Act of 2008, 12 U.S.C. §
5201 (2008)

10/7/2008: FDIC Board Adopts Restoration Plan

10/14/2008: FDIC Announces Plan

10/20/2008: FDIC's Temporary Liquidity Guarantee Program

5/22/2009: FDIC Final Rule Imposing a Special Assessment on Insured
Depository Institutions

9/16/2009: FDIC Foreclosure Prevention Initiative

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