

July 26, 2010

To: Members of the House Financial Services Committee

From: Floyd Stoner, Executive Vice President, Congressional Relations & Public Policy

Re: ABA views on H.R. 5823, the United States Covered Bond Act; H.R. 4790, the Shareholder Protection Act; and H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act

On behalf of the members of the American Bankers Association, I am writing to share our views on several of the bills that the Committee will consider on Tuesday, July 27, 2010.

H.R. 5823, the United States Covered Bond Act of 2010, is legislation that would facilitate the creation of a sustainable covered bond market by U.S. financial institutions. Covered bonds have a long and successful history in the European marketplace and can play a significant role in revitalizing the mortgage finance market in the United States by providing an additional source of mortgage funding for banks and other lenders. We support H.R. 5823 and urge the Committee to approve this legislation.

I am writing to express our opposition to H.R. 4790, the Shareholder Protection Act of 2010. The legislation treats public and private companies differently, leaving private companies free to exercise their First Amendment rights while disadvantaging public companies. The bill, as written, would discourage well qualified individuals from accepting positions on public company boards, as they would be open to potential fiduciary liability if a company were to expend resources in a manner not authorized by this bill.

H.R. 4790 is at odds with previous Congressional forays into corporate governance. For example, Congress, in giving public company shareholders a voice in company affairs – e.g., say on pay – expressly determined that these decisions would be non-binding and would not create any new or additional fiduciary duties on boards of directors. We urge you to oppose H.R. 4790.

I am also writing in regard to H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act. This legislation provides a framework to allow for the development of an online gambling industry in the United States through a licensing system. It remains uncertain whether H.R. 2267 would force lenders to assume liability for the actions of others when the banks are following all of the rules. For example, Section 5385 of this legislation states that financial transaction providers, including banks, that process payments for licensed gambling entities shall not be held liable for conducting these transactions as long as they are compliant with applicable federal and state laws. However, this provision does not indicate whether a bank would be liable if another partner in the process fails and the bank facilitates a payment.

H.R. 2267 does not eliminate any of the burdens banks must bear already to comply with the Unlawful Internet Gambling Enforcement Act (UIGEA). Banks must continue to screen for unlawful Internet gambling entities trying to open accounts and to block debit and credit card transactions to those parties. We ask that Members carefully review this legislation and oppose any new burdens that may be imposed on banks.

We appreciate the Committee's taking our views into consideration.