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NOMINATIONS OF: MARK C. BRICKELL, ALICIA R. CASTANEDA AND THOMAS J. CURRY

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

NOMINATIONS OF:

MARK C. BRICKELL, OF NEW YORK, TO BE DIRECTOR OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

ALICIA R. CASTANEDA, OF THE DISTRICT OF COLUMBIA TO BE A MEMBER OF THE BOARD OF DIRECTORS OF FEDERAL HOUSING FINANCE BOARD

THOMAS J. CURRY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS, FEDERAL DEPOSIT INSURANCE CORPORATION

JULY 22, 2003

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TUESDAY, JULY 22, 2003

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 2:02 p.m., in room SD–538, Dirksen Senate Office Building, Senator Richard C. Shelby (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN RICHARD C. SHELBY

Chairman SHELBY. The Committee will come to order.

We have three nominations this afternoon. I appreciate the willingness of the nominees to appear before the Committee today.

Today's nominees, if confirmed, will play a very vital role in overseeing the safety and soundness of our Nation's financial institutions. As the institutions regulated by the Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board, and the Federal Deposit Insurance Corporation provide liquidity to our Nation's mortgage and business credit needs, strong oversight of their soundness, I believe, is essential.

Two of today's nominees would oversee the regulation of the housing-related Government Sponsored Enterprises: Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System. These are large enterprises. Collectively, Fannie Mae and Freddie Mac carry $1.6 trillion in assets on their balance sheets and have outstanding debt of almost $1.5 trillion. The Federal Home Loan Banks are not

far behind, with combined assets of over $780 billion and outstanding advances to member institutions of $495 billion.

I support the role played by all the housing GSE's. Home Loan Bank advances are a vital resource for financial institutions nationwide. The secondary mortgage market liquidity provided by Fannie Mae and Freddie Mac, also serves as an important source of funds for our Nation's mortgage market. By enhancing liquidity, the Enterprises make possible the lending activity that is critical to economic growth and to expanding homeownership.

Due to the importance of the housing GSEs' mission and the size of their assets, I believe that better disclosure of pertinent financial information, essentially greater transparency, is important for the protection of taxpayers and investors.

Last Thursday, this Committee examined OFHEO's oversight of Fannie Mae and Freddie Mac and their accounting practices. I remain troubled by what appear to be lapses of monitoring at OFHEO. I also remain concerned that appropriate accounting procedures have not been performed by one of the institutions which OFHEO oversees. I believe the integrity of financial data is vital to measuring safety and soundness.

Also of great importance is the safety and soundness of our banking system. The Federal Deposit Insurance Corporation has served a vital role in assuring depositors that their money, often their life savings, is safe. This assurance has prevented the banking crises that characterized the first 150 years of our country's existence. It is of the utmost importance to maintain the public's confidence in the safety of our financial institutions.

While the current Federal Deposit Insurance System provides a high level of confidence to the individual depositor, I believe the system presently lacks flexibility and contains inefficiencies which could lead to costly problems in the long run. Reducing these inefficiencies ranks high on this Committee's agenda.

I again want to thank all of the witnesses for appearing before the Committee today. Our first panel is Mr. Mark C. Brickell, nominated by the President to be Director of the Office of Federal Housing Enterprise Oversight. Most recently, Mr. Brickell served as the CEO and Director of Blackbird Holdings, where he oversaw the company's development of its swaps and interest rate derivatives trading system. Over the course of 15 years, Mr. Brickell also served in various positions with JP Morgan and Company.

Our second panel this afternoon is Ms. Alicia Castaneda, nominated to be a Member of the Board of Directors of the Federal Housing Finance Board and Mr. Thomas J. Curry, nominated to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation.

Ms. Castaneda has over the course of almost two decades worked her way up the ranks at Bank of America. Having started as a clerk at the Bank of America's International Desk, she has risen to the position of Market Executive in the International Private Banking Division and previously as Senior Vice President in the Treasury Division. During this time, Bank of America has grown to become the world's second largest bank.

Mr. Curry currently serves as Commissioner of Banks for the Massachusetts Division of Banks. Previously, he served as First

Deputy Commissioner of Banks and as Acting Commissioner of Banks. Earlier in his career, Mr. Curry served as assistant general counsel for the Massachusetts Division of Banks and as an attorney with the Massachusetts Secretary of State.

Senator SARBANES.

STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman. I am pleased in joining you in welcoming these nominees before the Committee this afternoon. Since we will address both Tom Curry and Alicia Castaneda subsequently in a panel, I will reserve my comments with respect to their nominations until that time.

Mr. Chairman, last week you convened an important hearing to review the regulatory response to the accounting problems at Freddie Mac. That hearing underscored the importance of the role of the Office of Federal Housing Enterprise Oversight—OFHEO—and its Director in supervising the so-called Government Sponsored Enterprises, Fannie Mae, and Freddie Mac.

Today's hearing with our lead-off nominee, Mr. Mark Brickell, who has been nominated to be the Director of the Office of Federal Housing Enterprise Oversight, goes to the point of how effectively will the housing GSE's be supervised.

In 1992, we passed the Federal Housing Enterprises Financial Safety and Soundness Act. In that Act, the Congress found that Fannie Mae and Freddie Mac have an important public mission to provide housing and to help sustain the Nation's economy. And I take it from what was said at last week's hearing that we continue to consider Fannie Mae and Freddie Mac to be vital in serving these functions.

The Act states:

> An entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes.

This is clearly a critical role whose importance has only been heightened by recent events. The Director of OFHEO requires a person of exceptional independence, judgment, and commitment to OFHEO's regulatory mission.

Mr. Brickell, who has been nominated for this position, is knowledgeable with regard to financial matters. He worked for 25 years at JP Morgan and has been the CEO of Blackbird Holdings, Inc., since leaving Morgan in 2001.

Serious questions, however, have been raised as to whether he is the right person for this position at this time. This morning's *Washington Post* has a strongly worded editorial with respect to this nomination, and, Mr. Chairman, I would like to take a moment to quote from it.

Chairman SHELBY. Go right ahead.

Senator SARBANES. I am quoting from a *Washington Post* editorial this morning.

> The nominee, Mark C. Brickell, a former Managing Director at JP Morgan Securities, has a long track record of opposing Government regulation of financial services and leaving most of the work to market forces. In particular, Mr. Brickell . . . led lobbying efforts to prevent regulation of derivatives, the arcane financial instruments that are critical to the risk management operations of Fannie Mae and

Freddie Mac. Questionable accounting for derivatives is at the heart of the recent troubles at Freddie Mac. Mr. Brickell also weighed in on the side of Fannie Mae and Freddie Mac when they argued that they should be able to set up their own tests—rather than one devised by OFHEO—for whether they had adequate capital on hand, a change that OFHEO said would diminish its 'regulatory independence and rigor.'

Mr. Chairman, as we review this nomination, it is important to scrutinize Mr. Brickell's record closely as we address the question of who should be directing OFHEO and carrying out its importance regulatory mission.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Reed.

STATEMENT OF SENATOR JACK REED

Senator REED. Thank you very much, Mr. Chairman, for scheduling this hearing, and I want to thank Mr. Brickell. We had a chance to chat before in my office.

As Senator Sarbanes has indicated, the position of Director of OFHEO has recently taken on added importance. As we all know, Fannie Mae and Freddie Mac have played an invaluable role in creating a stable, liquid, and national mortgage market in our country, and this has resulted in our country having one of the highest homeownership rates in the world.

Strong, effective oversight of Fannie and Freddie is clearly important to their continued success, and as we heard at the hearing last week from current OFHEO Director Armando Falcon, recent events at Freddie Mac have driven this point home with some force.

In addition to being financially sophisticated, I believe that the Director of OFHEO needs to have an outlook and temperament that will convince the Government Sponsored Enterprises, investors, and Congress that he would be a tough and rigorous regulator. What concerns me about the present nomination of Mr. Brickell is that he has worked for over two decades to challenge the very idea of Government regulation of financial markets in many, many different ways.

First and foremost, Mr. Brickell, you have worked to oppose any type of regulation of financial derivatives or any type of transparency requirements for derivatives dealing or trading. You have also staunchly advocated rolling back regulations which have helped the Federal Government regulate Fannie and Freddie. Let me note a few examples.

You proposed to deregulate financial derivatives entirely and allow sales of them to retail investors. You actually wrote a letter to OFHEO in March 2000 arguing that the GSE's should be able to choose their own internal models for determining their risk-based capital requirements, which is essentially arguing that they should be able to regulate themselves. Such an approach could only have a multiplier effect on the consequence of any financial uncertainties or inappropriate assumptions, such as the ones that Freddie Mac has recently encountered or the duration gap disclosures that Fannie Mae made last year.

In addition, the use of internal models would have given each institution the ability to reduce, at the margin, the stringency of the risk-based capital standards.

Finally, you were in the forefront of the effort to oppose the Financial Accounting Standards Board from implementing Financial Accounting Standards Board Statement 133 and strongly supported legislation to undermine the independence of FASB with regard to established accounting rules for banks.

These are not the types of actions that an individual takes if they believe deeply in the role of Government regulators in the marketplace, who not only understand the primacy of the marketplace but also the critical role of robust, vigorous regulation, not as an afterthought but as a primary responsibility.

Now, Mr. Brickell no one doubts your intellectual abilities for this job or your great efforts over many years, but I am just not sure that someone who has consistently opposed regulation, transparency, and oversight in the derivatives market should be director of an agency that is designed to demand all of the above from the GSE's.

I look forward to this hearing. I must, with some regret, say that I also feel compelled to attend the briefing by Ambassador Bremer in a few moments. I was in Baghdad with the Ambassador about 2 weeks ago and left there with many more questions than were answered then. I will look to review carefully the transcript because the questions I pose need answers.

Thank you.

Thank you, Mr. Chairman.

Chairman SHELBY. Mr. Brickell, will you stand and hold up your right hand and be sworn.

Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRICKELL. I do.

Chairman SHELBY. Do you agree to appear and testify before any duly-constituted committee of the Senate?

Mr. BRICKELL. I do.

Chairman SHELBY. Thank you.

Your written statement, if any, will be made part of the record. If you want to introduce your family now, you may do so.

STATEMENT OF MARK C. BRICKELL, OF NEW YORK TO BE DIRECTOR OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

Mr. BRICKELL. Thank you and Chairman Shelby, Ranking Member Sarbanes, and Members of the Committee. I am honored to appear before you today, and I thank you, Mr. Chairman, for holding this hearing.

I appreciate the opportunity to introduce my family. I want to thank my wife, Anita; my daughter, Amanda; and my daughter, Missye; my son, Matt, for joining me here. Since it is July, no one here is missing classes in school, but three-fourths of the members of the group are employed in the labor force. Those among them who are hourly workers are giving up a day's pay to show their support. I appreciate that sacrifice, and I appreciate the other sacrifices that the family will make if I am confirmed.

The President has nominated me to serve as the Director of the Office of Federal Housing Enterprise Oversight. I admire President

Bush and his leadership of our country in the face of great challenges. It is a humbling thing to be called to public service, and particularly so to be called by this President, for this position, at this time. OFHEO has a brief history and challenges of its own, and if you choose to affirm my nomination, I will be only the third Director of the Office, and it is a responsibility which I take very seriously.

An important part of the responsibilities of OFHEO Director is to work with the Senate Banking Committee. I have had that privilege for more than a decade, working closely with Members of the Committee and with their thoughtful and talented staff on issues relating to banking and financial services activity. This Committee plays an important role in establishing a firm foundation for the Nation's capital markets and, should I be confirmed, it will be an honor to work with you in the years ahead.

Much capital raised in the American capital markets finances the homes of American citizens. I believe that housing finance is important not only because it makes a large contribution to our Nation's economy, but also because homeownership strengthens the fabric of our society. For many, indeed for most Americans, owning a home is a way to grasp the first rung on the economic ladder. In families like my own, when I was growing up, it was a way for my parents to send their children to the best public schools that they could find. I strongly support the fair housing policies, the Minority Homeownership Initiative to add more than 5.5 million minority homeowners by the end of the decade in this country, and the affordable housing goals of President Bush and Secretary Martinez. I hope that I can help more families of moderate and low income to share those benefits of homeownership by helping OFHEO to carry out its regulatory mission. Those benefits were certainly important in my family and important to me personally.

OFHEO's mission today is to ensure that Fannie Mae and Freddie Mac operate safely and soundly. Congress created OFHEO in 1992 in express recognition of the importance of the long-term financial health of these Government Sponsored Enterprises. I understand the importance of that mission, and if I am confirmed, I will vigorously enforce the rules and regulations of OFHEO to the full extent of the authority which Congress entrusts in the Director of OFHEO. I will also work closely with this Committee and all Members of Congress to improve the statutory framework within which OFHEO operates.

I believe that my career experience will help me achieve those goals. I have spent 25 years working at JP Morgan. I have spent the last 2 years as Chief Executive of Blackbird Holdings, Inc. It has been an opportunity to learn a great deal about the financial markets, financial technology, and risk management practices at leading financial institutions. If you choose to affirm my nomination, I will use that experience and dedicate every ounce of my energy and judgment to pursuing the important challenges facing OFHEO and our housing finance system at this important time.

Thank you, and I look forward to answering your questions.

Chairman SHELBY. Thank you, Mr. Brickell.

You heard Senator Sarbanes' comments and some of his concerns about the need for a strong and effective regulator of Fannie Mae

and Freddie Mac, and I think his view is pretty widely shared by a lot of us on this Committee. Mr. Brickell, what makes you the right person at this right time for this job? We respect that you have been appointed by the President of the United States for this job. We respect your education and your background and your experience and your success.

Mr. BRICKELL. Well, Mr. Chairman, I have spent more than 25 years in the financial markets, and that has given me exposure to complicated financial transactions like derivatives. It has given me an understanding of risk management at large financial institutions. It has given me the chance to see not only the strengths but also the weaknesses of financial markets and financial institutions. And while other people on Wall Street would be able to say those things, I think there is something else that I have, and I have enjoyed very much the opportunity to work over more than a decade with policymakers here in Washington on regulatory issues. I would hope that that experience, both in the markets and with policy discussions, would be helpful to OFHEO at this time.

Chairman SHELBY. My understanding is that OFHEO has never taken a formal enforcement action against either Freddie Mac or Fannie Mae during their existence. Do you believe that OFHEO has used the full extent of its enforcement powers? Do you believe that OFHEO needs additional enforcement powers? Have you thought about that in any depth?

Mr. BRICKELL. Fannie Mae and Freddie Mac perform a vitally important function for housing finance in this country. They bring capital market benefits to housing finance. And in that way, they give us the broadest, deepest, most successful housing markets in the world. That means expanded home loan opportunities. That means reduced costs for homeowners.

Part of the way that they are able to do that is because they are regulated financial institutions. In my career in financial services, every day that I have spent at my desk, every day that I have worked has been spent at a regulated financial institution. I know how important it is for depositors or lenders, investors in general, to have confidence in the regulator who oversees a financial institution. And I think it is essential that OFHEO be strong, fair, rigorous in what it does, and be perceived to be those things.

If I am confirmed, I would look forward to conducting the operations of OFHEO in a way that give that confidence to investors and working with the Committee to make sure that the framework in which OFHEO operates enables them to do that.

Chairman SHELBY. Mr. Brickell, when a hedge is ineffective, derivatives could increase risk rather than minimize risk. Should that hedging risk, whatever it might be, be factored into a GSE's risk-based capital level?

Mr. BRICKELL. A risk-based capital rule that achieves its objective will be a rule that ensures the institution is not too thinly capitalized to support the risks that it takes. So the capital rules have to operate in a way that identify the real risks that the institution is taking and ensure that the right amount of capital is there.

Chairman SHELBY. Fannie Mae and Freddie Mac enter into a large volume of derivative trades. The number of counterparties with which they trade, however, is quite small. The inability of any

of these counterparties to meet their side of the trade could be a significant cost to either Fannie Mae or Freddie Mac.

Could you explain to the Committee how derivative dealers monitor counterparty risk to a purchaser of derivatives?

Mr. BRICKELL. Sure. I am glad to do that, Senator. And I should say as I do that these are general comments about derivatives activity in general.

Chairman SHELBY. Sure. We know.

Mr. BRICKELL. Not specific to these two Government Sponsored Enterprises.

Chairman SHELBY. That was a general question.

Mr. BRICKELL. The contracts we are talking about, these risk management contracts, last for many years, and an interest rate swap could be 5, 10, or 20 years in length. So the participants in swap activity have cared deeply about the credit quality of the counterparty on the contract and the ability of their counterparty to perform.

There are several different ways that participants in these swap contracts can manage the risks that they are taking. One is by understanding carefully the business and the character of the firms they are doing business with, and limiting their counterparty relationships to well-capitalized, sometimes well-regulated firms.

In cases where one sees a limited number of counterparties, it may very well be because the party in question has chosen to enter into contracts with others that he knows well and trusts and whose credit he can judge.

Another thing that firms can do is to accept collateral or post collateral with those with whom they trade, and these techniques have been not only effective in keeping credit losses in derivatives activity below the level of credit losses in other banking activities, but also in giving a level of disciple to the swap business that is unusual and a very healthy thing.

Chairman SHELBY. Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Mr. Brickell, I first want to ask you a bit about the capital rules for the GSE's. OFHEO's lead responsibility is to establish capital standards for Fannie Mae and Freddie Mac. OFHEO's risk-based capital test just went into effect last year. In March 2000, you sent a comment letter on OFHEO's proposed risk-based capital rule in your capacity as Managing Director of JP Morgan. The thrust of your letter, as I understand it, was to recommend that OFHEO follow an internal models approach with respect to establishing the capital test, in other words, allowing Fannie and Freddie to use their own models. OFHEO responded to your comment letter by stating that allowing Fannie and Freddie to use their own models to calculate their own capital requirements could result in a weaker and inconsistently applied standard. Models that the Enterprises develop themselves would inevitably differ in their details, which could result in significant variations and make it difficult to apply the stress test consistently.

OFHEO went on and said that developing its own model is in the interest of regulatory independence and rigor and gives OFHEO greater flexibility and the ability to independently test alternative risk scenarios which ensures the integrity of the test.

What is your view of this OFHEO response, or the broader question, your view of the internal model approach based on models developed by the GSE's thank-you-very-much as being preferable to the approach adopted by OFHEO?

Mr. BRICKELL. I am glad you asked that question. There has been a robust discussion among financial regulators and participants in the financial services businesses over the last two decades about how to construct the most useful, healthiest capital rules. It is a discussion that has gone on within this country where we have different kinds of institutions regulated by different regulators and a discussion that Americans have had with financial services regulators from other countries, in forums like the Basel Committee. So it is not surprising that different regulators would have different views about what capital approach is best.

JP Morgan was one of about 20 financial services firms that submitted comment letters in response to OFHEO's request for comment about their proposed capital rule. And the letter that you cite is one that I signed for JP Morgan. I was actually the second signature on that letter. The first signer was Tim Ryan, who served as the Director of the Office of Thrift Supervision at the height of the S&L crisis. I think that anyone who knows Mr. Ryan's record would say that he was a fair but a very firm regulator.

Senator SARBANES. And by osmosis, does that carry over to you since you were the second signature on the letter?

Mr. BRICKELL. You have the right conclusion, although that is not the only reason you would reach it.

[Laughter.]

I, too, would strive to be a fair and firm regulator.

We sent that letter because we thought it would be helpful to OFHEO to know our perspective on the framework of capital regulation that was being developed by the banking supervisors at the same time. And what we did in our letter was described, the framework of capital rules being developed under the Basel scheme, and being employed by the U.S. banking regulators. That system of regulation uses the internal models approach it is called. It requires the banks to develop their own models, models that meet certain standards, models that accurately capture, as we discussed a while ago, the risks of the firm and identified the amount of capital that is needed for the firm.

We encouraged, in our letter, OFHEO to take a flexible approach like the approach the banking regulators take, rather than take an inflexible approach. I think it is worth saying that a rigid regime for capital is not necessarily a tough regime. Rigid rules give financial services firms an opportunity for regulatory arbitrage.

When the rules are spelled out with great precision, creative, innovative financial minds, and I am proud to have worked with many, will sometimes find ways to achieve regulatory arbitrage, and when they do the purpose of the capital rules is thwarted.

The approach we talked about in that letter, we believe, is more demanding not only of the financial institution, but also more demanding of the regulator because the regulator would have to satisfy himself that the models being used by the financial institution achieve the purpose of the capital regulation and do not lead to leakage of capital through regulatory arbitrage.

I think it was something worse considering, and OFHEO has not adopted it. Indeed, OFHEO is constrained, in some ways, by the statute, which hard wires into law many of the parameters of the capital rule. One thing that the Committee may wish to consider, as it talks about ways to strengthen OFHEO, is to give OFHEO the ability to tailor its capital rules as closely as possible to the risks being taken by Fannie Mae and Freddie Mac.

Senator SARBANES. I take it from that answer that you continue to hold to the position that was expressed in your March 2000 letter, even though you are now being considered to become the Director of OFHEO, which has not followed the internal models path; is that correct?

Mr. BRICKELL. What I am saying is that the proposal, the information that we presented in the comment letter is information that was worthy of consideration by OFHEO. It is a system of capital regulation which is used by regulators who are, I believe with good reason, well-respected: The banking supervisors in this country, the Federal Reserve, the Comptroller of the Currency, the FDIC. They operate under this framework.

I am not able to say whether this framework or the way they do it is tougher, weaker, or whether they are perceived as stronger or softer than OFHEO itself, but I think that it is important for the Director of OFHEO, it is important for OFHEO to be well aware of the approaches to regulation that are being taken by other well-respected U.S. financial services regulators and to interact with them, give them good ideas and take good ideas from them. I think that is a healthy process, and I would hope to learn from those other financial services regulators and take their best ideas and bring them to bear at OFHEO on Fannie and Freddie.

Senator SARBANES. So you are entertaining the prospect of changing the OFHEO rule with respect to the capital standards?

Mr. BRICKELL. We are talking here about an innovative area of American finance and one in which advances have come at a very rapid rate. The banking supervisors are constantly revising and improving the capital rules that they use for the banks. And I believe that OFHEO should constantly review and upgrade, strengthen the capital rule that it uses for Fannie and Freddie. If it does not do that, it will inevitably fall behind the quality of regulation done by the banking authorities.

Senator SARBANES. So you are entertaining allowing the Fannie and Freddie to set their own model for their capital standards; is that correct?

Mr. BRICKELL. If I am confirmed as the Director of OFHEO, I will have access to a great deal more information than I have had as a co-author of a comment letter on capital regulation, and I do not think it is prudent to prejudge or anticipate what I would decide when I learn more about Fannie and Freddie, how they operate, and the benefits of operating under the OFHEO framework.

What I do think is important is to show you that I would enter this job with an open mind, with a willingness to look for ways to strengthen OFHEO's regulation of Fannie and Freddie because it is essential, in my opinion, and I hope in the opinion of the Committee that these two large, world-class financial institutions have a world-class financial regulator with adequate resources and with

the statutory ability to be just as rigorous in its approach as the banking supervisors are.

Senator SARBANES. I see my time for this round has run out, and I will come back and revisit some other issues with you. I only note again that *the Post* editorial this morning was pretty strong on this very issue about whether these GSE's should be allowed to set their own tests, and you are now opening up the prospect that that is what they would be allowed to do. And *the Post* goes on to say, "The Banking Committee needs to assess whether he—" meaning Mr. Brickle "—has the right attitude. Regulators with a preset point of view and a disdain for tough enforcement have already done much damage during this Administration."

Mr. Chairman, I presume there are going to be further rounds.

Chairman SHELBY. There will be more rounds.

Senator Carper.

Senator CARPER. Thank you, Mr. Chairman.

Mr. Brickell, good to see you again. Thank you for visiting with me last week.

Mr. BRICKELL. Thank you, Senator.

Senator CARPER. Let me just ask, and I apologize if any of these questions have been asked before. If they have been, just let me know, and I will move on to another question.

Let me just ask, what is your view, if you will, of the risk-based capital rule finally put into effect by OFHEO, would you still prefer the internal model approach that is being used in developing the Basel II Accord?

Mr. BRICKELL. We have, in fact, talked a little bit about that, but I would like to summarize what we have said, particularly so that my view is clear.

OFHEO has a tightly drawn statute under which it imposed its capital rule on Fannie Mae and Freddie Mac. It is a statute which hard-wires into the law itself many of the parameters that would be used to calculate the required capital for the two institutions. And our comment letter talked about the benefits for the regulator and for the capital strength of the regulated institution of having enough flexibility to do what the banking supervisors do.

This is an area of financial theory and practice which is evolving very rapidly. We continue to learn new things each year about how to make better estimates of the risks being taken and of the capital required for financial institutions. I think it is important for OFHEO to be able to continuously upgrade the capital rules that it uses in its oversight of Fannie Mae and Freddie Mac in order to ensure that it doesn't fall behind the quality of regulation used by other American regulators, and the banking regulators in particular. They have spent a great deal of time on capital rules. They use the approach we described in the letter, and I think it has been beneficial to the banking system.

Senator CARPER. Do you believe the U.S. banking system is, at the current time, overcapitalized, undercapitalized, appropriately capitalized? Where are we?

Mr. BRICKELL. Well, that is a big question.

Senator CARPER. Actually, it is a pretty small one. The answers are bigger than the question.

Mr. BRICKELL. It would require a very big answer.

Senator CARPER. I only have 5 minutes.

Mr. BRICKELL. I will keep it short. I do believe this; there has been a tremendous amount of energy and effort dedicated to coming up with excellent capital rules by the banking supervisors in this country, and there are several of them, of course, and banking supervisors in other countries.

They have worked together in Basel to come up with the Basel Framework for Capital Regulation, and there has been a cross-fertilization of what the supervisors are learning from the regulators in other countries and what the people in the banking institutions are doing to improve their internal management of risks.

What is done internally is feeding the regulators. What the regulators in the United States learn from overseas is feeding back in the form of capital requirements for the U.S. firms. So, I think that capital regulation in this country is in better shape than it is ever been.

Senator CARPER. Maybe one more.

Do you think that the Basel II Accord will lower the level of capital in the U.S. banking system? And this kind of goes back to the last question, but would that be a desirable objective? Is your preference for the internal model approach for establishing capital standards for GSE's based on a view that the internal model approach would result in a lower level of capital?

Mr. BRICKELL. It is certainly not. As I have just described to Senator Sarbanes, in response to his question, the approach outlined in the comment letter is the approach used by the banking authorities in the United States because it is more rigorous in their view than the more rigid, capital rule employed by OFHEO.

So, I do not believe that Basel II will weaken capital regulation, and I certainly believe that it is important for the regulator of Fannie and Freddie to use a capital rule which is strong, every bit as good as the rules used by the banking authorities and one which will give confidence to investors.

Senator CARPER. Good enough. Thanks.

Mr. Chairman, as you know, we have Ambassador Bremer, who is addressing us up in a classified briefing. I am going to slip up there. I thank you for being here, and thank you for your willingness to serve.

Mr. BRICKELL. Than you, Senator.

Chairman SHELBY. Mr. Brickell, since its publication, Financial Accounting Standard 133 has generated a great deal of interest among practitioners and regulators. Do you believe that the Financial Accounting Standards Board came to the appropriate conclusions with FAS 133?

Mr. BRICKELL. I remember the discussions about FAS 133, and they went on for many years, and they were vigorous discussions. There were hundreds of letters sent——

Chairman SHELBY. A lot of comment.

Mr. BRICKELL. —on that rule. Many of them were signed by the chief executives of the companies who would be affected, and there were concerns expressed even by regulators. I remember Fed Chairman Greenspan expressing his concern about the rule at one point in the process.

I worked for institutions that participated in that comment process, and I worked hard to make sure that when FAS 133 was adopted, it would make it easier for investors and the readers of financial statements to understand the business activities of the reporting companies.

Now, FAS 133 is part of generally accepted accounting principles. It is GAAP.

Chairman SHELBY. And central to a recent controversy, right?

Mr. BRICKELL. Indeed, it is, and it is not an option. It is not an alternative. There is not room to interpret it in different ways.

Chairman SHELBY. It is a must now; is it not?

Mr. BRICKELL. It is GAAP, and it has to be used. Fannie and Freddie are required, by law, to report their results according to GAAP. They have to abide by FAS 133, and if I am confirmed as Director of OFHEO, I will make sure that they do comply, not only with that one accounting rule, but also with all of the GAAP.

Chairman SHELBY. In a copy of today's *Wall Street Journal*, Professor Stephen Ryan is an Accounting Professor at New York University, stated that on a fair-value basis, both Freddie Mac and Fannie Mae are undercapitalized.

Do you believe this to be an accurate statement or are you not on the inside of all of the information yet; whatever, should fair-value accounting be incorporated, Mr. Brickell, into Freddie Mac and Fannie Mae's risk-based capital standard?

Mr. BRICKELL. I haven't read the article, and I am not familiar with the professor or his views. We certainly want to make sure that investors, academics, observers of Fannie and Freddie, have confidence in their level of capital, and as Director of OFHEO, if I were fortunate enough to be confirmed, I would want to make sure that we understood why it is that some people have doubts of that kind and that we did whatever we thought was necessary to address those doubts.

I do not think it is good for these Government Sponsored Enterprises to leave investors in doubt about their capitalization. I think the marketplace has to be confident that they have the right amount of capital, that they are being regulated in a firm, but fair, way, and I would look forward to doing that if I were confirmed.

Chairman SHELBY. I know a little of your background in the private sector, but if you are confirmed as the Director of OFHEO, your position will be totally different from what it was in the marketplace; is that correct?

Mr. BRICKELL. Absolutely.

Chairman SHELBY. And your obligation and responsibilities as Director, among other things, would be to make sure, to the best of your ability and your staff's ability, that Freddie Mac and Fannie Mae are run well, run the right way; in other words, they would be in a position, you would be coming from the private sector, free market, into a job as a regulator to make sure that these companies, these GSE's are run right.

And, hopefully, if they ever got in trouble—I hope they will not—that the taxpayer would not wind up bailing them out. You see my concerns; do you not?

Mr. BRICKELL. I do, indeed. I not only see those concerns, but I also share those concerns.

Chairman SHELBY. You would have to be a hands-on regulator in your position, assuming that you are confirmed and sworn in as the Director. It would be your paramount responsibility, as Director, to be a hands-on regulator, to know what they are doing that could affect their financial well-being or ultimately, as a lot of people think, maybe the taxpayers' well-being, considering how large they are, how important they are, and that they are GSE's, notwithstanding all of the disavowing they are not Government entities. You understand what is out there.

Mr. BRICKELL. I do, Senator. When I was asked by the President to consider accepting this appointment, I thought hard about whether this was something that I could usefully do, and I believe that what I have learned in the financial markets, and what I have learned about public policy will be helpful to OFHEO in carrying out its mission of ensuring that Fannie Mae and Freddie Mac are run in a safe and sound way.

And to go a step beyond that, I have tried to pursue all of the assignments I have been given in my career with a great deal of energy. I do not think anyone who's been working with me or worked on the other side would accuse me of passivity or a lack of energy.

Chairman SHELBY. I do not believe anybody has ever thought that about you.

[Laughter.]

We do not want to think that about you later; in a different position, as a regulator, because you do bring to the table, let us face it, you know what derivatives are. You probably created many of them, if not, you have used them, and you know what they are. They are hedges against risk, are they not, in a sense? They are passing on a risk. Maybe some people call it a little insurance in the marketplace, if used properly; is that correct?

Mr. BRICKELL. Yes, Mr. Chairman. You use these contracts to shift risk. Most people, most of the time, use them to get rid of the risks they do not want.

Chairman SHELBY. Pass it on.

Mr. BRICKELL. And take on some other risk that they do, and you have to do it carefully, you have to understand what you are doing.

Chairman SHELBY. And you have to pay a premium to do that, do you not?

Mr. BRICKELL. If you are getting rid of a risk and not taking one back in return, then you have to pay somebody else a premium, just as you say with an insurance contract.

Chairman SHELBY. But from your background, it seems to me that you would perfectly understand, once you got into the particulars of the kind of models that Fannie Mae was using or Freddie Mac was using to hedge this risk; would you not?

Mr. BRICKELL. I think I would be well-equipped.

Chairman SHELBY. And I hope you would be getting into that.

Mr. BRICKELL. I want to do that. I understand that is the job, the nature of the job is to ensure these entities are run safely and soundly, to make sure we have the best capital models we can and to think more broadly about the risks these institutions face.

Chairman SHELBY. What do you think are the key elements, at least as you conceive them, of a strong and effective regulator? In

other words, what kind of leadership would you bring to OFHEO should you be confirmed?

Mr. BRICKELL. I think, Mr. Chairman, that for the regulator to be strong and be effective, it has to have the right statutory authority, it has to have the right powers, it has to have adequate resources and the assurance of those resources, it has to be able to attract people of stature to help the entity carry out its mission, and it needs to be led by people who are open-minded and who are fair, but who are willing to be firm, strong, and rigorous in the pursuit of the Agency's mission.

And I think that I was called to this task, in part, because I would carry out this role in exactly that way.

Chairman SHELBY. Senator Sarbanes.

Senator SARBANES. I want to follow up on the Chairman's question. I then have a couple of lines of questioning I want to ask you.

Is it your view that you cannot be in an effective regulator of these GSE's without substantial statutory change? You are constantly making reference to the statutory arrangements. I think you are the first person—the current Director is seeking some statutory changes, but they are not of great extent. Is it your position that you need significant statutory changes in order to be an effective regulator?

Mr. BRICKELL. No, sir, it is not. I am aware the current Director has recommended several possible statutory enhancements, he calls them.

Senator SARBANES. He is primarily seeking self-funding, but we have not had anyone yet who has, in effect, said, well, we have not really been able to do the job because of the statute under which we are operating.

Mr. BRICKELL. And I certainly am not of that view. I understand that there are recommendations from the existing Director for statutory changes and that there are also discussions underway here in the Senate and in other parts of Capitol Hill, and I am aware of those and happy to participate in them, but I think the time to do that is when I have the knowledge that would come as the Director of OFHEO.

Senator SARBANES. *The Dow Jones Newswire* this week carried a story, and I just want to read to you a paragraph from it and then ask a question on the basis of that.

A former bank lobbyist nominated the regulate Freddie Mac fought an accounting rule that, in part, caused the company to restate earnings by as much as $4.5 billion. Mark C. Brickell, former lobbyist for JP Morgan and Chase and Company, led an effort and helped draft legislation in 1998 to delay and gut a derivatives accounting rule known as Financial Accounting Standard No. 133.

"He fought against the introduction of FAS 133, which was an attempt to make derivatives more transparent," said Randall Dodd, Director of the Derivatives Study Center and former regulator at the Commodities and Future Trading Commission.

The battle over the accounting rule is significant, since Fannie Mae and Freddie Mac both are among the largest users of interest rate derivatives, holding a combined notional balance of $1.3 trillion as of June 30, 2002.

Now, listening to your responses, first of all, is that an accurate statement of the position you took with respect to FAS 133 back then at the time?

Mr. BRICKELL. I thought it was important that FAS 133 be written in a way that it would increase the understanding of the business activities of the affected firms by investors and creditors, and

I, along with—I was one of the people at JP Morgan, and there were many there who formulated the firm's comment on that rule, and there were hundreds of other institutions and regulators as well who made comments about it.

I think it was the focus of a great deal of attention because it was going to affect so many enterprises, and that is true, of course, because so many of these firms use these risk-management contracts to manage risk.

Senator SARBANES. Well, that may be, but you were amongst those that were opposed to it; is that not the case?

Mr. BRICKELL. I was among those who recommended changes that could, in my view, have improved the rule. There were many people who thought there ways to improve it, and indeed FASB's comment process solicits the views of those who think that there are ways to make the rule better.

Senator SARBANES. As I understand your answer here today, your position now is in support of FAS 133; is that correct?

Mr. BRICKELL. If I am confirmed as Director of OFHEO, I do not have any choice about that, and I would pursue it eagerly as part of the OFHEO mission. FAS 133 is the law of the land.

Senator SARBANES. Do you think it is an appropriate law of the land?

Mr. BRICKELL. I do not get to think about it. My job is to make sure that it is used. Fannie Mae, Freddie Mac do not have a choice about this. They have to comply with GAAP, they have to comply with FAS 133, and I, as Director——

Senator SARBANES. You are their regulator. Do you think that this is an appropriate standard that they are being held to?

Mr. BRICKELL. Yes, I think it is appropriate.

Senator SARBANES. Why do you think it is appropriate now, when you did not think it was appropriate then?

Mr. BRICKELL. It is the right standard because it has been adopted by the FASB and made a part of GAAP. When FASB has rules under consideration——

Senator SARBANES. Is there a substantive argument as to why it is the right standard now?

Mr. BRICKELL. I do not get to the substantive argument, Senator.

Senator SARBANES. We had another nominee before this Committee who wanted to take that position. Actually, she never got confirmed.

[Laughter.]

Which was that somehow the regulator does not express or have a view on what is the appropriate regulatory framework, that somehow the regulatory framework is simply handed to you from somewhere else, and your only job is to implement it.

Most regulators do not come in with that attitude. They recognize that they have an important role in shaping the framework within which the institutions that they are going to be regulating are going to function. So it becomes important to probe and understand what your position is on the substance of these matters.

Mr. BRICKELL. I do not know the case to which you are referring and whether the framework of regulation that was under discussion in that case was the framework administered by the agency that the person would have joined.

I certainly am willing to consider improvements to the statutory framework and to the regulations implemented by OFHEO in the proper time and place and in consultation of course with the Members of this Committee who would take the lead on any statutory change.

But I am focusing here and responding to your question with respect to FAS 133, and there is a time and place for companies and regulators to make their comments about the accounting rule and those comments have been made. Now, the rule has been adopted. It is the law of the land, and it is OFHEO's job to ensure that Fannie Mae and Freddie Mac conform with GAAP, and that is what I would do as Director of OFHEO.

Senator SARBANES. But you do not think it is a very good rule, I take it, from that answer. I mean, you will obviously have to implement it as the regulator, but you do not think it is a good rule; is that correct?

Mr. BRICKELL. Sir, in fairness, I do not think it is open to question by the Director of OFHEO. I think it is a great rule because it is GAAP, and it is the rule that Fannie and Freddie are required to use.

Senator SARBANES. Do you believe Federal financial regulations should prohibit fraud in the OTC derivatives market?

Mr. BRICKELL. I am opposed to fraud.

Senator SARBANES. I would certainly hope so. I think we should stipulate that that should be a basic requirement.

[Laughter.]

Mr. BRICKELL. If that were the only hurdle, it would be a low hurdle to clear, but as a banker, by profession, for the first 25 years of my career at a bank that I was very proud to be part of, financial fraud hurts noone more than the bankers. So, even as a matter of self-interest, fraud is something I am opposed to, and it is illegal to defraud people in the financial markets. It is illegal under the law to defraud anyone, and it should be.

I have done some thinking about that, some research. I have talked with people in Washington about that issue, and it should be illegal to defraud people using derivatives contracts just as it is to defraud people with other kinds of financial transactions or nonfinancial transactions. It should be illegal, and it is, and I am glad that it is.

Senator SARBANES. I think I am going to have to ask you the question again and focus you on specifically what is being asked because fraud may be illegal under other Federal or State statutes, which would leave someone engaged and open to prosecution.

My question was do you believe Federal financial regulations, which of course you will be involved in promulgating, should prohibit fraud in the OTC derivatives market?

Mr. BRICKELL. If it is already illegal, it is not clear to me that what we would gain by making it more illegal, if you will. Now, I do not believe that this is only a matter of State law, although much of the work that is done to prosecute fraud is done at the State level. I believe that there are antifraud authorities held by the SEC and by the Commodity Futures Trading Commission that could be brought to bear in certain cases, and indeed have been

brought to bear in some cases, where the kinds of contracts that you are talking about were used.

In addition, I know, from experience in the banking industry, that the banking authorities, as a matter of financial regulatory authority, will prosecute fraudulent activity if it is ever committed by bankers.

I believe that fraud is illegal in many different ways at the State and at the Federal level, that there are regulatory authorities that can be used against it, and I am glad that is the case. I think it gives investors confidence and ensures that contracts are more likely to be enforced.

Senator SARBANES. Do you believe Federal financial regulations should prohibit manipulation in the OTC derivatives market?

Mr. BRICKELL. I am thinking back to try to recall what the extent of Federal authority is in this area today, but it is my understanding that there is already a great deal of Federal authority to combat manipulation, and it is not limited to the financial services markets. You have the authority of the Justice Department.

You have, in addition, within the financial arena, certain antimanipulation powers that reside at the Security Exchange Commission, that can be brought to bear with certain kinds of contracts, securities in particular. And, finally, the Commodity Futures Trading Commission has always, well, I can remember many times their making the case that the antifraud authority of the Commodity Futures Trading Commission is extensive and would encompass many of the markets, if not all of the markets that you are talking about.

Senator SARBANES. Did you oppose the Commodity Futures Trading Commission's retention of the antifraud and antimanipulation authority in its 1992 rulemaking, exempting swaps for most of its regulatory requirements.

Mr. BRICKELL. 1992, sir?

Senator SARBANES. Rulemaking, yes. Did you oppose the retention by the CFTC of antifraud and antimanipulation authority when it had the rulemaking exempting swaps from most of its regulatory requirements, but it retained antifraud and antimanipulation authority?

Mr. BRICKELL. Well, that question would take me back a long way. And if you do not mind, I think it deserves a well-considered answer, and I would like to respond to you in writing, if I could do that.

Senator SARBANES. I think that would be helpful, and I think you are entitled to go back and examine the record carefully. There will be other questions that Members I know who were not able to be here because of this arising in a conflicting time have that they wish to submit, Mr. Chairman, to Mr. Brickell. So, obviously, the record will be kept open, I take it, for that purpose.

Chairman SHELBY. That is right.

Senator SARBANES. Mr. Chairman, I know we have other witnesses. I have a few more questions I would like to ask, and then I have a number of questions I will submit to Mr. Brickell for his response.

I want to run through how you envision the role of OFHEO. There have been proposals put forward to change the regulatory

structure of OFHEO: To move it to the Treasury, establish it as an independent regulator, include the Federal Home Loan Banks and its responsibilities. What are your views on those proposals?

Mr. BRICKELL. Senator, I am aware, first of all, of several proposals that are under consideration. I know that a bill has been introduced in the House by Congressman Baker, who has taken a leading role there on these issues, and I think that the location of OFHEO matters, and the proposal that he is making is certainly worthy of consideration, but what is even more important, in my view, and I think it goes to the heart of your question, is that OFHEO must have the authority, the powers that are commensurate with the other financial regulators if it is going to be perceived as being in the top echelon.

Fannie and Freddie are in the top rank of American financial institutions. I guess if you lined them up against the banking institutions, they would be the second and fourth-largest institutions in the country.

Senator SARBANES. But those are the only two you have to regulate. I am aware of your constant reference to other regulators, but they have a multiplicity of institutions. The Director of OFHEO has only two major enterprises to follow closely.

Mr. BRICKELL. I appreciate that, Senator.

If I were confirmed, my primary mission would be to ensure that OFHEO gives rigorous, firm, fair, oversight to Fannie Mae and Freddie Mac, so that they are run safely and soundly wherever Congress decides that OFHEO should be.

Of course, I would look forward to conferring with the Committee, working with the Committee, if you wanted to consider changes in the OFHEO framework, at the appropriate time.

Senator SARBANES. Do you believe there is a role for Fannie and Freddie to continue to play as GSE's or has the secondary mortgage evolved to the point where Government Sponsored Enterprises are no longer needed?

Mr. BRICKELL. We have in this country the best housing finance markets in the world, and the housing sector is, today, providing one of the brightest spots in the American economy. I think I would try to adhere to a principle that I have heard regulators put forward before, which is, first, do no harm. I do not think it is appropriate to propose any significant change in the structure of housing finance without a better understanding of the institutions and how safe and sound they are.

But I certainly appreciate the importance of the role that Fannie and Freddie play today and the way in which they bring the benefits of capital markets, financing costs and efficiencies to what was, before they came into existence, a more localized, less-sophisticated form of housing finance.

Senator SARBANES. In your letter on the OFHEO capital regulation, you suggested that overcapitalization, overly stringent capital requirements, could be equally dangerous to capital requirements, the undercapitalization. What is your view on that?

Mr. BRICKELL. Are we thinking there of the letter on the capital rule?

Senator SARBANES. Yes.

Mr. BRICKELL. The point that Mr. Ryan and I were making was one that I think regulators bear in mind and need to bear in mind. When you are making capital rules, you need to get the answer exactly right. If the rule is too loose and requires too little capital, investors might be perceive a risk that the company was undercapitalized, and that is no good.

Senator SARBANES. What company are you talking about now?

Mr. BRICKELL. Any company that is subject to a capital requirement. I am not speaking about any firm in particular. I am saying, in general, when you are administering a capital rule, you should be sure that you are requiring the right amount of capital from whatever firm is subject to that rule.

Senator SARBANES. And if you fall short, upon whom does that burden then come to rest? If you fall short in your capitalization and you confront a stressful situation, and you cannot handle it, on whom does the burden then fall?

Mr. BRICKELL. Senator, to answer that question, we would have to know what kind of institution we were talking about.

Senator SARBANES. With respect to Fannie Mae and Freddie Mac, upon whom would it fall?

Mr. BRICKELL. As the Chairman has indicated, as I understood it, there is some ambiguity about that question. The securities issued by Fannie Mae and Freddie Mac bear a disclaimer that states, in black and white, that they do not represent obligations of anyone but Fannie Mae and Freddie Mac.

In that case, for institutions, let's not talk about those specific institutions, but in general, for institutions that are not beneficiaries of Federal support, if a firm were too thinly capitalized and it were to fail, the burden would fall, of course, on the shareholders, and then, second, on the debtholders of the Enterprise.

Senator SARBANES. Well, now when you made this statement, you said, "The 1990's taught bankers and their regulators the importance of getting capital rules right." I am now quoting your letter. "At the beginning of the decade, policymakers were primarily concerned with ensuring that capital levels were not too low. Few imagined that capital requirements could be too high. But over the course of the decade, we realized that such a perspective is essentially a short-run view." And then you go on, "Over the long run, overly stringent capital requirements could be equally dangerous."

But if we undercapitalize, particularly in the bank context, eventually it may fall on the taxpayers, may it not?

Mr. BRICKELL. In a context where you are talking about enterprises that do receive the benefit of Federal support, it is possible that the burden would fall, in the event of their failure, on taxpayers or any reserves that have been set aside.

Senator SARBANES. If you look at the issue of what capital you are going to require these two GSE's, to what extent would you have in your mind that the burden, if they fail, may fall upon the taxpayer?

Mr. BRICKELL. I think it would be prudent to bear that possibility in mind, but I am not sure that it should affect the conduct of the Director because even though there is ambiguity on the point about where the burden falls, there is no ambiguity about the responsibility of the Director of OFHEO to ensure that Fannie Mae

and Freddie Mac are run in a safe and sound way. In other words, no matter where the burden would fall if they were to fail, it is up to OFHEO to do everything it can to ensure that does not happen.

Senator SARBANES. Mr. Chairman, you have been very generous.

Chairman SHELBY. These are important questions.

Senator SARBANES. I have a number of additional questions that I wish to ask Mr. Brickell, but I understand we have other nominees so I will request them in writing.

Chairman SHELBY. Absolutely. That will be done, and other Members, as you said, for the record. And, Mr. Brickell, if you could, when these questions will come in fairly soon, if you can answer them promptly, it would move the process perhaps.

I have another question. FAS, Financial Accounting Standard, 133—see if I am summing this up right. You did not create the rule because that was not your job, and when you were in the comment period, you were writing, you and Mr. Ryan, of your concerns about the possible rule as they were taking comments in the formulation period; is that correct, the comment period?

Mr. BRICKELL. It is true with respect both to the letter on FAS 133——

Chairman SHELBY. Right.

Mr. BRICKELL. —and the capital rule.

Chairman SHELBY. But regardless of your views then or even now regarding the rule, the rule is the rule, and that is what you were saying, and that is the law in the accounting field, right?

Mr. BRICKELL. Yes, Mr. Chairman.

Chairman SHELBY. And you are saying, as I understand it, that if you are confirmed and you are sworn into this job, which you would be after you are confirmed, you would swear to uphold the law, right?

Mr. BRICKELL. That is true, Mr. Chairman.

Chairman SHELBY. And carry out your responsibilities and obligations just like some of us might disagree with the law, may vote against the law, might fight hard the creation of a statute, but at the end of the day, we might be the same ones to carry out the law regardless or irrespective. Is that what you were saying?

Mr. BRICKELL. It is, Mr. Chairman.

Chairman SHELBY. I am asking you, but you were saying it better than I would.

Mr. BRICKELL. I agree wholeheartedly with the way you have described it. The Director of OFHEO has certain statutory obligations, and I would carry those out, and one of them is to ensure that Fannie Mae and Freddie Mae comply with GAAP. I have made my comments, my firm has made its comments, that is the law of the land today, and that is the accounting principle, the accounting rule that Fannie Mae and Freddie Mac would comply with.

Chairman SHELBY. And if you were the Director of OFHEO, how involved and how energized would you be, considering what is at risk out there—$1.7 trillion or whatever?

Mr. BRICKELL. That is a whole lot of money and a whole lot of risk, and I think the people who do business—

Chairman SHELBY. You could not be an absent regulator on a situation like that.

Mr. BRICKELL. It is only two companies, but they are so large, and they are so important in housing finance and in our economy, that I think it is essential that they have top-quality regulation that would be rigorous, and I would pursue that with all of my energy.

Chairman SHELBY. Let me see if I understand the other you were saying. Senator Sarbanes posed the question of there have been some recommendations by some of the Congressmen, some of the Senators, some of the people down the street that we move statutorily, we change the regulator to the Treasury or whatever we do or if we do nothing, but what you are saying, as I understood it a minute ago, that whatever it is, if those proposals come up, you would abide by them, right? You would have to.

Mr. BRICKELL. Yes, Mr. Chairman.

Chairman SHELBY. We will have questions for the record. It will be left open for other Members who have gone to hear Ambassador Bremer's comments on Iraq.

Senator SARBANES. Mr. Chairman, could I just put a couple of questions to Mr. Brickell?

Chairman SHELBY. Yes, sir.

Senator SARBANES. *The Wall Street Journal* reported this morning that you helped advise Freddie Mac on some of its derivative hedging. Would you describe the length and nature of this relationship.

Mr. BRICKELL. I am not sure what it is that they would be referring to. Is there a source given for the information or can we try to identify what they are talking about?

Senator SARBANES. It is mentioned in their article. They do not give a source. So you do not know what they are referring to?

Mr. BRICKELL. I do not. I would be happy to work with you on it, if we get better information.

Senator SARBANES. Obviously, we need to explore that matter.

In an answer to one of the questions on your questionnaire to, "list any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation at the national level of Government or affecting the administration or execution of national law or public policy," you said in your answer:

> While serving on the board of the International Swaps and Derivatives Association, and thereafter in my capacity as an officer of JP Morgan and Blackbird Holdings, I have participated in discussions in Washington concerning the development and implementation of the regulatory framework for swaps and other privately negotiated derivatives transactions.

In fact, when you were nominated for this position, in one of the articles, it was said that "Derivatives lobbyist nominated to regulatory position." Is it not fair to say that you were the lead lobbyist on derivatives issues over a fairly sustained period of time here in Washington?

Mr. BRICKELL. As I indicated earlier in the hearing, I started working in the derivatives business back in 1986. These were new products, and they got the attention of people in Washington and in other cities, as I indicated in the questionnaire. I have been to Washington and to those places many, many times, probably too many times to count in the period since 1988.

And we have worked on regulatory proposals to make sure that derivatives were well-regulated, we worked with the banking authorities and other agencies on that. We have worked with legislators, particularly with this Committee, on netting legislation, on modifications to the Commodity Exchange Act. We have worked on other legislation.

I have been here many, many times to talk about financial services, and in almost every single case, those meetings were related to derivatives, to swaps, and other privately negotiated derivatives contracts.

Senator SARBANES. So you would not quarrel with the headline that declares, "Derivatives lobbyist in line to head Fannie and Freddie regulator." I mean, given the activities you are engaged with, that would be an apt description, would it not?

Mr. BRICKELL. I do not like to quarrel with anybody, even with the reporter who wrote those words, but I think it would be perhaps an incomplete description of what I have accomplished in my 28 years in financial services.

Senator SARBANES. Thank you, Mr. Chairman.

Chairman SHELBY. As I recall at this point, and we do not have all of the information regarding Freddie Mac yet, and we had a hearing on this last week, but I do not recall the problem at this point, at least our knowledge of it, being the use of derivatives. It was accounting, at least up to now, and how they account for things under FAS 133, but I do not know what you know, and I do not know if we know enough at this point, Mr. Brickell, but I would point that out.

And although you may have lobbied, and I assume you did, and you have a right to lobby for a position on derivatives or anything else, I think one of the spokesmen, and I certainly would not want to call him a lobbyist, but one of the powerful spokesmen would be Chairman Greenspan, sitting right here at this same table on many occasions, saying basically that derivatives have a place in our financial institutions, and properly used are a positive thing.

We appreciate your appearance here today, and as I have said, we will have additional questions from Senator Sarbanes and any others perhaps myself. And you have some other information you are going to get back to him anyway.

Thank you.

Mr. BRICKELL. Thank you very much.

Chairman SHELBY. I now want to call up the second panel, Mrs. Alicia Castaneda of the District of Columbia, nominated to be a Member of the Board of Directors, Federal Housing Finance Board; and Mr. Thomas J. Curry of Massachusetts, nominated by the President to be a Member of the Board of Directors, Federal Deposit Insurance Corporation.

If I could get you both to raise your right hands and be sworn.

Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CURRY. I do.

Ms. CASTANEDA. I do.

Chairman SHELBY. Do you agree to appear and testify before any duly-constituted committee of the Senate?

Mr. CURRY. I do.

Ms. CASTANEDA. I do.

Chairman SHELBY. Thank you. Please have a seat.

I am going to submit my written statement for the record. I alluded to your nominations earlier and how important they were. And I am going to submit your written statements for the record because we have already been here a while and we want to move the hearing on.

Chairman SHELBY. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I appreciate that. I wanted to just say that I am pleased to welcome these witnesses: Thomas Curry, who has been nominated to be on the Board of Directors of the Federal Deposit Insurance Corporation, and Alicia Castaneda, who has been nominated to be a Member of the Federal Housing Finance Board.

Tom Curry has been Commissioner of Banks in the State of Massachusetts. He graduate cum laude from Manhattan College, his J.D. degree from New England School of Law. He has spent his entire professional career working for the State of Massachusetts, as an Attorney in the Office of the Massachusetts State Secretary and then with the Massachusetts Division of Banks, where he has risen steadily through the ranks of that office, from the General Counsel's Office to Deputy Commissioner, Acting Commissioner, and now Commissioner. He is a Member of the Board of Directors of the Conference of State Bank Supervisors and was Chairman of the Board of all of the State bank supervisors in 2000 and 2001. He was recommended to the President by Senator Daschle. The way the statute is written, you have to have some balanced membership on the FDIC.

Chairman SHELBY. I am sure he is a good Democrat.

Senator SARBANES. Well, no, actually he is not. I think he is an Independent.

Chairman SHELBY. Okay.

Senator SARBANES. I know Senator Daschle conducted an extensive search in order to make his recommendation to fill this office. It was required by the statue that the spot be filled by someone with State bank supervisory experience, and inquiries around the country indicated that Tom Curry was probably the most highly respected State Banking Commissioner in the country. We are pleased he is willing to take on this assignment. I think he is an excellent choice for the board. I intend to support his nomination.

Ms. Castaneda is, of course, being considered for the Federal Housing Finance Board. That is very important. That Home Loan Bank system is growing like topsy, if I may so observe. Over the last 5 years, the system's assets have more than doubled. They are one of the world's largest issuers of debt. At the end of 2002, debt outstanding totaled $673 billion, a $52 billion increase over the previous year. It is just growing exponentially, and so there are very important challenges there.

Ms. Castaneda brings with her a wealth of banking experience. She began her banking career 27 years ago as an International Clerk with American Security Bank here in Washington. Shortly thereafter, she was selected for the bank's executive development program. She was the first woman in the history of American Secu-

rity Bank to be promoted to Senior Vice President, a position in which she had responsibility for all of the bank's funding programs as well as balance sheet liquidity, liability pricing, and interest rate risk management. She currently holds the position of Market Executive for Bank of America's International Private Banking Division. I am confident that her extensive knowledge of day-to-day banking practices will prove useful on the Finance Board, and I intend to support her nomination as well.

Chairman SHELBY. Thank you, Senator Sarbanes.

Ms. Castaneda, you go first, if you will just sum up briefly your statement.

STATEMENT OF ALICIA R. CASTANEDA
OF THE DISTRICT OF COLUMBIA
TO BE A MEMBER OF THE BOARD OF DIRECTORS
FEDERAL HOUSING FINANCE BOARD

Ms. CASTANEDA. Thank you, Mr. Chairman.

Good afternoon, Mr. Chairman, Senator Sarbanes, and other distinguished Members of the Committee. Thank you for the opportunity to appear before you today. I am honored that President George W. Bush has nominated me to be a Director of the Federal Housing Finance Board, and I am very pleased to appear before you at this confirmation hearing.

Before I begin my statement, I would like to take this opportunity to introduce my husband, companion, and best friend for over 33 years, Rolando Castaneda. I am profoundly grateful to him for having played such an influential role in my decision to immigrate to the United States from Colombia in 1970. Almost 33 years ago, I came to this land of freedom, security, and unlimited opportunities as a 22-year-old young professional immigrant with a limited knowledge of the English language and almost without any money. My gratitude to this great country is beyond words. Not only was I given the opportunity to get a job at a bank, but also in time to become the first female ever promoted there to Senior Vice President. Nowhere else in the world can immigrants enjoy such opportunities.

And that brings me to the subject of housing and the Federal Housing Finance Board. All of us need somewhere to live. And many of us either own homes or aspire to do so. In fact, it is at the core of the American Dream.

The Federal Home Loan Bank System makes it easier for small banks to lend money to hard-working Americans for mortgages. In the early days of banking, banks could only lend out what they had on bank in deposits. Later, they acquired the ability to borrow from other sources to make loans to others. The 8,045 members can now, through the Federal Home Loan Banks, take advantage of pooling their requests for funds to achieve lower rates, which get passed on directly to the consumer.

Today, about 68 percent of American households own homes. But the rate for minorities is far lower, with fewer than half of Hispanics and African-American households owning homes. It is the goal of President Bush's Administration and that of the Federal Housing Finance Board to raise these levels. Projects are under

way to assist more of our countrymen, minorities, and new immigrants in particular, to realize the security of homeownership.

In current literature about the U.S. economy, we see the housing sector described as a beacon of strength, a rising tide lifting other economic boats. Thus, our vibrant housing market must be preserved and must continue to thrive.

Should I have the honor of being confirmed, I will work to strengthen and improve the flexible and secured financial system that America has and to make it possible for more Americans, especially minorities, to take full advantage of this system.

Twenty-seven years in commercial banking have prepared me to accept this challenge. My experience in the bank's Treasury Division, in particular, involved managing liquidity. Ensuring liquidity for the benefit of the homebuying public is the very reason Federal Home Loan Banks exist. In addition, I will bring to the job my leadership and management skills, a healthy respect for the trust placed in me, and a strong advocacy for fairness and common sense.

In conclusion, I want to acknowledge my family and my strong belief in personal accountability as the foundations of my own value system. I am a hard-working and God-fearing person who strives to give back the many blessings that have come my way in this great country.

Mr. Chairman, Senator Sarbanes, and other distinguished Members of the Committee, I respectfully ask for your favorable consideration of my nomination. If confirmed, I will be the first female and Hispanic Director of the full-time Federal Housing Finance Board, and I will be the only banker to serve in the current Board. I consider this nomination a great honor and privilege and a wonderful opportunity to begin my first tour of public service to my beloved adopted country. And, finally, if confirmed, I promise to work closely with this Committee and with Congress to ensure the safety and soundness of the Federal Home Loan Bank System and the fulfillment of the system's housing finance and affordable housing missions.

I will be delighted to respond to your questions.

Chairman SHELBY. Mr. Curry.

STATEMENT OF THOMAS J. CURRY, OF MASSACHUSETTS TO BE A MEMBER OF THE BOARD OF DIRECTORS FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. CURRY. Thank you, Chairman Shelby, Ranking Member Sarbanes, and Members of the Committee. It is a personal privilege to appear before the Committee today. I am very honored to have been nominated by President Bush to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation.

If I may, I would like to take this opportunity to briefly summarize my professional qualifications and to express my commitment to the FDIC's important mission as the Nation's Federal deposit insurer, if I were confirmed as a Board member.

It has been my privilege to serve the Commonwealth of Massachusetts for over 17 years in several senior financial regulatory positions. I have also had the honor of serving five Governors as the Commonwealth's Commissioner of Banks for a span of approxi-

mately 10 years. On a national level, as Senator Sarbanes mentioned, I was elected by my State regulator colleagues to be their past Chairman in the year 2000. I also have served as a Member of the State Liaison Committee of the Federal Financial Institutions Examination Council. On a very technical level, my State official status satisfies the FDIC Act's specific requirement that one FDIC Board Member possess State bank regulatory experience.

My public service career coincided with an extraordinary period of tremendous economic, technological, and competitive changes within both the Massachusetts banking industry and the larger national financial services sector. The regulatory experience that I gained during this period has provided me with invaluable perspective that I hope will serve me well if I am confirmed as an FDIC Board Member.

For example, my firsthand experience grappling with the effects of the New England banking crisis of the late 1980's and early 1990's had a profound impact upon me and our communities in Massachusetts and underscored the vital importance of the FDIC's deposit insurance guarantee in maintaining public confidence in our financial system, particularly in times of stress. It also reinforced the fundamental importance of a safe and sound banking industry to our economy. The New England regional experience demonstrates how economic recovery, or prosperity in general, requires a healthy, independently regulated banking system that has both the financial capacity and confidence to extend credit to individuals and businesses.

Unprecedented levels of industry consolidation, intense competition, and technological change also have marked the last decade. As a State bank regulator, I confront many of the same supervisory and policy issues faced by the FDIC and the other Federal regulators. I believe we share a common goal of fostering sound financial practices, competition, and product innovation in the banking industry while at the same time ensuring wider access to credit and financial services to individuals, businesses, and communities. As Bank Commissioner, I have been fortunate to be able to help develop and implement Massachusetts' regulatory and legislative responses to these trends from both a financial supervision and a consumer protection standpoint. My hope is that if I am confirmed, my experience as a State bank regulator will assist the full FDIC Board in developing the most sound and effective Federal supervisory policies.

In conclusion, I believe my 21-year public service career has given me the necessary financial safety and soundness and public protection regulatory experience and judgment to capably serve as a member of the FDIC Board of Directors, if confirmed.

Chairman Shelby, Ranking Member Sarbanes, and Members of the Committee, thank you again for allowing me this opportunity to appear before you, and I am glad to answer any questions from the Committee.

Chairman SHELBY. Thank you.

The Federal Home Loan Bank System has undergone, as you well know, a tremendous amount of change since its birth in 1933. With the decline of the thrift industry, membership in the system was expanded beyond savings and loans. With this expansion of

membership has come an expansion of responsibilities. What do you see as the future direction for the Federal Home Bank System? Where are we going in the future? Where do they need to go? What is their challenge?

Ms. CASTANEDA. I think we have a lot of challenges in front of us. One of the greatest challenges is how are we going to address all the different programs that the Federal Home Loan Banks are trying to get into. The multidistrict issue also will be a tremendous challenge that as a Member of the Board I will have to address, if I have the honor of being confirmed.

Chairman SHELBY. You mentioned in your testimony the Board's commitment to expanding homeownership, which Senator Sarbanes and I certainly share. Can you share with the Committee, tell us some of the Board's activities and some of your own in regard to your ideas of expanding homeownership, especially in the African-American community, the Hispanic community, because those are the two that are trailing behind in America, as you know, and I know that this Administration is committed to that. And we are committed to it because we believe that homeownership is a center point and generally a person's first wealth in America.

Ms. CASTANEDA. You are right, Senator. As I mentioned in my opening statement, the affordable housing programs are a critical issue in this country. I know the Administration, the Federal Housing Finance Board, and the Federal Home Banks are committed to make more funds available for the purchase of mortgages.

For the year 2003, the goal is $200 million. Since inception in the 1990's, they have allocated $1.7 billion. But, again, we have to work harder to increase the percentage of housing available, especially for minorities, as I said, Hispanics and African-Americans.

Chairman SHELBY. Absolutely.

Mr. Curry, while supervisory responsibility for financial institutions is dispersed across the Federal banking regulators, the Federal Deposit Insurance Corporation has sole responsibility for the insurance funds. Because of the potential taxpayer liability, I myself believe that the Federal Deposit Insurance Corporation has a very serious responsibility here. The very nature of the system, I think, requires the FDIC to work with other regulators that we have up here—and when Senator Sarbanes chaired the Committee, he did the same thing—to carry out your responsibilities.

Can you just quickly provide the Committee your views regarding the importance of successful cooperation between the FDIC and the other regulators?

Mr. CURRY. I think, Chairman Shelby, that regulatory cooperation is really essential to our system and ultimately to the Federal Deposit Insurance Fund.

Chairman SHELBY. Safety and soundness, right?

Mr. CURRY. That is right. And it is critical that regulatory agencies with different missions work together toward the goal of protecting that system and the Deposit Insurance Fund.

Chairman SHELBY. And running an efficient banking system for the American people.

Mr. CURRY. Most definitely.

Chairman SHELBY. In 1996, Mr. Curry, the General Accounting Office recommended including a representative from the Federal

Reserve System on the FDIC Board. Do you think—or have you thought about it, had a chance to, do you think including the Fed on the FDIC Board would increase interagency cooperation and ultimately enhance the effectiveness of banking regulation?

Mr. CURRY. I have not thought specifically about including an additional member on the FDIC Board, but, again, I can attest to the critical importance of having cooperation. For example, the Conference of State Bank Supervisors has been working very closely—the State supervisors—with both the Fed and with the FDIC to ensure that there are protocols and agreements to have the maximum cooperation and coordination of activity, particularly on an interstate basis.

Chairman SHELBY. I do not know if you have had a chance to flesh this out yourself, but do you have any views regarding the present supervision of industrial loan corporations, or ILCs? Do you believe, in other words, that the FDIC and the State banking regulators have the ability to provide adequate supervision of these entities? This is a big issue coming up.

Mr. CURRY. I have limited professional experience with ILC's. They are not authorized under Massachusetts law. Again, however, the overriding goal of a supervisor, is to ensure that both the insured financial institution and any affiliates operate in accordance with safe and sound practices.

Chairman SHELBY. Do you believe there is a need at the moment to raise the coverage level of Federal Deposit Insurance?

Mr. CURRY. I understand that it is a significant issue before Congress and with the FDIC and the industry.

Chairman SHELBY. On one side.

Mr. CURRY. Yes. I have not yet formed an opinion. Massachusetts, again, is unique in that we do have an option of a private, industry-sponsored insurance fund that does insure beyond the Federal limit.

Chairman SHELBY. How does that work?

Mr. CURRY. Basically it is a mutual fund, established by State-chartered banks, of a particular type that insures funds or deposits in excess of Federal FDIC limits.

Chairman SHELBY. Does it work?

Mr. CURRY. It has worked, and it worked through the New England banking crisis.

Chairman SHELBY. Oh. So it has been tested.

Mr. CURRY. It has been tested, and it was very significant in maintaining confidence in our system as well.

Chairman SHELBY. I would be interested in anything you can send me on that personally and maybe to the Committee to see what you have.

Mr. CURRY. I would be more than happy to do that, Chairman Shelby.

Chairman SHELBY. Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chiarman.

Ms. Castaneda, this Committee held a series of hearings on predatory lending practices in the mortgage industry, and we heard from a number of hard-working Americans who had the equity stripped out of their homes. In fact, one witness even lost her home, a tragic story.

There has been a general growing recognition in a number of States as well as among Federal regulators that we really have to put an end to these practices. The Federal Reserve Board has tightened its regulations. HUD has proposed a rule to address mortgage broker abuses. The Office of Thrift Supervision has recognized the power of States to address certain predatory lending practices, which a number of States are doing.

Several years ago, HUD, working with Fannie Mae and Freddie Mac, developed a set of guidelines to help prevent these Government Sponsored Enterprises from buying the worst predatory loans. And the Atlanta Home Loan Bank, within the Home Loan Bank System, developed a policy to ensure that it is not supporting loans with predatory characteristics.

The Finance Board recently put out a proposed regulation that, among other things, requests comments on steps the Board could take to help combat predatory lending. And I think those comments are due back in early September.

Do you regard predatory lending as a problem that needs to be addressed? And would you be open to trying to promote efforts as a Member of the Board in order to address this issue?

Ms. CASTANEDA. I think predatory lending is unacceptable, sir. My experience in banking has taught me that it should not exist, and an agency like the Federal Home Loan Banks definitely should not do that. I will definitely, if I have the honor of being confirmed to the Federal Housing Finance Board, look into that and I will make sure that predatory lending is not acceptable.

Senator SARBANES. Good. Thank you very much.

Mr. Curry, I want to follow up on something Chairman Shelby asked of you. Are the State bank supervisors—and you were their national head just a year ago, as I understand it—generally satisfied with the level of cooperation amongst the regulators? How do they view their interaction with the Federal regulators?

Mr. CURRY. Overall, Senator Sarbanes, I would agree that it is a positive relationship, but like any relationship, it requires a deep commitment to make sure that it works. Occasionally, there are differences of opinion, but I think the underlying goal is to have the best possible supervisory policies and relationship and to have a safe and sound system. Certainly there could be improvements, but the basic foundation is there, I believe.

Senator SARBANES. Do you expect, when they perceive that it is not working, that they are going to come knocking on your door?

Mr. CURRY. I hope not.

Senator SARBANES. Well, maybe they should. After all, you are on there in part because of the statutory requirement that you have State bank supervisory experience.

Mr. CURRY. Oh, I misunderstood.

Senator SARBANES. It gives you both a perspective, but it also gives you the contacts with all of your former colleagues in terms of strengthening our system.

Do you see any pressing, outstanding issues on safety and soundness facing the banking system today?

Mr. CURRY. I do not think there is any issue that is as significant as those issues that we saw, for example, with the New England banking crisis and the regional economic differences. What I think

is today we have an industry that is far better capitalized than it was a decade ago. I think we have management that is tested in terms of dealing with economic downside. And I think supervisors themselves have adopted much more refined approaches to the supervision of financial institutions.

Senator SARBANES. Did you find the banks in Massachusetts making heavy use of derivatives and similar arrangements?

Mr. CURRY. Not in the Massachusetts industry that I regulate, which is predominantly a community banking industry.

Senator SARBANES. Thank you, Mr. Chairman.

Chairman SHELBY. I want to thank both of the nominees for appearing here today. You have been nominated by the President to two very, very important jobs, and we appreciate your patience in going through the first panel. So we will try to expedite your hearing, your markups, as soon as we can.

Thank you.

Ms. CASTANEDA. Thank you so much.

Senator SARBANES. Sometimes when the first panel takes a long time, the second panel can be very short.

Ms. CASTANEDA. So that is better. Is that what you are trying to tell me?

Chairman SHELBY. It is always better.

Senator SARBANES. It is probably better to suffer through hearing the other panel than suffering through it as the panel yourself.

[Laughter.]

Ms. CASTANEDA. Senator Sarbanes, I will always remember your wise words.

[Laughter.]

Chairman SHELBY. Those are not just flippant words. Senator Sarbanes has been on this Committee a long time. He has chaired the Committee. I am glad he is not chairing it right now, but who knows in the future.

Thank you.

The hearing is adjourned.

[Whereupon, at 3:59 p.m., the hearing was adjourned.]

[Biographical sketches of nominees and response to written questions supplied for the record follow:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Brickell, Mark Cleveland

Position to which nominated: Director, Office of Federal Housing Enterprise Oversight

Date of nomination: June 12, 2003

Date of birth: August 24, 1952 **Place of birth:** New York,. New York

Marital Status: Married **Full name of spouse:** Anita Christine Jarmin Brickell

Name and ages of children:

Melissa Ann (19)

Amanda Jarmin (17)

Henry Matthias (14)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Harvard Business School	09/1974 - 06/1976	M.B.A.	06/1976
University of Chicago	09/1970 – 06/1974	B.A.	06/1974
Manhasset High School	09/1969 – 06/1970	Diploma	06/1970

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Policy Studies in Education, Great Neck, NY	Trustee	1977-present
International Swaps and Derivatives Assoc.	Director	1986-1999
International Swaps and Derivatives Assoc.	Chairman	1988-1992
International Swaps and Derivatives Assoc.	Vice Chrmn	1987, 1994
The Brickell Family Foundation	Director	2002-present
Member, University of Chicago Alumni Association		1974-present
Member, Harvard Club of New York		1976-present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Blackbird Holdings, Inc., Charlotte, North Carolina, 2001-present
Chief Executive Officer and Director. Oversaw development of screen-based trading system for swaps and other privately negotiated interest rate derivatives.

J.P. Morgan & Co., Inc., New York, New York 1976-2001
Twenty-five year career at J.P. Morgan included treasury, lending, derivatives trading and regulatory responsibilities.

Derivatives Strategies Group, 1993-2001
Managing Director reporting jointly to Vice Chairman and Global Trading Head.

Emerging Markets Derivatives Group, 1992-1993
Global head of structuring and trading unit for derivatives on emerging market risks, including bonds and equities.

Global Swaps Group, 1986-1992
Member of derivatives management team building JPM derivatives business with responsibility for marketing, trading, legal, and regulatory aspects of the business.

Treasury, 1983-1986
Priced fixed rate U.S. loans from overnight to 10-year maturities. Developed Loan Sale program to sell bank loans to other lenders.

Corporate Finance, 1998, 1989-1990
Detailed to Seoul, Korea, 1998, to negotiate swap contracts with Korean bank counterparties following the 1997 collapse of Asian currencies. Detailed to New Zealand, 1989-1990, to work out swaps portfolio of Development Finance Corporation as advisor to Reserve Bank of New Zealand.

International Lending Division, 1976-1983
Responsible for client relationships and lending decisions in Argentina (1977-79), and Venezuela (1979-83). Arranged international loan syndications for public and private sector borrowers. Republic of Venezuela Debt Restructuring Committee (1983).

International Swaps and Derivatives Association,* New York, New York, 1986-1989
Chairman, 1988-1992. Oversaw creation of 1992 ISDA Master Agreement and participated in industry efforts to pass the "netting amendments" to Federal Deposit Insurance Act and Bankruptcy Code (1989-1990).

Group of Thirty,* Washington, D.C., 1992-1993
Member, Global Derivatives Study Group. Contributor to the G-30 study, *Derivatives: Practices and Principles*, written to improve risk management practices and demystify derivatives.

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* No employment relationship

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"The Changing Nature of the Derivatives Market and the Lessons We Have Learned So Far." Derivatives and Public Policy Conference Proceedings, Federal Reserve Bank of Chicago, June 6, 1996, Chicago, Illinois, http://www.chicagofed.org/publications/derivativesandpublicpolicy/brickell.pdf.

"*Clearinghouse Arrangements for Privately Negotiated Derivatives*." Symposium Proceedings, International Symposium on Banking and Payment Services Sponsored by the Board of Governors of the Federal Reserve System, March 10-11, 1994, Washington D.C., pp. 180-187.

Derivatives: Practices and Principles. Group of Thirty, Washington, D.C., 1993, as a member of the Group of Thirty Global Derivatives Study Group.

Political Affiliations and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

BRICKELL, MARK NEW YORK, NY 10128	3/7/2000	$1,000	Campbell, Tom for Senate Committee
BRICKELL, MARK NEW YORK, NY 10128	11/17/1998	$1,000	JP Morgan & Co PAC, which contributes to candidates of both parties
BRICKELL, MARK NEW YORK, NY 10128	10/7/98	$500	Faircloth, Lauch for Senate Committee
BRICKELL, MARK NEW YORK, NY 10128	11/1/1996	$1,000	Helms, Jesse for Senate Committee
BRICKELL, MARK C NEW YORK, NY 10128	12/29/1995	$500	Warner, John W for Senate Committee
BRICKELL, MARK C NEW YORK, NY 10128	12/9/1995	$1,000	Campbell, Tom for Senate Committee

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Education and employment experience are detailed above. I have worked in the financial services industry for more than two decades, most recently as CEO of Blackbird Holdings, Inc., and before that as a Managing Director at J.P. Morgan. As Chief Executive and a board member at Blackbird, a multinational financial services technology company, I was responsible for all aspects of management, including implementation of corporate governance policies and practices. During 25 years at JPM, I had management responsibilities in treasury, lending, derivatives trading, workout, and regulatory activities. As Chairman of the International Swaps and Derivatives Association I have interacted with Congress and every major financial regulatory agency. All three activities gave me exposure to and knowledge of mortgage finance. I look forward to discussing these experiences in even greater detail with the committee.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

   Yes.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

   None.

3. Has anybody made you a commitment to a job after you leave government?

   No.

4. Do you expect to serve the full term for which you have been appointed?

   Yes.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

   See attached ethics agreement.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

   See attached ethics agreement.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

   None.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

   While serving on the board of the International Swaps and Derivatives Association, and thereafter in my capacity as an officer of J.P. Morgan and Blackbird Holdings, I have participated in discussions in Washington and, to a lesser extent, in London, Paris, Basel, and Tokyo, concerning the development and implementation of the regulatory framework for swaps and other privately-negotiated derivatives transactions.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

   See attached ethics agreement.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

   In April 2002, I was a defendant with other corporate officers in Civil Action 19530, Garban v. Blackbird, in the Chancery Court of Delaware. The action was brought in connection with a hostile takeover attempt by a foreign company and was dismissed by the agreement of the parties in September 2002.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: **Castaneda** (Last) **Alicia** (First) **Rizo** (Other)

Position to which nominated: Member of the Board of Directors of the Federal Housing Finance Board

Date of nomination: June 18, 2003

Date of birth: **30** (Day) **5** (Month) **1948** (Year) **Place of birth: Cali, Colombia**

Marital Status: Married **Full name of spouse: Rolando Hernandez Castaneda**

Name and ages of children: None

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Universidad del Valle Cali, Colombia	1965-1969	Bachelor Arts in Economics	7/1969
Liceo Benalcazar Cali, Colombia	1953-1965	High School Diploma	6/1965

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

None

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
None		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Title of job	Name of Employment Location of Work	Dates of Employment
Market Executive International Private Banking	**Bank of America, Washington, DC**	**1994 to present**
Senior VicePresident/Manager Treasury Division	**Bank of America, Washington, DC**	**1985-1994**
VicePresident Investments/Trading	**Bank of America, Washington, DC**	**1981-1985**
Assistant VicePresident Arbitrage Portfolio	**Bank of America, Washington, DC**	**1980-1981**
Assistant Treasurer/ Money Market Representative	**Bank of America, Washington, DC**	**1979-1980**
Management Development Training Program	**Bank of America, Washington, DC**	**1978-1979**
International Clerk	**Bank of America, Washington, DC**	**1976-1978**

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

I have not had any experience in or direct association with any Federal, State or local governments.

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

I authored a series of articles analyzing the Cuban transition towards democracy and a market economy. These articles were published in the Diario de las Americas, one of the largest and most influential Spanish speaking newspaper in the USA.

Political Affiliations and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I have not served in any election committee. Neither I have served in any political party.

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

I have not contributed $500 or more to any political party.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)
Please see Attachment

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes, I will sever my employment relationship, and will no longer be associated in any way with Bank of America

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No, I do not intend to resume employment with Bank of America after completing my government service.

3. Has anybody made you a commitment to a job after you leave government?

No, I have not received any job offer after I leave the government.

4. Do you expect to serve the full term for which you have been appointed?

Yes, I do expect to serve the full term for which I am appointed.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

No, there are no agreements or deferred payments compensation agreements or other continuing dealings.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

Following confirmation by the Senate and prior to entering into the position of Finance Board Director I will divest all holdings I own or control in Bank of America

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

I have not had any business relationship with the Federal Government. Thus I can anticipate no possible conflict of interest.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

I have not perfomed any lobbing activity during my entire life.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

Not applicable

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

There have been no such proceedings or investigations.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

Attachment

In January 1976, I started my banking career with American Security Bank, a Washington, DC financial institution, which had a strong International Department. After a stint as an International Clerk, utilizing my Economics degree and my language skills, I was selected for the bank's Executive Development Program. From that program, I joined the bank's nerve center, its Treasury Division, as a Money Market Representative.

During my tenure in the Treasury Division, I gained knowledge of bank funding, trading, personnel management, balance sheet reporting, securities sales, and portfolio management. I made regular presentations before the bank's Asset Liability Committee, and I met often with customers of the bank. My role required textbook knowledge and much more. I actually shared responsibility for the impact of decisions upon the bank's domestic and international client base, and upon the corporation's 1500 employees as well.

When real estate loan portfolio losses hit the Washington, DC area during the 1980's, the scope of my responsibilities was expanded to include the maintenance of the institution's solvency by providing sufficient funding and liquidity to meet the bank's obligations, and simultaneously to maintain the bank's, credibility in the marketplace by responding to inquiries from the press, our trading partners, and our regulators. I was equally obliged to preserve the jobs and livelihood of the bank's many employees. Having gained respect for my contributions over the good and the bad years, I became the first female in American Security's history to be promoted to Senior Vice President.

In 1994, after American Security Bank merged with NationsBank, I was appointed Manager of the new entity's International Private Bank office in Washington, DC. I continue to serve in that capacity today, now under the banner of Bank of America, which merged with NationsBank in 1998. My role includes all aspects of sales and service across the key areas of banking, investment, estate planning and credit to meet the needs of international clients residing all over the world.

During my 27 years banking career with Bank of America and its predecessors, I have had the opportunity to learn both the technical and the "people" sides of the financial services industry, and I have learned that neither side can exist without the other. I have responded to a vast array of changes that have altered the banking system during my lifetime. My response has included an ongoing educational program, such as the acquisition and updating of numerous regulatory licenses. It has also included many internal training programs sponsor by my employer.

My years as a sales manager have been a source of pride to me. I enjoy devising investment structures and strategies for clients, who in the end, must be well served. I am proud, also, of the long-term relationships, with the many bankers whose careers have progressed under my supervision.

At this point in my career, I look forward to accepting new challenges, which will allow me to make contributions in the public arena.

For your reference, I enclose my professional resume, which provides additional details of my career.

Alicia R. Castaneda
4521 Foxhall Crescents, N.W.
Washington, D.C. 20007
(202) 624-3772 [B] (202) 625-1615 [H]

Professional Summary

Senior financial services industry executive with more than 27 years of commercial bank treasury experience. Expertise in fixed income instrument sales and trading, short-term investments and arbitrage management, funding & liability management and the delivery of trust, investment and banking services to domestic and international clients. Consistent track record of exceeding performance objectives. Seasoned manager.

Bank of America, Washington D.C. 1976 – present

Market Executive – International Private Bank, 1994 – present

- Coordinate day-to-day banking, investment, and credit needs for international clients.
- Conduct marketing effort for investment management, offshore, trust and banking services, credit, and deposit services.
- Determine appropriate international company and trust structures to achieve financial goals of clients.

Senior Vice President/Manager – Treasury Division, 1985 –1994

- Developed and implemented all funding programs including Commercial Paper, CDs, Eurodollars, Fed Funds and RPs.
- Recommended and implemented all strategies for balance sheet liquidity, liability pricing, and interest rate risk management, including the use of derivative instruments.
- Managed short-term investment and arbitrage portfolio.

Vice President Investments/Trading, 1981 –1985

- Managed bank's investment/trading desks: Eurodollar, Foreign Exchange, Bankers Acceptances, Repo and Fed Funds.

Assistant Vice President/ Arbitrage Portfolio, 1980 –1981

- Generated incremental net interest margin via the positioning of short-term asset and liability instruments.

Assistant Treasurer/Money Market Representative, 1979 –1980
Management Development Training Program, 1978 –1979
International Clerk, 1976 –1978

Education

American University, Washington, D.C.
Post graduate courses in finance and accounting
Universidad del Valle, Cali, Colombia
Bachelor of Arts in Economics, 1969

Licenses

Series 7 General Securities Registered Representative
Series 24 General Securities Principal
Series 63 Uniform Securities Agent State Law
Series 66 Uniform Combined State Law

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: **Curry** (Last) **Thomas** (First) **James** (Other)

Position to which nominated: **Member Board of Directors Federal Deposit Insurance Corporation**

Date of nomination: **June 12, 2003**

Date of birth: **01/09/1957** (Day) (Month) (Year) **Place of birth: Greenwich, Connecticut**

Marital Status: Single **Full name of spouse: N/A**

Name and ages of children: N/A

Education:

Institution	Dates attended	Degrees received	Dates of degrees

See Attachment "A"

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

See Attachment "A"

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Conference of State Bank Supervisors	**Chairman**	**2001-2002**
Conference of State Bank Supervisors	**Director**	**1997-2002**
Conference of State Bank Supervisors Standing Regulatory Committee	**Committee Chairman**	**2002-2003**
St. Stephen R. C. Church Boston, MA	**Member**	**1999-Present**
Catholic Lawyers Guild Boston, MA	**Member**	**2000**
76-78 North Margin Street Condominium Association Trust	**Trustee (Director)**	**2002- Present**

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

See Attachment "A"

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

See Attachment "A"

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None.

Political Affiliations and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None other than voter party affiliation:

- **Registered Independent, 1999 - Present**
- **Registered Democrat, 1993 - 1999**

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

None.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

See Attachment "B"

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None other than in the course of official duties as Massachusetts Commissioner of Banks or through the Conference of State Bank Supervisors.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

Compliance with written commitments made in a June 13, 2003 Ethics Agreement entered into with the Federal Deposit Insurance Corporation. (See attachment C").

Civil, criminal and investigatory actions:

1. Give the full derails of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

N/A

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

N/A

ATTACHMENT "A"

THOMAS J. CURRY
76 North Margin Street, Unit 2
Boston, Massachusetts 02113
(617) 742-3258

PROFESSIONAL EXPERIENCE

MASSACHUSETTS DIVISION OF BANKS, Boston, MA
State agency charged with the regulatory oversight of the Massachusetts-chartered banking industry and licensed financial service providers.

Commissioner of Banks and Chairman, Board of Bank Incorporation — **1995 to Present and July 1990 to April 1991**

- Appointed by the Governor to oversee a major state regulatory agency with a staff of 155 full time professional employees, an annual budget appropriation of $10.6 million and annual revenues of over $13 million.
- Responsible for enforcing the Commonwealth's laws and regulations governing financial safety and soundness, consumer protection and community reinvestment. Entities supervised include more than 300 state-chartered trust companies, savings banks, cooperative banks, and credit unions, which have combined assets of over $185 billion.
- Licenses and examines over 4,000 consumer credit licensees, including mortgage lenders and brokers, check cashers, money transmitters, small loan companies, credit sales and insurance premium finance agencies as well as collection agencies.
- Responsible for reviewing and approving new bank charters and other banking industry expansionary activities, including mergers and acquisitions, for competitive effects and public benefit impacts under the Massachusetts Bank Holding Company, Bank Merger, Community Reinvestment and related Acts.
- Exercises broad rule making and enforcement authority under state banking laws in the areas of financial safety and soundness, corporate activities and powers, consumer protection and community reinvestment and licensing.

Acting Commissioner of Banks — **February 1994 to June 1995**

- As First Deputy Commissioner of Banks, assumed the regulatory duties of the Commissioner during an extended vacancy in the office.

First Deputy Commissioner of Banks — **1987 to 1995**

- Appointed by the Commissioner of Banks, with the Governor's approval, to be the chief operating officer of the Division of Banks and to act as the chief policy adviser to the Commissioner.
- Responsible for coordinating the resolution of failing Massachusetts banks and credit unions during the New England Banking Crisis (1989-1993) with minimal disruption to depositors and public confidence.

Assistant General Counsel — **1986 to 1987**

- Assisted the General Counsel in providing legal advice to the Commissioner of Banks and examination units within the Division. Drafted legal opinions, orders and regulatory approvals under General Counsel's direction.

MASSACHUSETTS STATE SECRETARY, Boston, MA
State constitutional office charged with the oversight of Massachusetts corporations, election laws, public records access (FOIA), legislative agent registration, public officer commissions and the state Archives.

Attorney **1982 to 1986**

- Served as legal counsel to the State Secretary's Public Records Division. Primary responsibilities consisted of researching and drafting decisions on administrative appeals of denied access to state and municipal records under the Massachusetts FOIA. Provided general legal advice and drafted legal memoranda for the agency.

EDUCATION

New England School of Law
Boston, Massachusetts
(9/78 to 6/81)
J. D., 1981

Manhattan College,
Riverdale, New York
(9/74 to 5/78)
B. A. *Summa Cum Laude*, 1978
Member: Phi Beta Kappa

PROFESSIONAL MEMBERSHIPS

Bar Admissions
- Connecticut, 1981
- Massachusetts, 1982

Conference of State Bank Supervisors
- Chairman of the Board of Directors, 2000-2001
- Regulatory Committee Chairman, 2002 -2003
- Member of the Board of Directors, 1997 to 2002

Federal Financial Institution Examination Council, State Liaison Committee
- Member at Large, 1996 to 2000
- Chair of State Liaison Committee, 1999
- Member, 2002 to Present

6/13/03

THOMAS J. CURRY

KEY ACCOMPLISHMENTS

ENSURING THE HEALTH OF MASSACHUSETTS BANKS AND CREDIT UNIONS

- Voluntary Conversion of Privately Insured Credit Unions to Federal Insurance: In April 1994, completed the successful conversion of all state-chartered credit unions from private share/deposit insurance to federal share/deposit insurance after the 1991 collapse of a similar private deposit insurance system in Rhode Island.

- Failed Bank Resolutions. Oversaw the orderly resolution of over 40 Massachusetts based banking institutions during the New England Banking Crisis (1989-1994) with minimal depositor and community disruption.

- Division of Banks Accreditation. Obtained initial national accreditation of the agency's examination and supervision programs from the Conference of State Bank Supervisors (CSBS) in 1995 and the National Association of State Credit Union Supervisors (NASCUS) in 1996. Re-accreditation was obtained from both CSBS and NASCUS in 2001.

- Y2K Preparedness. By 2001, completed a comprehensive 3-year Y2K century change date preparedness program for all state-chartered banks, credit unions and high-risk licensees. This program involved extensive interagency coordination with federal bank regulatory agencies and state/local emergency preparedness agencies.

- Risk Based Operating Assessment System. In 1997, reformed the agency's operating fee system becoming the first state bank regulatory agency in the country to utilize a risk based assessment system. The new structure reduced fees for well-run institutions by requiring problem institutions, which absorb greater supervisory resources, to bear a proportionately greater share of the costs of regulation.

- Regulatory Reform. From 1992 to present, engaged in a comprehensive review of all banking regulations and statutes resulting in the repeal or amendment of numerous archaic provisions. Undertook a major streamlining of formal bank application approval processes. Legislative regulatory reforms include the authority to engage in interstate banking and branching, bank insurance sales powers, national bank/federal thrift parity powers and other expanded "financial" powers consistent with the Gramm-Leach-Bliley Act.

PROTECTING CONSUMERS IN FINANCIAL SERVICES TRANSACTIONS

- Anti-Predatory Lending Initiatives. Took the following steps to combat predatory lending practices:

- In December 1997, issued an industry letter to all state-chartered banks and credit unions, mortgage lenders, mortgage brokers and small loan agencies on emerging safety and soundness and consumer protection concerns relative to subprime lending.

- In March 2001, released comprehensive high cost mortgage loan regulations containing a panoply of consumer protections curbing abusive mortgage lending practices such as excessive rates and points/fees, loan flipping, packing and other predatory practices.
- In 2001, took enforcement actions under the Commonwealth's Small Loans Act and Pawnbroker Act to prevent payday lending by 3rd party agents and automobile title loan lenders in Massachusetts.
- In 2002, promulgated revisions to the 2001 high cost loan regulations in an effort to conform state provisions to new HOEPA regulations while retaining more consumer protective provisions. Final regulations become effective October 1st.
- Expanded the "Don't Borrow Trouble" consumer education campaign and consumer referral toll free hotline on a statewide basis.

- Revamped State CRA Regulations for Banks and Credit Unions. Substantially amended the Commonwealth's Community Reinvestment Act (CRA) regulations to conform to 1995 federal CRA regulations. The 1997 CRA regulations promote consistency with the federal regulations while also maintaining the unique provisions of the Massachusetts CRA statute. The state regulations include a fifth descriptive rating category, an expanded definition of investments, and the applicability of CRA to credit unions given their specific statutory and structural limitations.

- Bank Insurance Sales Practices Consumer Protection. Participated in legislative working group drafting 1998 Bank Insurance Sales Act and its consumer protection provisions. Developed with Insurance Commissioner joint regulations and coordinated enforcement and consumer complaint resolution procedures.

- Massachusetts Housing Partnership Fund (MHPF) Loan Call Program. Participated in the development of 1990 affordable housing loan funding amendments to the Massachusetts Bank Holding Company Act. The amendments require an acquirer to pledge up to .09% of an aquiree's assets to fund affordable housing loan sponsored or underwritten by the MHPF.

- Mortgage Lender & Mortgage Broker Licensing. Implemented a 1991 statute mandating a licensing and examination program for mortgage lenders and mortgage brokers.

- Check Casher Licensing. Implemented a 1994 statute mandating a licensing and examination program for check cashers. Promulgated regulations that require check cashers to prominently post fees in a standardized format that allows consumers to comparison shop more effectively. In addition, check cashers not in business prior to December 1993 must also demonstrate a need for the business in the proposed community.

- Mortgage Lender Regulations Revisions. In July 1994, strengthened existing mortgage lender regulations by raising minimum regulatory capital requirements, imposing prepaid fee escrow requirements, and expanding remedial regulatory action programs for problem mortgage lender licensees with financial and compliance deficiencies.

- On-Line Access to Checking Account Fee Data: In October 2000, developed a web site which allows individuals to compare account fee and features information from over 300 Massachusetts banks and credit unions and link directly to these financial institutions' web sites.

Attachment "B"

Thomas J. Curry
Statement of Qualifications to Serve as
Member of the Board of Directors of the
Federal Deposit Insurance Corporation

It is a great personal honor to be nominated by the President to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation (FDIC).

My primary qualifications for this position are based upon my seventeen years of service as a financial regulator for the Commonwealth of Massachusetts. Some of my specific professional achievements are detailed in the appended *curriculum vitae* and *Key Accomplishments* sections of Attachment "A."

It has been a privilege to serve as the Commonwealth's Commissioner of Banks for approximately ten years. On a very technical level, my state official status satisfies the FDIC Act's specific requirement that one FDIC Board Member possess state bank regulatory experience. More importantly, my participation in many of the tremendous economic, technological and competitive changes and challenges that occurred within the Massachusetts banking industry and the larger national financial services sector during this period have provided me with invaluable experience and perspective. In sum, I believe that my twenty-one year public service career has gained for me the necessary financial safety and soundness and public protection regulatory experience and judgement to capably serve as a Member of the FDIC Board of Directors.

ATTACHMENT "C"

THOMAS J. CURRY
76 North Margin Street, Unit 2
Boston, Massachusetts 02113
(617) 742-3258

June 13, 2003

Robert E. Feldman
Executive Secretary and
Designated Agency Ethics Official
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Mr. Feldman:

The purpose of this letter is to describe the steps that I intend to take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC").

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interest or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interest of the following persons are imputed to me: a spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign my position as Commissioner of Banks for the Commonwealth of Massachusetts. Furthermore, pursuant to 5 C.F.R. § 2635.502, for one year after I terminate my position with the Commonwealth of Massachusetts, Division of Banks, I will not participate in any particular matter involving specific parties in which the Commonwealth of Massachusetts, Division of Banks is a party or represents a party, unless I am authorized to participate. I will continue to participate in, but not make further contributions to the Commonwealth of Massachusetts' defined benefits pension plan and deferred compensation plan. Pursuant to 18 U.S.C. § 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of the Commonwealth of Massachusetts to provide this contractual benefit, unless I first obtain a written waiver or qualify for a regulatory exemption.

Upon confirmation, I will resign my position as Trustee on the Governing Board of the 76-78 North Margin Street Condominium Association Trust. Pursuant to 5 C.F.R. § 2635.502, for a period of one year after I terminate this position, I will not participate in any particular matter involving specific parties in which this organization is a party or represents a party, unless I am authorized to participate.

Additionally, I was not reappointed to my position as Chair of the Standing Regulatory Committee of the Conference of State Bank Supervisors. My term expired May 28, 2003. Pursuant to 5 C.F.R. § 2635.502, for a period of one year after I terminate this position, I will not participate in any particular matter involving specific parties in which this organization is a party or represents a party, unless I am authorized to participate.

Sincerely,

Thomas J. Curry

RESPONSE TO WRITTEN QUESTIONS OF SENATOR CORZINE FROM MARK C. BRICKELL

Capital Adequacy

Q.1. The Enterprises' minimum capital requirement specified in the statute is 2.5 percent of on-balance sheet assets and 0.45 percent of off-balance sheet assets. Is this adequate? Please explain.

A.1. I believe that it is important that the Enterprises are managed in a safe and sound manner, and are perceived to be sound. If confirmed, I would fully enforce the existing capital standard that has been mandated by statute. I have no reason, based on what I now know, to believe that current capital levels are inappropriate. I would look forward to working with Congress as requested to discuss any legislative proposals regarding the statutorily mandated minimum capital requirement, should I be confirmed and after I have had the opportunity to more fully explore the effects of the current capital requirements on the Enterprises.

Q.2. In explaining your preference for allowing internal models of risk-based capital to the external model OFHEO has had in effect, you imply that the internal model reflects the most advanced thinking of U.S. and international regulators. In fact, isn't it fair to say that OFHEO is differently situated than the other regulators because it has only 2 financial institutions it has to regulate, both of which are in the same business? Indeed, the use of internal models in Basel II may simply be a less preferred compromise position necessitated by the large number of institutions other regulators must oversee. How do you respond? Given this specific fact, OFHEO argues it is better able to maintain the "integrity" of the rule, ensure its evenhanded impact, and "independence and rigor."

A.2. You make a good point, and I agree with you that OFHEO is differently situated than other Federal financial regulators in that it oversees fewer institutions. It is my understanding that the banking supervisors use the internal models approach not because they supervise more institutions, but because they believe that a "rigid" approach to capital rules is not necessarily a "tough" approach, and that the flexibility of the internal models approach leads to greater precision in measuring capital needs than alternative approaches would. If I am confirmed as the Director of OFHEO, I will approach this matter with an open mind and with a willingness to look for ways to strengthen OFHEO's regulation of Fannie Mae and Freddie Mac because it is essential, in my opinion, and I believe in the opinion of the Committee, that these two large, world class financial institutions have a world class financial regulator with adequate resources and with the statutory authority to be just as rigorous in its approach as the banking supervisors.

Q.3. You raise concerns numerous times in your testimony regarding the "hard-wired" nature of the capital standard. Please outline and explain specific changes you would like to see made to the risk-based capital statute.

A.3. I have no specific changes in mind for the risk-based capital requirements in the statute, although I support the Administration's recent call for greater flexibility in monitoring and establishing capital standards for the Enterprises.

Q.4. Are the derivative counterparty "haircuts" used in OFHEO's risk-based capital rule appropriate? Did you make any comments to OFHEO on this topic on your own behalf, or on behalf of JP Morgan, ISDA, or any other group? If so, please provide those comments. Please explain your current views on this topic.

A.4. I do not recall having made comments about the capital requirements for derivatives in the capital rule and, while I do not believe that it would be appropriate to prejudge any matter that is within the purview of the duties of the Director of OFHEO, I am willing to consider ways to strengthen OFHEO's regulation of Fannie Mae and Freddie Mac, including measures to ensure that regulation of their derivatives activity encourages safe and sound operation of the Enterprises.

FAS 133

Q.5. In response to a question regarding FAS 133 from Chairman Shelby, you said that, "It is GAAP, and it has to be used." However, the preference you have expressed in the past is that, "the derivatives rule [FAS 133] is only GAAP for banks if the Federal banking supervisors certify that it should be," which is what you told the *Bond Buyer* on November 24, 1997 was your reason for supporting Senator Faircloth's bill, S. 1560. Your testimony clearly indicates that you understand that you must enforce FAS 133 as a regulator because it is now part of GAAP. However, is it still your view that a better course of action would have been to allow the banking regulators to be able to decide if whether or not to apply FAS 133 to the banks?

A.5. I believe that the article to which you are referring was published on November 24, 1997, in *CFO Alert,* a newsletter published by the same company that publishes the *Bond Buyer.* In that article, I was quoted as saying, "This legislation could assure that the derivatives rule is only GAAP for banks if the Federal banking supervisors certify that it should be." This statement was a description of what, in my judgment, was the principal, possible effect of the legislation, not an assessment of that result. As I indicated in my testimony before the Committee, if confirmed, I will enforce the existing requirement that the Enterprises report using GAAP, including FAS 133.

Q.6. Would you have the same preference with regards to the GSE's?

A.6. My thinking with respect to the GSE's is no different from my thinking about banks as indicated in my response to Question 5. As I indicated in my testimony before the Committee, if confirmed, I will enforce the existing requirement that the Enterprises report using GAAP, including FAS 133.

Q.7. Did you or do you believe that only the derivatives rule (FAS 133) should apply to banks at the regulators discretion, or should this discretion extend to all GAAP accounting rules? Please explain why or why not.

A.7. I see no reason to single out the derivatives rule for special treatment. As I indicated in my testimony before the Committee,

if confirmed, I will enforce the existing requirement that the Enterprises report using GAAP, including FAS 133.

Q.8. Given your belief that regulators should have this discretion, wouldn't this result in the return of regulatory capital for financial institutions separate and apart from GAAP? Do you have concerns about this? Please explain.

A.8. As I understand the question, as to whether this method of establishing accounting principles for banks would have created differences between regulatory accounting and GAAP it is my understanding that such differences existed already between the accounting by banks for regulatory purposes and their accounting for GAAP, so that this would not have been a new situation.

Q.9. *The Dow Jones Newswire* reported (July 16) that you prepared a memorandum for the House sponsor of the legislation, Mr. Baker. Is this accurate? If so, please provide a copy of this memorandum.

A.9. A memorandum containing the language quoted in the *Dow Jones* story was sent to Ted Beason on February 1, 1998. I believe the memorandum was drafted for his benefit, but it is certainly possible that it may also have been shared with Representative Baker. A copy is attached.

Q.10. Please describe fully your lobbying activities on FAS 133 on behalf of the legislation introduced by Representative Baker and Senator Faircloth.

A.10. I attended meetings in New York and Washington and communicated with others to discuss the proposed rule and some of the concerns expressed by major businesses (including JP Morgan), as well as the Federal Reserve Board and the Department of the Treasury.

Q.11. The Faircloth and Baker bills would have had the effect of undermining the independence of the accounting standards setting body—the Financial Accounting Standards Board—whose independence was recently affirmed in the Sarbanes-Oxley Act. Efforts like the Faircloth and Baker bills, and other proposals, have sought to undo FASB accounting standards via legislative fiat. Do you agree with that analysis? If not, please explain your reasons for your disagreement with that analysis.

A.11 It is my understanding that Congress has from time to time addressed accounting issues, both through its grant of authority to the Securities and Exchange Commission to require U.S. securities issuers to use the GAAP rules of FASB, and occasionally by addressing individual accounting issues such as stock option accounting, and as Congressman Baker and Senator Faircloth sought to do. I would not characterize those Congressional endeavors as legislative fiat, however, since that I believe that Members of Congress undertook them after reasonable deliberation.

Q.12. One of the problems that led to the passage of the Sarbanes-Oxley bill was the undue influence of industry interest groups on FASB, either directly or by bringing political pressure to bear. Wouldn't the Faircloth and Baker bills have exacerbated this problem? Please explain your views.

A.12. I understood that the Sarbanes-Oxley bill was passed, in part, because Congress concluded that the accounting industry needed closer Federal oversight, and Congress created an oversight board to address that need. While I do not have direct knowledge about the source of the problems that Congress acted to remedy, I note that Congress did ultimately conclude, as Baker and Faircloth had earlier, that legislative action was appropriate to address them. It is not clear to me that legislation, such as that introduced by Senator Faircloth, which was apparently intended to give Federal banking supervisors a role in the accounting standard setting process for the institutions they regulated, or such as that introduced by Congressman Baker, which was apparently intended to incorporate FASB standards into actual SEC regulations, should be characterized as legislation that would have exacerbated undue influence of industry groups on FASB.

Q.13. Do you have a view today as to whether your support for the Baker and Faircloth legislation was wise? Please explain.

A.13. I stand by the views expressed above. As I indicated in my testimony before the Committee, if confirmed, I will also rigorously enforce the existing requirement that the Enterprises under my supervision report using GAAP, including FAS 133.

Derivatives and Systemic Risk

In testimony to the House Banking Committee in 1993, you said, "it was hard to find justification for the view that derivatives pose a greater systemic threat than other financial activities." The next year, ISDA published a critique of a GAO study on derivatives. The critique claims that, "there is no concentration of credit exposures among [derivatives] dealers." In a *Dow Jones News Service* story on May 19, 1994, you were quoted as saying, "These exposures aren't of a new kind, they are not particularly large, and they are not particularly concentrated. So where's the big threat to the system?" Since that time, Warren Buffet, in Berkshire Hathaway's 2002 annual report described derivatives as "financial weapons of mass destruction . . . ."

One of the risks that Mr. Buffet cites is the systemic risk created by the concentration of derivatives: "Large amounts of risk . . . have become concentrated in the hands of relatively few . . . dealers, who . . . trade extensively with one another. The troubles of one could quickly infect the others. [T]hese dealers are [also] owed huge amounts by nondealer counterparties, [s]ome of [which] are linked in ways that could cause them to contemporaneously run into a problem because of a single event. Linkage, when it suddenly surfaces, can trigger serious systemic problems." In fact, the GSE's are some of the largest nondealer counterparties.

A *Business Week* article (March 2003) explained, "exposure to derivatives is highly concentrated. The OCC says seven U.S. banks own nearly 96 percent of the derivatives in the banking system. And because most derivatives are traded directly between the parties and not on exchanges, they are almost entirely unregulated."

Even Federal Reserve Chairman Greenspan, who disagrees with Mr. Buffett's conclusions, has acknowledged the problems associated with systemic risk: "One development that gives me and oth-

ers some pause is the decline in the number of major derivatives dealers and its potential implications for market liquidity and for concentration of counterparty credit risks . . . . When concentration reaches these kinds of levels, market participants need to consider the implications of exit by one or more leading dealers. Such an event could adversely affect the liquidity of types of derivatives that market participants rely upon for managing the risks of their core business functions."

One example of such concentrations is U.S. dollar interest rate options, which are used extensively by both Fannie Mae and Freddie Mac.

In your testimony, you appear to minimize this concern. You say that the limited number of counterparties, "may very well be because the party in question has chosen to enter into contracts with others that he knows well and trusts and whose credit he can judge."

While such behavior may be rational on the part of individual market participants, regulators must look after the health of the institutions and the markets as a whole.

Q.14.a. Have the events of the past 10 years, since you made your comment on the GAO report, or the concerns raised by Mr. Greenspan, changed your attitude regarding the potential systemic risks of derivatives? Please comment in detail.

A.14.a. No. In fact, I believe that the events and comments of the past 10 years tend to validate the judgment that the risks of derivatives are similar to the risks of other, related financial and trading activities, and that they should be managed with similar care. By making it easier for those who are already exposed to risk in their existing business activities to manage those risks with greater precision, transferring to others those risks they do not wish to take, and taking on those risks that they would prefer, derivatives tend to strengthen the position of individual firms and, in the process, tend to strengthen the financial system and the economy. As Chairman Greenspan said on April 22, 2002:

> Financial derivatives, more generally, have grown at a phenomenal pace over the past 15 years. Conceptual advances in pricing options and other complex financial products, along with improvements in computer and telecommunications technologies, have significantly lowered the costs and expanded the opportunities for hedging risks not readily deflected in earlier decades. The performance of these increasingly complex financial instruments, especially over the past couple of stressful years, has been noteworthy. These financial products have contributed importantly to the development of a far more flexible and efficient financial system—both domestically and internationally—than we had just 20 or 30 years ago.

Q.14.b. You have been quoted often to the effect that market discipline is the best regulator of swaps and derivatives. My fear is that the GSE's, as such enormous users of derivatives, could trigger the kind of liquidity crisis both Warren Buffett and Chairman Greenspan have discussed in recent months, if they are not effectively regulated. In your view, what role ought OFHEO play in terms of regulating the use of derivatives by the GSE's in order to avoid systemic risk to the financial system, or will you simply rely on market discipline, whatever the consequences to the rest of the economy?

A.14.b. I understand your concerns. I understand that regulation can be especially appropriate where there is any weakening of the

discipline that market forces bring to financial activity. I believe that the Office of Federal Housing Enterprise Oversight should supervise and address activities of Fannie Mae and Freddie Mac that could threaten the safety and soundness of those institutions—including their derivatives activities—and as I indicated at the July 22 confirmation hearing, if confirmed I will provide vigorous oversight as Director of OFHEO.

VIA FACSIMILE

MEMORANDUM

TO: Ted Beason

FROM: Mark Brickell

DATE: February 1, 1998

RE: Proposed Legislation

There have been a number of conversations with the associations and companies regarding the proposed legislation, and I can report that the reaction has been favorable. Of course, with so many parties involved, there is bound to be some quibbling but the main reaction is appreciation that Rep. Baker has been willing to continue the effort in the House. I can also tell you that our Senate supporters are happy to learn of the House initiative.

The discussion draft certainly appears to be in sufficient shape to be submitted to the SEC for its comments; in fact, "the sooner the better." Here are some additional thoughts:

- The provision calling for specific consultation with the banking agencies as provided on page 5 is brilliant since it brings the Banking Committee's jurisdiction into play. Might it not be useful to make a conforming change to the banking statutes themselves in order to provide a clearer jurisdictional hook and a cross-reference in the bill description on page 1?

- Accountants and the SEC will raise two points in opposition. One is whether it might be overbroad to require the SEC to approve proposed accounting standards even as limited by the definition on page 8. More fundamentally, they will argue that requiring SEC approval is taking accounting standards away from the *private* sector. On the latter point, the industry's response has been that the SEC is the *public*-sector force driving the derivatives rule.

- A Citicorp representative has raised the issue of whether the bill goes far enough. You might want to discuss this with Bob Barnett.

- I presume you are in touch with counsel from the standpoint of any inference which a court might draw as to the ability of an aggrieved party to sue under *current* law. It would seem that this concern could also be handled through the introductory statement.

I will be on a plane during business hours on February 2, but I trust this will serve to undertake the next step.

Thanks again for your continued time and interest.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR REED FROM MARK C. BRICKELL

Q.1. Do you have any concerns about the growth of the GSE's, especially of their debt?

A.1. I am concerned about any adverse impact that the growth of the Enterprises might have on their safety and soundness. If confirmed as the Director of OFHEO, I will work to ensure that the Enterprises do not engage in any activities or grow in a fashion that threatens safety and soundness.

Q.2. Do you believe that Fannie and Freddie still have a role to play today as Government Sponsored Enterprises, or has the secondary mortgage evolved to the point where Government Sponsored Enterprises are no longer needed?

A.2. As I indicated in response to a question at the July 22 confirmation hearing, Fannie Mae and Freddie Mac perform a vitally important function for housing finance in this country. They bring capital market benefits to housing finance and, in that way, they give us the broadest, deepest, most successful housing markets in the world. That means expanded home loan opportunities, and it means reduced costs for home loans. These are important benefits and, if confirmed, I would work to ensure that they are preserved.

Q.3. Should any of the Enterprises' ties to the Federal Government be modified or discontinued? Please explain.

A.3. While I am unable to make specific recommendations at this time, I support the changes in regulatory structure and oversight recently proposed by Secretaries Snow and Martinez in testimony before the House Financial Services Committee.

Q.4. Are the derivative counterparty "haircuts" used in OFHEO's risk-based capital rule appropriate? Did you make any comments to OFHEO on this topic on your own behalf, or on behalf of JP Morgan, ISDA, or any other group? If so, please provide those comments, and explain your current views on this topic.

A.4. I do not recall having made comments about the capital requirements for derivatives in the capital rule and while I do not believe that it would be appropriate to prejudge any matter that is within the purview of the duties of the Director of OFHEO, I am willing to consider ways to strengthen OFHEO's regulation of Fannie Mae and Freddie Mac, including ensuring that regulation of their derivatives activity encourages safe and sound operation of the Enterprises.

A 1994 GAO report on derivatives (Financial Derivatives, May, 1994) recommended that the "SEC registrants that are major end-users of complex derivatives products establish and implement" requirements for internal controls and the publication of those controls, including assessments of derivative risk-management systems. ISDA put out a response to the report suggesting that there is no more reason to monitor controls on derivatives than there is to have the SEC "monitor controls on new marketing campaigns or research projects."

Q.5.a. As the chief lobbyist and spokesperson for ISDA at this time, did you think it was accurate to compare controls on deriva-

tives risk-management with corporate research projects or marketing campaigns? Is that your view today?

A.5.a. While I was a member of ISDA's Board for much of 1994, I was not "the chief lobbyist and spokesperson for ISDA at [that] time." Nonetheless, to the best of my knowledge, that recommendation of the 1994 GAO report was not adopted at that time or since, and I am not uncomfortable with that result. The risks of derivatives are similar to the risks of other, related, financial and trading activities, and they should be managed with similar care.

Q.5.b. If confirmed, would you require that the Enterprises establish and implement internal controls for the use of derivatives? Would you monitor those controls? Would you require that those controls be made public?

A.5.b. I believe OFHEO has both safety and soundness regulatory authority and authority to enforce compliance with the standards and rules that it establishes. Using this authority, OFHEO should ensure that the policies of Fannie Mae and Freddie Mac limit risk taking and enhance risk management appropriately, and determine that those policies have been carried out. If confirmed, I intend to provide vigorous oversight of Fannie Mae and Freddie Mac, including oversight of their derivatives activities.

Q.6. Were you involved in the effort to block the regulation of energy or metal derivatives during the debate on the CFMA? Did you take any position on this specific issue, or lobby anyone on this issue? If so, please fully describe your activities.

A.6. Although questions about energy and metals were part of the larger bill, I do not recall having taken a position or lobbied on this specific issue.

Q.7. You are currently the CEO of Blackbird Holdings, which, as I understand it, is a specialized inter-dealer electronic trading system for OTC financial derivatives. Blackbird's website states that it has 40 international dealers installed and trading on its system in North America and an additional 35 dealers across Europe, and that the Blackbird "trading network has consistently expanded over time." But the website specifically declines to release any volume records. And no press releases are listed on the website for this year, although 8 are listed for 2002 and 12 for 2001.

The Wall Street Journal reported on February 18, 2003, a company named eSpeed, which is an affiliate of Cantor Fitzgerald, was entering the same businesses as Blackbird. The *Journal* article stated:

> If successful, eSpeed's planned move into electronic trading for dollar and euro-denominated interest-rate swaps would make it the only formidable player in the wide-open area of online swaps trading. Only one firm, Blackbird Holdings, so far has launched an online swaps platform. But it has failed to gain a foothold, despite what was seen as a novel technology. [Emphasis supplied.]

What is the state of Blackbird's business now? Why did both Blackbird's two large institutional investors, Reuters and ICAP PLC sell out their Blackbird investments?

A.7. Blackbird continues to market its service to potential customers in several countries. Other aspects of the business are proprietary information. I understand that Reuters sold its Blackbird

shares as part of a realignment of its business activities. By terms of a settlement agreement with ICAP PLC, Blackbird is not allowed to disclose any details of our settlement arrangements with that firm.

Q.8. During the CFMA debate you were very public about that fact that you thought a company should be able to "opt for regulation." It was your view then, is it your view now? Is this something you believe would work for Fannie Mae and Freddie Mac?

A.8. Congress adopted this approach in the Commodity Futures Modernization Act (CFMA). The CFMA, in part, assures that swap activity will be subject to Commodity Futures Trading Commission (CFTC) regulation when a participant seeks and the CFTC agrees to provide that regulatory oversight. Members of the President's Working Group on Financial Markets, including Treasury Secretary Summers and Federal Reserve Board Chairman Greenspan, supported the legislation, which was enacted into law. I shared the view of the regulators and Congress that this approach was appropriate then, and I still do today.

I believe that the Office of Federal Housing Enterprise Oversight (OFHEO) already possesses the authority to supervise and address activities of Fannie Mae or Freddie Mac that could threaten the safety and soundness of those institutions—including their derivatives activities. Stated plainly, swap activity oversight by OFHEO is mandatory, not optional.

Q.9. According to an article published online by the *American Banker* (July 16), you own stock of American International Group (the parent of mortgage insurer United Guaranty), General Electric (the parent of GE Mortgage Insurance); and HSBC Holdings (the parent of Household International). You also hold a number of other bank stocks and stocks of other companies that have significant finance affiliates.

You have agreed to divest certain of your holdings within 90 days. Given the role of some of the companies in which you hold shares—especially JP Morgan Chase—in the derivatives markets, do you think it is appropriate for you to wait up to 90 days before divesting your interest? How do you plan to divest yourself of your holdings in other banks or companies with significant finance affiliates? Do you plan to do so immediately? Did you consider simply placing all of your shares in a blind trust for the duration of your government service?

Rather than dispose of your wife's holdings of more than $1 million dollars in Citigroup shares and options, you have chosen to recuse yourself during your service "from participating personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of Citigroup." Citigroup is the Nation's largest financial institution, and it is also a substantial participant in the Nation's derivatives and mortgage markets. Given the nature of your responsibilities, and the size and importance of Citigroup, how can you perform your post effectively and satisfy the terms of your recusal? Even if technical compliance is possible, why have you chosen to allow a situation to arise that many may view as tantamount to the appearance of a conflict of interest?

A.9. If confirmed, I will comply fully with the terms of my Ethics Agreement and all applicable laws and regulations. It is my understanding that, after undertaking a thorough review of my financial holdings, the Office of Government Ethics and the U.S. Department of Housing and Urban Development have reconfirmed that the terms of my Ethics Agreement meet or exceed the requirements of applicable laws and regulations, and will not impair my ability to perform effectively the duties of Director of OFHEO.

Q.10. Do you believe that the secondary mortgage market needs Federally chartered institutions, instead of private financial institutions to maintain a stable, liquid, and reliable source of mortgage financing, or could it be maintained by private financial institutions alone? Describe in detail why or why not.

A.10. As I indicated in response to a question at the July 22 hearing, Fannie Mae and Freddie Mac perform a vitally important function for housing finance in this country. They bring capital market benefits to housing finance and, in that way, they give us the broadest, deepest, most successful housing markets in the world. That means expanded home loan opportunities, and it means reduced costs for home loans. These are important benefits and, if confirmed, I would work to ensure that they are preserved.

Q.11. What are the three most important challenges you believe the Office of Federal Housing Enterprise Oversight (OFHEO) faces at the moment? If confirmed, describe in detail how you will address such challenges.

A.11. My first objective, if confirmed, would be to ensure that OFHEO, or its successor entity, continues its swift evolution into a world-class financial regulator of the Enterprises under its supervision. I will dedicate my energies to the completion of this task. Second, OFHEO must provide rigorous, continuing oversight of the entities under its jurisdiction to ensure that they operate safely and soundly. Third, OFHEO must ensure that it has the necessary resources, authority, and enforcement power to respond to the concerns raised by the recent accounting and management difficulties at one of the Enterprises. I look forward to helping to pursue these important goals.

Q.12. Under what circumstances, if any, would you ever recommend formally rescinding the GSEs' line of credit with the Federal Treasury? Describe those circumstances in detail. Are there any other Federal benefits that GSE's currently have that you would consider eliminating? Please explain in detail.

A.12. The mission of OFHEO is to work to ensure that Fannie Mae and Freddie Mac operate in a safe and sound manner. While I am unable to make specific recommendations at this time, any policy recommendations by OFHEO concerning the Enterprises should be based on their impact on the safe and sound operation of the Enterprises.

Q.13. On your Statement for Completion by Presidential Nominees, in answer to Question 4 in the "Potential Conflicts of Interest" section, you are asked to list any lobbying activity during the past 10 years you have engaged in. In your brief answer, you state that you have, "participated in discussions in Washington and, to a lesser

extent, in London, Paris, Basel, and Tokyo, concerning the development and implementation of the regulatory framework for swaps and other privately negotiated derivative transactions." Please list, to the most complete extent possible, all of your lobbying activities between 1993–2003.

A.13. During that time I filed lobbying reports, as required by law, describing that activity. I would be happy to obtain additional copies for you, if necessary.

Q.14. Given what you currently know about OFHEO and the GSE's, do you believe the current risk-based capital rule is identifying the real risks that Fannie and Freddie are taking? Describe in detail why or why not. Which specific changes, if any, would you propose to the risk-based capital rule? Describe in detail why you believe such changes are necessary.

A.14. I believe that it is important that the Enterprises are managed in a safe and sound manner, and are perceived to be sound. If confirmed, I would fully enforce the existing capital standard that has been mandated by statute. I have no reason, based on what I now know, to believe that current capital requirements are ineffective, but I would look forward to working with Congress as requested to discuss any legislative proposals regarding the statutorily mandated minimum capital requirement, should I be confirmed and have had the opportunity to explore more fully the effects of the current capital requirements on the Enterprises. I support the improvements outlined in testimony by Secretaries Snow and Martinez before the House Financial Services Committee.

Q.15. Given what you currently know about OFHEO and the GSE's, do you believe that the GSE's are overcapitalized? Please describe in detail why or why not. What level of capitalization do you believe is necessary in order to ensure the safety and soundness of the GSE's? Describe in detail your rationale for the level of capitalization specified and how it could be best accomplished.

A.15. I believe that it is important that the Enterprises are managed in a safe and sound manner, and are perceived to be sound. If confirmed, I would fully enforce the existing capital standard that has been mandated by statute. I have no reason, based on what I now know, to believe that current capital levels are inappropriate, but I would look forward to working with the Congress as requested to discuss any legislative proposals regarding the statutorily mandated minimum capital requirement, should I be confirmed and have had the opportunity to explore more fully the effects of the current capital requirements on the Enterprises. I support the improvements outlined in testimony by Secretaries Snow and Martinez before the House Financial Services Committee.

Q.16. While at JP Morgan and Blackbird Holdings, did you have any interactions, discussions or written communications with FM Watch/FM Policy Focus? If so, with which individuals did you interact, to what extent, and specifically, on which issues did you work with them?

A.16. While I know personally and professionally some individuals who are associated with that organization, and have worked with

them on other matters, I do not believe that I have worked with them on matters involving the Enterprises.

Q.17. *Dow Jones* reported recently (February 6, 2003) that, during the effort to pass the Commodity Futures Modernization Act (CFMA), you "pushed for legislation allowing so-called Granny swaps—derivatives that can be sold to ordinary investors." Do you believe that retail swaps should be completely unregulated? Describe in detail why or why not.

A.17. The CFMA was enacted, in part, to increase legal certainty for counterparties in swap contracts. I believe that the benefits of legal certainty should be available to all such counterparties, and that was my view during the discussions that lead to the passage of the CFMA.

Q.18. Describe in detail your experience at the International Swaps and Derivatives Association (ISDA), both as a Director and as Chairman. Describe in detail why you left the Chairmanship. Was there a term limit to the position? If so, how long is it and when was the term limit instituted? If not, did you have the support of a majority of the Directors when you left the Chairmanship?

A.18. I served on the Board of the International Swaps and Derivatives Association for most of the period from 1986 to 1999. During that time I spent 4 years as Chairman and 2 years as Vice Chairman of the organization. I served as Chairman in four consecutive terms from 1988–1992, the first person to be elected to that post for more than 1 year. Although ISDA did not have, and does not have today, a term limit policy, I voluntarily stepped down as Chairman after 4 years of service. I enjoyed serving on the Board for another year until 1993, departing voluntarily at the end of that term. While there was no formal measure of the support of the Board when I resigned as Chairman or left the Board, I was pleased that I was reelected to the Board in 1994 and that the Board Members elected me Vice Chairman of the organization at that time.

Q.19. Have you had any management complaints filed against you from any employee of JP Morgan or Blackbird Holdings, Inc.? If so, please describe the outcome of such complaints.

A.19. Not to my knowledge.

Q.20. Did you communicate, verbally or in written form, with the Commodity Future Trading Commission (CFTC) about Blackbird to the Chairman, or its enforcement personnel? If so, describe in detail such communications, and provide documentation, if available.

A.20. I do not recall having discussed Blackbird with the Chairman of the CFTC or with CFTC enforcement personnel during my tenure as Chief Executive Officer of Blackbird.

Q.21. In testimony to the House Commerce Committee in 1999, you said, "Hedge funds are not regulated and . . . let me say I am glad that they are not regulated." There have been growing concerns in recent months about the retailization of unregulated hedge funds. Is it still your view that hedge funds should remain unregulated? In your view, should there be any limits on the net worth of people who may invest in hedge funds? Please explain in detail.

A.21. I am not familiar with any policy proposals in this area, and thus have no comment with respect to any such proposals.

Q.22. You have testified as recently as April 2000 that you believe that futures exchanges should be unregulated. Is that still your position? Please explain in detail.

A.22. I do not recall having given such testimony. I am comfortable with the current regulatory framework for futures exchanges.

Q.23.a. In a response to a question from Chairman Shelby, you said, "In my career in financial services, every day that I have spent at my desk, every day that I have worked has been spent at a regulated financial institution." My understanding is that Blackbird Holdings is not a regulated entity. Is that correct?

A.23.a. Blackbird is a regulated enterprise. Blackbird's operating companies, Blackbird North America, Inc., and Blackbird Europe, Limited, are regulated by the NASD under the supervision of the Securities and Exchange Commission, and the Financial Services Authority of the United Kingdom, respectively.

Q.23.b. In fact, my understanding is that you have worked hard to prevent Blackbird and its core business from being regulated. Is that correct? Please describe in detail any lobbying or other actions you have taken to keep Blackbird from being regulated.

A.23.b. The regulatory status of Blackbird, as described above, was established before I joined the company, and I have not attempted to change or modify those arrangements. I have worked to ensure that Blackbird complies with its regulatory obligations.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM MARK C. BRICKELL

Q.1. In response to my question 4, you state in 1994 you jointly headed a JP Morgan project for Freddie Mac. You identified the project as, "a risk management advisory project that focused principally, as I recall, on the quality of Freddie Mac's management of the credit, market, legal, and operational risk of its derivatives activities." Please provide the Committee with any documents in your possession, including any presentations or reports, regarding the project. In addition, please identify any individuals who you believe may be in possession of any documents related to the project.

A.1. There are no documents regarding the project in my possession. For further information about the project and related documents, the Committee may wish to contact Tim Ryan or Courtney Ward of JP Morgan, who are responsible for the firm's relationship with Freddie Mac.

Q.2. Did you or your team at JP Morgan at any time advise Freddie Mac on how to use derivatives to structure financial transactions in a way that achieved desired results, that is manage earnings?

A.2. I have never provided advice to Freddie Mac about using derivatives to manage earnings, and have no knowledge regarding any advice of such a nature that others may have provided.

Q.3. Were you at any time a participant in any presentation or briefing of Freddie Mac officials regarding the project? If so, please

identify the date(s) of such presentations or briefings, and the individuals present.

A.3. Yes. I participated in a briefing to members of the Finance Committee of the Freddie Mac Board, most likely during the third or fourth quarter of 1994. I do not recall all the names of the Finance Committee members and others who may have been present at the time, but do recall that Tim Ryan and Steve Thieke from JP Morgan participated along with me in the briefing.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR CARPER FROM ALICIA R. CASTANEDA

Q.1. What is your view of multidistrict membership? What factors do you believe are most important to consider when deciding this issue?

A.1. I understand the Federal Housing Finance Board began considering this issue after four Federal Home Loan Banks filed petitions seeking clarification on whether a member institution can be a member of two or more Federal Home Loan Banks.

With any action a regulator considers, the statutory authority for options under review must be a prime consideration.

In addition, as with all issues that come before the Federal Housing Finance Board, multidistrict membership must be considered in the light of safety and soundness, that is, whether a change in membership enhances or harms the safety and soundness of the Federal Home Loan Banks.

I would also consider the question of whether any change serves the housing finance and affordable housing missions that Congress has given the Federal Home Loan Banks, as well as the effect of any change on business choices the Banks make in serving these missions.

Q.2. What is your position on requiring the Home Loan Banks to register with the Securities and Exchange Commission under the Securities and Exchange Act of 1934? As you may know Section 12(i) of the 1934 Act provides the bank regulatory agencies with the powers, functions, and duties vested in the SEC to administer and enforce the disclosure and reporting provisions of the 1934 Act. What is your view of having the Federal Home Loan Banks register under 12(i) with the Finance Board?

A.2. I am aware of the Administration's position that all Government Sponsored Enterprises, including the Federal Home Loan Banks, should voluntarily register with the SEC under the Securities and Exchange Act of 1934.

The 12(i) concept is one that I have not had the opportunity to familiarize myself with, but I intend to do so. If confirmed, I will study all the factors involved with the disclosure issue.

My experience at the Bank of America has led me to appreciate the importance of disclosure, and as a regulator, I would be a strong supporter of transparency, of full disclosure. My duty is, ultimately, to the public, and the public is well-served through a clear and consistent regime of disclosure.

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August 18, 2002

WILLIAM J. DONOVAN
Senior Vice President
General Counsel

The Honorable Richard C. Shelby
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Shelby:

I am writing to express my strong and unqualified support for the nomination of Thomas J. Curry to serve as a member of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC").

For the past ten years Mr. Curry has served as Commissioner of Banks for the Commonwealth of Massachusetts. During that period he has made positive contributions to the development of financial institution regulatory policy reaching well beyond the borders of the Commonwealth of Massachusetts through his active involvement in the Conference of State Bank Supervisors (which he Chaired in 2000 – 2001) and his service as a member of the Federal Financial Institutions Examinations Council's "State Liaison Committee".

In my capacity as general counsel of the National Association of Federal Credit Unions I have had the opportunity to work with Mr. Curry on a number of occasions over the years. I have consistently found him to be fair-minded and even-handed, always accessible and willing to hear all viewpoints on issues. I have no doubt that Mr. Curry will build upon his already distinguished record of public service as a member of the Board of Directors of the Federal Deposit Insurance Corporation.

Thank you, Mr. Chairman, for allowing me to share my comments in support of the nomination of Mr. Thomas C. Curry to serve as a member of the Board of Directors of the Federal Deposit Insurance Corporation. I urge you and your Senate colleagues to act swiftly in confirming his appointment to this office for which he is very well qualified. Our country is well-served when men and women of Mr. Curry's intellect, character and integrity dedicate their lives to public service.

If you or your staff have any questions concerning my views in regard to Mr. Curry's nomination, please don't hesitate to contact me.

Best personal regards,

Bill