Statement of Senator Richard C. Shelby
Committee on Banking, Housing and Urban Affairs
March 22, 2010

- Thank you Mr. Chairman.

- Chairman Dodd and I have known and worked with each other on various issues for over three decades.

- For the last several months, we have been working to achieve a broad bipartisan agreement on how to reform our financial regulatory structure. Although it has been a difficult endeavor in many respects, both the Chairman and I have worked diligently to find middle ground.

- I expect we will continue to do so in the future.

- When we began this process, the Chairman and I shared many of the same goals.

- We both wished to end “Too Big to Fail.”

- We believed that our regulatory structure needed to be modernized and streamlined.

- We agreed that the scope of the Federal Reserve’s authority should be closely examined and that consumer protections needed to be strengthened.

- Finally, we concurred on the need to modernize derivatives trading to increase transparency, standardization, and competition.

- These broad areas of agreement were, and I believe remain, the foundation of bipartisan legislation. Unfortunately, such legislation continues to elude us.

- That does not mean, however, that an agreement is out of reach.

- The Chairman's latest proposal contains a number of positive steps forward and could form the foundation for broad bipartisan agreement. Therefore, I do not view today's markup as the end of the road, but rather just another step in the process.

- As we move forward, there are several issues that I believe must be addressed in any final bill.

- First, and foremost, we must end "Too Big to Fail."

- The Chairman’s first proposal expanded the problem of “Too Big to Fail” by broadening the Federal Reserve’s emergency lending authority and creating a resolution regime that could bail out failing firms. Although this bill takes some steps in the right direction, it still falls short of ending bailouts and the associated moral hazards.

- The Chairman’s approach to systemic risk oversight, however, is much improved.

- Through recommendations to agencies and to Congress, the Financial Stability Oversight Council would work to strengthen our financial system and improve financial regulation. The structure and mission of the Council are consistent with my views.

- However we choose to end “Too Big to Fail” and to mitigate systemic risk, none of our efforts will succeed unless we change market expectations regarding bailouts, require enhanced private sector due diligence, and provide regulators with realistic objectives and the tools to achieve them.

- The issue of consumer protection continues to be a high priority for both Chairman Dodd and for me. The relationship between banks and consumers has attracted the most media attention, and perhaps the most rhetoric.

- Recently, a relatively well-known commentator characterized the debate over consumer protection as a clash between those who favor either the banks, or families.

- Not only is that particular characterization absurd, but it is also incredibly unconstructive.

- Reforming our entire financial regulatory structure is a difficult and complex undertaking. It requires people of good faith to work cooperatively toward a common goal, not an "us versus them" mentality.

- That said, I do believe that there is currently an imbalance in our regulatory structure between consumer protection and safety and soundness regulation.

- I do not wish, however, to correct this imbalance by creating a new one. Therefore, I have advocated elevating consumer protection, giving it parity with safety and soundness oversight.

- While I continue to believe that a safe and sound banking system is the best consumer protection, there are steps that need to be taken to strengthen the role of consumer protection within our regulatory structure.

- There are a number of different constructs that can accomplish this goal.

- Whatever organizational structure we ultimately settle upon, I will continue to insist on the meaningful integration of safety and soundness considerations in both rule-writing and enforcement. I remain optimistic that this can be achieved.

- The derivatives title does not yet reflect the work of Senators Gregg and Reed.

- The current language would subject derivatives transactions to reporting, clearing and execution requirements.

- Even companies that use derivatives to hedge legitimate business risks would be subject to these requirements, unless they qualified for one of the title's narrow exemptions.

- Forcing clearing of essentially all derivatives ignores the risks of central clearing. Instead of taxpayer savings, this title could expose taxpayers to future bailouts of clearinghouses.

- We need to carefully weigh the risks of mandating the clearing of products that are complex, illiquid and hard to price.

- We should also allow companies that are using swaps to hedge legitimate business risks to continue doing so without requiring them to jump through unnecessary regulatory hoops or have to set aside resources that could otherwise be used to create jobs and develop new products.

- One of the most important lessons from the AIG bailout is that regulators need to have access to information about the full range of activities in the derivatives markets. We need to shed light on all classes of swaps, including ones that this bill would allow to remain in the dark.

- In short, we need to establish a rational regulatory framework for derivatives that allows for both transparency and economic growth.

- This bill also contains a number of provisions that are unrelated to the crisis, including the so-called corporate governance provisions that would impose costs on shareholders and empower special interests.

- There are several other SEC-related provisions that, as presently drafted, would not solve the problems they attempt to address. The three key areas are credit rating agencies, securitization, and SEC funding – all of which will need to be addressed.

- Mr. Chairman, those of us who have worked on this legislation for more than a year now, know how difficult and complex this undertaking has been. Nevertheless, we have made significant progress and Chairman Dodd's dedication, patience, and persistence have been instrumental in bringing us this far.

- Although I have raised a number of serious concerns, I remain optimistic that we can, over time, reach an agreement that will garner broad bipartisan support. I just don't believe we are there yet.

- Chairman Dodd has made it clear that he intends to move forward without Republican support which is his prerogative. It is not our intention to turn this mark up into a long march, offering hundreds of amendments that will inevitably be defeated. We don't think that would be constructive or productive.

- Consequently, we will be opposing the bill at this time. But, I pledge to the Chairman and my colleagues that I will continue to work with them as this bill approaches floor consideration in hopes of reaching a broad consensus.

- As I have said many times, if we place policy ahead of politics, we can, and I believe will, reach an agreement that will not only attract significant support, but will also be good for the American taxpayer, our financial system and our economy.

- Thank you Mr. Chairman.