



1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

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

April 14, 2009

The Honorable Timothy F. Geithner
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Secretary:

I am writing on behalf of the American Bankers Association to express our views on the proposal to make the FDIC the resolution authority for systemically significant financial companies. While the ABA strongly supports the creation of a clear resolution mechanism for such companies, we have serious concerns about this proposal.

In general, it appears the support for using the FDIC as the resolution authority is based largely on the fact that the FDIC has experience in resolutions through its history of resolving failed FDIC-insured banks. However, ABA strongly believes that the direct use of the FDIC for resolutions of non-banks would severely confuse the public about FDIC deposit insurance and would likely result in banks carrying a significant direct and indirect cost burden for the resolution mechanism for non-banks.

The FDIC "brand" is important for the safety of our banking system, the confidence of depositors, and the strength of the economy during financial downturns. The high regard for this brand is a real credit to the FDIC and the men and women who work there. Depositors rely on FDIC insurance. The confidence depositors have in that insurance is a major reason our country has had no material bank runs since the 1930's, despite several periods of significant bank failures. However, the public's confidence in, and understanding of, deposit insurance is not deep. ABA polling late last year demonstrated that a significant proportion of the public did not have a good understanding of deposit insurance. The FDIC, itself, felt the need to undertake an extensive public relations campaign in recent months to educate the public on deposit insurance.

The FDIC brand has always been directly linked to insured banks. The public would be confused if non-banks were "taken over" by the FDIC. Indeed public confidence in the deposit insurance system could easily be undermined. In recent weeks, the difficulties with AIG have been all over the headlines. We can only imagine the loss of public confidence in the FDIC, and in FDIC deposit insurance, had the FDIC been in charge of resolving AIG.

Second, the ABA is concerned that banks will bear a significant cost for a resolution mechanism housed in the FDIC. While the proposal to use the FDIC for non-bank resolutions contemplates the reimbursement of costs for a specific resolution, the FDIC would likely have on-going costs to be in a position to deal with non-bank resolutions. Since there is no other source of funding for these costs, it would appear that they would be borne by banks, which bear the entire cost of the FDIC's operations.

The FDIC has reason to be proud of its history of resolving failed banks. However, it is not clear to the ABA that the FDIC's experience in handling bank failures, the great majority of which are small, give the agency significant expertise with respect to large, complex institutions, which often operate internationally and are engaged in financial activities that are not common to most banks. Only once has the FDIC handled what might be considered a systemically important resolution – Continental Illinois – and by today's standards that was small and not at all complex. Thus it will undoubtedly be necessary to use personnel from outside the FDIC for any resolution. To the degree the FDIC has expertise to be offered, it can be tapped without using the FDIC itself as the resolution authority.

If FDIC's expertise is the reason for turning to the FDIC to manage resolutions of non-banks, ABA would suggest the following approach be taken instead. First, the FDIC, itself, should not be the resolution agency, either directly or by having the resolution agency housed under the FDIC. Instead a shell agency should be created by statute – for example, it could be called the Special Resolutions Authority (SRA) – which would have all the powers the proposal would give to the FDIC. The organizational and management structure of SRA could be laid out in advance in order for it to be able to start running immediately when needed and also so that its authorities and procedures are clearly understood by the marketplace. When called into action, the new agency would use existing agency expertise according to a predetermined plan, supplemented at the time of a resolution as needed. By statute, the SRA could tap the expertise of the FDIC in a significant manner if and when a determination is made that an institution that raises significant systemic implications needs resolution. The ABA's suggestion would create, in advance, an agency similar to the Resolution Trust Corporation, which also used FDIC personnel extensively.

At this time, the Treasury, the Federal Reserve, and the FDIC could constitute the board of the SRA. The membership of the board, however, should be adjusted as needed to incorporate the systemic risk regulator, once that is determined. In fact, it would seem inappropriate to have the resolution authority entirely in an independent agency like the FDIC without any statutory oversight or input from the Treasury or the systemic regulator. The ABA also believes, therefore, that major decisions about a resolution – whether or not the potential default of an institution would cause system risk, the types of actions that should be taken, and the ultimate resolution of the institution – should be

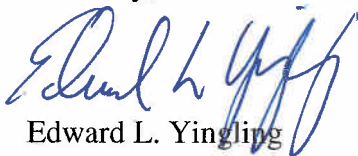
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determined by the Treasury, the systemic risk regulator, and the institution's prudential regulator or regulators. The FDIC should not be put in the position of helping to make such determinations unless it is, itself, the relevant prudential regulator.

In addition, the costs of the SRA should not be borne, even indirectly, by the banking industry. It is unfair, for example, to have a community bank bear costs for carrying a resolution authority created primarily for non-banking firms that raise significant systemic implications. Any on-going costs to support the existence of the SRA should be borne by the systemic regulator. Proposals for systemic resolutions generally contemplate that costs for specific resolutions would be recovered from systemically important firms, which seems appropriate.

The ABA strongly supports the creation of a mechanism for resolving systemically significant financial firms. The need for such a mechanism has been amply demonstrated in recent months, especially by the difficulties encountered in handling Lehman Brothers and AIG. However, ABA opposes using the FDIC directly as the resolution authority. Thank you for considering the views of the ABA on this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward L. Yingling".

Edward L. Yingling

cc: Chairman Ben Bernanke, Federal Reserve System
Chairman Sheila C. Bair, Federal Deposit Insurance Corporation
John Dugan, Comptroller of the Currency
John Bowman, Acting Director, Office of Thrift Supervision
Martin Gruenberg, Vice Chairman, Federal Deposit Insurance Corporation
Thomas J. Curry, Director, Federal Deposit Insurance Corporation
Chairman Barney Frank, House Financial Services Committee
Spencer Bachus, Ranking Member, House Financial Services Committee
Chairman Christopher Dodd, Senate Banking Committee
Richard Shelby, Ranking Member, Senate Banking Committee