

**Statement of Hon. Edolphus Towns
Chairman, Committee on Oversight and Government Reform
September 16, 2010**

Thank you Chairman Frank, Ranking Member Bachus, Members, and staff of the Committee on Financial Services for inviting me here today.

The landmark Dodd-Frank Wall Street Reform and Consumer Protection Act made significant improvements to the accountability and transparency of our nation's financial system. The Act gives consumers access to more information about investments and it reigns in the abusive and excessive practices of Wall Street.

Passing the Dodd-Frank Act was an important achievement. But our work in Congress did not end when the bill was passed. It is critical that we exercise vigilant oversight of implementation and that we act to close loopholes when they are identified. To that end, I applaud you Chairman Frank for your willingness to hold this hearing to examine a significant loophole that I believe undermines the core purposes of the Dodd-Frank Act.

Section 929I of the Act would allow the SEC to avoid disclosing information the Commission receives during examinations of companies if the information is used for "surveillance, risk assessments, or other regulatory and oversight activities." This language is too broad. It allows the SEC to keep secret virtually any information it obtains under its examination authority.

SEC Chairman Mary Schapiro has asserted that the Commission will only use section 929I as intended. But the SEC has already indicated its willingness to exploit this loophole. In an action the SEC brought against a broker-dealer, the Commission tried to use section 929I to avoid an Administrative Law Judge's order to comply with a subpoena. That clearly goes beyond the intent of the provision and the SEC's reasons for needing the provision.

Chairman Schapiro yesterday issued guidance that places limits on the Commission's use of section 929I. This is a step in the right direction. But the Chairman's guidance is not sufficient because the Commission can change its interpretation at any time and the fact that guidance is

needed at all is evidence itself that this provision is too broad and subject to abuse.

The SEC's rationale for section 929I is that the provision is necessary to ensure that the Commission can obtain sensitive information when the Commission is performing examinations.

Prior to Dodd-Frank, the SEC relied on an existing exemption under the Freedom of Information Act (FOIA) to protect information obtained under its exam authority. Exemption 8 protects matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." The SEC has expressed concern that the new entities it is responsible for regulating under the Dodd-Frank Act, such as private equity funds might not be considered by the courts to be "financial institutions" under Exemption 8.

I introduced H.R. 6086 on August 10, 2010. H.R. 6086 repeals the secrecy provisions of section 929I and amends the Securities and Exchange Act to clarify that any entity the SEC regulates under the Securities Exchange Act will be considered a "financial institution" for purposes of FOIA Exemption 8. My bill strikes a careful balance to address the SEC's concerns without compromising the goals of transparency and accountability that are at the heart of the Dodd-Frank Act.

In a letter supporting H.R. 6086, a coalition of 36 public interest organizations including groups such as the Project on Government Oversight, the Sunlight Foundation, and openthegovernment.org wrote "[t]his bill sends a clear message that public access is vital to accountability." I am submitting a copy of that letter for the record.

The culture of accountability must start at the top. Allowing the SEC to operate in the darkness of secrecy will undermine the confidence of consumers and regulated companies.

In conversations with my staff, the SEC has indicated that legislation as broad as 929I is not necessary and that legislation similar to my bill but with a few additional provisions would meet its needs. I look forward to continuing to work with the SEC on legislation as well as with

Chairman Frank and the members of this Committee so that we can quickly and effectively address this issue.

Thank you again Chairman Frank and Members of the Committee for holding this hearing and for the opportunity to testify.