

Testimony of
Edward L. Yingling

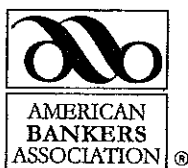
On Behalf of the

AMERICAN BANKERS ASSOCIATION

Before the

Committee on Financial Services

United States House of Representatives



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March 17, 2009

Chairman Frank, Ranking Member Bachus, and members of the Committee, my name is Edward L. Yingling. I am President and CEO of the American Bankers Association (ABA). ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members -- the majority of which are banks with less than \$125 million in assets -- represent over 95 percent of the industry's \$13.9 trillion in assets and employ over 2.2 million men and women.

The ABA congratulates the Committee on the approach it is taking to respond to the financial crisis. There is a great need to act, but to do so in a thoughtful and thorough manner, and with the right priorities. That is what this Committee is doing. On March 10, Federal Reserve Board Chairman Bernanke gave an important speech laying out his thoughts on regulatory reform. He laid out an outline of what needs to be addressed in the near term and why, along with general recommendations. We are in broad agreement with the points Chairman Bernanke made in that speech.

Chairman Bernanke focused on three main areas: first, the need for a systemic regulator; second, the need for a pre-existing method for an orderly resolution of a systemically important non-bank financial firm; and third, the need to address gaps in our regulatory system. Statements by the leadership of this Committee have also focused on a legislative plan to address these three areas. We agree that these three issues -- a systemic regulator, a new resolution mechanism, and addressing gaps -- should be the priorities. This terrible crisis should not be allowed to happen again, and addressing these three areas is critical to making sure it does not.

The ABA strongly supports the creation of a systemic regulator. In retrospect, it is inexplicable that we have not had a regulator that has the explicit mandate and the needed authority to anticipate, identify, and correct, where appropriate, systemic problems.

To use a simple analogy, think of the systemic regulator as sitting on top of Mount Olympus looking out over all the land. From that highest point the regulator is charged with surveying the land, looking for fires. Instead, we have had a number of regulators, each of which sits on top of a smaller mountain and only sees its part of the land. Even worse, no one is effectively looking over some areas.

This needs to be addressed. While there are various proposals as to who should be the systemic regulator, most of the focus has been on giving the authority to the Federal Reserve. It does make sense to look for the answer within the parameters of the current regulatory system. It is doubtful that we have the luxury, in the midst of this crisis, to build a new system from scratch, however appealing that might be in theory. There are good arguments for looking to the Federal Reserve, as outlined in the Bernanke speech. This could be done by giving the authority to the Federal Reserve or by creating an oversight committee chaired by the Federal Reserve. ABA's concern in this area relates to what it may mean for the independence of the Federal Reserve in the future. We strongly believe that Federal Reserve independence in setting monetary policy is of utmost importance.

ABA believes that systemic regulation cannot be effective if accounting policy is not part of the equation. That is why we support the Perlmutter/Lucas bill, H.R. 1349. To continue my analogy, the systemic regulator on Mount Olympus cannot function if part of the land is held strictly off limits and under the rule of some other body that can act in a way that contradicts the systemic regulator's policies. That is, in fact, exactly what happened with mark-to-market accounting.

I want to take this opportunity to thank this Committee for the bipartisan efforts in the hearing last week on mark-to-market. Your action can significantly aid in the economic recovery. We must hope that the Financial Accounting Standards Board (FASB) and the Securities and Exchange Commission (SEC) will take the comprehensive action you clearly advocated.

As Chairman Bernanke pointed out, as part of a systemic approach, the Federal Reserve should be given comprehensive regulatory authority over the payments system, broadly defined.

ABA agrees. We should not run the risk of a systemic implosion instigated by gaps in payment system regulations.

ABA also strongly supports creating a mechanism for the orderly resolution of systemically important non-bank firms. Our regulatory bodies should never again be in the position of making up a solution on the fly to a Bear Stearns or AIG, of not being able to solve a Lehman Brothers. The inability to deal with those situations in a predetermined way greatly exacerbated the crisis. Indeed, many experts believe the Lehman Brothers failure was the event that greatly accelerated the crisis. We believe that existing models for resolving troubled or failed institutions provide an appropriate starting point – particularly the FDIC model, but also the more recent handling of Fannie Mae and Freddie Mac.

A critical issue in this regard is too-big-to-fail. Whatever is done on the systemic regulator and on a resolution system will set the parameters of too-big-to-fail. In an ideal world, no institution would be too big to fail, and that is ABA's goal; but we all know how difficult that is to accomplish, particularly with the events of the last few months. This too-big-to-fail concept has profound moral hazard implications and competitive effects that are very important to address. We note Chairman Bernanke's statement: "Improved resolution procedures...would help reduce the too-big-to-fail problem by narrowing the range of circumstances that might be expected to prompt government action..."¹

The third area for focus is where there are gaps in regulation. These gaps have proven to be major factors in the crisis, particularly the role of largely unregulated mortgage lenders. Credit default swaps and hedge funds also should be addressed in legislation to close gaps.

There seems to be a broad consensus to address these three areas. The specifics will be complex and, in some cases, contentious. But at this very important time, with Americans losing their jobs, their homes, and their retirement savings, all of us should work together to develop a stronger regulatory structure. The ABA pledges to be an active and constructive participant in this critical effort.

In fact, even before the turmoil of last fall, ABA's board of directors recognized this need to address the difficult questions about regulatory reform and the desirability of a systemic risk regulator. As a consequence, Brad Rock, ABA's chairman at that time, and chairman, president, and

¹ Ben Bernanke, speech to the Council on Foreign Relations, Washington, D.C. , March 10, 2009.

CEO of Bank of Smithtown, Smithtown, New York, appointed a task force to develop principles and recommendations for change. I will highlight many of the principles developed by this group – and adopted by ABA’s board of directors – throughout my statement today.

In the rest of my statement today, I would like to expand on the priorities for change:

- *Establish a regulatory structure that provides a mechanism to oversee and address systemic risks.* Included under this authority is the ability to mitigate risk-taking from systemically important institutions, authority over how accounting rules are developed and applied, and protections to maintain the integrity of the payments system.
- *Establish a method to handle the failure of non-bank institutions that threaten systemic risk.*
- *Close the gaps in regulation.* This might include the regulation of hedge funds, credit default swaps, and particularly non-bank mortgage brokers.

I would like to touch briefly on each of these priorities to highlight issues that underlie them.

I. Establish a Regulatory Structure That Provides a Mechanism to Oversee and Address Systemic Risks

As I have said in other hearings before this Committee, ABA supports the formation of a systemic risk regulator. There are many aspects to consider related to the authority of this regulator, including the ability to mitigate risk-taking from systemically important institutions, authority over how accounting rules are developed and applied, and the protections needed to maintain the integrity of the payments system. I will discuss and highlight ABA’s guiding principles on each of these.

A. There is a need for a regulator with explicit systemic risk responsibility.

A systemic risk regulator would strengthen the financial infrastructure. As Chairman Bernanke noted: “[I]t would help make the financial system as a whole better able to withstand future shocks, but also to mitigate moral hazard and the problems of too big to fail by reducing the range of circumstances in which systemic stability concerns might prompt government intervention.” ABA believes the following principles should apply to any systemic risk regulator:

- **Systemic risk oversight should utilize existing regulatory structures to the maximum extent possible and involve a limited number of large market participants, both bank and non-bank.**
- **The primary responsibility of the systemic risk regulator should be to protect the economy from major shocks. The systemic risk regulator should pursue this objective by gathering information, monitoring exposures throughout the system and taking action in coordination with other domestic and international supervisors to reduce the risk of shocks to the economy.**
- **The systemic risk regulator should work with supervisors to avoid pro-cyclical reactions and directives in the supervisory process.**
- **There should *not* be a new consumer regulator for financial institutions. Safety and soundness implications, financial risk, consumer protection, and other relevant issues need to be considered together by the regulator of each institution.**

It is clear we need a systemic regulator that looks across the economy and identifies problems. To fulfill that role, the systemic regulator would need broad access to information. It may well make sense to have that same regulator have necessary powers, alone or in conjunction with the Treasury, and a set of tools to address major systemic problems. (Although based on the precedents set over the past few months, it is clear that those tools are already very broad.)

At this point, there seems to be a strong feeling that the Federal Reserve should take on this role in a more robust, explicit fashion. That may well make sense, as the Federal Reserve has been generally thought to be looking over the economy. We are concerned, however, that any expansion of the role of the Federal Reserve could interfere with the independence required when setting monetary policy. One of the great strengths of our economic infrastructure has been our independent Federal Reserve. We urge Congress to carefully consider the long-term impact of

changes in the role of the Federal Reserve and the potential for undermining its effectiveness on monetary policy.

Thus, the ABA offers these guiding principles:

- **An independent central bank is essential.**
- **The Federal Reserve's primary focus should be the conduct of monetary policy.**

B. To be effective, the systemic risk regulator must have some authority over the development and implementation of accounting rules.

Accounting standards are not only measurements designed to ensure accurate financial reporting, but they also have an increasingly profound impact on the financial system – so profound that they must now be part of any systemic risk calculation. No systemic risk regulator can do its job if it cannot have some input into accounting standards – standards that have the potential to undermine any action taken by a systemic regulator. Thus, a new system for the establishment of accounting rules – one that considers the real-world effects of accounting rules – needs to be created in recognition of the critical importance of accounting rules to systemic risk and economic activity. Thus, ABA sets forth the following principles to guide the development of a new system:

- **The setting of accounting standards needs to be strengthened and expanded to include oversight from the regulators responsible for systemic risk.**
- **Accounting should be a reflection of economic reality, not a driver.**
- **Accounting rules, such as loan-loss reserves and fair value accounting, should minimize pro-cyclical effects that reinforce booms and busts.**
- **Clearer guidance is urgently needed on the use of judgment and alternative methods, such as estimating discounted cash flows when determining fair value in cases where asset markets are not functioning and for recording impairment based on expectations of loss.**

Again, I want to commend the bipartisan efforts of this Committee in the hearing last week on mark-to-market. Your action can significantly aid in the economic recovery. The ABA particularly thanks subcommittee chairman Rep. Paul E. Kanjorski (PA) and ranking Republican subcommittee member Rep. Scott Garrett (NJ) for their leadership. For several years, long before the current downturn, ABA argued that mark-to-market was pro-cyclical and should not be the model used for financial institutions as required by the Financial Accounting Standards Board (FASB). Even now, the FASB's stated goal is to continue to expand the use of mark to market accounting for all financial instruments. For months, we have specifically asked FASB to address the problem of marking assets to markets that were dysfunctional.

Our voice has been joined by more and more people who have been calling for FASB and the Securities and Exchange Commission to address this issue, including Federal Reserve Chairman Bernanke and, as noted below, former Federal Reserve Chairman Paul Volcker. For example, in his recent speech, Chairman Bernanke stated: “[R]eview of accounting standards governing valuation and loss provisioning would be useful, and might result in modifications to the accounting rules that reduce their procyclical effects without compromising the goals of disclosure and transparency.”² Action is needed, and quickly, so that first quarter reports can be better aligned with economic realities. We hope that FASB and SEC will take the significant action that is needed; this is not the time to merely tinker with the current rules.

In creating a new oversight structure for accounting, independence from outside influence should be an important component, as should the critical role in the capital markets of ensuring that accounting standards result in financial reporting that is credible and transparent. But accounting policy can no longer be divorced from its impact; the results on the economy and on the financial system must be considered. That is why we support the Perlmutter/Lucas bill, H.R. 1349, which would create a board to stand in the place currently held by the SEC.

This board would also examine issues such as whether the FASB rules result in international competitiveness concerns. Issues such as recognition of "other than temporary impairment" (OTTI), which in this environment is critically important as U.S. accounting rules generally result in higher losses than the international accounting rules, placing U.S. companies at a disadvantage. Therefore, we are very much in agreement with the recommendations of Group of 30, headed by

² Ibid

Paul Volcker and Jacob Frenkel on fair value accounting in its *Financial Reform: A Framework for Financial Stability*. That report stated: “The tension between the business purpose served by regulated financial institutions that intermediate credit and liquidity risk and the interests of investors and creditors should be resolved by development of principles-based standards that better reflect the business model of these institutions....” The Group of 30 suggests that accounting standards be reviewed:

- (1) to develop “more realistic guidelines for dealing with less-liquid instruments and distressed markets”;
- (2) by “prudential regulators to ensure application in a fashion consistent with safe and sound operation of [financial] institutions”; and
- (3) to be more flexible “in regard to the prudential need for regulated institutions to maintain adequate credit-loss reserves”.

The oversight board created by H.R. 1349 would be in the ideal position to accomplish these recommendations.

C. Uniform standards are needed to maintain the reliability of the payments system.

An important part of the conduct of monetary policy is the reliability of the payments system, including the efficiency, security, and integrity of the payments system. Therefore, ABA offers these three principles:

- **The Federal Reserve should have the duty to set the standards for the reliability of the payments system, and have a leading role in the oversight of the efficiency, integrity, and security thereof.**
- **Reforms of the payments system must recognize that merchants and merchant payment processors have been the source of the largest number of abuses and lost customer information. All parts of the payments system must be responsible for its reliability.**
- **Assuring the integrity of the payments system against financial crime and abuse should be an integral part of the supervisory structure that oversees system reliability.**

Banks have long been the primary players in the payments system ensuring safe, secure, and efficient funds transfers for consumers and businesses. Banks are subject to a well-defined regulatory structure and are examined to ensure compliance with the standards. Unfortunately, the current regulatory scheme does not apply comparable standards for non-banks that participate in the payments system. This is a significant gap that needs to be filled.

In recent years, non-banks have begun offering “non-traditional” payment services in greater numbers. Internet technological advances combined with the increase in consumer access to the Internet have contributed to growth in these alternative payment options. These activities introduce new risks to the system. Another key difference between banks and non-banks in the payments system is the level of protection granted to consumers in case of a failure to perform. It is important to know the level of capital held by a payment provider where funds are held, and what the effect of a failure would be on customers using the service. This information is not always as apparent as it might be.

The non-banks are not subject to the same standards of performance and financial soundness as banks, nor are they subject to regular examinations to ensure the reliability of their payments operations. In other words, this is yet another gap in our regulatory structure, and one that is growing. This imbalance in standards becomes a competitive problem when customers do not recognize the difference between banks and non-banks when seeking payment services.

In addition, the current standard designed to provide security to the retail payment system, the Payment Card Industry Data Security Standard, compels merchants and merchant payment processors to implement important information security controls, yet tends to be checklist and point-in-time driven, as opposed to the risk-based approach to information security required of banks pursuant to the Gramm-Leach-Bliley Act.³ Through the Bank Service Company Act, federal bank regulatory agencies can examine larger core payment processors and other technology service providers for GLB compliance.⁴ We would encourage the Federal Reserve to use this power more aggressively going forward, and examine an increased number of payment processors and other technology providers.

In order to ensure that consumers are protected from financial, reputational, and systemic risk, all banks and non-bank entities providing significant payment services should be subject to

³ 16 CFR 314

⁴ 12 USC 1861-1867(c)

similar standards. This is particularly important for the operation of the payments system, where uninterrupted flow of funds is expected and relied upon by customers. Thus, ABA believes that the Federal Reserve should develop standards for reliability of the payments system that would apply to all payments services providers, comparable to the standards that today apply to payments services provided by banks. The Federal Reserve should review its own authority to supervise non-bank service providers in the payments system and should request from Congress those legislative changes that may be needed to clarify the authority of the Federal Reserve to apply comparable standards for all payments system providers. We support the statement made by Chairman Bernanke: “Given how important robust payment and settlement systems are to financial stability, a good case can be made for granting the Federal Reserve explicit oversight authority for systemically important payment and settlement systems.”⁵

II. *Establish a Method to Handle the Failure of Non-bank Institutions That Threaten Systemic Risk*

We fully agree with Chairman Bernanke when he said: “[T]he United States also needs improved tools to allow the orderly resolution of a systemically important nonbank financial firm, including a mechanism to cover the costs of the resolution.”⁶ Recent government actions have clearly demonstrated a policy to treat certain financial institutions as if they were too big or too complex to fail. Such a policy can have serious competitive consequences for the banking industry as a whole. Without accepting the inevitability of such a policy, clear actions must be taken to address and ameliorate negative consequences of such a policy, including efforts to strengthen the competitive position of banks of all sizes.

The current ad hoc approach, used with Bear Stearns and Lehman Brothers, has led to significant unintended consequences and needs to be replaced with a concrete, well-understood method of resolution. There is such a system for banks, and that system can serve as a model. However, the system for banks is based in an elaborate system of bank regulation and the bank safety net. The system for non-banks should not extend the safety net, but rather should provide a mechanism for failure designed to limit contagion of problems in the financial system.

⁵ Ibid

⁶ Ibid

Thus, the ABA offers several principles to guide this discussion:

- **Financial regulators should develop a program to watch for, monitor, and respond effectively to market developments relating to perceptions of institutions being too big or too complex to fail—particularly in times of financial stress.**
- **Specific authorities and programs must be developed that allow for the orderly transition of the operations of any systemically significant financial institution.**

The creation of a systemic regulator and of a mechanism for addressing the resolution of entities, of course, raises the important and difficult question of what institutions should be considered systemically important, or in other terms, too-big-to-fail. The theory of too-big-to-fail (TBTF) has in this crisis been expanded to include institutions that are too intertwined with other important institutions to be allowed to fail. We agree with Chairman Bernanke when he said that the “clear guidelines must define which firms could be subject to the alternative [resolution] regime and the process for invoking that regime.”⁷

I was very involved, from the private-sector side, during the debate and adoption several years ago of what is now called the systemic risk exception. During that debate, the ABA sought the tightest possible language for the systemic risk exception. Basically, we wanted to limit the TBTF concept as much as possible.

We did this for two reasons, reasons that still apply today: first, TBTF presents the classic moral hazard problem – it can encourage excess risk-taking by an entity because the government will not allow it to fail; second, TBTF presents profound competitive fairness issues – TBTF entities will have an advantage – particularly in funding, through deposits and otherwise – over institutions that are *not* too big to fail.

Our country has now stretched the systemic risk exception beyond what could have been anticipated when it was created. In fact, we have gone well beyond its application to banks, as we have made non-banks TBTF. Ideally, we would go back and strictly limit its application, but that may not be possible. Therefore, we need to adopt a series of policies that will address the moral hazard and unfair competition issues while protecting our financial system and the taxpayers. This may be the most difficult question Congress will face as it reforms our financial system.

⁷ Ibid

For one thing, this cannot be done in isolation from what is being done in other countries. Systemic risk clearly does not stop at the border. In addition, the ability to compete internationally will be a continuing factor in designing and evolving our regulatory system. Our largest financial institutions compete around the world, and many foreign institutions have a large presence in the United States.

This is also a huge issue for the thousands of U.S. banks that will not be considered too big to fail. As ABA has noted on many occasions, these are institutions that never made a subprime loan, are well capitalized, and are lending. Yet they have been deeply and negatively affected by this crisis – a crisis caused primarily by less regulated or unregulated entities like mortgage brokers and by Wall Street firms. These banks have seen their name “banks” sullied as it is used very broadly; they have seen their local economies hurt, and sometimes devastated, which led to loan losses; and they have seen their deposit insurance premiums drastically increased to pay for the excessive risk-taking of institutions that have failed. At the same time, there is a clear unfairness in that many depositors believe their funds, above the insurance limit, are safer in a TBTF institution than other banks. And, in fact, this notion is reinforced when large uninsured depositors lose money – take a “haircut” – when the FDIC closes some not-too-big-to fail banks.

There are many difficult questions. How will a determination be made that an institution is systemically important? When will it be made? What extra regulations will apply? Will additional capital and risk management requirements be imposed? How will management issues be addressed? Some have argued that the largest, most complex institutions are too big to manage. Which activities will be put off-limits and which will require special treatment, such as extra capital to protect against losses? How do we avoid another AIG situation, where, it is widely agreed, what amounted to a risky hedge fund was attached to a strong insurance company and brought the whole entity down? And, importantly, how do we make sure we maintain the highly diversified financial system that is unique to the United States?

III. Close the Gaps in Regulation

A major cause of our current problems is the regulatory gaps that allowed some entities to completely escape effective regulation. It is now apparent to everyone that a critical gap occurred with respect to the lack of regulation of independent mortgage brokers. Questions are also being raised with respect to credit derivatives, hedge funds, and others.

Given the causes of the current problem, there has been a logical move to begin applying more bank-like regulation to the less-regulated and un-regulated parts of the financial system. For example, when certain securities firms were granted access to the discount window, they were quickly subjected to bank-like leverage and capital requirements. Moreover, as regulatory change points more toward the banking model, so too has the marketplace: The biggest example, of course, is the movement of Goldman Sachs and Morgan Stanley to Federal Reserve holding company regulation.

As these gaps are being addressed, Congress should be careful not to impose new, unnecessary regulations on the traditional banking sector, which was not the source of the crisis and continues to provide credit. Thousands of banks of all sizes, in communities across the country, are scared to death that their already-crushing regulatory burdens will be increased dramatically by regulations aimed primarily at their less-regulated or unregulated competitors. Even worse, the new regulations will be lightly applied to non-banks while they will be rigorously applied – down to the last comma – to banks.

This committee has worked hard in recent years to temper the impact of regulation on banks. You have passed bills to remove unnecessary regulation, and you have made existing regulation more efficient and less costly. As you contemplate major changes in regulation – and change is needed – ABA would urge you to ask this simple question: how will this change impact those thousands of banks that make the loans needed to get our economy moving again?

There are so many issues related to closing the regulatory gaps that it would be impossible to cover each in detail in this statement. Therefore, let me summarize the important issues by providing the key principles that should guide any discussion about filling the regulatory gaps:

- **The current system of bank regulators has many advantages. These advantages should be preserved as the system is enhanced to address systemic risk and non-bank resolutions.**

- Regulatory restructuring should incorporate systemic checks and balances among equals and a federalist system that respects the jurisdictions of state and federal powers. These are essential elements of American law and governance.
 - We support the roles of the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Federal Reserve, the Office of Thrift Supervision (OTS) and the state banking commissioners with regard to their diverse responsibilities and charters within the U.S. banking system.
 - Bank regulators should focus on bank supervision. They should not be in the business of running banks or managing bank assets and liabilities.
- **The dual banking system is essential to promote an efficient and competitive banking sector.**
- The role of the dual banking system as incubator for advancements in products and services, such as NOW and checking accounts, is vital to the continued evolution of the U.S. banking sector.
 - Close coordination between federal bank regulators and state banking commissioners within Federal Financial Institutions Examination Council (FFIEC) as well as during joint bank examinations is an essential and dynamic element of the dual banking system.
- **Charter choice and choice of ownership structure are essential to a dynamic, innovative banking sector that responds to changing consumer needs, customer preferences, and economic conditions.**
- Choice of charter and form of ownership should be fully protected.
 - ABA strongly opposes charter consolidation. Unlike the flexibility and business options available under charter choice, a consolidated universal charter would be unlikely to serve evolving customer needs or encourage market innovation.
 - Diversity of ownership, including S corporations, limited liability corporations, mutual ownership, and other forms of privately held and publicly traded banks, should be strengthened.
- **Diversity of business models is a distinctive feature of American banking that should be fostered.**
- Full and fair competition within a robust banking sector requires a diversity of participants of all sizes and business models with comparable banking powers and appropriate oversight.

- Community banks, development banks, and niche-focused financial institutions are vital components of the financial services sector.
- A housing-focused banking system based on time-tested underwriting practices and disciplined borrower qualification is essential to sustained homeownership and community development.

- **An optional federal insurance charter should be created.**

- **Similar activities should be subject to similar regulation and capital requirements. These regulations and requirements should minimize pro-cyclical effects.**
 - Consumer confidence in the financial sector as a whole suffers when non-bank actors offer bank-like services while operating under substandard guidelines for safety and soundness.
 - Credit unions that act like banks should be required to convert to a bank charter.
 - Capital requirements should be universally and consistently applied to all institutions offering bank-like products and services.
 - Credit default swaps and other products that pose potential systemic risk should be subject to supervision and oversight that increase transparency, without unduly limiting innovation and the operation of markets.
 - Where possible, regulations should avoid adding burdens during times of stress. Thus, for instance, deposit insurance premium rates need to reflect a balance between the need to strengthen the fund and the need of banks to have funds available to meet the credit needs of their communities in the midst of an economic downturn.

- **The FDIC should remain focused on its primary mission of assuring the safety of insured deposits.**
 - The FDIC plays a crucial role in maintaining the stability and public confidence in the nation's financial system by insuring deposits, and in conducting activities directly related to that mission, including examination and supervision of financial institutions as well as managing receiverships and assets of failed banking institutions so as to minimize the costs to FDIC resources.

- **To coordinate anti-money laundering oversight and compliance, a Bank Secrecy Act "gatekeeper," independent from law enforcement and with a nexus to the payments system, should be incorporated into the financial regulatory structure.**

Conclusion

Thank you for the opportunity to present the views of ABA on the regulation of systemic risk and restructuring of the financial services marketplace. The financial turmoil over the last year, and particularly the protection provided to institutions deemed to be “systemically important,” require a system that will more efficiently and effectively prevent such problems from arising in the first place and a procedure to deal with any problems that do arise. Clearly, it is time to make changes in the financial regulatory structure. We hope that the principles laid out in this statement will help guide the discussion. We look forward to working with Congress to address needed changes in a timely fashion, while maintaining the critical role of our nation’s banks.