

BITS

FINANCIAL SERVICES
R O U N D T A B L E

November 4, 2010

Mr. Rod Beckstrom
CEO and President
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Ray, California 90292

Re: Potential Delegation of Financial Generic Top Level Domains

Dear Rod:

BITS, the technology policy division of The Financial Services Roundtable, appreciates your willingness to discuss the consumer risks and potential safeguards associated with the delegation of financial generic Top Level Domains (financial TLDs). We are committed to pursuing every available option - including our ongoing, constructive engagement with you – to protect financial services customers worldwide from heightened risk of fraud, confusion, and loss of confidence in the Internet as a platform for the delivery of financial services.

The following comments, and the more detailed attachments, describe the financial services community's efforts to identify the most critical risks, our suggestions for cooperative mitigation of those risks with ICANN, and alternative avenues that might prove necessary if our joint efforts are unsuccessful.

As ICANN has considered generic Top Level Domain (gTLD) expansion, and refined its proposed process in multiple drafts of the Applicant Guidebook, BITS has weighed in with six comment letters - noting concerns with security, customer confusion, cost, and brand protection (please see attachment A). Given that the financial services community has a unique interest in security and customer confidence, that other stakeholders are addressing cost, and that ICANN is making strides in brand protection, BITS has focused primarily on security and on directing the delegation of any financial TLDs only to responsible applicants. ICANN reinforced this emphasis by asking BITS and three of our closest partners to lead the community consultation on security requirements (Attachment B).

Outreach. As BITS developed and vetted its analysis of these issues, we reached out to a wide variety of stakeholders, including: the broader ICANN community; financial institutions of all sizes and sub-sectors worldwide; and financial trade associations, regulators and policymakers around the world (Attachment C). In this outreach, we received a number of public endorsements (Attachments D and E), but heard no fundamental disagreement about the critical importance of safeguarding financial TLDs with elevated security and prudent delegation.

Given this substantial agreement, we urge you to (1) adopt mandatory, elevated security requirements for financial TLDs, and (2) refine the objection process to prevent an outlier applicant from prevailing over the global financial community. If ICANN is unable to resolve these two issues, we urge you to defer the delegation of any financial TLDs until after the initial round, to allow adequate time to achieve a resolution. We believe that this attention to security and delegation, and this consideration of postponement, are not only in the best interests of consumers, but also constitute prudent risk management on behalf of ICANN and the gTLD expansion program.

Security. We recommend making the High Security TLD Verification Program requirements mandatory for TLDs principally intended for the offering of financial services (see Attachment F for a DAG 4.0 edit; see Attachment G for an internationally-derived definition of financial services). Less definitive approaches, that nonetheless represent improvements, could require “commensurate” or “appropriate” security procedures (Attachment H). At ICANN’s request, BITS also has drafted a response to the HSTLD Verification Program Request for Information (Attachment I), although we do not currently intend to bid as a potential program manager.

Delegation. We recommend that an applicant for a financial generic TLD be required to demonstrate the “substantial support” of the financial community. It is critical that this criterion not be preempted by the Complete Defense that currently requires the applicant only to demonstrate minimum standing. We, therefore, recommend that the Complete Defense be eliminated or modified to weigh community support or opposition (Attachment J).

Deferral. If the security and delegation issues are not fully resolved, we recommend that ICANN not accept generic financial TLD applications (see Attachment G definition) in the initial round. This approach would garner additional time to resolve the issues, and would allow lessons from first-round non-financial gTLD applications to inform the highly sensitive financial TLD delegation process.

Remedies. If these critical issues are not fully resolved and ICANN chooses not to defer financial TLD delegation, BITS, its members and its partners are prepared to employ all available legislative, regulatory, administrative and judicial mechanisms. Among the possibilities under discussion are: legislation prohibiting renewal of the IANA contract without adequate security safeguards (Attachment K), further action by U.S. and non-U.S. banking regulators (Attachment L), a request for Board reconsideration or for an independent review panel, and the filing of legal complaints in one or more jurisdictions. Please rest assured that we prefer a prudent solution, reached by collaborative means, to any of these costlier, riskier and more contentious remedies.

Thank you once again for your willingness to work through these issues for the benefit of the worldwide community of financial consumers. We look forward to continuing our substantive, constructive dialogue.

Best regards,

A handwritten signature in black ink, appearing to read "Leigh Williams", with a stylized flourish at the end.

Leigh Williams
President

BITS Comment Letters to ICANN on gTLD Expansion (Attachment A)

- Draft Applicant Guidebook on Top Level Domains (December 2008)
- Draft Applicant Guidebook, Version 2, on Top Level Domains (April 2009)
- Financial Generic Top Level Domains (August 2009)
- Top Level Domains Draft Applicant Guidebook Version 3 (November 2009)
- Affirmation Reviews Proposal 3 (February 2010)
- Top Level Domains Draft Applicant Guidebook Version 4 (July 2010)

All comment letters are posted at http://www.bits.org/p_comment_lettersICANN.html.



The Internet Corporation for Assigned Names and Numbers

21 June 2009

Mr Leigh Williams, BITS, President leigh@fsround.org
 Mr Bill Nelson, FSISAC, President & CEO, bnelson@fsisac.us
 Mr Dan Schutzer, FSTC, Executive Director, dan.schutzer@fstc.org
 Mr Doug Johnson, ABA, Senior Policy Analyst, djohnson@aba.com

Dear Messrs Williams, Nelson, Schutzer and Johnson,

We appreciate the active engagement of the banking and finance sector as represented by the American Bankers Association (ABA), BITS, the Financial Services – Information Sharing and Analysis Center (FS-ISAC) and the Financial Services Technology Consortium (FSTC) in our public consultations related to the Draft Applicant Guidebook.

The comment letters from BITS and the ABA have provided important input on a range of general and specific concerns. We are seeking to refine our understanding of your concerns related to security and potential for malicious conduct to ensure our efforts to refine the Draft Applicant Handbook and related efforts regarding the creation of new gTLDs. As you are aware, we are handling concerns you have expressed related to protection of trademarks and other intellectual property issues through our consultations with the Implementation Recommendation Team (IRT) and other groups. We encourage your active comment on the recent IRT recommendations and participation in the process of resolving trademark issues.

The BITS comment letters and our further dialogue with all four associations have included a specific offer of assistance in order to help ICANN address security concerns. We would welcome your assistance and propose to have the ICANN staff work with your organizations to facilitate conducting a series of focused consultations with key stakeholders in the banking and finance sector.

ICANN is endeavoring to refine the Applicant Guidebook and related processes to address community concerns in an expedited manner and will seek to work with the banking and financial services sector in a fashion that allows us to best understand concerns and proposals for addressing those concerns in the most timely and efficient manner possible. We believe one way to accomplish consultations with the banking and financial services sector would be to hold these focus sessions in conjunction with planned July consultations on the four overarching issues related to the Draft Applicant Guidebook in New York, London and Hong Kong.

I have asked Greg Rattray, ICANN Chief Internet Security Advisor, to lead our effort to expeditiously establish a collaborative approach for ICANN to work with you as representatives of the banking and financial services sector.

Sydney
 Brussels
 Marina del Rey
 Washington, DC

Level 2, 48 Hunter Street
 6 Rond Point Schuman, Bt. 5
 4676 Admiralty Way, Suite 330
 1875 I Street, NW, 5th Floor

Sydney NSW 2000
 1040 Brussels
 Marina del Rey, CA 90292
 Washington, DC 20006

AUSTRALIA
 BELGIUM
 USA
 USA

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|--------------------------|--------------------------|
| T +61 2 8236 7900 | F +61 2 8236 7913 |
| T +32 2 234 7870 | F +32 2 234 7848 |
| T +1 310 823 9358 | F +1 310 823 8649 |
| T +1 202 429 2704 | F +1 202 429 2714 |



Please let us know if you will be able to support such an effort and how you think we can best engage the concerns you have raised.

Yours sincerely

A handwritten signature in blue ink, reading "Paul D. Twomey".

Dr Paul Twomey
President and CEO

Cc:

Mr Don Rhodes, Policy Manager, ABA, drhodes@aba.com

Mr Paul Smoca, BITS, VP, Security, pauls@fsround.org

Mr John Carlson, BITS, john@fsround.org

Mr Andrew Kennedy, BITS, Project Administrator, andrew@fsround.org

Mr Roger Lang, FSTC, Managing Executive –Security SCOM, roger.lang@fstc.org

Community Outreach (Attachment C)

ICANN Community:

- Panel on Malicious Conduct (Sydney)
- Consultation on Malicious Conduct (New York)
- High Security TLD Working Group (Seoul)
- Business Constituency Roundtable on Security, Stability and Resiliency (Washington)

Financial Institutions:

- 80 BITS member institutions based in the U.S.
- 20 BITS member institutions based outside the U.S.
- 10,000 Affiliate member institutions
- (Includes banks, credit unions, insurers, brokerages, card networks, consumer finance companies, industrial finance companies, hedge funds and exchanges.)

Financial Trade Associations in:

- | | | |
|-----------------|----------|------------------|
| • Australia | • Canada | • China |
| • India | • Japan | • Korea |
| • Germany | • Russia | • United Kingdom |
| • United States | | |

Financial Regulators in:

- | | | |
|-------------------|---------------|-------------|
| • Australia | • Belgium | • Canada |
| • France | • Germany | • Hong Kong |
| • Indonesia | • Italy | • Japan |
| • Luxembourg | • Malaysia | • Mexico |
| • The Netherlands | • New Zealand | • Norway |
| • Singapore | • Spain | • Sweden |
| • United Kingdom | | |

U.S. Regulators and Policymakers:

- Department of Commerce
- Department of the Treasury
- Federal Deposit Insurance Corporation
- Federal Reserve
- Office of the Comptroller of the Currency
- Office of Thrift Supervision
- Securities and Exchange Commission
- Bureau of Consumer Financial Protection
- U.S. House of Representatives
- U.S. Senate
- White House Office of Cyberspace Security

**AUSTRALIAN BANKERS' ASSOCIATION INC.**

David Bell
CEO

Level 3, 56 Pitt Street
Sydney NSW 2000
Telephone: (02) 8298 0417
Facsimile: (02) 8298 0402

11 August 2009

Mr Rod Beckstrom
President and CEO
Internet Corporation for Assigned
Names and Numbers

Dear Rod,

Generic Top Level Domains - Draft Applicant Guidebook

The Australian Bankers' Association (ABA) represents banks in Australia and works with its members on analysis, advice and advocacy that contribute to the development of public policy on banking and other financial services, including those services provided on the Internet.

The Internet is a key delivery mechanism for many transactional, information and advisory services, and our members play a significant role in ensuring that their activities and processes, and those of their customers, support the shared goal maintaining the security, resilience and robustness of the web.

The ABA has seen the submission of the American Bankers Association, BITS, the Financial Services ISAC and the Financial Services Technology Consortium, and is broadly in support of the recommendations relating to the need for process integrity for new Generic Top Level Domains (gTLD) applicants, particularly as they relate to Internet security.

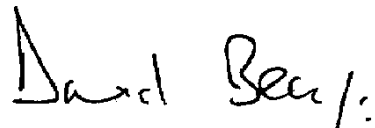
Additionally, we are unable to identify any significant benefits in the creation of new gTLDs specifically for our industry, and would have concerns about the possibility of an organisation having no legal status as a bank, being able to use "bank" or some variant of the word in its domain name.

In this country, and many others, the term "bank" and the institutions able to refer to themselves in this way, are tightly regulated. The purpose of this regulation is to protect customers, shareholders and the national interest, and it would not be in the interests of banks, their customers, or our country if companies were able to circumvent this regulation in any way.

Even with no regulatory arbitrage, there could be the real and significant danger of customers being confused about the nature of the party with whom they were conducting value transactions.

It is the responsibility of all participants to ensure that the expansion of gTLDs does not lead to a decrease in security and resiliency, and we look forward to further opportunities for consultation on this important change in the use of the Internet.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Beaufort". The signature is written in a cursive, slightly slanted style.

September, 2010

Dear: [Member of Congress]

The undersigned organizations look forward to working with you and your colleagues in Congress on cyber security issues. As you consider legislation in this important area we wanted to bring to your attention an issue involving the expansion of top-level internet domains that is of great concern to the financial services industry.

The Internet Corporation for Assigned Names and Numbers' (ICANN) oversees the process that allows each Internet page to be uniquely identified, through the domain name system. ICANN plans to substantially expand the number of gTLDs (.com, .gov, .net) starting in 2011; it is estimated that between 200-500 applications will be filed, including domains purporting to offer financial services (e.g., ".bank" or ".fin").

We have serious concerns about the impact of this initiative on financial services and other critical infrastructures. We are particularly concerned about the lack of an adequate verification process in the ICANN proposal because it is likely to lead to more and not less cyber crime. It is important to ensure that applicants for a financial Internet domain name are legitimate financial services companies rather than criminals who would increase consumer exposure to cybercrime. Otherwise, the increased number of gTLDs, some purporting to be offering financial services, could create substantial confusion for financial customers, making it difficult for them to identify which gTLD is registered to legitimate financial institutions.

We have consistently recommended that ICANN exclude financial services gTLDs from the expansion, or at the very least postpone their inclusion or add them on an incremental basis, so that improvements can be made to the security of the domain name system and the application process surrounding financial services gTLDs.

We have recommended to ICANN that it create a formal financial services panel for assessing financial services gTLD applications, as well as mandating specific higher levels of security and stability for financial services gTLDs. Unfortunately, ICANN has not adopted these recommendations.

Legislation introduced in Congress, including S. 3480 and S. 773, recognize the importance of a secure domain name system. S. 3480 would facilitate research and development funding to accelerate the deployment of more secure versions of

fundamental Internet protocols and architectures, including for the secure domain name addressing system and routing security.¹ S. 773, as introduced, would have required the Department of Commerce to develop a strategy, within three years of enactment, to implement a secure domain name addressing system.² Unfortunately, the bill was amended to drop this requirement.

S. 773 as introduced, which was filed prior to the expiration of the ICANN and Department of Commerce's National Telecommunications and Information Administration (NTIA) Joint Partnership Agreement (JPA), required that an advisory panel formed by the bill approve any new agreement for renewal or modification of a contract related to the operation of the Internet Assigned Numbers Authority (IANA).³ With the expiration of the JPA, the renewal of the IANA contract governing root zone management for the Domain Name System, set to occur in August 2011, provides a similar opportunity for Congress to evaluate ICANN activities as envisioned in the bill.

In recognition of the need for higher levels of security and stability in financial services gTLDs than in gTLDs generally, we urge you to support inclusion of language in cyber security legislation language that prevents ICANN from adding financial services gTLDs to the root zone unless the IANA contract specifies higher levels of security for such gTLDs.

We look forward to working with you to positively influence the future direction of internet security and stability.

Sincerely,

American Bankers Association
American Financial Services Association
Consumer Bankers Association
Financial Services Information Sharing and Analysis Center
The Financial Services Roundtable
Insured Retirement Institute
Mortgage Bankers Association
National Business Coalition on E-Commerce and Privacy
Securities Industry and Financial Markets Association
U.S. Chamber of Commerce

¹ Section 23, Cybersecurity Research and Development

² Section 9, Secure Domain Name Addressing System

³ Section 8, Review of NTIA Domain Name Contracts

Mandatory Employment of High Security (Attachment F)

Proposed Addition to DAG 4.0:

“1.2.9 Mandatory Designation of High-Security Requirements for High-Risk gTLDs

Where it is determined that a particular gTLD faces an exceptionally high risk of malicious misuses of the DNS, as in those gTLDs intended principally for the delivery of financial services, Applicants shall be required to demonstrate a commensurate commitment to the provision of strong security policies and procedures. If a gTLD is required to demonstrate strong security policies and procedures, the Applicant's commitment to adhere to the requirements that would designate it as a HSTLD shall be prima facie evidence of an applicant's satisfaction of high-risk security requirements. An applicant's decision not to achieve voluntary HSTLD designation shall not be fatal to an application, although it may be a factor considered in Dispute Resolution Proceedings.”

Global Definition of Financial Services (Attachment G)

Financial services are activities performed by financial institutions, including: (1) the acceptance of deposits and other repayable funds; (2) lending; (3) payment and remittance services; (4) insurance or reinsurance services; (5) brokerage services, including money brokering; (6) investment services and activities, including underwriting of securities, market-making, and dealing in securities and other financial products; (7) financial leasing; (8) issuance of guarantees and commitments; (9) provision of financial advice; (10) portfolio management and advice; or (11) acting as a clearinghouse. To avoid doubt, a person's conduct is not the provision of a financial service if it is done in the course of work of a kind ordinarily done by clerks or cashiers.¹

Global Definition of Bank

A **bank**, or a **banking financial institution**, means a licensed or regulated entity whose main business includes the receipt of deposits and the provision of credit, and other authorized activities approved by the relevant prudential supervisor, such as the administering of means of payment, and the issuance of credit, debit or multipurpose cards.²

Nonbank Financial Institution

Nonbanking financial institutions means a licensed or regulated commercial entity, other than a banking institution, that has as its main business, the performance of one or more of the following activities: (1) the provision of financing; (2) insurance or reinsurance services; (3) provision of investment services; (4) performance of investment activities (on its own account or for its client); (5) financial advice or asset management; (5) brokerage services; (6) issuing or administering means of payment; or (7) acting or operating as a clearinghouse or settlement facility.

FN 1. This definition of “financial services” derives from a comparative study of the laws and regulations of 22 nation-states as well as the European Commission. Sources:

- (a) **[Australia]** Australia provides an extensive definition of financial services. A “person provides a financial service if they: provide financial product advice (see section 766B); or deal in a financial product (see section 766C); or make a market for a financial product (see section 766D); or operate a registered scheme; or provide a custodial or depository service (see section 766E); or engage in conduct of a kind prescribed by regulations made for the purposes of this paragraph....To avoid doubt, a person's conduct is not the provision of a financial service if it is done in the course of work of a kind ordinarily done by clerks or cashiers. Australia Financial Services Reform Act 2001, Div. 3, Sub. B, § 766A, as amended.
- (b) **[Brazil]** Brazil's Central Bank, the Central de Brazil, defines financial services to include: (i) the business of banking, (ii) the provision of credit, (iii) investment, capital market services, including the securities and bonds, (iv) stock, mercantile and futures exchange services; (v) the business of brokerage and distribution companies; and (vi) foreign exchange market operations, including the authorized FX brokerage houses, tourist agencies; (vi) the administration of international coverage

credit cards; (viii) the provision of insurance and capitalization services and private social security entities, linked to the Social Security and Insurance Systems; (ix) administering third-party resources, such as those managing investment funds and consortium administrators; (x) and the provision of regulated financial services, such as those of clearance and settlement and custody of bonds, in support of the financial markets. *See* Banco Central de Brazil, MMS - Manuals Management System - Supervision Manual.

- (c) **[Canada]** In Canada, the following institutions provide financial services: (1) a bank or an authorized foreign bank, (2) a body corporate to which the Trust and Loan Companies Act applies, an association to which the Cooperative Credit Associations Act applies or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act, (3) an insurance company or a fraternal benefit society incorporated or formed under the Insurance Companies Act, (4) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province, (5) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province, (6) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province and that is primarily engaged in dealing in securities, including portfolio management and investment counselling, and a foreign institution. Bank Act of 1991, as amended, Pt. I, Ch. I, c. 46, s. 409 (2009); see also Financial Consumer Agency of Canada Assessment of Financial Institutions Regulations (SOR/2001-474).
- (d) **[East Caribbean]** The East Caribbean Central Bank (“ECCB”) distinguishes between financial services provided by banks ([Banking] financial services) and nonbanking financial services. [Banking] financial services include the (i) receipt of funds through “the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation; (ii) the sale or placement of bonds, certificates, notes or other securities and the use of such funds, either in whole or in part, for loans or investment; and (iii) any other activity recognised by the Central Bank as banking practice and which a financial institution may additionally be authorised to do.” Nonbanking financial services are defined as “business of a financial nature,” such as the “collection of funds in the form of deposits, shares, loans, premiums, and the investment of such funds in loans, shares and other securities and includes the types of businesses set out in Schedule II but does not include banking business.” **The activities listed in Schedule II conform to** The ECCB of 2005 is uniformly in force in the eight member territories of the Eastern Caribbean Currency Union, although there are some minor differences in the structure and style of the Act. Amendments to the new Banking Act were based in part on the *Basle Committee on Bank Supervision - 25 Core Principles for Effective Banking Supervision* and legislative gaps identified by the ECCB. The eight member territories are: Anguilla, Antigua & Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St. Kitts & Nevis, St. Lucia, & St. Vincent & the Grenadines. Available at <http://www.eccb-centralbank.org/PDF/Banking%20Act.pdf>.
- (e) **[European Commission]** Annex I of the 2006/48/EC Directive of the European Parliament and of the Council of 14 June 2006, Relating to the Taking Up and Pursuit of the Business of Credit Institutions (recast) provides a comprehensive list of “mutually recognized” financial services and instruments. 30/6/2006 EN Official Journal of the E.U. EC 2006/48, L. 177/57. Items 1 – 12 of the list are activities and services provided by credit institutions, and items 2-21 are services and activities of nonbank financial institutions. Recognized financial services: (1) Acceptance of deposits and other repayable funds (2) Lending including, inter alia: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting); (3) Financial leasing; (4) Money transmission services; (5) Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts); (6) Guarantees and commitments; (7) Trading for own account or for account of customers in: (i) money market instruments (cheques, bills, certificates of deposit, etc.); (ii) foreign exchange; (iii) financial futures and options; (iv) exchange and interest rate instruments; or (v) transferable securities; (8) Participation in securities issues and the provision of services related to such issues; (9) Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings; (9) Money broking; (10) Portfolio

management and advice; (11) Safekeeping and administration of securities; and (12) Credit reference services.

- (f) **[Germany] Banking Act (Gesetz über das Kreditwesen).** Financial services are (1) the brokering of business involving the purchase and sale of financial instruments or their documentation (investment brokering), (2) the purchase and sale of financial instruments in the name of and for the account of others (contract brokering), (3) the administration of individual portfolios of financial instruments for others on a discriminatory basis (portfolio management), (4) the purchase and sale of financial instruments on an own-account basis for others (own-account trading), (5) the brokering of deposit business with enterprises domiciled outside the European Economic Area (non-EEA deposit brokering), (6) the execution of payment orders (money transmission services), and (7) dealing in foreign notes and coins (foreign currency dealing). Gesetz über das Kreditwesen, as amended, Sept. 9, 1998 (Federal Law Gazette I, page 2776), as last amended by Article 3 of the Act, (Gesetz zur Änderung insolvenzrechtlicher und kreditwesenrechtlicher Vorschriften*) of Dec. 8, 1999 (Federal Law Gazette I No. 54, page 2384).
- (g) **[Hong Kong] Hong Kong Banking Ordinance CAP 155, Sch. 14** defines "banking or other financial services" (銀行或其他財務服務) to include (1) the taking of deposits, (2) the provision of payment and remittance services, (3) the issuance of credit, debit or multipurpose cards, (4) facilities for the purchase or sale of foreign currencies, securities or other financial instruments, (5) the provision of financial advice and (6) the incurring of financial exposure mentioned in section 81(2) of this Ordinance;
- (h) **[Malaysia] Banking & Financial Institutions Act of 1989 ("BAFIA"),** as amended, Pt. 1, § 2, decrees that the following "institutes and activities" are financial in nature: (1) institutions carrying on banking; (2) finance company, merchant banking, discount house and money-broking businesses, (3) institutions carrying on certain other financial businesses, and for matters incidental thereto or connected therewith. BAFIA defines finance company business as "the business of receiving deposits on deposit account, savings account or other similar account; and (i) giving of credit facilities; (ii) leasing business; (iii) business of hire-purchase, including that which is subject to the Hire-Purchase Act 1967; or (iv) business of acquiring rights and interests in a hire-purchase, leasing or other similar transaction; (v) such other business as the Bank, with the approval of the Minister, may prescribe. *Id.* The provision of finance includes (i) the lending of money; (ii) leasing business; (iii) factoring business; (iv) the purchase of bills of exchange, promissory notes, certificates of deposit, debentures or other negotiable instruments; and (v) the acceptance or guarantee of any liability, obligation or duty of any person. *Id.*
- (i) **[Netherlands, Kingdom of/Koninkrijk der Nederlanden].** The Netherlands Authority for the Financial Markets (*De Autoriteit Financiële Markten*, AFM) defines (1) financial services means (1) to offer; to advise on financial products other than financial instruments; (2) to provide brokerage services; (3) to provide reinsurance brokerage services; (4) to act as a clearing institution; (5) to act as an authorised agent or authorised sub-agent; or (6) to provide an investment service. *See* Act on Financial Supervision of 28 Sept. 2006, Tit. 1, Ch. 1.1., Pt. 1.1.1, s. 1:1, *as amended* (April 2009).
- (j) **[Nigeria]** Financial services include (i) receiving deposits on currency account, savings account or other similar account, (ii) paying or collection cheques, drawn by or paid in by customers; (iii) provisions of finance; (iv) factoring; (v) equipment leasing, (vi) debt administration, (vii) fund management, private ledger services, (viii) investment management, (ix) local purchases order financing, (x) export finance, (xi) project consultancy, (xii) financial consultancy, (xiv) pension fund management and (xiv) such other business as the Bank may, from time to time, designate. *See* Banks & Other Financial Institutions Act ("BOFIA"), Pt. III, s. 61.
- (k) **[Norway, Kingdom of/Kongeriket Norge].** The provision of finance means the granting, negotiating, or furnishing of guarantees for credit or otherwise participating in the financing of

activity other than one's own, except for (1) investment of funds with financial institutions, but not the intermediation of such investments or other receipt of others' funds for reinvestment with financial institutions (2) acquisition of shares or other proprietary interests; (3) credit provided by the seller of a good or service; (4) leasing of real property or chattels which does not constitute financial leasing; (5) loans or loan guarantees to one's employees; (6) isolated cases of financing; (7) activity of undertakings regulated by the Act relating to E-money Institutions; and (8) In cases of doubt the King decides whether a given activity falls within this Act. Financial Institutions Act (Kredittilsynet), No. 40 of 10 June 1988, as amended (June 2004), Cap. 1, Sec. 1-2.

- (l) **[South Africa]** “Financial service” means any financial service rendered by a financial institution to the public or a juristic person and includes any service so rendered by any other person and corresponding to a service normally so rendered by a financial institution. Sec. 1, Financial Services Board Act 97 of 1990, as amended (2009).
- (m) **[Taiwan/Republic of China]** Banks in Taiwan can provide the following financial services: (a) accept Checking Deposits; (b) accept various kinds of other Deposits; (c) manage Trust Funds under mandate; (d) issue Bank Debentures; (e) extend loans; (f) discount bills and notes; (g) invest in securities; (h) invest in productive enterprises; (i) invest in residential construction and construction for business purposes; (j) handle domestic and foreign remittances; (k) To accept commercial drafts; (l) issue Letters of Credit; (m) guarantee domestic and foreign transactions; (n) act as collecting and paying agent; (o) underwrite and trade in securities for its own account or for customers; (p) manage issuance of bonds and debentures and to provide advisory services with respect thereto; (q) act as attester for the issuance of stocks, bonds and debentures; (r) manage various kinds of property under mandate; (s) conduct businesses related to investment and trusts regarding securities; (t) buy and sell gold bars/coins and/or silver bars/coins and foreign currencies; (u) conduct warehousing, custody and agency businesses in relation to the businesses itemized above; and (v) conduct other relevant businesses... authorized by the Central Competent Authority. *See* Banking Act of The Republic of China, as amended (12.30.2008), Art. III. Taiwan defines financial institutions to means any of the following banks, insurance companies or securities firms: “Bank” shall mean banks and bills finance companies as defined in the Banking Act and other entities designated by the Competent Authority; (2) “Insurance company” shall mean insurance enterprises established in accordance with the Insurance Law and organized as companies limited by shares; and (3) “Securities firm” shall mean securities firms engaging in securities underwriting, proprietary trade and brokering or securities finance companies engaging in the securities finance business. Taiwan Financial Holding Act of 2001, as amended (2009), Cap. 1, Art. 1.
- (n) **[United States of America]** Section 1002(15)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No.: 111-203, (2010), provides an extensive definition of “financial product or service,” a portion of which is reproduced here. “The term ‘financial product or service’ means— (i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions); (ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if— (I) the lease is on a non-operating basis; (II) the initial term of the lease is at least 90 days; and (III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau; (iii) providing real estate settlement services, except such services excluded under subparagraph (C), or performing appraisals of real estate or personal property; (iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer; (v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer..... (vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network

(viii) providing financial advisory serviceson individual financial matters or relating to proprietary financial products or services.... including— (I) providing credit counseling to any consumer; and (II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service....

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is— (I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or (II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.”

FN 2. The definitions of “bank” and the “business of banking” derive from a comparative study of the laws and regulations of 22 nation-states as well as the European Commission. Sources:

- (a) **[Antigua & Barbuda]** Banking Act, 2005, No. 14 of 2005, “bank” means financial institution whose operations include the acceptance of deposits subject to the transfer of funds by the depositor by cheque or other forms of payment transfer.” The “banking business” means (i) the business of receiving funds through the acceptance of money deposits payable on demand or after a fixed period or after notice; or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, and (ii) the use of such funds either in whole or in part for loans or investment for the account and at the risk of the person doing such business; and (iii) any other authorised activity. *Id.* Available at <http://www.laws.gov.ag/acts/2005/a2005-14.pdf> (last visited Oct. 16, 2010).
- (b) **[Australia]** Banking Act 1959, as amended, Pt. 1, Sec. 5, § 1, as amended (2009) available at http://www.austlii.edu.au/au/legis/cth/consol_act/ba195972/ (Last visited Oct. 16, 2010). The business of banking is “(a) a business a business that is carried on by a corporation to which paragraph 51(xx) of the Constitution applies and that consists, to any extent of: (i) both taking money on deposit (otherwise than as a part-payment for identified goods or services) and making advances of money; or (ii) other financial activities prescribed by the regulations for the purposes of this definition.”
- (c) **[China]** China Banking Regulatory Commission ("CBRC") Banking Supervision Law of the P.R.C., (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 27, 2003, effective Feb. 1, 2004), *translated in* LAWINFOCHINA (last visited Oct. 20, 2008). (Defining bank as a “financial institution established in the Peoples Rep. of China that takes deposits from the general public....”)
- (d) **[Chile]** A “bank” is “every special stock corporation that, authorized in the manner provided for in this statute and subject to its provisions, engages in the business of receiving in a customary manner money or funds from the general public, in order to use it to grant loans, discount documents, make investments and effect financial intermediation, obtain a rent out of this money and, generally, perform any other transaction permitted by the laws.” (Official Translation) General Banking Act (Ley General de Bancos), Art. 40 (2007), as amended. In Spanish: *Un banco es toda sociedad anónima especial que, autorizada en la forma indicada por la dicho cuerpo legal "se dedique a captar o recibir en forma habitual dinero o fondos del público, con el*

objeto de darlos en préstamo, descontar documentos, realizar inversiones, proceder a la intermediación financiera, hacer rentar estos dineros y, en general, realizar toda otra operación que la ley le permita". available at http://www.sbif.cl/sbifweb/internet/archivos/ley_1102.pdf (last visited Oct. 16, 2010).

- (e) **[East Caribbean]** Central Bank ("ECCB") Banking Act, as amended, (2005) defines "bank" as any financial institution whose operations include the acceptance of deposits subject to the transfer of funds by the depositor by cheque. The "banking business" means -(i) the business of receiving funds through the acceptance of money deposits payable on demand or after a fixed period or after notice or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, and the use of such funds either in whole or in part for loans or investment for the account and at the risk of the person doing such business; and any other authorized activity. The ECCB Central Bank Act of 1983, as amended, Pt. I, § 2. The following countries are party to the ECCB Banking Act, 2005 and the 1983 Bank Act: Anguilla, Antigua & Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St. Kitts & Nevis, St. Lucia, & St. Vincent & the Grenadines.
- (f) **[Egypt]** Bank business shall mean any activity comprising, basically and habitually, the acceptance of deposits, the obtainment of finance, and the investment of these funds in providing finance and credit facilities and contributing to the capital of companies, and all that is considered by banking tradition as bank business. Law of Central Bank of Egypt, and Money Law No. 88, Sec. 2, Ch. 1, Art. 31, as amended (2005). Egypt also restricts the use of the word bank: "Any establishment not registered according to the provisions of this Law, shall be prohibited from using the term "bank" or any other expression similar to it in any language, whether in its special name, commercial title, or publicity. *Id.*
- (g) **[European Commission]** Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006, Relating to the Taking Up and Pursuit of the Business of Credit Institutions (recast). 30/6/2006 EN Official Journal of the E.U. EC 2006/48, L. 177/57. Defining a "credit institution" as an "undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account." EC Dir. 2006/48, Art. 4(1), L 177/13. *See also* Annex I, EC 2006/48, List of Activities Subject to Mutual Recognition. The 2009 EC Proposal in response to the global economic crisis produced a more streamlined definition of bank and financial institution. *See Proposal for a Regulation of the European Parliament and of the Council, on macro prudential oversight of the financial system EU-level macro prudential oversight of the financial system and Establishment of European Systemic Risk Board (ESRB)*, Brussels, 23.9.2009, 2009/01410 (COD), COM (2009) (defining "ban" as "a type of credit institution whose primary activity is to (1) Lending including, inter alia: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting); (2) Financial leasing; (3) Money transmission services (4) Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts); (5) Guarantees and commitments; (6) Trading for own account or for account of customers in: (i) money market instruments (cheques, bills, certificates of deposit, etc.); (ii) foreign exchange; (iii) financial futures and options; (iv) exchange and interest rate instruments; (v) transferable securities; (5) Participation in securities issues and the provision of services related to such issues; (6) Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings; (7) Money broking; (8) Portfolio management and advice; (9) Safekeeping and administration of securities.") The 2009 Proposal also provides a cleaner definition of "financial institution" as a "any undertaking whose main business is to take deposits, grant credits, provide insurance services, or other financial services to its clients or members, or engage in financial investment, or trading activities on its own account or on behalf of its clients. *Note:* In many parts of the world, including the European Economic Area, the term credit institution is used interchangeably with "bank" in the international community. For example, France defines "credit institutions" as "legal persons carrying out banking operations as their regular business." French Bank Act 84-46, Tit. 1, Ch. 1, Art. 1. *See also* Germany's Banking Act (Kreditwesengesetz, KWG) (defining "credit institutions" as

“enterprises which conduct banking business commercially or on a scale which requires a commercially organized business undertaking”).

- (h) **[France]** Banking operations comprise the receipt of funds from the public, credit operations and making available to customers or administering means of payment. French Bank Act 84-46, Tit. 1, Ch. 1, Art. 1. France also restricts the use of the word “bank” or “credit institution” except those licensed to carry out banking operations on a regular basis. French Bank Act 84-46, Tit. II, Ch. 2, Art. 10.
- (i) **[Germany]** The German Banking Act decrees that the banking business “comprises of the acceptance of funds from others as deposits or other repayable funds from the public unless the claim to repayment is securitized in the form of bearer or order debt securities.” Banking Act (Gesetz über das Kreditwesen). In the amended text of the Announcement of September 9, 1998 (Federal Law Gazette I, page 2776), as last amended by Article 3 of the Act amending insolvency and banking law provisions (Gesetz zur Änderung insolvenzrechtlicher und kreditwesenrechtlicher Vorschriften) of December 8, 1999 (Federal Law Gazette I No. 54, page 2384).
- (j) **[Hong Kong]** H.K. Banking Ordinance, Cap. 155, Sch. 14: “Banking or other financial services includes the taking of deposits...”
- (k) **[Malaysia]** Banking & Financial Institutions Act of 1989 (“BAFIA”) defines “bank” as a “person which carries on banking business.” The “banking business” means “the business of receiving deposits on current account, deposit account, savings account, or other similar account.” BAFIA, Part I, § 2(1), Act 519. BAFIA defines “deposit” as a “sum of money received or paid on terms (a) under which it will be repaid, with or without interest or at a premium or discount; or (b) under which it is repayable, either wholly or in part, with any consideration in money or money’s worth, (c) and such repayment being either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, regardless whether the transaction is described as a loan, an advance, an investment, a saving, a sale or a sale and repurchase, but does not include money paid bona fide— (A) by way of an advance or a part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided; (B) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract; (C) without prejudice to paragraph (B), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise; and (D) in such other circumstances, or to or by such other person, as specified in the First Schedule. Under BAFIA, banking, finance companies, merchant banking, discount house and money-brokering business can be carried on only under license. BAFIA, Part II, § 4, Act A1256.
- (l) **[Mexico]** *Ley de Instituciones de Crédito*, Tit. 1, Cap. 1, the business of credit institutions (banks) “[S]ignifica la colocación de los recursos tanto propios como captados de terceros, mediante operaciones de préstamo, descuento, asunción de riesgos crediticios, aval y otro tipo de garantías o créditos en su más amplio sentido, así como cualquier operación bancaria que genere o pueda generar un derecho de crédito a favor de las Instituciones, respecto del cual exista un riesgo de incumplimiento.” *Unofficial translation: Credit Activity means the allocation of resources both internal and third captured by lending, discount, assuming credit risks, guarantee and other guarantees, or credits in its broadest sense, and any banking operation that generates or can generate a receivable in favor of the institutions for which there is a risk of default.*
- (m) **[Moldova, The Republic of]** A bank means a financial institution, accepting deposits or their equivalents of individuals or their entities, transferable by repayment instruments and utilizing these funds in whole or in part for lending and investing on its own account and risk. Law on Financial Institutions, Cap. 1, Art. 3.
- (n) **[Netherlands, Kingdom of]** (*Koninkrijk der Nederlanden*). A bank is a party who business it is to obtain the disposal of callable funds from others than professional market parties beyond a restricted circle, and to extend loans at its own expense. Act on Financial Supervision of 28 Sept. 2006, Tit. 1, Ch. 1.1., Pt. 1.1.1, s. 1:1, as amended (April 2009). The Netherlands Authority for

the Financial Markets (*De Autoriteit Financiële Markten*, AFM) also defines “credit institution” as a “bank or electronic money institution”. *Id.*

- (o) **[Nicaragua] Law of Banks, Financial Institutions, and Non-Bank Financial Groups**, Tit. 2, Cap. I, s. 1 Art. 2: “Para los efectos de esta Ley, son bancos las instituciones financieras autorizadas como tales, dedicadas habitualmente a realizar operaciones de intermediación con recursos obtenidos del público en forma de depósitos o a cualquier otro título, y a prestar otros servicios financieros. *Unofficial translation: For the purposes of this Act, banks are licensed financial institutions as such, routinely engaged in brokerage operations with resources obtained from the public in the form of deposits or any other title, and provides other financial services*”
- (p) **[Nigeria]** The Banks & Other Financial Institutions Act (“BOFIA”), Pt. III, s. 61, defines the “banking business” as the “business of receiving deposits on currency account, savings account or other similar account, paying or collection cheques, drawn by or paid in by customers; provisions of finance or such other business as the Governor may, by order published in the Gazette, designate as banking business.” BOFIA, Pt. III, § 61. Nigeria also restricts the use of certain names related to financial services, including the name “bank.” BOFIA, Pt. I, §§ 39-40.
- (q) **[Norway, Kingdom of/(Kongeriket Norge)]**. Norway defines “credit institutions” as “undertakings whose activity consists in receiving deposits or other repayable funds from the general public and in making loans for own account.” Financial Institutions Act (Kreditilsynet), No. 40 of 10 June 1988, *as amended* (June 2004), Cap. 1, Sec. 1-5(3).
- (r) **[United Kingdom]** The Financial Services Administration (“FSA”) Handbook defines “bank” as a firm...which includes accepting deposits, and which is a credit institution; or whose Part IV permission includes a requirement that it comply with prudential regulations relating to banks, but isn't a building society, friendly society, or credit union.” Available at <http://www.fsa.gov.uk/Pages/handbook/index.shtml>, (last visited Oct. 16, 2010).
- (s) **[United States]** ““Bank” means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, **a substantial part of the business of which consists of receiving deposits and making loans and discounts**, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State, Territorial, or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.” (Emphasis added). 26 U.S.C. § 581.
- (t) **[Singapore]** “Banking business” means the business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers, the making of advances to customers, and includes such other business as the Authority may prescribe for the purposes of this Act[.] Banking Act, Cap. 19, § 2(1).
- (u) **[Taiwan/Republic of China]** The Banking Act of The Republic of China, as amended (12.30.2008): The term “bank” shall mean an organization formed and registered in accordance with the provisions of this Act for purposes of transacting a banking business. The Banking Act of Republic of China, Art. 2, as amended (2008). The business of banking includes the acceptance of “check deposits” and “various kinds of other Deposits.” Art. 3, as amended.

FN 3. Our definition of “**non-bank financial institution**” derives from a comparative study of the laws and regulations of 22 nation-states as well as the European Commission. Sources:

- (a) **[Australia]** Australia distinguishes between “banking financial institutions” and “non-banking financial institutions,” referring to the latter as simply, “financial institutions.” The Reserve Act of 1959, as amended, defines “financial institutions” as a body (other than the Reserve Bank) that has at any time carried on, is carrying on, or proposes to carry on, a business that consists of, or includes, the provision of financial products or financial services (including a body that has

previously carried on such a business but has ceased to exist). Reserve Bank Act 1959, Act No. 4 of 1959 as amended, (2009), Pt. VIII, s. 79A.

- (b) **[Brazil]** Non-banking financial institutions: (a) incentive agencies, (b) savings & loans associations, (c) mortgage companies, (d) credit, financing and investment, real estate credit, and (e) mercantile leasing companies; (f) institutions operating in the capital market, including the securities and bonds, and stock, mercantile and futures exchange brokerage and distribution companies; (g) institutions operating in the foreign exchange market, including the authorized foreign-exchange brokerage houses, tourist agencies and means of accommodation and administrators of international coverage credit cards; h) insurance and capitalization companies and private social security entities, linked to the Social Security and Insurance Systems; (i) Entities administering third-party resources, such as those managing investment funds and consortium administrators; and (j) Entities providing regulated financial services, such as those of clearance and settlement and custody of bonds, in support of the financial markets. Banco Central de Brazil, Manuals Management System Supervision Manual (MMS), Tit. II, Cap. 10, s.10(8).
- (c) **[East Caribbean Central Bank]** The ECCB uses the term "business of a financial nature" to distinguish between banking financial institutions and non-bank financial institutions. Business of a financial nature "means the collection of funds in the form of deposits, shares, loans, premiums, and the investment of such funds in loans, shares and other securities and includes the types of businesses set out in Schedule II but does not include banking business." The ECCB uses a definition of "credit institution" that diverges slightly from the European Commission (the EC defines a bank as a type of credit institution, whilst the ECCB defines a credit institution as any financial institution other than a bank whose business involves "money lending" or the granting of credit facilities. ECCB Banking Act, 2005, No. 14 of 2005.
- (d) **[England/United Kingdom]** As defined by the Financial Services Handbook (2009) a nonbank financial institution is "an undertaking, other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the listed activities listed in points 2 to 12 of Annex I to the [EC] Banking Consolidation Directive (see FN 1 (e) for an expanded list of the activities listed in Annex I)... And those institutions permanently excluded by Article 2 of the Banking Consolidation Directive (Scope), with the exception of the central banks of EEA States; and an asset management company." Available at <http://www.fsa.gov.uk/Pages/handbook/index.shtml>, (last visited Oct. 16, 2010).
- (e) **[European Commission]** "[Non-bank] financial institution" means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex I [*See supra*, n.2(g) for a list of the activities included in Annex I]. Art. 4, s. 5, Dir. 2006/48/EC of the European Parliament, (14 June 2006), Relating to the Taking Up and Pursuit of the Business of Credit Institutions (recast). 30/6/2006 EN Official Journal of the E.U. EC 2006/48, L. 177/57.
- (f) **[Germany]** Nonbanking-financial institutions are referred to as financial services institutions, defined as "enterprises which provide financial services to others commercially or on a scale, that requires a commercially organized business undertaking, and which are not credit institutions. Sec. 1a., Banking Act (Gesetz über das Kreditwesen)." In the amended text of the Announcement of September 9, 1998 (Federal Law Gazette I, page 2776), as last amended by Article 3 of the Act amending insolvency and banking law provisions (Gesetz zur Änderung insolvenzrechtlicher und kreditwesenrechtlicher Vorschriften) of December 8, 1999 (Federal Law Gazette I No. 54, page 2384).
- (g) **[Netherlands, Kingdom of/Koninkrijk der Nederlanden]**. A non-bank financial institution: a party, not being a credit institution, that has as its main business the performance of one or more of the activities referred to under 2-12 of Annex I to the Recast Banking Directive, or the acquisition or holding of units (*e.g.*, activities including the provision of financial services to offer, to advise on financial products other than a financial instrument; to provide brokerage services; to

- provide reinsurance brokerage services; to act as a clearing institution, to act as an authorized agent or subagent; or to provide an investment service, to perform an investment activity; to perform an investment activity). Act on Financial Supervision, of Sept. 2006, Tit. 1, Ch. 1.1, Part 1.1.1., s. 1.1 (2009).
- (h) **[Maylasia]** Nonbanking financial institutions include regulated finance companies, discount house & money-brokering businesses; institutions carrying on certain other financial business other than banking, and for matters incidental thereto or connected therewith. Banking & Financial Institutions Act of 1989 (BAFIA), Part I, section 2(1).
 - (i) **[Nigeria]** In BFOIA, Nigeria defines non-banking financial institutions as “other financial institutions” as “any individual, body, association or group of persons; whether corporate or unincorporated, other than the banks licensed company and money brokerage and whose principal object include (i) factoring, (ii) project financing, (iii) equipment leasing, (iv) debt administration, (v) fund management, (vi) private ledger services, (vii) investment management, (viii) local purchases order financing, (ix) export finance, (x) project consultancy, (xi) financial consultancy, (xii) pension fund management and (xiii) such other business as the Bank may, from time to time, designate. BFOIA, Pt. III, § 61.
 - (j) **[Taiwan/Republic of China]** In Taiwan, non-banking financial institutions include “(A) securities and futures enterprises, (I) including securities firms, securities investment trust enterprises, (II) securities investment consulting enterprises, securities finance enterprises, (III) futures commission merchants, leverage dealers, (IV) futures trust enterprises, (V) futures management enterprises and (VI) futures consulting enterprises; (B) institutions covered by the insurance enterprise (I) insurance companies, and (II) insurance cooperatives; (C) Trust Enterprises; and other institutions approved by eh Competent Authority. The Financial Institutions Merger Act, File. No. 8900295690 (Dec. 13, 2000), as amended, Art. 4(1).
 - (k) **[Singapore]**. Nonbanking financial institutions includes: (i) any licensed finance company; (ii) licensed money changers (buying & selling foreign currency notes) and licensed remitters; (iii) licensed insurance advisers; (iv) any approved...securities exchange, futures exchange, or recognized market operator; (v) designated clearing house or licensed capital markets service. Monetary Authority Act, Cap. 186, Part. IV, s. 27A(6)(b-h).

Appropriate, Commensurate Security (Attachment H)

Proposed Edit to DAG 4.0 (in bold, underlined):

Section 1.2.3.1 Community-Based Designations. Definitions.

“....An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a clearly delineated community.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies, **and if appropriate, security verification procedures** for registrants in its proposed gTLD, commensurate with the community-based purpose it has named.
4. Have its application endorsed in writing by one or more established institutions representing the community it has named.”

Internet Corporation for Assigned Names and Numbers
Request for Information
High Security Zone Verification Program

Please fill-in the form and submit it to hstldrfi@icann.org not later than 21 October 2010.

Full Company Name: **BITS/The Financial Services Roundtable**

Type of Company: **Trade Association**

Parent Company Name: **The Financial Services Roundtable**

User Salutation: **Mr.**

First Name: **Leigh**

Last Name: **Williams**

Job Title: **BITS President**

Mobile: **202-207-8744** (please include country & city code)

Fax: **202-628-2492** (please include country & city code)

Official e-mail address: **Leigh@fsround.org**

Office Address: **1001 Pennsylvania Avenue, NW, Suite 500 South**

City: **Washington, DC**

Postal Code: **20004**

Country: **USA**

Address of Internet website: **www.bits.org; www.fsround.org**

Alternate contact person: **Greg Rattray, Greg@fsround.org, 202-589-2442**
(name and contact details)

BITS

FINANCIAL SERVICES
R O U N D T A B L E

October 18, 2010

Mr. Rod Beckstrom
CEO and President
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Ray, California 90292

Re: Response to ICANN RFI on HSTLD Verification Program

Dear Rod:

BITS, the technology policy division of The Financial Services Roundtable, appreciates the opportunity to comment on ICANN's program to establish a HSTLD program. BITS continues to support the efforts of ICANN and its community to mitigate the extent to which domain names or the DNS are exploited for malicious purposes and further believes that effective programs must be in place to ensure control over malicious conduct before proceeding with the launch of new gTLDs, especially those principally focused on providing banking and finance services.

BITS supports and has been actively engaged in the community advisory group effort to establish a HSTLD verification program as an essential element of ICANN's responsibility to mitigate malicious conduct. We are committed to the success of the HSTLD program and plan to continue our support for the community advisory group, ICANN staff and when selected, the eventual implementing organization for the program in terms of control requirements, processes for verification and approaches to establishing seals or trust marks.

BITS assumes the HSTLD verification program certifying that the operations of a TLD meets a set of defined control elements will be

in place before ICANN accepts applications for new gTLDs principally focused on providing banking and finance services. Further, BITS believes that compliance with this program must be mandatory for such applicants. BITS has consistently engaged ICANN regarding the need for strong controls related to TLDs providing banking and financial services through comment on all versions of the Draft Applicant Guidebook, specific input on controls necessary for new gTLDs providing such services and active participation in the HSTLD Verification Program working group. The requirement for mandatory controls for operations in new gTLDs principally focused on providing banking and finance services has been highlighted consistently by BITS and other banking and financial services organizations.

BITS is gravely concerned about the recent comment of the ICANN Board regarding this program. The RFI states “this HSTLD Program would involve one or more independent third party evaluators. ICANN would maintain a list of approved evaluators and retain oversight and authorship of the control elements.” However, the 25 September 2010 resolution of the Board states, “the development of the concept does not impact the launch of the gTLD application process.” The Resolution goes further in stating that “ICANN will not be certifying or enforcing the HSTLD concept” and “ICANN will not endorse or govern the program.” BITS believes this contradicts the original intent for ICANN to establish this program. Additionally, we believe the lack of ICANN sponsorship for the program will likely undermine incentives for a third-party to undertake establishing such a program. Without such a program, BITS will strongly object to establishment of new gTLDs principally focused on providing banking and finance services.

Our answers to the specific questions posed in the RFI are attached.

Please contact the undersigned (leigh@fsround.org), or BITS Senior Vice President for Security Greg Rattray (greg@fsround.org), if you require any additional information.

Best regards,

A handwritten signature in black ink, appearing to read "Leigh Williams", with a stylized flourish at the end.

Leigh Williams
President

BITS Responses to High Security TLD RFI Questions

1. What is your particular experience with ICANN, or any other organizations/parties (e.g., registries, registrars) that interact with ICANN?

BITS has been an active participant in the ICANN multi-stakeholder processes since 2007. BITS is a member of the ICANN business constituency group. It has been actively engaged in commenting on the new gTLD program and provided input on all four versions of the Draft Applicant Guidebook. BITS member organizations are major users of DNS services with a focus on ensuring those services can be used securely. As an organization, BITS has actively engaged with registries related to discussing how a high security zone for financial activities can be established.

2. What is your experience with security mechanisms, controls, auditing, or similar activities?

BITS is a leader in working with its members to improve the security of the banking and finance sector. BITS has an established security program focused on the development of best practices and appropriate controls for this industry since 1996. The comments of BITS regarding the need and criteria for a HSTLD program have been a driver for this effort.

3. How would you propose both point-in-time and periodic assessments of a TLD registry operator based on the HSTLD Program requirements and assessment methods described in the referenced concept paper?

BITS believes both aspects of assessment are necessary and that the methods used need to be consistent with existing industry practices used to validate compliance with other security standards such as ISO 27001. To the extent possible, the program should leverage the efforts of participants in documenting controls and achieving compliance with other regulatory or voluntary programs to the extent possible.

4. Describe a potential implementation process to determine, through documentation review, interview, on site or remote assessment analysis or monitoring, or other means that a registry satisfies the business and operational criteria of a High Security Zone TLD.

While BITS does not currently plan to be the implementing organization of such a program, we believe it should be consistent with our comment on question 3 above.

5. How would your assessment consider supporting registrar or reseller operations? Section 3.1.1 of Model for a High Security Zone Verification Program (the "HSTLD Model") and the HSTLD Control Work Sheet (see Appendix A of the HSTLD Snapshot #2) identifies the HSTLD Program elements, objectives and sample criteria which would be used for these assessments.

BITS believes it is essential to have the scope of controls required to be certified as a HSTLD to include those involving registrars as well as ensure these controls are extended to resellers to include registry and registrant security verification, anti-abuse policy and enforcement and registrar processing integrity.

6. What are the considerations in expanding verification beyond just registry operations to include registrar, reseller and potential registrant operations from both an implementation and cost perspective? See e.g., the HSTLD Model, Section 3.1.1 principles 1.3, 2.2, 2.4, 3.1, and 3.2; and the corresponding HSTLD Control Worksheet Criteria Controls, including illustrative control examples.

BITS believes evaluation of potential implementing organizations must include their willingness and ability to extend the evaluation of controls to registrar, reseller and potential registrant operations for a registry seeking HSTLD certification.

7. In order to determine the potential viability of the HSTLD Program within the domain name marketplace it is critical that prospective participants have an idea of the potential cost of this verification program.

As BITS does not currently plan to become an implementing organization for this program, we have not endeavored to answer this question in detail. In general, BITS believes potential costs can be mitigated by an implementation approach that leverages existing control programs that organizations at all levels should have in place as parties participating in the operation of a HSTLD.

8. Are there any HSTLD Control Worksheet Criteria Objectives or Controls that should be removed or amended? If so which ones, and why?

BITS believes the HSTLD Control Objectives and Controls developed by the working group provide a strong foundation for the establishment of a program. We believe the implementation of the program must include processes to revise and add to controls gleaned from experience as well as to ensure a high level of trust and security can be maintained in the face of evolving threats.

9. Are there any HSTLD Control Worksheet Criteria Objectives or Controls that have not been included, but should be, and if so which ones and why?

See answer to question 8.

10. What would you envision to be a reasonable timeframe for developing and implementing the HSTLD Program?

BITS believes that the existence of this program is a precondition to the possible establishment of gTLDs that are principally focused on providing banking and financial services. As stated in our cover letter, we believe certification under such a program should be mandatory. BITS believes the HSTLD verification program must be in place before applications for new TLDs principally focused on providing banking and financial services are accepted. BITS believes that no application for a financial generic TLD should be approved unless it includes a commitment to a high security verification program. More generally, BITS is interested in raising the level of security across the existing TLD system. BITS members are contending with the security limitations of operation in many existing TLDs and we strongly support a rapid development and implementation of the program even beyond concerns related to the launch of new gTLDs.

11. The HSTLD Advisory Group is particularly interested in hearing from Respondents on their experience about the potential pros and cons associated with various ways of publicly representing an entities verification status, e.g., certificate, trust mark, scorecard.

BITS' experience with a variety of trust marks suggests that well-defined certification programs, incorporating clear requirements and public attestations, can be highly successful at standardizing and

communicating elevated levels of control. Seal programs are most valuable to consumers and business partners when they are highly uniform, as in mandatory programs, and when their scope is well-defined, as in the gTLD environment.

12. Please discuss your perspective on the opportunities and challenges associated with establishing an HSTLD Program and how such a program could be built for success. Describe the elements you believe are critical to creating an effective program, and suggest strategies to address any problems or issues you see with the work that's been done to date.

BITS commends the efforts of the ICANN advisory group to date. Our principal concerns remain the proposed voluntary nature of the program as regards its application to banking and financial services TLDs and the lack of commitment to establish such a program for use by applicants in this industry as an essential part of the launch of new gTLDs. More fundamentally, the 25 September 2010 ICANN Board statement that ICANN will not sponsor such a program is of grave concern to us as stated in the cover letter.

Condition the Complete Defense on Substantial Community Support (Attachment J)

Proposed Edit to DAG 4.0 (in bold, underlined):

“Section 3.4.4 ... Community Objection ... Defenses to a Community Objection –

Satisfaction of the standing requirements for filing a Community Objection (refer to subsection 3.1.2.4) by a community-based applicant is a complete defense to an objection filed on community grounds. To invoke the complete defense, the community-based applicant must affirmatively prove, in its response to the objection, that it meets all elements of the standing requirements and **there is substantial support from the associated community in favor of the challenged community-based applicant.**

Where substantial support exists for the Applicant and Objector, the Objector may successfully rebut the “Complete Defense” by proving the support for the Objector outweighs the support for the Applicant.”

Condition IANA Renewal on Financial Services Security (Attachment K)

Proposed Amendment to U.S. Cybersecurity Legislation:

“The Department of Commerce shall ensure that the Internet Assigned Numbers Authority contract requires generic top level domain registries providing financial services offerings to meet mandatory security requirements approved by the Department of Commerce in consultation with the financial services sector and regulators.”



Federal Deposit Insurance Corporation

550 17th Street NW, Washington, D.C. 20429-9990

Attachment L

Division of Supervision and Consumer Protection

September 30, 2010

OCT 5 2010

Lawrence E. Strickling
Assistant Secretary for Communications & Information
National Telecommunications & Information Administration
United States Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

FYI
ACTION OFFICE OIA
COPIES TO _____

SUSPENSE DATE 10/19/2010
REMARKS _____
CONTROL# 4292

Dear Assistant Secretary Strickling,

I would like to share my concerns with you about the new Generic Top Level Domains (gTLDs) and the draft procedures for their implementation, currently under consideration by the Internet Corporation for Assigned Names and Numbers (ICANN).

The Federal Deposit Insurance Corporation insures the deposits in U.S. banks and is the primary federal regulator for approximately 5,000 insured depository institutions. In these roles, the FDIC enforces consumer protection laws and regulations, and provides supervisory guidance to prevent Internet-based financial fraud. FDIC programs have resulted in stronger customer authentication for Internet banking, mandatory information security standards, and required notice to customers in the event of a compromise of sensitive personal information held by an insured depository institution. We know, however, that criminals and fraudsters continue to vigorously attack consumers' online bank accounts, and in 2009, we estimated that fraudsters were responsible for approximately \$285 million in losses resulting from such online account takeovers and unauthorized funds transfers.

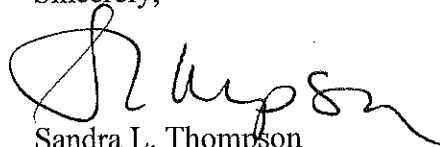
The FDIC is concerned that ICANN's current proposal for the new gTLDs, such as "bank", would unintentionally confuse customers, erode their confidence in Internet banking, and foster financial fraud. Specifically, I am concerned that the use of the proposed new gTLD, ".bank", would mislead consumers into thinking that the bank's deposits are insured by the FDIC.

The proposed new gTLDs also imply industry or regulatory endorsement, which would lure consumers into letting down their guard when using such Web sites. That reduced level of vigilance could make more consumers victims of online financial fraud. As you can imagine, this would surely erode consumer confidence in this very important delivery channel.

Finally, the FDIC remains very concerned that despite revisions to its 2008 draft procedures, ICANN needs stricter application rules that guarantee gTLDs are issued only to legitimate financial services entities and don't fall into the hands of cyber criminal organizations.

Thank you again for your consideration of this important matter. If you have any questions about this recommendation, please contact me (202) 898-3696.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Thompson', written over the printed name.

Sandra L. Thompson
Director

cc. Tim Long, Office of the Comptroller of the Currency
Thomas Barnes, Office of Thrift Supervision
Pat Parkinson, Federal Reserve Board
Brian Peretti, U.S. Department of Treasury