



1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World-Class Solutions,
Leadership & Advocacy
Since 1875*

Edward L. Yingling
President & CEO
Phone: (202) 663-5328
Fax: (202) 663-7533
E-mail: eyinglin@aba.com

January 5, 2010

The Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Dodd and Ranking Member Shelby:

In response to your joint statement of December 23, I am writing on behalf of ABA to express our support for your efforts on financial regulatory reform. We agree, as we have stated numerous times in congressional testimony, that reform is needed, and we believe the best way to ensure that goal is accomplished is through the bipartisan process you are pursuing. ABA also supports your efforts to have the legislation address the issues identified in your joint statement.

Below, we provide you with brief comments on ABA's positions on the issues you list and on several other important issues that are part of the debate on regulatory reform. This letter is by no means an attempt to present a comprehensive position, but rather to provide you with an overview that we hope will be helpful in your deliberations over the next few weeks.

Too-Big-To-Fail: ABA has, for many years, advocated an end to the policies that support the concept that some institutions are too-big-to-fail. Since the financial crisis began in 2008, ABA has testified several times in

Page two ... January 5, 2010

support of reform that ends too-big-to-fail. We are very pleased to see your commitment to address too-big-to-fail and support your efforts in that regard.

Enhanced Resolution: ABA supports your efforts to create a strong resolution regime that will protect the taxpayer. Such a regime should also end too-big-to-fail and provide clarity to the markets so that creditors and investors will know how they will be treated in resolutions. There are several other issues with respect to resolutions that ABA believes are of great importance. First, we agree with the Administration's recommendation that any cost to the taxpayers, which may occur despite the design of the resolution regime to avoid any such costs, should be funded after-the-fact. A prefunded approach is, in effect, a too-big-to-fail fund, and we believe is inconsistent with ending too-big-to-fail. Second, ABA is very concerned with the manner in which the FDIC may be used to resolve non-bank institutions. The public understands that the FDIC insures bank deposits, and the public relies on that insurance. There is a very real danger of the public becoming confused if the FDIC, itself, is resolving a non-bank institution. This confusion could undermine the public's very crucial confidence in FDIC insurance and should be addressed by separating the resolution agency from the FDIC, while allowing the FDIC to take a lead role in managing resolutions. Third, ABA believes that the resolution mechanism should rely on traditional bankruptcy policies and rules to the maximum extent possible. This is particularly true with respect to secured creditors. If new, uncertain rules are adopted, either through possible haircuts on types of security or other methods, the cost of credit to our economy will go up and some financial institutions may become even more subject to the withdrawal of financing during market disruptions, thereby increasing the potential for market instability.

Consumer Protection: ABA agrees with your joint statement that consumer protection needs to be strengthened. As we testified before your Committee, however, ABA is opposed to the Consumer Financial Protection Agency (CFPA) proposed by the Administration because of the unworkable conflicts it will inevitably have with a bank's prudential regulator, the increased regulatory costs and burdens on traditional banks,

the sweeping new powers it is given (including the ability to design its own products and require that they be offered), and the lack of sufficient focus on the shadow banking system. Banks of all sizes across the country continue to oppose the Administration proposal on the CFPB.

Nevertheless, ABA agrees that there should be significant improvements in consumer protection and would be pleased to work with the Committee to see such improvements enacted. We would support an approach that requires more focus on consumer issues, greater coordination, and more accountability by the regulators. Any new system should certainly include a much stronger focus on, and authority over, the shadow banking system. It should be designed to avoid conflicts with prudential regulation, both in the creation of rules and in enforcement and examination, which should not be carried out by two different examination teams. We also believe the applicable substantive laws should be the existing consumer laws, together with full authority to use UDAP rulemaking; this approach will preserve the role of Congress in setting consumer laws, while giving a consumer regulator sufficient flexibility and authority to address any abuses aggressively. Finally, ABA strongly opposes the elimination of federal preemption. The elimination of preemption will greatly increase the cost of credit and financial services as banks and thrifts attempt to track and comply with the myriad state and local laws that will become applicable.

Modernize the Regulatory Structure and Protect the Dual Banking System:

ABA supports efforts to modernize the regulatory system. As part of that, we support the concept of creating a council of regulators to oversee and identify systemic risks. ABA also strongly supports the concept that the systemic oversight council should have the ability to have input into accounting policies that may affect systemic risk, a concept that is consistent with recent recommendations of the G-20. In fact, we do not see how the oversight council can function effectively without some say in accounting policy. ABA also supports creating a regulatory regime that puts emphasis on institutions and activities that raise systemic issues, including additional regulatory authority in such areas as capital and liquidity. ABA agrees with you that the dual banking system should be protected, and that is why we have strongly opposed the creation of a single bank regulator. Simply put, a single regulator, even if protections

are built in, is incompatible with the dual banking system. We also believe it is important for the FDIC and the Federal Reserve to maintain connection with bank regulation in order for them to be able to effectively carry out their other core functions.

Federal Reserve Focus on Monetary Policy: While the modernization of the regulatory structure will result in significant changes in the role of the Federal Reserve, ABA is very concerned that some proposals before Congress go too far and will undermine the critical independence of the Fed in setting monetary policy. Such proposals would create uncertainty, raise inflationary expectations, and undermine the value of the dollar. We believe great care should be taken in this area. One proposal ABA has put forward to streamline regulation and to eliminate what is, in effect, a regulatory distraction for the Fed is to take the oversight of holding companies, at least for community and regional banks, from the Fed and give it to the primary supervisor of the lead bank. There is, for example, no reason for the Fed to regulate the holding company of a community bank or thrift that is currently overseen by the FDIC, the OCC, or the OTS.

Modernize Regulation of the Derivatives Market: ABA supports efforts to modernize the regulation of, and improve the transparency in, the derivatives market.

Other Issues: While not attempting to address all the many issues of interest to ABA in comprehensive regulatory reform, we do wish to highlight the following:

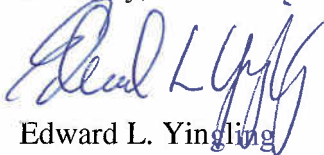
- ABA strongly supports charter choice, maintenance of the provisions of the Home Owners Loan Act and the thrift charter, and the preservation of mutual institutions.
- ABA recognizes that changes are needed in the securitization process. However, accounting and regulatory issues relating to requirements that originators hold "skin in the game" need to be fully addressed, or credit availability through securitization will be deeply undermined.

Page five ... January 5, 2010

- ABA strongly supports the creation of an Office of Insurance within the Treasury Department.
- ABA strongly supports the recommendation that smaller public companies should be exempt from requirements of Section 404 of Sarbanes-Oxley.

ABA appreciates the extraordinary efforts that the leadership and members of the Senate Banking Committee are putting into creating a financial reform package. We strongly support reform, but at the same time believe it should be focused on the causes of the financial crisis and preventing future crises and not impose heavy new regulatory burdens on traditional banks that did not cause the crisis. We stand ready to work with the Committee to create a regulatory structure for a stronger, more stable financial system that will support economic growth and provide the financial services that consumers, businesses, and governments want and need.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward L. Yingling". The signature is fluid and cursive, with the first name "Edward" being the most prominent.

Edward L. Yingling

cc: Timothy Geithner, Secretary of the Treasury
Lawrence Summers, Director, National Economic Council
All Members of the Banking, Housing and Urban Affairs Committee