

*Testimony of*

Bradley E. Rock

*On Behalf of the*

AMERICAN **BANKERS** ASSOCIATION

*Before the*

Subcommittee on Financial Institutions and Consumer Credit

*Of the*

Committee on Financial Services

United States House of Representatives

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Mr. Chairman and members of the Subcommittee, my name is Bradley Rock. I am Chairman, President, and CEO of Bank of Smithtown, an \$800 million community bank located in Smithtown, New York, founded in 1910. I am also the Vice Chairman of the American Bankers Association (ABA). ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

I am glad to be here today to present the views of the ABA on the need to eliminate unnecessary, redundant, or inefficient regulatory burdens that increase costs for banks and reduce the amount of credit available to our communities. By now, it should not come as news that banks are struggling under the weight of increasing levels of regulatory burdens, many of which do not serve the objective of making the nation's banks operate more soundly or to provide meaningful protections to consumers. The rising level of regulatory burden creates additional red tape and barriers to effective compliance with a wide range of legislative mandates and policy goals. This raises costs to banks and, consequently, places an unnecessary strain upon banks' abilities to efficiently serve their customers.

The USA PATRIOT Act, the Sarbanes-Oxley Act, and the Gramm-Leach-Bliley Act (GLBA) are all valuable pieces of legislation that strive to serve the public interest. However, overly complex or redundant compliance requirements render these laws far less effective than they would be otherwise. Banks, particularly community banks, are strained to the breaking point under the weight of thousands of pages of regulation, guidance, and other mandates. When the cumbersome layering of additional requirements, issued by the Securities and Exchange Commission (SEC), the Financial Accounting Standards Board (FASB), the Public Company Accounting Oversight Board (PCAOB), and the American Institute of Certified Public Accountants (AICPA) are also taken into account, it is abundantly clear that bank resources are being stretched too thin.

I have had the privilege of testifying before this committee about the urgent need for regulatory relief for banks earlier this year. In addition, ABA has submitted comments to regulators on a wide range of regulatory relief priorities, which would make a real difference in the vitality of our nation's banks. At a September 22 hearing before this committee, chief regulators from the Federal Reserve, Treasury Department, Office of Thrift Supervision, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC) all expressed strong support for several provisions that ABA supports to reduce regulatory burden on banks. In addition, progress made as a result of the ongoing review of regulatory costs by the federal bank regulators, required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA), is very positive.

We are pleased the regulators have acted on some of our recommendations and that our message is apparently being heard. For example, I am particularly pleased with regulators' support for changes that involve the Bank Secrecy Act (BSA), including discontinuing CTR requirements for seasoned customers – changes that would not only provide relief to banks and our regular customers, but also increase the security of our banking system by identifying criminal activity with greater precision. However, at the end of the day, only Congress's decision to act on these recommendations can make a real difference.

In my testimony, I would like to make three key points:

**I.** Excessive regulatory burden has a significant impact on bank customers and local economies.

**II.** Regulatory burden is significant for banks of all sizes, but small banks are particularly affected.

**III.** There are several important regulatory issues that Congress should address this year, but three are especially pressing to maintain the competitive vitality of my industry. These are the elimination of unnecessary cash transaction reports (CTRs), preventing credit union capital erosion and widening credit union authority in higher-risk lending, and restricting authority under the industrial loan corporation (ILC) charter to prevent the mixing of banking and commerce.

**I. Excessive Bank Regulation Harms Consumers, Communities' Economies**

Outdated laws and regulations squander scarce resources of banks that could otherwise be used to provide financial services demanded by our customers. New laws, however well intentioned, have added yet more layers of responsibilities on businesses like mine. While no single regulation by itself is overwhelming to most businesses, the cumulative weight of all the requirements is overwhelming.

The burden of regulation has a significant impact on bank customers and local economies. Every new law, regulation or rule added means two things: more expensive bank credit and less of it. This is likely to hurt small businesses the most, as they cannot go directly to the capital markets, yet need low-cost financing. The result is slower economic growth.

During the past 25 years, the compliance burden has grown so large and is so pervasive throughout all levels of bank management that it is extremely difficult to measure. Research done by the ABA and the Federal Reserve<sup>1</sup> indicates that the total cost of compliance *today* for banks would range from \$34 billion to \$42 billion per year and this does not include compliance costs due to legislation enacted in the last five years, such as the USA PATRIOT Act and Sarbanes-Oxley. Compliance costs are expected to grow at an even faster pace in the coming years.

Certainly, some of the regulatory cost is appropriate for safety and soundness reasons. But consider the direct impact on bank lending and economic growth if this burden could be reduced by 20 percent and redirected to bank capital; it would support additional bank lending of \$69 billion to \$84 billion. This would clearly have a big impact on our economies. In fact, it represents nearly 10 percent of all consumer loans or 11 percent of all small business loans.

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<sup>1</sup> "Survey of Regulatory Burden," ABA, June 1992; Ellichehausen, "The Cost of Banking Regulation: A Review of the Evidence," Staff Study, Board of Governors of the Federal Reserve System, April 1998.

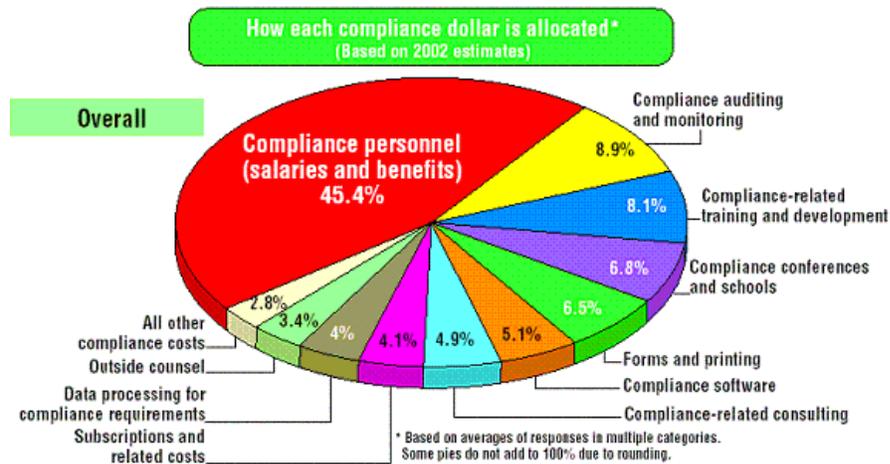
## II. Community Banks Hit Especially Hard

Regulatory costs are significant for banks of all sizes, but pound for pound, small banks carry the heaviest regulatory load. For the typical small bank, about one out of every four dollars of operating expense goes to pay the costs of government regulation. For large banks as a group, total compliance costs run into the billions of dollars annually.

The cumulative effect of new rules and regulations will ultimately force many community banks to look for merger partners to help spread the costs; some will go out of business altogether or consolidate with larger banks. Our members routinely mention regulatory burden as the first or second critical factor threatening the viability of his or her community bank. I can tell you, Mr. Chairman, the pressures to comply with all the regulations and still meet the demands of our customers are enormous. We feel that we must grow the bank rapidly to generate more revenues simply to pay for the ever-increasing regulatory cost. The sad part is that too much time and effort is now devoted to compliance and not to serving our customers.

Bankers at all levels, from bank directors and CEOs to compliance managers and tellers, spend endless hours on compliance paperwork. Because of the complexities involved, my bank pays more than \$100,000 each year to outside firms to help us with the big compliance issues. On top of this, one person on my staff has a full-time job just to coordinate all the activities throughout the bank related to regulatory compliance. I personally spend about one-and-a-half days per week just on compliance issues. Some CEOs tell me that they are now spending nearly half of their time on regulatory issues. In addition,

banks spend billions annually on compliance training, outside compliance support (including accounting firms, consultants and attorneys), compliance related hardware and software, printing, postage, and telephone connections.



Source: *Compliance Watch*, 2003. *Nationwide Bank Compliance Officer Survey*. ABA Banking Journal, June 2003.

Banks that can least afford increasing compliance costs are hit the hardest. There are more than *2,516 banks and thrifts with fewer than 20 employees; nearly 900 banks and thrifts have fewer than 10 employees*. In order to fulfill their compliance obligations, banks of this size often are forced to hire an additional full-time employee just to complete government-mandated reports. According to the Small Business Administration’s Office of Advocacy, the total cost of regulation is 45 percent higher per employee for firms with fewer than 20 employees compared to firms with more than 500 employees due to the fixed costs

associated with regulations.<sup>2</sup> The cost versus benefit analysis fails to make the case for many of the rules and regulations banks must follow, and the reports that we generate.

The bottom line is that too much time and too many resources are consumed by compliance paperwork, leaving too little time and resources for providing actual banking services. I'm sure I speak for all bankers when I say that I would much rather be spending my time talking with our customers about their financial needs and how my bank might fulfill them than poring over piles of government regulations. The losers in this scenario are bank customers and the communities that banks serve.

### **III. CTRs, Credit Unions, & ILCs: The Pressing Three**

In the appendix to this testimony is a list of recommended actions, every one of which would provide meaningful and much needed regulatory relief to banks. All of these items are important to my bank. Nevertheless, there are three issues in particular that are especially timely and that I would like to emphasize.

#### **(a) Eliminate CTR Filings for Seasoned Customers**

ABA and its members strongly believe that the current cash transaction reporting (CTR) standards have long outlived their utility in detecting possible acts of money laundering and other criminal activity. ABA members believe that CTR filing has been rendered virtually obsolete by several developments: formalized customer identification

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<sup>2</sup> Crain, "Impact of Regulatory Costs for Small Firms," Small Business Administration, 2005

programs, more robust suspicious activity reporting and government use of the 314(a) inquiry/response process. We believe that maintaining the CTR threshold at the current level generates too many reports that capture extensive immaterial activity wasting banker and law enforcement time that could be spent on Suspicious Activity Report (SAR) detection and investigation. Consequently, we believe that the time has come to recognize the redundancy of CTR filings for seasoned customers with transaction accounts and to eliminate this inefficient use of resources by bankers and law enforcement.

This sentiment is echoed by the Financial Crimes Enforcement Network (FinCEN) and all the bank regulators. For example, at his September 22 testimony before this committee, FinCEN Director William Fox said ending CTR reporting for seasoned customers is a way to make the CTR reporting system “more effective while still ensuring that currency transaction reporting critical information to identifying criminal activity is made available to law enforcement.”

Also, at the same hearing, Federal Reserve Governor Mark Olson testified, “We support the efforts of the Treasury Department and others to develop ways of reducing the burdens imposed on banks in ways that would not adversely affect the ability of banks to manage their risk or unintentionally impede the investigative tools available to law enforcement.” Office of the Comptroller of the Currency Chief Counsel Julie Williams, Office of Thrift Supervision Chief Counsel John Bowman, and Texas Banking Commissioner Randall James also expressed support for making changes to the CTR requirements.

Given the widespread support and important benefits of eliminating CTR requirements for seasoned customers, it is not only in the interest of banks that Congress should act, but for law enforcement also.

**(b) Reject Efforts to Expand Credit Union Business Lending Authority**

ABA strongly opposes the Credit Union Regulatory Improvements Act of 2005 (H.R. 2317). It is our understanding there may be efforts to incorporate provisions of this bill with the regulatory relief legislation now pending before this committee. H.R. 2317 would, among other things, greatly expand credit union commercial lending authority while at the same time undercut the regulation of capital levels at federally-insured credit unions. Taken together, these changes would fuel even more rapid expansion of the government's tax subsidy of an ever-increasing segment of the credit union industry. This segment is comprised of complex credit unions, which today are already virtually indistinguishable from tax-paying banks. Large-scale business lending is inconsistent with Congress's original charge that credit unions serve "people of small means" and should not be encouraged further.

It is important for Congress to recognize that a fundamental change has occurred within the credit union industry that has divided the industry into two distinct groups – diversified conglomerate credit unions and traditional credit unions that continue to embody credit unions' mission to serve people of modest means. Today, more than 100 credit unions surpass \$1 billion in assets. These conglomerate credit unions are much larger than the typical community bank in their local market, which has an asset size of \$103 million. The current tax-exempt status of these diversified conglomerate credit unions and lack of

equivalent regulation has created huge competitive inequities in the local marketplace and represents an ever-increasing abuse of the credit union tax subsidy.

This proposed legislation would exacerbate these competitive inequities, as well as raise safety and soundness concerns. Specifically, the bill would significantly increase credit unions' business lending authority, despite the fact that Congress specifically recognized credit unions' mission to serve consumers of modest means by clearly limiting credit unions' business lending in the Credit Union Membership Access Act of 1998 (CUMAA). CUMAA imposed the current limit of 1.75 times net worth not to exceed 12.25 percent of total assets. Also, CUMAA required credit unions to hold a higher leverage ratio than banks because (1) credit unions can build capital only through retained earnings; and (2) credit unions hold "investments" in their insurance fund equal to one percent of insured deposit and in their corporate credit union system, which are claims on a credit union's capital – thus overstating the amount of capital available to absorb unexpected losses. Lowering the net worth (leverage) ratio for credit unions, as the bill contemplates, while instituting a system of risk-based capital for all credit unions would artificially inflate the capital cushion purported to be available and *still fall short of bank standards*.

In sum, the credit union lobby's efforts to obtain such expanded authority primarily benefits large credit unions. It is harmful to small credit unions that observe the intent of the law and is harmful to tax-paying community banks and savings associations. For these reasons, we re-affirm our opposition to any efforts to expand credit unions' lending authority.

**(c) Prohibit Mixing of Banking and Commerce**

ABA strongly supports legislative language to restrict new commercially-owned industrial loan corporations (ILCs) from engaging in expanded banking and branching powers. Specifically, ABA supports provisions in the regulatory relief bill that is now pending before the committee that would deny new commercially-owned ILCs de novo branching authority. The ILC de novo provision passed the House in the last Congress, but was not ultimately enacted.

We understand these issues are receiving renewed attention due to Wal-Mart's recent application for an ILC charter and federal deposit insurance. ABA has long taken the position that commercial firms should not own banks or savings institutions because of the potential for conflicts of interest (particularly in the credit granting process) and because of the potential for an unhealthy concentration of economic power. The so-called unitary thrift holding company charter, which allowed commercial firms to own a savings association, was closed prospectively in GLBA, precluding the possibility that commercial firms could use this channel to obtain a banking charter. The GLBA provision represented a consistent extension of congressional policy going back 50 years.

However, the ILC charter remains an open avenue for commercial firms – even those large firms that are not primarily financial in nature – to provide retail and corporate banking services. ABA strongly supports closing this loophole for commercial firms. We look forward to working with this committee on this important issue going forward.

## **Conclusion**

In conclusion, the cost of unnecessary paperwork and red tape is a serious long-term problem that will continue to erode the ability of banks to serve our customers and support the economic growth of our communities. We thank you for continuing to look for ways to reduce the regulatory burden on banks and thrifts, and to restore balance to the regulatory process. Mr. Chairman, the ABA is committed to working with you and the members of this Subcommittee to achieve this goal.

## Appendix

### Additional Recommended Changes in Regulation

Not only are the demands on banks enormous, but they seem to change daily, which is its own form of burden. In addition to the specific reform delineated in the main body of this testimony, there are many other areas that should be addressed. Below is a summary of some recommended areas for reform. ABA is pleased to offer more detailed information to the Subcommittee upon request on any of these points:

#### a. **Bank Secrecy Act (BSA)/Anti-Money Laundering**

- **Eliminate Identity Verification for Monetary Instruments Conducted by Customers**

In view of the passage of the USA PATRIOT Act and the regulations implementing section 326 requiring a Customer Identification Program (“CIP”), we recommend that the verification requirement of 31 CFR 103.29(a)(ii) be eliminated, since bank customers purchasing these instruments will have already been identified through their institution’s CIP program.

- **Eliminate Notification to Directors or Designees of SARs**

The federal banking agencies instruct a bank that “whenever [it] files a SAR ..., the management of the bank shall promptly notify its board of directors, or a

Subcommittee of the board of directors or executive officers designated by the board of directors to receive notice.” (See, e.g., 12 C.F.R. 21.11 (h).) No such requirement exists in the Financial Crimes Enforcement Network’s (FinCEN) parallel SAR regulation.

ABA believes that this expectation imposes a role on directors and executive officers (those who not serve as an institution’s BSA officer) that is inconsistent with rational risk management responsibilities and compromises the board’s independence in evaluating management performance under the board approved BSA compliance program. The requirement diverts scarce board and executive resources from more significant strategic and policy oversight functions. At the same time, it adds further risk to information security issues without any concomitant benefit to the bank. Mandating notification of SAR filing to the board or executive level for all institutions is an unwarranted imposition on, and deleterious to, sound corporate governance.

- **Establish Standard for Suspending SARs on Continuing Activity**

There are many reasons that banks file continuing SARs when the underlying customer transaction activity is not considered inconsistent with reasonable banking behavior. For example, many institutions file SARs out of a literal interpretation of the structuring guidance and in an abundance of caution, when they have no conviction that the customer is engaging in activity that constitutes money laundering.

Accordingly, ABA proposes that when an institution would otherwise file serial SARs on repeatedly similar customer activity, they should be permitted by a clear regulatory interpretation to suspend further SAR filing when: an original and two additional SARs report continuing similar activity by the same customer have been filed; law enforcement has not requested the continued reporting of the identified activity; and when no substantively different conduct alters the nature, significance or criminality of the repeated activity, or merits a SAR identifying the activity as a different type or involving perpetrators not previously identified.

- **Include FFIEC Exam Instruction to Invoke FinCEN Helpline**

ABA considers the FinCEN Helpline to be a valuable source of BSA interpretive guidance. Many bank representatives and agency examiners utilize this service to obtain staff analysis to assist in evaluating compliance issues. This option has helped many bankers and examiners resolve their disagreements about BSA regulatory applications arising during an exam. However, other examiners resist using this resource when their interpretations are challenged by management.

ABA proposes that the FFIEC agencies include in their uniform exam procedures the following mandatory instruction to expedite exam dispute resolution without requiring a banking agency to compromise its supervisory judgment:

“Whenever management submits a written rebuttal to an examiner’s BSA exception pertaining to 31 CFR Part 103 and includes therein a request to call the FinCEN Helpline, the examiner shall then call the FinCEN Helpline and, in the presence of

the institution BSA Officer, obtain a FinCEN staff advisory interpretation of the issue. If the advisory interpretation does not alter the examiner's judgment with respect to the exception, the FinCEN interpretation is to be recorded on the exception sheet along with any supplemental management position after the BSA Officer has heard the FinCEN interpretation."

- **Include FFIEC Exam Instruction on Conducting Transaction Analysis**

Despite agency requirements for a tailored risk-based BSA compliance program and mandatory testing of bank BSA controls, agencies request transaction files and conduct transaction analyses without finding fault with the bank's audit/testing of the same processes. This is not an appropriate use of resources by agencies and is unduly burdensome for banks.

The FFIEC should adopt the following uniform BSA exam instruction: "Examiners should not request a bank to assemble files or records for the purpose of conducting transaction testing, or engage in transaction testing, of any provision of a bank's BSA compliance program before evaluating the adequacy of the bank's audit or independent testing of the relevant program provision and concluding either (i) that the audit/independent testing is demonstrably not a reliable indicator of bank performance of the program provision being examined, or (ii) that deficiencies identified by bank audit or independent testing of the program provision have not been timely corrected."

**b. Sarbanes-Oxley Implementation**

- **Continued Oversight Critical**

ABA is appreciative that the Subcommittee held a hearing on Section 404 of the Sarbanes-Oxley Act, and we also appreciate SEC Chairman Donaldson's leadership in hosting an all-day roundtable discussion about ways to improve the process. These events helped identify the areas that are in dire need of attention, especially the need to streamline the process in order to reduce costs. Subsequently, the Public Company Accounting Oversight Board (PCAOB) issued further guidance intended to help clarify and streamline the process and the costs related to Section 404. It remains questionable as to whether the costs will, in fact, be reduced. We believe that this streamlining, including increasing the number of shareholders for registration purposes, can be done through regulatory processes with your support. Continued oversight is important to facilitate these changes.

**c. Other Burden Reductions**

- **Exemption for Small Depository Institutions from Some Auditing Requirements**

Consistent with our request, the FDIC has proposed rules to exempt depository institutions with \$1 billion or less in assets from the management reporting requirement (and the audit and attestation of that report) and independent membership of the audit committee of the board of directors. Although the comment period has closed, these proposed rules have not yet been implemented.

Today, institutions of less than \$1 billion represent only 14 percent of total industry assets. These requirements have imposed serious burdens on the smaller institutions that frequently result in duplication of these banks' internal audits and are not necessary to safe and sound operation of institutions of less than \$1 billion.

The previous threshold, established by the FDIC in 1993, of \$500 million is not appropriate today given the state of the industry. At the time the threshold was set, banks under \$500 million represented 25 percent of total industry assets. The makeup of the industry has changed considerably since then. While more than 1,876 new banks have been chartered since then, today under-\$500 million institutions represent only 9.7 percent of total industry assets. Moreover, in light of the structural changes which have taken place, the widely-held definition of a community bank today is one with assets as large as \$1 billion or less.

- **Increase Shareholder Threshold for Registration**

To ameliorate the burdens associated with registration under the Securities Exchange Act of 1934, which the SEC set in 1964, for companies with 500 or more shareholders, ABA has proposed to the SEC increasing the triggering shareholder threshold to a number between 1,500 and 3,000. This level would appropriately establish a registration threshold comparable in effect to the level enacted in 1964 in terms of market presence. That is to say the market presence that 500 shareholders occupied in 1964 would require six times the dollar investment, or six times the number of shareholders to achieve the same presence in today's market. Recent activities by the SEC recognize that the cost of compliance with reporting

requirements is relatively greater for smaller companies than for larger issuers. Yet new requirements have significantly increased the costs to small companies.

The SEC regulations also provide that a company cannot seek to de-register until the number of shareholders of record is below 300. Sections 12(g)(4) and 15(d) of the Securities Exchange Act of 1934 should be similarly updated to place the threshold for de-registration within the range of 900 to 1,800 *shareholders of record*.

**d. Eliminate Cross-Marketing Restrictions**

ABA supports elimination of the prohibition in the Gramm-Leach-Bliley Act on cross-marketing between banks and non-financial portfolio companies where the Financial Holding Company (FHC) that owns the bank also has an investment position in a non-financial portfolio company made through its securities affiliate. No such prohibition exists when the investment position in a portfolio company is made through an FHC's insurance affiliate.

**e. Problems in the Consumer Protections on Bank Sales of Insurance Law**

Section 47 of the Federal Deposit Insurance Act establishes certain protections for consumers who purchase insurance products from depository institutions. These protections include a disclosure that insurance products are not backed by the Federal Deposit Insurance Corporation, that such products may involve an investment risk, and that the purchase of an insurance product cannot be conditioned upon the approval of a loan. This disclosure is

intended to distinguish insurance products from other banking products, especially insured deposit products.

Section 47, however, does not define the term “insurance product.” As a result, the statute has been interpreted to apply to all types of insurance products, even insurance products for which the disclosure either is not necessary or is potentially confusing to the consumer. To address this problem, we recommend modifying the scope of the disclosure requirement to only apply to products wherein there is an investment risk, e.g., not fixed rate annuities or credit insurance.

**f. Control of Shares by Trusts**

We propose a safe harbor from the attribution rules of Section 2(g) (2) of the Bank Holding Company Act: (1) for shares held in trust through a regulated employee benefit plan; or (2) for mutual fund shares held in trust provided any investment adviser or affiliate with the power to vote 25 percent of the shares of the investment company transfers the vote to the beneficial owners or an independent entity; or (3) for shares held in a common or collective fund.

The purpose of this safe harbor is to exempt certain bank and bank holding company employee investment holdings from being improperly attributed to the bank holding company when those holdings are held through an employee benefit plan or a common or collective fund, or the employee assets are invested in mutual fund shares held in trust.

Without this exemption, bank holding companies, by virtue of their employees' activities, could be deemed to control the mutual fund or other company in which the plan or trust has invested.

**g. Provide Parity for Savings Associations**

ABA recommends eliminating disparate treatment of thrifts under the federal securities laws eliminating the investment adviser and broker-dealer registration requirements that apply to thrifts, but not banks, under the Investment Advisers Act (IAA) and the Securities Exchange Act of 1934.

Thrifts and banks provide investment adviser, trust and custody, third party brokerage, and other related services in the same manner, but have been subject to disparate requirements under the SEC's interpretation of the securities laws. There is no logical basis to structure the regulation of thrifts and banks differently. Removing the disparity will reduce regulatory burden by providing cost savings to affected thrift institutions and enhance competition that will benefit consumers.

**h. Flood Insurance Compliance Problems**

The Flood Disaster Protection Act of 1973 should be amended to streamline and simplify flood insurance requirements; resolve compliance problems when the official flood map is more than 10 years old; increase the "small loan" exception (currently \$5,000) and allow adjustments for inflation on a regular basis; and to allow exceptions to flood insurance

requirements for agricultural real estate where the value of most of the collateral is represented by land, not permanent structures.

In addition, the forced-placement rules should be changed to allow lenders to force-place flood insurance within 30 days (instead of the current 45 days) of notifying the borrower and regulators should be given more flexibility to tailor their actions to individual cases by eliminating mandatory civil monetary penalties for certain pattern and practice violations of the National Flood Insurance Program.

**i. Clarify Citizenship of National Banks & Federal Savings Associations**

The National Bank Act generally provides that national banks are “citizens” of the states in which they are “located.” However, the term “located” is not defined in statute, and the federal courts have not defined the term consistently. Since 1992, federal courts have disagreed about the meaning of “located,” resulting in national banks having multiple state citizenships. Additionally, to avoid inconsistent treatment of federally chartered financial institutions under the diversity statute, we recommend a change in the Home Owners’ Loan Act to consider that a federal savings and loan is a citizen in the state where its home office is located for federal court jurisdiction.

**j. Establish Protections for Information Provided to Banking Agencies**

ABA proposes amending the Federal Deposit Insurance Act to provide that when a depository institution submits information to a bank regulator as part of the supervisory

process, the depository institution has not waived any privilege it may claim with respect to that information. Recent court decisions have created ambiguity about the privileged status of information provided to supervisors when outside of the narrow confines of the actual examination. However, the purpose of providing confidentiality for examiner information is to encourage open communication between the regulator and the regulated financial institution. The process of preserving safety and soundness applies just as clearly to additional information supplied to regulators in any part of the supervisory process. The bank agencies have supported the change and we urge Congress to adopt these important protections for bank customers.