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Statement of the New York Bankers Association
Before the
Financial Institutions and Consumer Credit Subcommittee of the
House Financial Services Committee
On the
Dodd-Frank Act's Collins Amendment

May 18, 2012

The New York Bankers Association appreciates the opportunity the Subcommittee has provided to offer this statement for the record on the impact of the Collins amendment with regard to bank holding company capital on the banking industry of New York State. Our Association strongly supports appropriate levels of bank and bank holding company capital requirements as a very important step in maintaining the stability of our nation's banking and financial system. Ensuring that banks hold an appropriate amount of capital allows them to absorb losses that may arise during future economic downturns.

As the Subcommittee is aware, the Dodd-Frank Act contains a significant number of provisions requiring increased capital in the banking industry generally and in systemically important financial institutions specifically. In addition, bank regulators have been extraordinarily vigilant in recent years in demanding increased capitalization of individual institutions during the examination process, and the Basel II international bank standard-setting process with regard to bank capital is well advanced. Nevertheless, one provision of the Dodd-Frank Act continues to be problematic. The Collins Amendment applies to bank holding companies the capital standards applicable to their subsidiary banks in spite of the very different corporate structures and economic roles played by holding companies. The amendment prohibits the use of trust-preferred securities and securities issued to the Treasury Department in return for TARP funds from inclusion in bank holding company Tier 1 capital. Our Association opposed this amendment at its adoption and urged that it be dropped during the conference on the bill. The amendment ignores the Federal Reserve System's "source of strength" doctrine, which encourages increased capitalization by holding companies in order that a holding company be available to strengthen the finances of its subsidiary banks. Trust preferred securities were acceptable at the holding company level for many years because they provided exactly the type of increased financial cushion and greater flexibility in capitalizing subsidiaries that regulators of holding companies felt necessary.

The amendment, which has not yet become effective, will have a deleterious effect on the capital adequacy of a number of bank and thrift holding companies, including those controlling many community banks and savings institutions. It would require diversified bank holding companies, savings and loan holding companies, and systemically-designated nonbank financial companies to comply with the capital rules initially developed for insured banks in the 1980s. This may well result in standards that are inappropriate to the activities and risks of those firms that may engage in a range of

financial and commercial activities not permitted for insured banks. More generally, banking firms and the financial markets are dynamic and innovative. Flexibility is needed to adapt to capital rules over time to mitigate risks from new products and instruments.

The Collins Amendment, by freezing in place as a floor previously existing bank capital standards may also undermine the ongoing efforts of our financial regulators to modernize and strengthen international capital standards. In effect, the amendment would be a step backwards to codify the existing, outdated Basel I capital requirements at a time when the U.S. is working with other nations to strengthen capital requirements on a global, internationally-coordinated basis. These global efforts are designed to strengthen capital requirements in light of lessons learned from the recent financial crisis. At this juncture, it seems unwise to hinder U.S. participation in global discussions to build stronger capital buffers into the global financial system by mandating U.S. capital requirements in legislation.

The amendment also causes a number of unanticipated consequences, some of which can only be described as unfair. One particularly egregious example of such a consequence involves bank holding companies that, as of December 31, 2009, had total consolidated assets in excess of the $15 billion trigger in the amendment, but that had significantly less than $15 billion as of the March 31, 2010 call report, the date of adoption of the Collins Amendment and the date of passage of the Dodd-Frank Act. One holding company of which we are aware found itself in exactly that position as a result of actions it took in early 2008 to enhance its financial firewalls in light of the uncertainty in the markets at that time. In a perfect example that "no good deed goes unpunished," the very actions that enhanced the holding company's safety and soundness have inadvertently resulted in its being subject to the Collins amendment.

As a result, our Association strongly supports H.R. 3128, a bill that would address this glaring injustice by providing the opportunity for bank regulators to value the consolidated assets of bank holding companies subject to the Collins Amendment either as of December 31, 2009 or March 31, 2010. This very targeted provision would permit a holding company to avoid the disallowance of a significant portion of its capital base within the next three years even as institutions of comparable and even larger sizes can maintain the same liabilities as capital. We urge that the Subcommittee recommend passage of H. R. 3128.

Capital requirements need to be enhanced to help provide additional flexibility to individual institutions and help prevent another financial crisis. To be effective, however, capital requirements must be carefully crafted and applied so as to avoid hindering economic growth, the viability of our financial institutions and other unintended consequences. While there seems no likelihood that the Collins Amendment will be repealed, we urge that at least one of its unintended consequences be effectively and expeditiously addressed by the passage of H.R. 3128.

Thank you for the opportunity to submit this statement. We are available to respond to any additional questions that the Subcommittee may have.