

# An Era of Reform

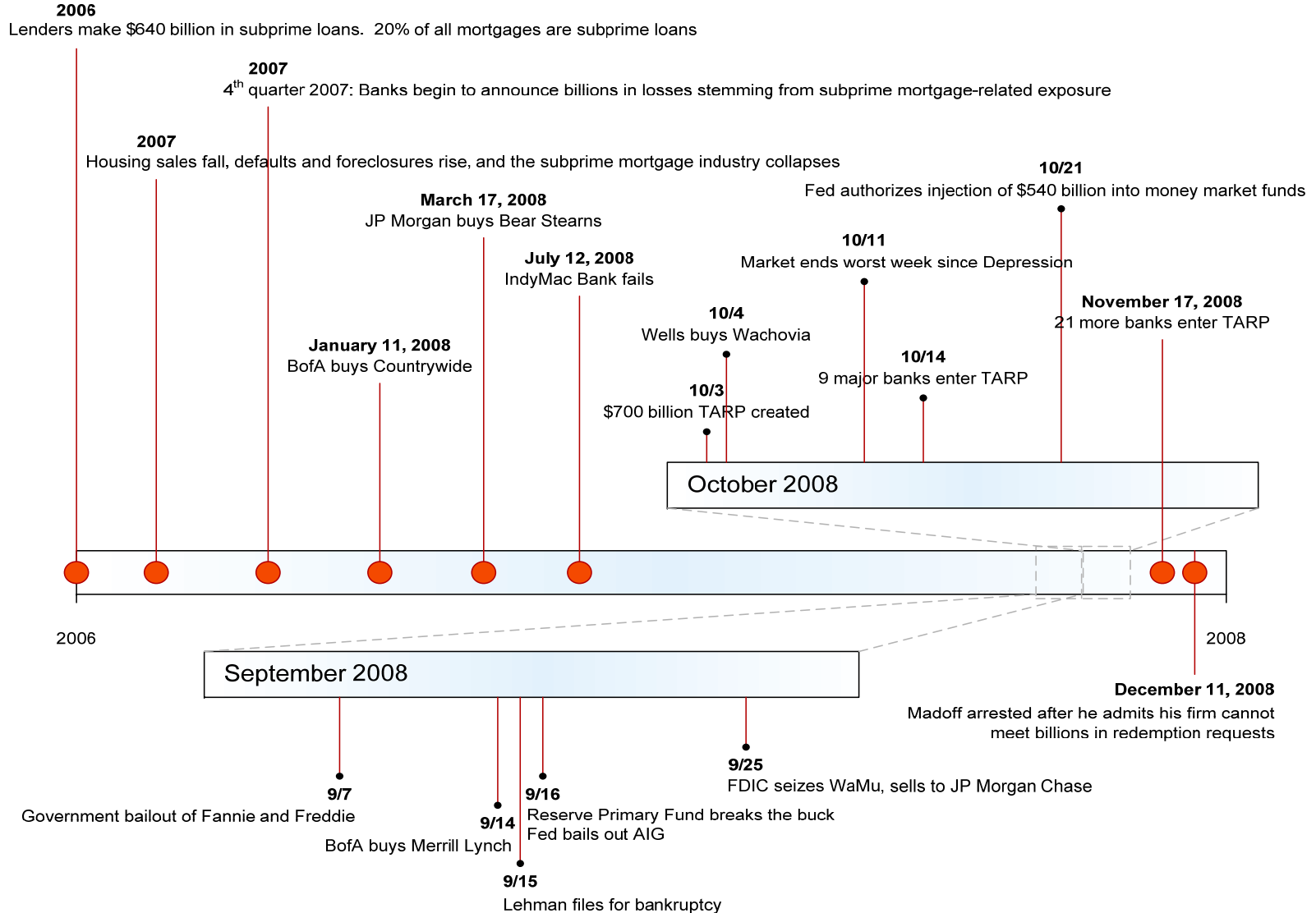


**The Institute of Performance Measurement  
Performance Measurement Forum  
December 3, 2009**

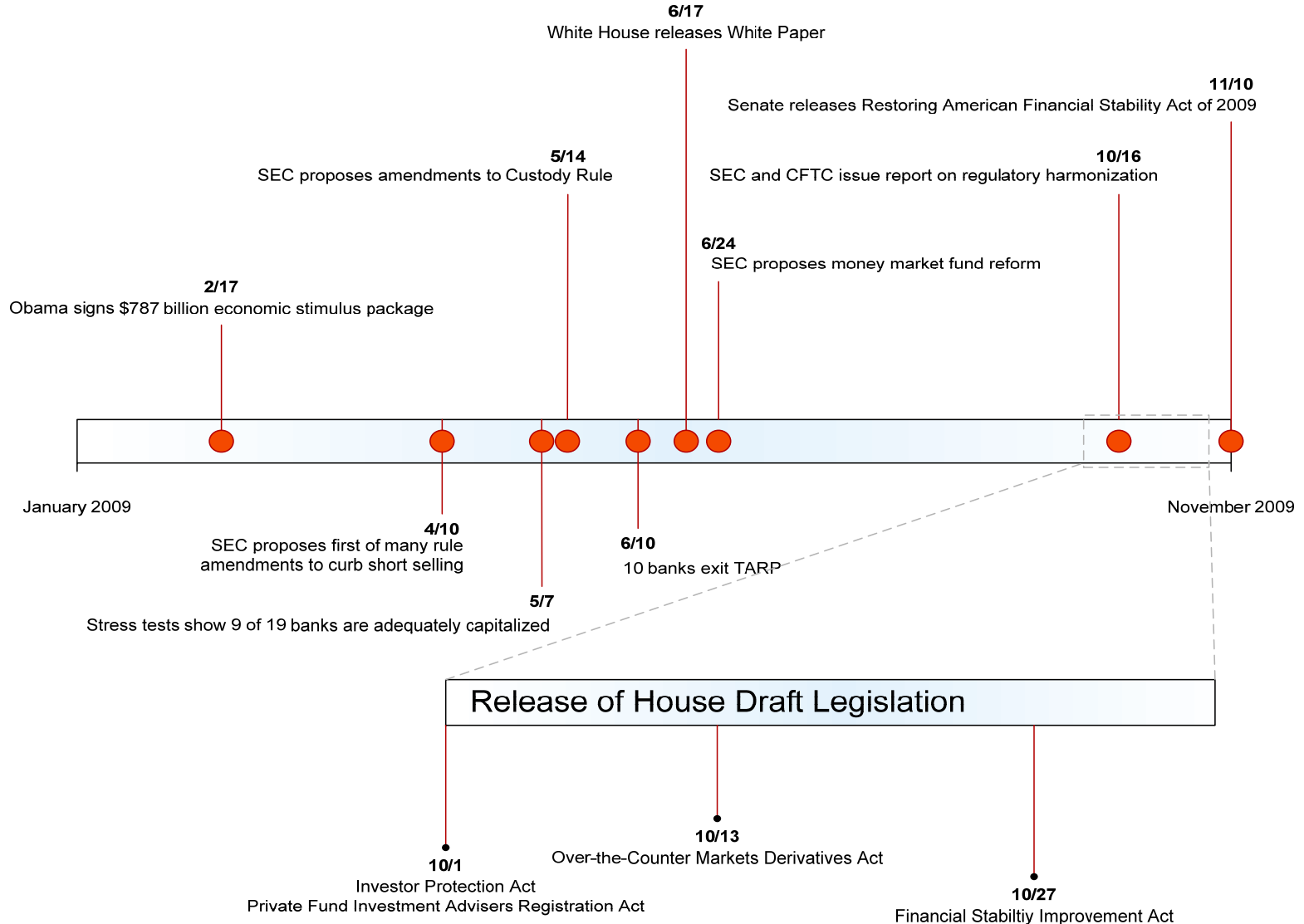
# Objectives

- Timeline of Financial Crisis
- Major Reform Proposals
- SEC Initiatives

# Timeline of Financial Crisis



# Reaction to Crisis



# Major Reform Proposals

# Regulatory Reform Process

- Administration released White Paper
- Treasury submitted proposals to Congress
- House and Senate drafted their own versions
- SEC amending/promulgating several rules

# Regulatory Reform Topics

- Systemic Risk
- Registration of Private Fund Managers
- OTC Derivatives
- Investor Protection
- Money Market Funds
- Harmonization of Futures and Securities Regulation

# Systemic Risk - White Paper

- Goal: identify risks from “firms whose failure could pose a threat to financial stability due to their combination of size, leverage, and interconnectedness.”
- Key provisions:
  - Federal Reserve power to regulate Tier 1 Financial Holding Companies (FHCs)
  - Subject FHCs to strict capital, liquidity, disclosure and risk standards
  - Consider FHCs impact on each other, the critical markets and on the broader financial system

# Systemic Risk - House

## Financial Stability Improvement Act

- Draft legislation released 10/27/09
- Bill would:
  - Create Financial Services Oversight Council to monitor systemic risks
  - Subject firms to heightened federal regulatory supervision and scrutiny

# Systemic Risk- Senate

## Financial Stability Act

- Discussion draft released on 11/10/09
- Bill would:
  - Create Agency for Financial Stability
  - Enact rules governing capital, leverage, liquidity and risk standards
  - Impose burdens on firms that pose significant risks to financial system
  - Allow regulators to break up large, complex companies

# Private Fund Managers

## White Paper:

- Concluded regulators lack data to assess systemic impact of private funds on the financial industry
- Recommended Congress require the registration of managers of certain private funds
- Proposed all funds be subject to recordkeeping and disclosure requirements

# Private Fund Managers - House

## Private Fund Investment Advisers Registration Act

- Discussion draft passed by committee on 10/27/09
- Requires all managers of private funds to register
- Imposes certain recordkeeping and disclosure requirements

# Private Fund Managers - Senate

## Private Fund Investment Advisers Registration Act

- Discussion draft released 11/10/09
- Requires advisers of private funds over \$100 million to register with SEC
- Requires an independent custodian
- Raises the asset threshold of federal regulation for all advisers from \$25 million to \$100 million

# OTC Derivatives - Treasury

Key provisions of proposal:

- Broaden federal regulatory authority to police the derivative markets and dealers
- Establish clearing, margin and capital requirements to reduce risk
- Impose limits to prevent market manipulation and excessive speculation
- Enhance reporting and recordkeeping requirements

# OTC Derivatives - House

- Over-the-Counter Markets Derivatives Act
  - Discussion draft passed by committee on 10/15/09
  - Requires all transactions between major swap participants to be cleared and traded on an exchange or electronic platform
  - Parallel regulatory framework for security-based OTC derivatives (SEC) and other OTC derivatives (CFTC)

# OTC Derivatives - Senate

- OTC Derivatives Markets Act
  - Discussion draft released 11/10/09
  - Establishes clearing, capital and reporting requirements
- Comprehensive Derivatives Reform Act
  - Released on 01/06/09
  - Substantially similar to House version, but expands the definition of “derivative” to include all derivatives (not just OTC)

# Investor Protection - White Paper

## Goals:

- Expand SEC authority
- Establish a fiduciary duty for broker-dealers who offer investment advice
- Harmonize investment adviser and broker-dealer regulations
- Protect whistleblowers
- Codify SEC's Investor Advisory Committee

# Investor Protection - House

## Investor Protection Act

- Discussion draft passed by committee on 11/4/09
- Key provisions:
  - Imposes fiduciary duty on investment advisers and broker-dealers
  - Harmonizes enforcement and remedy regulations between broker-dealers and investment advisers

# Investor Protection - House

## Investor Protection Act

- Key provisions (con't):
  - Authorizes SEC to require delivery of disclosures before purchase of fund shares
  - Authorizes SEC to restrict mandatory pre-dispute arbitration
  - Provides whistleblower incentives and protections

# Investor Protection - House

Fiduciary duty up close

- Currently not defined by law
- Amendments to both the Securities Exchange Act of 1934 and Investment Advisers Act of 1940 will:
  - Require both broker-dealers and investment advisers to adhere to “Standards of Conduct”
  - Give SEC authority to promulgate rules requiring each to “act in the best interest of the customer without regard to the financial or other interest of the (person) providing the advice”

# Investor Protection - Senate

## Restoring American Financial Stability Act

- Codifies Investor Advisory Committee
- Harmonizes regulation of broker-dealers and investment advisers
- Creates Office of the Investor Advocate
- Requires investor disclosures before purchase of investment company shares

# Investor Protection - Senate

## Restoring American Financial Stability Act (con't)

- Restricts mandatory pre-dispute arbitration
- Authorizes whistleblower protections
- Impose penalties for aiding and abetting violations of the federal securities laws

# Money Market Mutual Funds

## White Paper

- Encourages the SEC to strengthen the regulatory framework around money market mutual funds
- Considerations:
  - Liquidity requirements
  - Shorter maturities
  - Tighten credit
  - Allow suspension of redemptions

# Money Market Mutual Funds

## SEC

- Proposed reform on 6/24/09, comment period ended 9/8/09
- Proposed requirements to:
  - Maintain a portion of portfolio in highly liquid investments
  - Reduce exposure to long-term debt
  - Limit securities to only the highest quality
  - Report holdings to SEC monthly
  - Allow suspension of redemptions if a fund breaks the buck

# Harmonization of CFTC and SEC

## White Paper

- Acknowledged the overlap between futures and securities regulators
- Required agencies to issue a report to Congress identifying conflicts/gaps in statutes and regulation
  - Identify why important, or recommend how to change
  - Build a common regulatory framework, either “rules-based” or “principals-based”

# Harmonization of CFTC and SEC

- SEC and CFTC met on 9/2/09 and 9/3/09
- Released report on 10/16/09
- Includes 20 recommendations to Congress, including:
  - Draft legislation to clarify jurisdictional uncertainties with regard to new products
  - Align record retention requirements
  - Provide consistency with regard to risk disclosure documents

# Harmonization of CFTC and SEC

- Recommendations (con't):
  - Enact legislation granting whistleblower protections
  - Authorize the SEC and CFTC to form, fund and operate a Joint Advisory Committee

# SEC Initiatives

# SEC Initiatives

- Proposed Rules
  - Money market reform
  - Custody Rule amendments
  - Pay-to-play measures
  - Trading rules: dark pools and flash orders
- Final Rules
  - Regulation S-AM
  - Disclosure of certain money fund information

# SEC Initiatives

## Internal changes

- Restructuring the Office of Enforcement
  - New Director
  - Add COO
  - Eliminate mid-level managers
- Beefing up OCIE
  - Recruit staff with specialized skills
  - Train and certify staff to increase expertise
  - Ensure clear and consistent exam practices

# SEC Initiatives

## Custody Rule Amendments

- Proposed 5/14/09, comment period ended 7/28/09
- Would require:
  - Advisers with custody to undergo annual surprise exam by an independent public accountant
  - Accountant attestation of controls if assets are not held by an independent custodian
  - Reports designed to alert SEC staff and investors to potential problems at an adviser

# SEC Initiatives

## Privacy

- Regulation S-P
- Regulation S-AM
- Actions by Other Entities
  - Massachusetts Data Privacy Standards
  - FTC Red Flags Rule

# SEC Initiatives

## Other Focus Areas

- Valuation
- Third party due diligence
- Disclosures
- Short sales
- Credit rating agency oversight

# Questions

# Speaker Profile

## **Jeffrey M. Squires, Principal**

Jeff is a founding principal of Vista360 and shares responsibility for the firm's strategic direction and client servicing. Jeff has 16 years of investment industry experience – currently assisting investment advisers and mutual fund companies with compliance and strategic matters. Previously, Jeff led the compliance, operations and personnel functions of FIRMCO, a \$30 billion investment adviser with a \$10 billion mutual fund complex, as Senior Vice President of Compliance and Operations. Jeff was also a member of the Senior Management Committee and the Board of Directors for U.S. Bancorp Asset Management, a \$120 billion investment management firm. Jeff held audit positions with Robert W. Baird & Company, Inc. and Price Waterhouse, LLP. He earned a bachelor's degree in accounting from Illinois Wesleyan University.

Jeff is a member of the National Society of Compliance Professionals and the American Institute of Certified Public Accountants.

# Vista360 Adviser and Fund Services

## **Compliance Services**

Compliance Program Development

Gap Analysis

Compliance Program Annual Review

Compliance Program Testing

Continuous CCO Support

SEC Examination Assistance

Sub-Adviser Due Diligence

Expert Witness

## **Strategic Services**

Fund Service Provider Search/Assessment

Business Start-Up

M&A Due Diligence/Integration

Fund Feasibility Analysis

Mutual Fund Board Consulting

Part-Time CFO

Work Flow Mapping and Operation Efficiency  
Analysis



# VISTA360

COMPLIANCE AND STRATEGIC SOLUTIONS FOR ADVISERS AND FUNDS

Vista360, LLC  
309 North Water Street  
Suite 210  
Milwaukee, WI 53202  
(414)431-4360  
[www.vista360llc.com](http://www.vista360llc.com)