STATEMENT

OF

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TO THE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

OF

THE U.S. SENATE

JULY 13, 2004

Mr. Chairman and members of the Committee, I am Steve Bartlett, and I am President and Chief Executive Office of The Financial Services Roundtable.

I particularly appreciate the opportunity to testify on the impact of the Gramm-Leach-Bliley Act ("GLBA"). The Roundtable's membership reflects the spirit of that landmark law. The Roundtable members are 100 of the nation's largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer.

With the enactment of GLBA, Congress acknowledged the contribution of the financial services industry to our economy. Not only are financial services firms directly responsible for almost 10 percent of our nation's total gross domestic product ("GDP"), they contribute to the nation's GDP by financing the activities of individual consumers and businesses. It is, therefore, appropriate for the Committee to review the impact of GLBA on the financial services industry and the economy as a whole.

One of the principal goals of GLBA was to maintain the competitiveness of the financial services industry so that all Americans could have access to financial services. Indeed, in writing GLBA, lawmakers set out to create an environment whereby the marketplace would determine through what channels consumers are able to purchase financial services. The environment is governed by regulations that ensure safety and soundness and consumer protection, but not what products can be offered, or by whom. By this standards GLBA has, in large measure, been a success. The U.S. financial services industry is the envy of the world. U.S. financial services firms are among the world's largest and best capitalized firms. The Roundtable members offer American consumers and businesses an ever-increasing array of financial products and services designed to address needs ranging from home loans, life insurance, securities brokerage, and retirement services.

However, in the past five years it has become apparent that some modifications to GLBA are necessary. In the remainder of my statement, I will outline some of the changes to GLBA that The Roundtable recommends.

Amend GLBA to Establish Uniform, National Privacy, Insurance and Mortgage Lending Standards

In the past five years, it has become increasingly apparent that a number of financial services firms operate on a nationwide basis. They offer financial products and services to consumers and businesses not only through physical offices, but also over the Internet and telephone. Therefore, The Roundtable recommends that GLBA be amended to subject national financial services firms to uniform, national regulation.

This is not a call for the elimination of regulation. It is a recommendation that financial firms that operate on a national basis be subject to a single set of national standards rather than a multiplicity of state and local regulatory requirements.

More importantly, this is a recommendation that is intended to benefit the consumers of financial products and services. Overlapping and conflicting state and local regulatory requirements increase the operating costs of national firms, and these costs, inevitably, are passed along to consumers. Overlapping and conflicting state and local regulatory requirements also impair the ability of national firms to offer uniform products and services. This complicates life for the homeowner that moves from one state to another and seeks to receive the same financial products and services in his or her new home state. It also prevents a company that operates in multiple states from purchasing the same financial product or service for all of the company's facilities.

This Committee recently recognized the importance of uniform, national laws in the reauthorization of the Fair Credit Reporting Act. The principle of uniform, national financial regulation also is embedded in the National Bank Act, which applies to national banks, and the Home Owners' Loan Act, which applies to federal savings associations.

The need for national standards is most evident in three areas: privacy, insurance, and mortgage lending.

Privacy

Title V of GLBA imposed a number of privacy requirements upon financial institutions. These requirements include the distribution of an annual privacy notice to consumers, and they permit consumers to prevent the sharing of personal financial information with unaffiliated third parties. Title V of GLBA also expressly authorizes the states to adopt privacy notice and disclosure laws that afford consumers greater protection. The Roundtable urges the Committee to modify this provision of GLBA and establish uniform, national privacy standards for financial institutions.

Two examples illustrate the confusion and conflict created by current law. First, like many consumers, The Roundtable member companies have found that the annual privacy notice required by GLBA is overly confusing, and largely ignored by many consumers. Extensive research indicates that consumers have difficulty processing notices that contain more than seven elements, and that require a reader to translate vocabulary used in the notice into concepts they understand. Consumer surveys also indicate that over 60 percent of consumers would prefer a shorter notice than the lengthy privacy policy mandated by GLBA.

The federal banking agencies, in conjunction with the Federal Trade Commission, the National Credit Union Administration, the Commodities Futures Trading Commission and the Securities and Exchange Commission, recently requested comment on alternative notices that would be more readable and useful to consumers. Yet, even if these agencies develop a simplified notice, they lack the authority to make the notice truly consumer-friendly because GLBA leaves the states free to adopt their own, additional, notice requirements.

An illustration of the conflict created by GLBA's deference to state privacy laws arose just two weeks ago, when a federal court affirmed the application of a California privacy law to financial institutions operating in that State. The California law, SB1, permits consumers to prevent the sharing of information with affiliates (i.e. opt-out) and requires that consumers affirmatively authorize the sharing of information with non-affiliated third parties (i.e., opt-in). In ruling that the FCRA does not preempt the application of this law to financial institutions operating in California, the court based its opinion in part on the provisions of GLBA that allow states to adopt more stringent privacy laws, and that the federal preemption applicable to affiliate sharing in the Fair Credit Reporting Act is limited strictly to credit reports. As the court stated: "... Title V of the Gramm-Leach-Bliley Act of 1999, which sets forth basic privacy protections that must be provided to consumers by financial institutions, demonstrates that it, and not the FCRA, encompasses the kind of information sharing at issue in this case."[1] This decision, if not reversed, amounts to an invitation to other states to pass their own privacy laws, thereby subjecting financial institutions, and their customers, to a variety of different and conflicting privacy regulations contrary to the clear intent of Congress to establish national uniform standards for affiliate sharing.

[1] American Bankers Assoc. et. al. v. Lockyer, at page 10.

To avoid this consumer confusion and regulatory conflict, the privacy standards in GLBA should be national, uniform standards. Also, the federal regulators should be directed to promulgate a simplified, national privacy notice with a safeharbor.

Insurance

Title III of GLBA reaffirmed that the business of insurance is regulated primarily by the states. During the past five years, however, all parties to insurance regulation, including the state insurance commissioners, have concluded that the current system of insurance regulation is flawed. Indeed, the regulatory regime should be updated to reflect the needs of our mobile, transient population. As the former President of the National Association of Insurance Commissioners, Mike Pickens, told the House Financial Services Committee last year: "We agree with critics that there is a need to make the [insurance regulatory] system more uniform, reciprocal, and efficient."[2]

The Roundtable has concluded that the best way to reform the regulation of insurance is to create a parallel system of chartering and supervision for insurance companies at the federal level. This so-called "optional federal chartering" system would not replace state insurance regulation. Instead, it would give insurance companies a supervisory alternative, similar to that available to banks and thrifts.

A soon-to-be published study that was partially funded by The Roundtable has found that the competition between the states and the Federal Government inherent in the dual banking system has generated significant benefits for banks, their regulators and their customers. Those benefits include enhanced product and regulatory innovation, expanded consumer choices, and

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[2] Hearing on "Reforming Insurance Regulation" before the Capital Markets, Insurance and Government Sponsored Enterprises Subcommittee of the House Financial Services Committee, November 5, 2003.

expanded efficiencies in bank activities and regulations.[3] These same benefits would flow to the insurance industry, its regulators and its customers through the introduction of optional federal regulation of insurance.

Mortgage Lending

GLBA addressed mortgage lending through provisions in Title I, which authorized financial holding companies to engage in mortgage lending, and Title VI, which made various reforms to the Federal Home Loan Bank System. In the five years since the enactment of GLBA, however, the regulation of mortgage lending has become a "hot" topic, as a variety of state and local governments have enacted laws designed to stop predatory lending practices, and as this Committee has debated the supervision of not only the Home Loan Banks, but also Fannie Mae and Freddie Mac.

Accordingly, The Roundtable urges the Committee to amend GLBA and enact a national mortgage lending law that establishes basic anti-predatory lending protections for mortgage borrowers. This federal law should apply uniformly to all lenders, regardless of charter, and should supersede state anti-predatory lending laws.

The rationale for a uniform, national mortgage lending law is the same as the rationale for a uniform, national privacy law: a single, federal standard avoids consumer confusion and the potential for conflict between competing state and local laws.

Amend GLBA to Remove Sunset on Non-Financial Activities

[3] "The Benefits of Competition in Financial Regulation: Innovation, Choice and Efficiency," a paper by James A. Wilcox, Kruttschnitt Family Professor of Financial Institutions, Haas School of Business, University of California, Berkeley. We will provide the Committee a copy of this study upon publication.

One of the central features of GLBA was the creation of financial holding companies. It is now apparent that this feature of the bill has been only marginally successful. While most of the nation's largest banking firms have become financial holding companies, only a handful of securities firms and insurance firms have chosen to do so. The financial holding company structure significantly expanded the scope of activities permissible for banking firms; it did not offer insurance firms and securities firms a similar benefit. Outside of the financial holding company structure, securities and insurance firms are subject to few limitations on affiliations. Thus, it is not surprising that only a handful of securities and insurance firms have become financial holding companies.

In a marketplace that is subject to rapid changes in technology and even more rapid changes in consumer demands, some companies need the flexibility to provide products and services outside the statutory list of activities that are financial in nature. Title I of GLBA took a step in this direction when it grandfathered the non-financial activities of companies that were not bank holding companies prior to GLBA, but became financial holding companies after the enactment of GLBA. This grandfather, however, only protects non-financial activities that constitute less than 15 percent of the financial holding company's gross revenues, and is scheduled to sunset in 5 years. We recommend that the Committee remove this sunset.

Amend GLBA to Remove Activity Limitations Applicable to Financial Subsidiaries of National Banks and State Banks

Section 121 of GLBA authorized national banks to own financial subsidiaries, and empowered these subsidiaries to engage in a range of financial activities. At the same time, however, GLBA imposed a number of activity and other operating constraints on the financial

subsidiaries of national banks and state banks that do not apply to financial holding companies. These constraints should be removed.[4]

The activity and operational limitations applicable to the financial subsidiaries of national and banks were imposed to eliminate a presumed subsidy enjoyed by banks as a result of the federal safety net, but not available to uninsured bank holding companies. Thus, the activity and operational limitations were intended to ensure regulatory parity between banks and bank holding companies.

The problem with these limitations is that the case for the presumed subsidy was rather weak. Studies done by both the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") have found little, if any, evidence that banks, on net balance, receive a subsidy because of the federal safety net. Therefore, instead of establishing regulatory parity between bank holding companies and banks, the limitations have had the effect of making the financial holding company structure, which is not subject to similar limitations, the more viable corporate vehicle for banking institutions seeking to engage in expanded financial activities.

Removing the activity and operational limitations on national and state banks would allow banking organizations to select between alternative corporate vehicles through which they could offer financial products and services.

State-chartered banks are subject to another activity limitation, which pre-dates GLBA, and which also should be removed. In 1991, Congress barred state banks from engaging in any activity, as a principal, that is not permissible for a national bank. While the FDIC can overcome this prohibition by determining that a particular activity poses no significant risk to the deposit

[4] For example, financial subsidiaries of national banks may not underwrite insurance, may not engage in merchant banking activities, and may not engage in real estate development or investment. Moreover, the total assets of all financial subsidiaries of national banks cannot exceed a certain limit.

insurance fund, the prohibition is fundamentally at odds with the philosophy behind our dual banking system. The dual banking system is premised upon the operation of two, independent regulatory systems. Therefore, linking the powers of state banks to those permissible for national banks diminishes the independence of the state banking system. Moreover, this limitation cannot be justified on safety and soundness grounds. Both federal regulators of state banks, the Federal Reserve Board and the Federal Deposit Insurance Corporation, have the authority to take actions against state banks if the activities of subsidiaries jeopardize the financial condition of the parent bank.[5]

Amend GLBA to Allow Treasury and the Federal Reserve Board to Independently Determine What Activities are Financial in Nature

When it comes to determining whether or not a new activity should be permissible for a financial subsidiary of a national or state bank or a subsidiary of a financial holding company, GLBA establishes a complex notice and disapproval procedure involving the Secretary of the Treasury and the Federal Reserve Board. This procedure gives each agency a veto over new activities. It also ensures that the activities permissible for financial subsidiaries of national and state banks will be the same as the activities permissible for subsidiaries of financial holding companies.

In the five years since GLBA was enacted, the Treasury and Federal Reserve Board have authorized few new activities. This suggests that the current procedure is overly cumbersome. Therefore, The Roundtable recommends that the Treasury Department and the Federal Reserve

[5] For example, the prompt corrective action provisions in the Federal Deposit Insurance Act permit federal regulators to restrict the activities of subsidiaries or even require the divestiture of subsidiaries. Also, Section 114 of GLBA authorized the federal banking regulators to impose restrictions or requirements on relationships and transactions between depository institutions and affiliated companies to ensure the safety and soundness of the depository institutions.

Board should have independent authority to determine what a permissible financial activity is.[6] This would stimulate a positive competition between regulators that will benefit the customers of financial services firms and the financial services industry. This proposed change should not jeopardize the safety and soundness of affiliated depository institutions since the OCC and Federal Reserve have separate authority to ensure that the operations of financial affiliates do not harm depository institutions.

The Importance of National Laws, Federal Preemption, and Regulatory Competition

Three regulatory principles run throughout our testimony. The first is the need for uniform, national laws for the financial services sector of our economy. Today's financial services markets are characterized by a handful of large, national financial services firms, and thousands of smaller, local firms. The top ten property and casualty insurers, for example, control roughly 55 percent of that industry's assets. Similarly, the top ten banks account for 45 percent of all assets in the banking industry. Uniform, national regulation is in the best interest of these national firms, and more importantly, their customers. Uniform national regulation promotes efficiencies that can be passed along to consumers. It also permits the development of standard products and services that can be offered to consumers, regardless of their location. Therefore, we urge the Committee to incorporate the principle of uniform, national laws into GLBA in key areas such as privacy, insurance and mortgage lending.

The regulatory companion to uniform, national laws is federal preemption. Without federal preemption, the goal of uniformity cannot be realized. Congress has recognized the

[6] Treasury also should have the ability to determine that certain activities are "complimentary" to financial activities; a power that Congress extended to the Federal Reserve Board when GLBA was enacted, but not to Treasury.

importance of preemption in other key sectors of our economy, such as drugs, airline safety, and communications. This principle needs to be applied more broadly to financial services.

Finally, the benefits of competition in financial regulation stand behind several of our recommended modifications to GLBA. As James Wilcox explains in his forthcoming paper, the competition between state and federal banking regulations that is inherent in the dual banking system has produced numerous benefits to consumers, the industry and regulators. Therefore, we urge the Committee to modify GLBA in these concrete ways:

- Create national uniform privacy standards;
- Create national uniform protections against predatory lending;
- Create and optional federal charter for life and property & casualty insurance companies;
- Remove the sunset on non-financial activities;
- Remove activity limitations on both national and state banks; and
- Allow Treasury and the Fed to determine independently what activities are financial in nature

Thank you for the opportunity to testify on this most important topic.