

To: Secretary Rubin
From: Lisa S. Andrews
Subject: Industry Positions on H.R. 10
Date: September 22, 1998

MEMORANDUM

Despite several near death encounters, HR 10 manages to survive thanks in large part due to the extraordinary efforts of its core advocates: Merrill Lynch, Citicorp/Travelers, and Nation's Bank/Bank of America. The securities industry has remained a strong supporter throughout Congress' consideration of this bill. SIA, the Securities Industry Association claims that they could support op subs, but the House Commerce Committee would not accept this provision. It is not an important enough issue for them to weaken their support.

As a result of changes the Senate Banking Committee made, the American Bankers Association now supports HR 10. The ABA has persuaded most state banking associations to support the bill, with the exceptions of OK, TX, KS and KY. ND opposes, too, but may become neutral. Those opposing view the 13 safe harbors in the bill as creating too much opportunity for states to enact laws discriminating against banks offering insurance. Apparently, the memo from the OCC addressing this issue has generated much concern among the state associations. The Independent Bankers Association has taken a position of "not opposed," but earlier enunciated support for the affiliate structure. (Ken Guenther of IBAA worked for the Fed.) America's Community Bankers Association wants to make improvements in the bill, particularly the thrift provisions and allow for full transferability of grandfathered powers. ACB would like all of Title IV removed, notably Sec. 401.

A number of large banks have also changed their position to one of support. Walter Shipley of Chase Manhattan just sent a letter expressing support to the Senate provided the bill does not change. Last week, Norwest, one of the last holdouts opposing the bill, agreed to join the Bankers' Roundtable support of the bill. Both Norwest and the Roundtable have been advocating the need for addressing op sub. Washington Mutual, the Nation's largest thrift, however, has persuaded Senators Gordon and Murray to place a hold on the bill because of its restrictions on the transfer of grandfathered unitary thrifts.

The insurance industry had been a strong supporter of the House passed bill, but the agents now strenuously oppose the Senate passed version. The agent groups, the National Association of Underwriters ("NALU") in particular, have tried unsuccessfully to reach an agreement with the American Bankers Association to settle their difference on the insurance sales provisions. Consequently, the Independent Insurance Agent and the Professional Insurance Agents have mounted major grassroots campaigns against H.R. 10. NALU has or is expected to activate their membership as well. These associations purportedly have lined up Senators Ford, Bob Kerry and Cleland to fight their battle on the Senate floor. Should the bill pass the Senate, the agents have much support in the House, particularly with Speaker Gingrich and Rules Committee Chairman Solomon who would be key members deciding on whether to accept such a bill.

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The insurance company trade associations generally continue to support HR 10, but have a few issues they would like to see addressed concerning corporate governance and state discrimination. The removal of the redomestication provision has created a tremendous internal problem for the ACLI. Their big NY-based mutual member companies, e.g. Metropolitan and New York Life, are adamant that this provision be restored. This creates a political problem for D'Amato, who cannot be seen supporting legislation that would allow major NY mutual companies to redomestic to states where they can demutualize.

Several community groups have launched their own grassroots campaigns to defeat HR 10. They have been especially energized by the weakening of the Community Reinvestment Act. The National Community Reinvestment Coalition are looking to Senators Wellstone, Dorgan and Feinstein for help with their cause.

In summary, the question of whether the banks and the insurance agents can cut a deal remains a central factor in the prognosis for the bill. If an agreement can be reached between these groups, then the changes for enactment dramatically improve. The next question becomes whether the House would accept such a brokered agreement.

Industry Positions on H.R. 10

I. Insurance

Paul Equale of the Independent Insured Agents confirmed that they are negotiating with the ABA to come up with a compromise on the insurance provisions. He assured me that they had a “fireball built on the Senate floor to protect their interests if necessary. He mentioned Bob Kerry, Wendall Ford, Max Cleland, and implied other midwestern populists were supporting them. On Friday, Sept. 18, Paul said he had just come from a meeting with Sarbanes and his senior staff to explain their concerns on the insurance provisions. Sarbanes, Dodd and D’Amato really want a bill and Paul seemed quite hopeful that their issue would be addressed. He said that during the S. Banking mark-up, the agents had been asked “to look the other way,” which some took to mean they approved of the bill tacitly. Paul said they had corrected that misconception. He commented that Bahner is trying to find a way to move a bill which would be no worse for the agents than the House bill. Subsequently, Tom Conklin of the Indep. Insurance Agents, reported no agreement has been reached with the ABA. He lamented that they do not have a strong Member of the Senate willing to serve as a broker between the entities

NALU (Nat’l Ass. of Life Underwriters)-- David Winston does not believe an agreement can be worked out; hence, the grassroots effort. He said neither D’Amato or Sarbanes seem willing to accept a manager’s amd. He commented that the ACLI has a huge problem -- ie the redomestication issue. David also said that no one seems to be lobbying the rank and file Senators, eg, Lautenberg said no one from private industry had been in to talk about HR 10. He assured me Sen. Ford would be a dog fighting this battle for them; “Ford is more adamant than we are.” He reiterated that he sees no incentive for the banks to concede. NALU is mounting a big grassroots campaign to defeat the bill. They’ve called upon their entire membership -- a rare event. They also just ended a national convention where they were revving up opposition. View they bill as worse than current law. They hope the bill dies.

According to the PIA, the Professional Insurance agents (p&c agents), the agents have not reached an accord with the ABA, nor do they believe agreement is likely. Consequently, the grassroots effort to defeat the bill continues in earnest. PIA faxed 22,000 members last week, NALU sent some 80-100,000 legislative alerts to their membership. PIA said they’re getting a good response, but Marne reports she’s heard little on the Hill about the agents’ grassroots lobbying.

Lincoln National (members of ACLI and the Financial Services Council) -- Interestingly, Mark Pope shared with me that Howard Mennell has agreed to a manager’s amendment, a technical amendment and an agreement to work out redomestication in conference. One part of the manager’s amd. would cure a huge problem concerning state corp governance. As Mark explained it to me, HR 10’s provision pre-empting state laws that prevent or restrict affiliations also captures state “corp. governance laws” which help protect companies from unwanted takeovers. He said the ACLI has gotten SIA aboard on this, that it’s critical to the IBAA, and that the ABA wants it, too. Mark even said it’s on page 10 of the manager’s amd. I asked if he

had a copy he could share. He said that this is the only part he had, which I find hard to believe. The header on the fax shows page 10 originated from the Board of Governors two days ago! While the substance of the provision is not critical here, the fact that Howard has a manager's amd. seems indicative of movement. The technical amendment relates to Sarbanes' "mega-merger amendment" by adding a third criteria for the Fed to consider if a target company in a takeover has assets of greater than \$40 billion. This provision would require the Fed to consider the functional regulator's opinion on whether the merger would protect the interests of policyholders and the risk to the state insurance guaranty fund. He commented that without these amendments, then the IBAA would really come out opposed.

II. Securities Associations

The SIA fully supports HR 10 and supports an affiliate holding structure for the ease of functional regulation. Steve Judge said that while they prefer the affiliate approach, they are "agnostic" about the op sub structure. He said they had been willing to talk about flexibility for op subs earlier, but that the House Commerce Committee was adamantly opposed. Steve thinks there's a 50-60% chance the bill will pass the Senate, and commented that neither the Fed or Treasury thinks the bill will really become law. He volunteered that if Rubin and Greenspan, or Summers and Virgil Mattingly (or whoever's #2), could get together then they should be able to work out an agreement. I reminded him that we hadn't been able to do that earlier and remain staunchly opposed to the bile.

III. Individual Banks

First Union's Chairman Crutchfield said at the CEO lunch 9/17 that they supported H.R. 10. His Washington lobbyist, however, told me that First Union was not actively supporting the bill. Joe Siedel said it was a bad bill, and that Wachovia and all the other N.C. banks [except Nation's] were against it. FU's top exec's were in town 9/17 for the BRT meeting. Their sec. sub., Wheat First, exec. was in, too. These exec's lobbied with the message that progress was made in HR 10, but it was not enough. FU has problems with the safe harbors enabling states to enact discriminatory state laws against financial institutions. They have a particular problem with Fla.'s insurance commissioner and this language could exacerbate that problem. FU is studying this provision carefully.

Norwest is now supporting the bill. They apparantly joined in a Merrill Lynch letter today expressing their support. Anita Bedelis said they were pushing op sub hard, arguing among other reasons that the Fed had an imbalance of power. She reported Dorgan, Wellstone, Feingold all agree on the Fed problem. Norwest will continue to support the bill, however, even if op sub is not taken care of. They would also like to see clarification on the ins. provisions. Anita said they are very worried about the potential for the House bill to be enacted (which they oppose). She says Daschle would like to move something because of Sarbanes, but that he listened carefully to Kovacevich on the need to curb the Fed's authority and on the op sub issues. Norwest views the Senate as an interim battle.

Chase's Chairman Shipley sent a letter to the Senate expressing Chase's support for the bill provided no changes are made. Rick Hohlt said the report was filed Friday and that Lott is expected to bring the bill to the floor on Oct. 2, conceivably it will be a bill the House will accept. Rick says they recognize there's not enough time for a conference.

IV. Bank Associations – National

As Jerry reported earlier, the Bankers Roundtable now supports H.R. 10. Alfred Pollard said they are focusing on the op sub issue and the fact that the Fed has too much power under this bill. He also said Daschle was going to encourage Reed to take the lead on op sub. If no ob sub and were adopted, the BRT would continue to support the bill. In their lobbying materials, the BRT include 2 pro op sub editorials [and a pro IMP piece]. When Larry spoke to the BRT Sept. 18th on the international economic situation, no one asked a question on the HR 10.

America's Community Bankers-- wants to make improvements in the bill, particularly the thrift provisions and allow for full transferability of grandfathered powers. ACB would like all of Title IV removed, notably Sec. 401.

V. Bank Associations – State

I have spoken to numerous state banking associations this week and with the exception of the ND, TX, OK and KY, all are inclined to support HR 10. The lack of enthusiasm is evident. ND is opposed now, but may become "neutral" at best. Their Exec. Director said Dorgan would oppose no matter what and that Conrad was opposed.

The Arkansas bankers view HR 10 as much improved to the point, "It's digestible, with heartburn." They have grave concerns about slippage occur on the bill, especially in – conference. Their concerns over unitary thrifts and deterrence have been ameliorated and are sharing this with their Senators. He noted the lack of improvement on op subs. The Ex. Dir. senses that the Senate is being asked to pass legislation without much opportunity for a thorough debate. Nevertheless, the "emotional issues" for bankers - unitary thrifts and the ability for state ins. comm'rs to discriminate have been taken care of to a degree they're satisfied.

The WV bankers hold a similar view. They are satisfied with the unitary thrift and title ins. provisions, which had been their chief sources of opposition earlier. He expects that at some point they will lobby for the bill. He noted that the ABA is pushing hard on op sub.

KS Bankers -- After a week of regional meetings, the KS bankers are ambivalent about HR 10. They really don't care whether it passes or not, and have expressed this position to their Senators whose staffs have called asking their position. Jim Magg thinks their Senators will follow the state ass'ns recommendation. Presently, their position remains opposed, but it may change after the ABA conference call. Jim said KS doesn't have problems with their insurance commissioner, and 70% of their members are in towns of less than 5,000 so already are eligible for ins. powers. Op sub not a big deal, but a few urban county bankers would prefer op. sub. Jim commented that Roger Beverage of OK Bankers had sent around the OCC memo.

LA does not have a position yet since they have only seen a one-page summary. They had been opposed to the bill, and don't have an official position now. He warned that the House leadership has made no commitment on [preserving] the Senate language and doesn't believe Congress can be trusted to develop a bill acceptable to the industry.

The MT bankers are not that concerned about the bill since most of their members are rural bankers who would not be interested in expanded powers. They have given up on engaging in the legislative debate since losing the credit union vote. Although the MT bankers usually follow the ABA's position, the Ex. VP/CEO thought they'd be more inclined to follow Norwest's position (supportive of the IBAA's). Bottom line: they're not actively lobbying this.

Iowa has no official position until a Board meeting is held, but probably could support the bill based upon what they've seen. IA is unique in that state banks have security powers option already; for the national banks, they're concerned about state discrimination; feel that the tightening on unitary thrifts is all they can get; agree w/Treas. on op sub, but believes few community bankers would offer insurance in subs.

ID is ambivalent about the bill. Largest member, US Bank has been for HR 10, but others had been opposed. The ass'n probably won't oppose the bill or lobby aggressively for it. The Exec. Dir. lamented that their Senators weren't that concerned about the bill all along and she expected them to follow the Republican leadership on this bill regardless of the ass'n's position. She had heard that the FHLB in their district had problems with the governance issue and suggested that the FHLBs might be allies in opposing the bill. She was checking on this. The ass'n's board meets Sept. 23 and will likely have an official position then.

AK Bankers -- They can probably support the bill, and will likely lobby on it later. They only have 8 banks in AK, including Key and B of A. Right now, the Ass'n is concerned with ATM fees in the bankruptcy bill. In terms of HR 10, they're concerned about a prohibition on title ins. sales by banks not already in the business; that lifeline banking is a major negative if restored; believe CRA has gone too far and creates a competitive adv. for those not subject to it. Have no concern with op sub; no problem with Wolfies. He feels no pressure on bank ins. sale. (seems contrary to concern @ title ins.) Believes that there's little real enthusiasm for the bill, but that bankers view think this bill is better than what they'd get next year. Another driving factor for bankers' support is that big interests will use the unitary thrift charter to banks' competitive disadvantage. Bottom line, though, he personally thinks that there's too much in the bill to get it enacted into law.

OK against, says both Senators oppose based upon their discussions; ins. provisions too unclear, nothing for community banks. TX opposed due to problems with safe harbors.

FL -- supports bill, and Connie Mack apparently supports because of Barnett i.e., Nations.

Miss. Bankers met 9/21 with the ABA and the ACB jointly. Apparently, the ass'n is torn on its support for HR 10. While one of the members was a strong proponent at the meeting, others had concerns with the 13 safe harbors and expressed fear that they may generate new, unfavorable

state laws. ABA purportedly did a poor job explaining these provisions. Accompanying the ass'n were the state's Banking Commissioner, the Deputy Banking Comm'r and the chairs of the state's legislative banking committees. They're meeting with the Comptroller tomorrow. Steve Verdier called Carolyn McFarlen to warn her about the lack of unity among the MS bankers and the fissure on the state powers. The MS bankers will also meet with Lott who wants to know where they stand. Presumably it will influence how strongly he feels about moving the bill.