

# THE FINANCIAL SERVICES ROUNDTABLE

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Statement of the  
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The Financial Services Roundtable  
Before the  
Institute of International Bankers  
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Distinguished guests, I am Steve Bartlett, the President and CEO of the Financial Services Roundtable (the Roundtable), and I would like to thank Larry Uhlick for the opportunity to share my views with you today. The Roundtable is a national trade association composed of 100 of the nation's largest banking, securities and insurance firms. Our members provide a full range of financial products and services to consumers and businesses.

Everyday when I pick up a newspaper, I am reminded that we are living in extraordinary times that demand extraordinary actions from policymakers, regulators, and financial services firms of all kinds.

Passage of that Emergency Economic Stabilization Act of 2008 (EESA) was vital to our national interest. Our nation's financial institutions and financial markets are the lifeblood of the economy, and EESA provides Federal officials with the tools needed to stabilize our financial markets and restore economic growth.

The injection of capital into the nation's largest financial institutions was the first real exercise of the new law. Others are now signing up for a capital injection. The Department of Treasury (Treasury), the Federal Reserve Board (Board) and the Federal Deposit Insurance Corporation (FDIC) are now in the

midst of implementing a variety of other measures, including the purchase of distressed assets, the issuance of guarantees for the payment of principle and interest on distressed assets, the establishment of a system of guarantees for senior unsecured debt issued by banking institutions, and the purchase of unsecured commercial paper. The Roundtable believes that the combination of these measures should succeed in stabilizing our financial markets, accelerating economic recovery, and restoring economic growth.

Yet, in light of all these measures, additional actions are needed to establish better, more effective financial regulation that can evolve with developments in global financial markets. Modernizing our financial regulatory structure not only will help to regain the trust and respect of consumers and markets everywhere, but also will preserve our leadership role in the global financial marketplace.

The Roundtable has spent considerable time on this issue in the past several months, and I appreciate the opportunity to share our views with you today. The rest of my speech is divided into four parts. First, I will place current events in some context. Second, I will use the mortgage markets to illustrate some of the regulatory gaps and challenges we face. Third, I will outline five specific reforms that the Roundtable recommends for immediate action. These reforms are designed to address certain limitations inherent in our current system of financial regulation. They could be enacted in the short-term as a first “no regrets” move to improve our regulatory system, while more far reaching, long-term structural proposals are considered and debated. Fourth, I identify some additional actions Congress, Treasury, and the federal regulatory agencies should take to address current events.

### ***I. We Have Reached a “Tipping Point” in Financial Regulation***

For many years, the U.S. financial markets and financial institutions were the envy of the world. They provided consumers, businesses, investors, governments, and other organizations with the means to invest, save, and borrow funds. They helped the U.S. reach record levels of GNP and record levels of employment. Likewise, Federal and State financial regulators are dedicated public servants, who have worked hard to maintain the stability and security of our nation’s financial system.

It is now clear, however, that we have reached a “tipping point” in financial regulation. The regulatory system that has served us so well in the past was not able to recognize fundamental changes in national and international financial markets and to adapt to those changes in a coordinated fashion.

We have reached this tipping point for many reasons. One of the most significant reasons is our fragmented financial regulatory structure. We have hundreds of Federal and State financial agencies that pursue different missions and

rely upon different methods of supervision. This structure is based upon a national policy that dates to the founding fathers, and was improved upon in 1999 with the passage of the Gramm-Leach-Bliley Act (GLBA). That Act permitted banks to affiliate with investment banks and insurance companies under a holding company structure, but limited the authority of the Board over financial affiliates in order to preserve the authority of other Federal and State regulatory agencies.

Some commentators have suggested that the amendments to the Glass-Steagall Act made by the GLBA contributed to the crisis in our financial markets. GLBA did permit banks to affiliate with investment firms, but those affiliations did not contribute to current problems. In fact, GLBA had just the opposite effect. It permitted financial holding companies to acquire distressed investment banks (e.g., Bank of America's acquisition of Merrill Lynch and JP Morgan Chase's acquisition of Bear Stearns). It also has allowed Goldman Sachs and Morgan Stanley to become bank holding companies, subject to comprehensive supervision by the Board.

Historically, there is a strong rationale for functional regulation. It enabled regulators to specialize, and it preserved the regulatory authority of States in our Federal system. Functional regulation also was well suited for a time when the different segments of the financial services industry operated separately with little overlap in terms of products and services. For all of its merits, however, this system of financial regulation is subject to certain limitations that contributed to the recent market turmoil.

First, Federal and State financial regulators lack a common set of regulatory objectives. They do not share a common vision or operate under common principles that balance consumer and investor protection, market integrity and stability, and competition. This has resulted in gaps in regulation, and even conflicts in regulation.

Second, Federal and State financial regulators lack an effective mechanism to communicate and coordinate policies. This limitation has become increasingly significant as the lines between the different segments of the financial services industry have crossed and blurred.

The President's Working Group on Financial Markets (PWG) was established in 1987 to respond to the stock market crash then and to provide some degree of coordination among financial regulators, but its membership is limited to the Secretary of the Treasury, the Chairman of the Board, the Chairman of the Securities and Exchange Commission (SEC), and the Chairman of the Commodity Futures Trading Commission. Representatives of the Federal banking agencies are noticeably absent from the PWG, as well as any representatives of State regulatory bodies. Lacking a better means to coordinate policy actions, individual regulatory agencies focus on compliance with their own rules, and may not have

an appreciation for larger trends in the financial services sector.

This clear regulatory gap makes it difficult for regulators to fully appreciate market developments and to adjust policies in response to developments. Today, there is no formal coordinating mechanism that allows all credit market regulators and all capital market regulators to sit around the same table to share information, develop early warning systems, conduct routine scenario planning, and anticipate future financial crises. There is no single point of accountability to consumers and the Congress, and no single point of contact on global financial regulatory issues.

## ***II. Our Fragmented System of Financial Regulation Failed to Respond to Fundamental Changes in Mortgage Finance***

The recent turmoil in our financial markets is illustrative of the limitations inherent in our current system of financial regulation. The developments that ultimately led to the current crisis had their genesis in mortgage instruments and structured financial transactions, such as traunched asset-backed securities, collateralized debt obligations (CDOs), and other derivatives.<sup>1</sup> These innovations facilitated an explosion in activity in the U.S. housing market. While credit became more accessible, the development of the “originate-to-distribute” model led to an increased separation between those responsible for risk creation and those who ultimately bore the risk and thus led to a weakening of risk accountability. In short, governance of risk did not keep pace with innovation and market structural changes.

The Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board, the FDIC, and individual State banking authorities supervise State and national banks that are active in the mortgage markets. However, lacking unified policy goals it took these agencies almost one year to develop guidance on nontraditional mortgage lending, and even then the guidance applied only to federally-supervised lenders, not state-supervised lenders.

In conjunction with the development of the originate-to-distribute model of mortgage finance, mortgage bankers and mortgage brokers assumed a greater percentage of mortgage originations. In 2006, for example, they were involved in 58 percent of the mortgage originations. While these individuals and firms were licensed by most States, State supervision varied widely. Consequently, at a time when the system of mortgage origination and financing was undergoing fundamental change, no single regulatory body had a clear purview or supervisory

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<sup>1</sup> It should be noted that a root cause of the crisis was a large influx of funds into the U.S. economy from other countries combined with a long-standing national policy to promote homeownership. Subprime loans developed to meet the growing demand for housing and did enable many Americans to own their own homes. It is now clear that many of those subprime loans were made on the basis of continuously rising home values, and when the housing bubble burst, the financial structure surrounding mortgage finance collapsed.

authority over the entirety of the primary-mortgage market.

The regulation of secondary-mortgage market activity also was divided among several authorities. Freddie Mac and Fannie Mae securitized conforming mortgages, subject to the supervision of an agency, the Office of Federal Housing Enterprise Oversight, which lacked many of the regulatory, supervisory, and enforcement powers available to the Federal banking agencies. Separately, the supervision of the securitization of nonconforming loans by brokers and dealers fell to the SEC, an agency that relies upon disclosure and enforcement to police the activities of brokers and dealers. Many financial services firms regulated by Federal and State bank regulators also were active in securitization and the secondary-mortgage market, but, again, there is no single agency across the secondary markets, or the combined primary- and secondary-mortgage markets, that had a complete picture of what was occurring in the marketplace.

Additionally, credit ratings and accounting policies played a role in recent market events. Favorable ratings on mortgage-based securities and derivative products facilitated the world-wide distribution of these products. As the assets underlying these securities started to deteriorate mark to market accounting distorted their true economic value and led to write downs that resulted in a reduction in credit availability for consumers. Both credit rating agencies and accounting policies fall within the supervision of the SEC, yet that agency lacked any formal mechanism to discuss market developments and appropriate policy responses with Federal and State banking authorities that were overseeing the origination of the underlying assets.

In sum, different Federal and State regulators supervising different parts of the mortgage finance system, without coordination or clearly delineated accountability, increased the potential for excesses and ultimately crisis.

Likewise, when the current crisis erupted, no coordinating body was clearly responsible, and an ad hoc response was required. As the crisis emerged, many observers looked to the Treasury to play a leadership role. However, until the passage of the EESA, Treasury's powers were limited. Before EESA, all the Secretary of the Treasury could do was to call meetings of the PWG and request reports; other than that, the Secretary only had the power of persuasion. Treasury could provide its perspective to the markets, but it was dependant on a variety of other regulatory agencies, especially the Board, to take action.

With the passage of the EESA, Treasury and the Federal financial regulators, especially the Board and the FDIC, have taken extraordinary steps to stabilize markets and set a foundation for the restoration of economic growth. To be clear, in these difficult times, the Roundtable supports the actions taken to date by the Treasury and all the regulators.

### ***III. Roundtable Near-term Recommendations for Reforming Financial Regulation***

The Roundtable has five near-term recommendations for reforming our system of financial regulation. Our recommendations are designed to address the limitations in our current system of financial regulation. As I said earlier, these are “no regret” moves that do not stand in the way of more comprehensive regulatory reform in the future if that is deemed necessary.

In response to recent events, we propose a series of targeted, near-term reforms aimed at the lack of common goals and coordination in our current regulatory system. These reforms should not in any way detract from subsequent structural reforms and improvements. Specifically, we propose five reforms:

1. **Market Stabilization** – Reduce the potential for systemic risk by giving the Board overarching supervisory authority over systemically significant financial services firms that seek access to the discount window or other financial facilities.
2. **Interagency Coordination** – Provide for greater cooperation and coordination among all financial regulators by expanding the membership and mission of the PWG to make it more forward looking.
3. **Principles-Based Regulation** – Enable financial regulators to adapt and respond more effectively to changes in markets through the enactment of a set of principles that serve as a common point of reference for both financial regulators and financial services firms. Such principles will guide the review and development of more detailed rules that necessarily follow.
4. **Prudential Supervision** – Encourage the early identification of potential financial risks by requiring the application of prudential supervision by all financial regulators to all financial services firms.
5. **Federal Insurance Supervision** – Strengthen the oversight of insurance markets and potential insurance risks by authorizing optional Federal chartering and supervision of firms engaged in the business of insurance.

We would not be so bold as to suggest that the implementation of these recommendations would have prevented the current crisis entirely. However, we do believe they would have helped regulators and the financial services industry better appreciate market developments and would have diminished the scope and severity of the crisis. Each of these five integrated recommendations is described in greater detail in the attachment to my statement.

#### ***IV. Additional Action Items***

##### *Fair Value Accounting*

The Roundtable supports use of fair value accounting and not a return to historical cost accounting. We advocate use of a clear-minded system to determine the true value of assets in distressed and illiquid markets. Unfortunately, the current application of fair value accounting is neither clear-minded nor fair. It does not work in these times. It is causing significant damage to individual institutions and the economy as a whole. The SEC's recent clarification and the Board's recent guidance attempted to resolve the issue of valuing assets in illiquid markets. However, additional actions are needed by the SEC and the Public Company Accounting Oversight Board to provide auditors the flexibility in the application of fair value accounting.

##### *Credit Default Swaps*

Another element in the current crisis is the impact of derivative products, especially credit default swaps. This is an extremely complex issue, and one that the Roundtable is still reviewing. However, we do support current efforts by the industry and regulators to establish a clearinghouse for credit default swaps, with better supervision and greater transparency. Such a mechanism should significantly reduce the uncertainty associated with these instruments.

##### *Mortgage Interest Rates*

Short term rates, such as the 3-month LIBOR, are starting to drop. Yet, we have not seen any significant reduction in long term mortgage rates since the enactment of EESA. I am hopeful that as EESA continues to be implemented we also will see a reduction in mortgage interest rates since that would have a significant, positive impact on individuals and the economy. If mortgage rates do not fall soon and help lead a housing recovery, then Congress, Treasury, and the federal regulatory agencies may need to consider additional appropriate actions.

#### ***V. Conclusion***

In closing, there are great challenges ahead for the entire financial services industry. The key is to find the right balance in regulation and regulatory structures going forward.

We need a system that provides market stability and integrity, yet encourages innovation and competition to serve consumers and meet the needs of a vibrant and growing economy. We need better, more effective regulation and a modern financial regulatory system that is unrivaled anywhere in the world. As a leading financial marketplace globally, we deserve no less. I believe that these five "no regret" reforms proposed by the Roundtable strike this balance in the near

term.

Lastly, in these turbulent times, many commentators are looking back to lessons learned during the events of the 1930s. In that spirit, I would like to conclude by quoting from President Franklin Delano Roosevelt's first inaugural address. That address is well known for his statement that "the only thing we have to fear is fear itself." However, President Roosevelt went on to state that "This Nation asks for action, and action now," and he closed his address by declaring that the "American spirit of the pioneer" is the way to recovery. "It is the immediate way. It is the strongest assurance that the recovery will endure." This declaration should inspire our collective actions in the days ahead to jointly build a robust and resilient regulatory structure for the 21<sup>st</sup> century..

## **FIVE NEAR-TERM REFORMS TO ENSURE THE INTEGRITY AND STABILITY OF FINANCIAL MARKETS**

The Financial Services Roundtable recommends the following five near-term reforms to our financial regulatory system. These reforms are designed to ensure the integrity and stability of the financial system, while maintaining innovative and competitive markets to serve consumers and support a growing economy.

### **1. Market Stabilization**

To reduce systemic risk, Congress should clarify the authority of the Federal Reserve Board to supervise systemically significant financial institutions that seek access to the discount window and other financial facilities. Recently, the Board has granted access to primary dealers that it does not directly supervise. The Board should now be given explicit authority to supervise systemically significant financial institutions that have access to the discount window or other facilities. Supervision should include appropriate reporting requirements, the authority to examine such firms, and the authority to set capital and liquidity requirements for such firms.

### **2. Interagency Coordination and Cooperation**

To promote cooperation and coordination among financial regulators, Congress should expand the membership and mission of the President's Working Group on Financial Markets. Our fragmented financial regulatory system can be slow to respond to changing market forces, international competition, and the dynamic needs of consumers. It also is slow to identify early warning signs and respond accordingly to potential financial crises. An enhanced Working Group would help Federal and State financial regulators keep ahead of market developments and adopt policies that ensure the stability and integrity of financial markets and financial firms.

Today, neither the current President's Working Group nor the Federal Financial Institutions Examination Council performs this role. No single agency spans all financial markets or is accountable across the entire financial sector of our economy, not even the U.S. Treasury Department. Over the past three decades, when specific events in the financial markets have impacted the U.S. economy, both the Congress and the Administration have empowered the Secretary of the Treasury to assume a leadership role in convening and overseeing various aspects of financial regulation. Based upon these precedents, we propose that the Secretary of the Treasury continue to preside over the enhanced PWG. The

Secretary's role would be limited to the oversight of financial regulation and general coordination; the Secretary would have no role in the supervision of any particular institution by a national or State financial regulatory authority or other aspects of an individual regulator's statutory mandate (e.g., prudential supervision by all agencies, monetary policy of the Federal Reserve).

The recent market volatility here at home and around the world underscores the urgent and critical need for better regulation and more effective coordination. It also highlights the growing imperative to better manage the complex structural and regulatory issues that challenge all of us – regulators and firms alike. Better coordination among all Federal and State financial regulators based on fundamental principles, more balanced regulation and prudential supervision, should enable financial services firms and regulators to see issues sooner, understand complicated inter-market workings better, and resolve problems faster. While we may not have been able to avoid all of the fallout from the recent market volatility, an enhanced Working Group would have been the point of first response for a more focused, accountable, and coordinated approach to market issues across all segments of the financial services industry.

The expanded Working Group should include not only the existing members of the President's Working Group, but also other major Federal financial regulators and individuals knowledgeable in State banking, insurance and securities regulation.

The Working Group should be directed, by law, to: (1) serve as a forum in which financial regulators could identify and consider issues related to the regulation and supervision of financial services firms, including investor and consumer protection, and the stability and integrity of financial markets; (2) monitor the health and competitiveness of the U.S. financial services industry; (3) develop early warning systems to detect potential points of weakness or strains in U.S. or global financial markets; (4) recommend coordinated actions for financial regulators and financial services firms, especially in times of market stress or financial crisis; and (5) oversee the implementation of the system of principles-based regulation and prudential supervision by all financial regulators (see recommendations below).

### 3. Guiding Principles

To enable financial regulators to adapt and respond more effectively to changes in markets, Congress should direct financial regulators to follow a simple set of guiding principles, which would serve as a common point of reference for financial regulators and financial services firms.

Such principles would stand ahead of and guide the application and review of policies, laws, and rules affecting the activities and behaviors of both financial

market participants and their regulators. They should be designed to be responsive to the needs of consumers, and should ensure that the regulation of financial services and markets is balanced, consistent, and predictable. We need better regulatory outcomes and behavior.

Such principles would not only enable regulators to focus on desired policy outcomes and material risks to markets, but also reduce the potential for consumers to fall through gaps between the national and State legal and regulatory systems.

Guiding principles can act as a compass for all to follow, but they would not replace the need for more detailed regulations. To the contrary, regulations will remain necessary, especially at the retail level for the protection of consumers. However, once enacted into law, a set of guiding principles would become a touchstone against which all existing and new national and State financial regulations would be evaluated in a policy and legal context. Regulations that are not consistent with the principles would be identified, analyzed, and then revised or eliminated, with regulators recommending changes to existing national or State laws, if necessary, to achieve the intent of the principles.

#### 4. Prudential Supervision

To encourage the early identification and resolution of problems, Congress should direct all financial regulators, including self-regulatory organizations, to adopt a “prudential” form of supervision. Prudential supervision not only can protect consumers, but also can better accommodate the ability of the financial services industry to grow and adapt to a dynamic environment and facilitate the efficient allocation of regulatory resources.

Prudential supervision is a form of supervision in which regulators and regulated entities maintain a constructive engagement to ensure an effective level of compliance with applicable laws and regulations. Prudential supervision relies upon regular and open communications between firms and regulators to discuss and address issues of mutual concern as soon as possible. Prudential supervision encourages regulated entities to bring matters of concern to the attention of regulators early and voluntarily. Prudential supervision promotes and acknowledges self-identification and self-correction of control weaknesses, thereby reinforcing continued focus and attention on sound internal controls. Industry-led solutions to identify weaknesses have proven to be both responsive and effective. Among existing financial services regulators, the Federal banking agencies and the CFTC have the greatest experience with a prudential form of supervision.

The Federal banking agencies rely upon regular examinations and robust internal compliance and audit functions to identify existing or potential violations

of law or regulations as well as unsafe and unsound practices. The Comptroller of the Currency recently described this prudential supervisory approach to Congress:

[O]urs is not an “enforcement-only” compliance regime – far better to describe our approach as “supervisory first, enforcement if necessary,” with supervision addressing many problems early that enforcement often is not necessary.<sup>2</sup>

Regular, informal exchanges between bank examiners and management allow both examiners and management to raise questions on matters of common concern. Examination reports routinely identify matters that require attention by management. Examiners and other supervisory staff, however, are given a significant amount of discretion, which permits firms to utilize resources to resolve issues, rather than expending them on defending a formal enforcement matter.

Banking agencies expect problems to be identified and corrected internally by insisting upon strong internal controls and audit functions. Sometimes, informal memorandums of understanding are used to identify concerns more specifically and set forth specific corrective actions, to which both the firm and the regulator agree. Less formal approaches to addressing problems usually are successful simply because the failure to take appropriate corrective actions can expose a firm to a range of more formal, and public, enforcement actions, including written agreements, cease and desist orders, removal orders, and civil money penalties. It is generally not necessary for banking agencies to take public enforcement actions, since serious problems should already have been identified with strong compliance and audit functions and corrected. More importantly, banks do not want to be exposed to the reputation risk of public enforcement actions.

Since the passage of the Commodity Futures Modernization Act in 2000, the CFTC also has followed a more prudential approach to supervision. For example, regulated entities that seek to pursue alternatives to the agency’s accepted compliance practices are able to engage in a dialogue with CFTC staff and that dialogue often leads to the implementation of a more tailored compliance regime.

Adherence to prudential supervision would facilitate the establishment of an open dialogue and a constructive relationship between regulated firms and regulators. In the current financial marketplace, where complex products are

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<sup>2</sup> Statement of John C. Dugan, Comptroller of the Currency, before the Committee on Financial Services of the U.S. House of Representatives, June 13, 2007.

becoming more common, a high degree of public and private sector cooperation will enable regulators to keep up with or even stay ahead of the curve on market innovation and industry developments. This cooperation would result in a higher quality of regulation and compliance over time and, in turn, greater investor confidence.

All of the financial services regulators should develop and enhance a culture of prudential supervision. Agency personnel should be rewarded for learning about problems and working with firms to undertake informal corrective. Cooperation between examiners and firms should be encouraged and rewarded. Likewise, cooperation within and among agencies should be encouraged. However, enforcement actions would continue to be necessary and appropriate in cases of fraud, serious abuses, egregious behavior or ineffective voluntary compliance.

## 5. Insurance Regulation

To strengthen Federal oversight over the business of insurance, Congress should provide for the optional Federal chartering and supervision of insurance underwriters and producers.

The business of insurance has grown significantly since the state-based system of insurance regulation was established. It is no longer a local business, bounded by State borders. It is a national and international business. Under the framework of the National Association of Insurance Commissioners, State insurance regulators have attempted to make the state-based system of regulation more uniform. However, insurance regulation continues to vary widely among the States. Even when the NAIC adopts a uniform proposed rule or law, individual States are not compelled to implement such proposals. Furthermore, even States that adopt the same uniform rule or law may administer or implement such rule or law differently. Varying, and potentially conflicting, State regulations not only complicate the operations of larger, multi-state insurers and producers and raise their costs for consumers, but also impede their ability to meet the needs of those same consumers.

The state-based system of insurance regulation also has an impact on global competition. Because U.S. insurers lack a national regulator who can negotiate international agreements, the industry is not adequately represented in trade negotiations, and this fact limits the industry's access to foreign markets and its ability to meet the needs of consumers globally. While the NAIC and individual State regulators have been involved in some aspects of international trade negotiations, U.S. trade negotiators have a uniquely difficult challenge. Our trade negotiators must try to obtain concessions from other countries when they know that the United States cannot commit on a reciprocal basis.

Similar challenges have arisen within other international regulatory settings. The International Association of Insurance Supervisors (IAIS) currently is working on several proposals regarding worldwide industry standards, including standards for solvency, accounting, collateral, and regulatory transparency. The United States, through the NAIC, participates in IAIS meetings. However, it is understood that no one representative from the United States can make any decision or commitment that is binding on the entire U.S. market. Therefore, despite participation by the NAIC, U.S. firms simply do not have an adequate representative at IAIS discussions.

An optional national system would give insurers and producers a choice between State or national regulation and supervision. To provide a true option, continued efforts to modernize and improve the efficiency of the State regulatory system should be supported. Modeled after the dual banking system, a system of dual insurance regulation of comparable strength would promote the flexibility needed to respond to a changing market, promote product innovation, promote competition, and ensure consistent consumer protection. In other words, the creation of this option would not spell the end of State regulation. State regulation would continue to be a preferred option for the many insurers and producers that would continue to operate on a local basis, and under the pending Congressional bills, State regulation would remain in place for certain mandatory coverage, such as workers' compensation.