



December 1, 2009

Dear Member of Congress:

Thank you for your continued leadership toward reforming and modernizing our nation's framework of financial supervision.

To retain its global leadership position and return to robust economic growth and job creation, the United States needs a 21st century supervisory framework – one that ensures institutional safety and soundness; promotes systemic stability; protects the interests of consumers, savers, and investors; and promotes the innovative capacity and competitiveness of the financial services industry.

The members of the **Financial Services Forum** consider the following reforms essential:

- 1) **End “Too-Big-to-Fail”**: The shareholders and management of financial institutions – regardless of size – should never be insulated from the consequences of their own mistakes. The discipline of potential failure is necessary to ensure truly fair and competitive markets. Accordingly, Congress should provide the relevant agencies with the legal authority, procedural protocol, required resources, and expertise for resolving even the largest, most interconnected, and complex entities in a manner that preserves public confidence, protects systemic stability, and provides reasonable certainty to customers, shareholders, creditors, and other stakeholders.

The remedy to the problem of “too-big-to-fail” is more effective supervision coupled with resolution authority – not the preemptive dismantling of large, healthy, well-managed institutions.

Importantly, we support checks and balances on the authority to invoke resolution – specifically, requiring a two-thirds vote of the Boards of the Federal Reserve and the FDIC (or the SEC where the major subsidiary of the distressed firm is a broker-dealer), with consultation by the Secretary of the Treasury with The President. Resolution of failing insurance companies should rely on the already well-developed state regulatory system.

Specific legislation should include how shareholders, creditors and counterparties should be treated in a resolution and that rules for determining creditors' rights be governed by the bankruptcy code.

Because large financial institutions are generally active in many countries, Congress must also mandate that the relevant agencies establish the agreements and procedures necessary to coordinate multi-jurisdictional resolutions with foreign financial authorities.

- 2) **Enhance Consumer Protections**: The United States cannot be a world-class financial marketplace unless consumers have full confidence in the safety and soundness of financial institutions, the integrity of the markets, the quality and suitability of financial products, and the basic fairness of the broader financial system.

Views differ on the best means of ensuring stronger consumer protections. One option deserving of consideration would be to create an Office of Consumer Protection and Education within each Federal functional regulator charged with policing consumer protection issues within that agency's purview. The efforts of these entities would be further strengthened by the creation of a Council of the Directors of the various Offices of Consumer Protection and Education to share information and observations, promote cooperation, harmonization of standards, and develop best practices.

Strong national standards, which would promote consistency of application and enforcement of consumer protection rules across all financial institutions, should be the principle that guides consumer protection efforts. Legislation currently before Congress would allow states to adopt different rules, and enforce both federal and state standards, resulting in a patchwork of inconsistency and generating uncertainty about which set of rules apply to institutions conducting a national business and how those rules will be interpreted and enforced by 51 different authorities. Such a regime would serve to eliminate the benefits of the national banking system, and lead to confusion, structural distortions, unnecessary costs, reduced credit availability, slower growth, and job losses – none of which is in consumers' interest.

- 3) **Regulate Over-the-Counter Derivatives**: Derivatives are financial tools that enable corporations and other businesses to hedge the risks to which their businesses are exposed – thereby lowering the cost of capital and contributing to economic growth and job creation. Effective oversight of OTC derivatives markets is necessary to:
 - 1) ensure those markets do not threaten the stability of the broader financial system;
 - 2) promote market transparency and efficiency;
 - 3) prevent market manipulation, fraud, and other abuses; and,
 - 4) ensure that derivatives are not used or marketed inappropriately.

Toward this end, all standardized OTC derivatives – as determined by regulators, working closely with the industry – among dealers and major non-end user market participants should be cleared through regulated central counterparties, and all OTC derivatives dealers should be subject to a robust regime of prudential supervision, including appropriate margin and capital requirements, business conduct and transparency standards, and timely reporting requirements.

- 4) **Designate a “Systemic Supervisor”**: Our current supervisory framework is highly balkanized, with agencies focused on particular institutions within specific industry sectors. Gaps in oversight naturally develop between the silos of sector-specific regulation, and no agency is currently charged with assessing risks to the financial system as a whole – the big picture.

To ensure a more coherent, consistent, and comprehensive approach to supervision, some entity should be charged with monitoring, assessing, and addressing emerging risks that might threaten the stability of the financial system. The systemic supervisor could be a single agency – such as the Federal Reserve – or a council of agencies, provided the council is chaired by one agency that would be held accountable. Whether or not the Fed is designated as the systemic supervisor, it should maintain its existing supervisory authority over the largest and most complex financial institutions in order to best perform its other duties as monetary authority and lender-of-last-resort.

Policymakers should take steps to ensure that supervisory assignments are not construed by the marketplace in ways that could entail structural distortions, perverse incentives, or moral hazard.

Maintaining the stability of the financial system as a whole requires that all systemically important participants and activities are subject to some form of official oversight. For that reason, while due regard should be given to a company’s functional regulator, the systemic supervisor should have appropriate oversight power over all systemically important financial companies, regardless of how they are otherwise regulated. Likewise, the systemic supervisor should be given – within clear statutory guidelines – the discretion to determine which firms are systemically important. Any rigid or simplistic definition based on a single metric like size would not be appropriate and could result in firms adopting organization structures solely to avoid systemic oversight.

To avoid the confusion that stems from duplicative regulation, the systemic supervisor and relevant functional regulators should coordinate their activities. Finally, because systemic risk is a global concern, active coordination with foreign and international counterparts is critical to ensure cross-border supervisory consistency, and to ensure a level field of competition.

Change is difficult – even change that everyone agrees is necessary and overdue. But reform and modernization of financial supervision is both possible and desirable. For decades the U.S. financial system remained the world’s leader despite the costs and deficiencies of an antiquated supervisory framework. The recent financial crisis and the damage it has inflicted on the broader economy and millions of people vividly demonstrate that America can no longer avoid difficult reforms.

Again, we thank you for the energy and commitment you have brought to this important debate. We look forward to working with you to achieve a world-class, 21st century framework

of financial supervision that will ensure financial strength and stability, economic growth, and job creation.

Sincerely yours,



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