

**Testimony
of
Brooksley Born**

**Former Commissioner,
Financial Crisis Inquiry Commission**

**Concerning the Final Report
of the
Financial Crisis Inquiry Commission**

**Before the
United States House of Representatives
Committee on Financial Services**

February 16, 2011

Chairman Bachus, Ranking Member Frank and Members of the Committee:

Thank you for inviting me to appear before you to discuss the Report of the Financial Crisis Inquiry Commission. As a member of that Commission, I voted to adopt the Report and agree with its conclusions, which have been discussed by former Chairman Angelides in his testimony.

In my testimony, I will describe several conclusions of the Commission about specific components of the financial system that contributed significantly to the financial meltdown.

1. The Commission concluded that collapsing mortgage-lending standards and the mortgage securitization pipeline lit and spread the flame of contagion and crisis.

Many mortgage lenders became so eager to originate loans that they took borrowers' qualifications on faith, often with a willful disregard of the borrowers' ability to pay. The Federal Reserve and other regulators were aware of the increase in irresponsible lending, including predatory and fraudulent practices, but failed to act effectively to restrict such behavior. The securitization process led lenders and securitizers to believe that they were able to pass the risk of these toxic mortgages to investors in mortgage-backed securities and collateralized debt obligations (CDOs). However, the financial crisis revealed that in fact a number of systemically important institutions remained significantly exposed to them.

2. The Commission concluded that over-the-counter (OTC) derivatives contributed significantly to this crisis.

After being deregulated by federal statute in 2000, the OTC derivatives market grew exponentially to almost \$673 trillion in notional amount on the eve of the crisis in June 2008. The unregulated market was characterized by uncontrolled leverage, lack of transparency, lack of capital and margin requirements, speculation, interconnections between firms, and concentration

of risk in systemically important institutions. Derivatives known as credit default swaps fueled the securitization frenzy by encouraging investors in mortgage-related securities to believe they were protected against default. Credit default swaps were also used to create synthetic CDOs which were merely bets on real mortgage securities. Such bets significantly amplified the losses from the collapse of the housing bubble. Insurance giant AIG's sale of credit default swaps without adequate capital reserves brought it to the brink of failure and necessitated its rescue by the government, which ultimately committed more than \$180 billion because of concerns that AIG's collapse would trigger cascading losses throughout the financial system. In addition, the existence of millions of OTC derivatives of all types created interconnections among a vast web of financial institutions through counterparty credit risk, exposing the system to contagion and helping to precipitate the massive government bailouts.

3. The Commission concluded that the failures of credit rating agencies were essential cogs in the wheel of financial destruction.

Without the high ratings issued by credit rating agencies, the mortgage-related securities at the heart of the crisis could not have been marketed and sold in such vast quantities. The credit rating agencies issued top ratings to tens of thousands of mortgage securities, which reassured investors and allowed the market to soar, and then downgraded them, wreaking havoc across markets and firms. The agencies' rating failures resulted from pressure by financial firms that paid for the ratings, the use of flawed computer models, the desire to increase or maintain market share and the absence of meaningful public oversight, among other things.

* * *

The Committee has asked for my assessment of the Dodd Frank Act in light of the Commission's conclusions. As we have testified, the Commission found that widespread

failures in financial regulation and supervision along with dramatic breakdowns in corporate governance and risk management were key causes of the financial crisis. In my view, the Dodd Frank Act is an important response to those problems, and its full and speedy implementation should reduce risks to the financial system. I urge policy makers and regulators to examine the Commission's Report to ensure that the causes of the crisis are adequately addressed in order to protect the American public.

Thank you very much.

BROOKSLEY ELIZABETH BORN

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Washington, D.C. 20004-1206
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Born: San Francisco, California
August 27, 1940

Education: San Francisco public schools;
A.B. Stanford University 1961;
J.D. Stanford Law School 1964.

Academic Honors, Awards, Etc.:

Intelligence and Courage Award, Frances Perkins Center, 2010;
Margaret Brent Women Lawyers of Achievement Award, American Bar Association
Commission on Women in the Profession, 2010;
Outstanding Service Award, Fellows of the American Bar Foundation, 2010;
Breaking Down Barriers Award, National Women's Law Center, 2009;
Pioneer of the Bar, Washington's Top Lawyers, Washingtonian, 2009;
Profile in Courage Award, John F. Kennedy Library Foundation, 2009;
Champion, Legal Times, 2008;
Lifetime Achievement Award, American Lawyer, 2005;
Stars of the Bar Honoree, Women's Bar Association
of the District of Columbia, 2002;
Woman of Genius Award, Trinity College, 2000;
Outstanding Public Interest Advocate of the Year,
National Association of Public Interest Law, 1994;
Allies for Justice Award, National Lesbian & Gay Lawyers Association, 1993;
Honoree, National Legal Aid and Defender Association, 1992;
Honoree, National Women's Law Center, 1986;
Woman Lawyer of the Year Award, Women's Bar Association
of the District of Columbia, 1981;
Outstanding Senior Award, Stanford Law School, 1964;
Order of the Coif, 1964;
President, Stanford Law Review, 1963-1964.

Admitted to Practice: District of Columbia, 1966.

Employment:

Law Clerk, Judge Henry W. Edgerton, U.S. Court of Appeals
for the District of Columbia Circuit, 1964-1965;
Legal Researcher, Harvard Law School, 1967-1968;
Lecturer at Law, Columbus School of Law, Catholic University
of America, 1972-1974 (teaching Women and the Law);
Adjunct Professor, Georgetown University Law Center,
1972-1973 (teaching Women and the Law);
Chairperson, U.S. Commodity Futures Trading Commission, 1996-1999;

Associate and then Partner, Arnold & Porter, Washington, D.C.,
1965-1967, 1968-1996, 1999-2002;
Commissioner, Financial Crisis Inquiry Commission, 2009 - 2011.

Affiliations:

American Bar Association

House of Delegates, State Delegate for the District of Columbia, 1994-2005;
Council of the Fund for Justice and Education (formerly
Resource Development Council), Chair, 1993-1996;
Board of Governors, 1990-1993, Program Committee, Chair, 1992-1993;
Consortium on Legal Services and the Public, Chair, 1987-1990;
Standing Committee on Federal Judiciary. Chair, 1980-1983;
Section of Individual Rights & Responsibilities, Chair, 1977-1978;

American Bar Foundation, Board of Directors, 1989-1999;

District of Columbia Bar

Secretary, 1975-1976;
Board of Governors, 1976-1979;

National Women's Law Center, Board of Directors, 1981-, Chair, 1981-1996, 2003-;

District of Columbia Judicial Nomination Commission, 2005-2009;

ALI-ABA Continuing Professional Education, Board of Directors, 2005-2009;

President's Working Group on Financial Markets, 1996-1999;

International Organization of Securities Commissions,

Technical Committee, 1996-1999;

Small Agency Heads, 1997-1999;

Center for Law & Social Policy, Board of Trustees, 1977-1996;

Lawyer's Committee for Civil Rights Under Law, Board of Directors, 1993-1996;

Washington Lawyers' Committee for Civil Rights and Urban Affairs,

Board of Directors, 1992-1996;

Historical Society of the District of Columbia Circuit,

Board of Directors, 1990-1996;

Consortium for the National Equal Justice Library,

Board of Directors, 1992-1996;

Southwestern Legal Foundation, Board of Trustees, 1993-1996;

Washington Legal Clinic for the Homeless, Inc.,

Board of Directors, 1993-1996;

Stanford Law School, Board of Visitors, Chair, 1987;

American Judicature Society, Board of Directors, 1984-1988;

Women's Bar Foundation, Board of Directors, 1981-1986;

National Legal Aid and Defenders Association,

Board of Directors, 1972-1979.

United States House of Representatives
Committee on Financial Services

“TRUTH IN TESTIMONY” DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

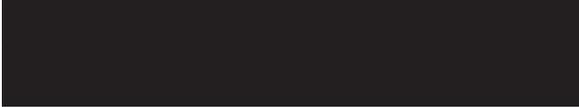
<p>1. Name:</p> <p>Brooksley Elizabeth Born</p>	<p>2. Organization or organizations you are representing:</p> <p>None. I am presenting my views as a former Commissioner of the Financial Crisis Inquiry Commission.</p>
<p>3. Business Address and telephone number:</p> <p>555 Twelfth Street, NW, Suite 1292 Washington, DC 20004-1206 (202) 942-5832</p>	
<p>4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?</p> <p>See Number 6.</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?</p> <p>See Number 6.</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>6. If you answered “yes” to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.</p> <p>The Financial Crisis Inquiry Commission was a federal commission created by Section 5 of the Fraud Enforcement and Recovery Act of 2009, Public Law 111-21, and received federal appropriations. As a Commissioner from July 2009 to February 13, 2011, I received compensation and travel expenses as provided in the statute.</p>	
<p>7. Signature: Brooksley Born <i>Brooksley Born</i></p>	

Please attach a copy of this form to your written testimony.

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Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name: Brooksley Elizabeth Born	2. Organization or organizations you are representing: None. I am presenting my views as a former Commissioner of the Financial Crisis Inquiry Commission.
3. Business Address and telephone number: 	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? See Number 6. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? See Number 6. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. If you answered "yes" to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets. The Financial Crisis Inquiry Commission was a federal commission created by Section 5 of the Fraud Enforcement and Recovery Act of 2009, Public Law 111-21, and received federal appropriations. As a Commissioner from July 2009 to February 13, 2011, I received compensation and travel expenses as provided in the statute.	
7. Signature: Brooksley Born <i>Brooksley Born</i>	

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