

STATEMENT OF

BITS PRESIDENT LEIGH WILLIAMS

ON BEHALF OF THE FINANCIAL SERVICES ROUNDTABLE

BEFORE THE

SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE

PROTECTION AND SECURITY TECHNOLOGIES OF

THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOMELAND SECURITY

EXAMINING THE IMPACT OF THE OBAMA ADMINISTRATION'S

CYBERSECURITY PROPOSAL

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TESTIMONY OF LEIGH WILLIAMS, BITS PRESIDENT

Thank you Chairman Lungren, Ranking Member Clarke, and Members of the Committee for the opportunity to testify before you today.

My name is Leigh Williams and I am president of BITS, the technology policy division of The Financial Services Roundtable. BITS addresses issues at the intersection of financial services, technology and public policy, on behalf of its one hundred member institutions, their millions of customers, and all of the stakeholders in the U.S. financial system.

From this perspective, I will briefly describe cybersecurity and data protection in financial services, including private sector efforts, sector-specific oversight and inter-sector interdependencies. I will explain why The Financial Services Roundtable supports the cybersecurity proposal delivered by the Obama Administration to the Congress on May 12. Finally, I will comment on the key provisions of H.R. 174, which I understand is under active consideration by the Committee.

Financial Institutions' Voluntary Cybersecurity Efforts

Within the financial services sector, the greatest amount of cybersecurity protection arises from voluntary measures taken by individual institutions for business reasons. To protect their retail customers, commercial clients and their own franchises, industry professionals – from Chief Information Security Officers to CIOs to CEOs – are increasingly focused on safeguards, investing tens of billions of dollars in data protection. They recognize the criticality of confidentiality, reliability and confidence to their success in the marketplace. This market-based discipline is enforced through an increasingly informed consumer base, and by a very active commercial clientele that often specifies security standards and negotiates for audit and notification rights.

At the industry level, BITS and several other coalitions facilitate a continuous process of sharing expertise, identifying and promoting best practices, and making these best practices better, to keep pace in a dynamic environment. For example, as BITS and our members implement our 2011 business plan, we are addressing the following items associated with protecting customer data:

- Security standards in mobile financial services.
- Protection from malicious or vulnerable software.

- Security in social media.
- Cloud computing risks and controls.
- Email security and authentication.
- Prevention of retail and commercial account takeovers.
- Security training and awareness.

While much of this institution-level and industry-level effort is voluntary – not driven primarily by regulation – it is not seen by industry executives as discretionary or optional. The market, good business practices and prudence all require it.

Oversight

To strengthen public confidence and to ensure consistency across a wide variety of institutions, Federal financial regulators codify and enforce an extensive system of requirements. Many of these represent the distillation of previously voluntary best practices into legislation introduced in Congress, enacted into law, detailed in regulation, enforced in the field, with feedback to the Congress in its oversight capacity.

In addition to these Federal authorities, institutions are subject to self-regulatory organizations like the Financial Industry Regulatory Authority (FINRA), state regulators like the banking and insurance commissioners, independent auditors, outside Directors, and others.

These various oversight bodies, for example, apply the Financial Services Modernization Act of 1999 (GLB), the Fair and Accurate Credit Transactions Act (FACTA), Electronic Funds Transfers (Regulation E), Suspicious Activity Reporting (SARs), the International Organization for Standardization criteria (ISO), the Payment Card Industry Data Security Standard (PCI), BITS' own Shared Assessments and many, many more regulations, rules, guidelines and standards.

Inter-Sector Collaboration

Commensurate with the escalating cybersecurity challenges and increasing interconnectedness among sectors, more and more of our work entails public/private and financial/non-financial partnerships. Our Financial Services Sector Coordinating Council (FSSCC) of fifty-two institutions, utilities and associations actively partners with the seventeen agencies of the Finance and Banking Information Infrastructure

Committee (FBIIC). [For additional detail on the FSSCC's perspective on cybersecurity, research and development, and international issues, please refer to the April 15, 2011 testimony of FSSCC Chair Jane Carlin before this Subcommittee.] Our Financial Services Information Sharing and Analysis Center (FS-ISAC) is in constant communication with the Department of Homeland Security (DHS), law enforcement, the intelligence community and ISACs from the other critical infrastructure sectors, to address individual incidents and to coordinate broader efforts.

Other examples of collaboration with non-financial partners, drawn just from BITS' 2011 agenda, include:

- The Cyber Operational Resiliency Review (CORR) pilot, in which institutions may voluntarily request Federal reviews of their systems, in advance of any known compromise - with DHS and the Treasury.
- Multiple strategies for enhancing the security of financial Internet domains - with the Internet Corporation for Assigned Names and Numbers (ICANN) and Verisign, in partnership with the American Bankers Association (ABA) and in consultation with members of the Federal Financial Institutions Examination Council (FFIEC).
- A credential verification pilot - with DHS and the Department of Commerce – building on private sector work that began in 2009, was formalized in a FSSCC memorandum of understanding in 2010, and was featured in the April 15, 2011 announcement of the National Strategy for Trusted Identities in Cyberspace (NSTIC).

Through the processes and initiatives above and in many other efforts, financial institutions, utilities, associations, service providers and regulators continue to demonstrate a serious, collective commitment to strengthening the security and resiliency of the overall financial infrastructure. As the Committee considers action on cybersecurity, I urge Members to be conscious of the protections and supervisory structures already in place and the collaborations currently underway, and to leverage them for maximum benefit.

Need for Legislation

Even given this headstart and substantial momentum, we believe that cybersecurity legislation is warranted. Strong legislation can catalyze systemic progress in ways that are well beyond the capacity of individual companies, coalitions or even entire industries. For example, comprehensive legislation can:

- Raise the quality and consistency of security throughout the full cyber ecosystem, including the telecommunications networks on which financial institutions depend.

- Enhance confidence among U.S. citizens and throughout the global community.
- Strengthen the security of Federal systems.
- Mobilize law enforcement and other Federal resources.
- Enable and incent voluntary action through safe harbors and outcome-based metrics, rather than relying primarily on static prescriptions.

Attached are a list of thirteen policy approaches that the FSSCC recently endorsed, along with three that it deemed problematic. We urge the Committee to consider the FSSCC's input, particularly in light of the FSSCC's leadership of the financial services industry on this issue.

Administration Proposal

On May 12, 2011, on behalf of the Administration, the Office of Management and Budget transmitted to Congress a comprehensive legislative proposal to improve cybersecurity. The Financial Services Roundtable supports this proposal and looks forward to working for its passage. We support many of the provisions of this proposal on their individual merits, and we see the overall proposal as an important step toward building a more integrated approach to cybersecurity. Given that our member institutions operate nationally, are highly interdependent with other industries, and are already closely supervised by multiple regulators, we appreciate that this proposal promotes uniform national standards, throughout the cyber ecosystem, with the active engagement of sector-specific agencies and sector regulators.

Consistent with its comprehensive approach, the proposal strives to address cybersecurity both at the level of the entire ecosystem and also within specific sectors. For example:

- The DHS Cybersecurity Authority title naturally stresses DHS' role, but it also mentions "other relevant agencies" and sector coordinating councils.
- The Regulatory Framework title focuses largely on DHS leadership and standardized evaluations, but it also mentions ISACs and sector-specific regulatory agencies, and provides for sector-level exemptions.

We believe that harmonizing the comprehensive approach with the need to incorporate sector-specific mechanisms will be one of the most important challenges as the Congress considers this proposal. As this Committee considers DHS' role, and its relationship to the sector-specific roles, we urge Members to leverage existing financial services protections and circumstances, and their analogs in other sectors, while

preserving the inter-sector quality of the proposal. Below, we offer the Committee two potential approaches and illustrations for addressing this DHS/sector nexus:

- *Establish a uniform standard with specified exceptions:* In the Data Breach Notification title, the Federal Trade Commission (FTC) could enforce the requirements enacted under this bill, but defer to sector-specific regulators where substantially similar sector-specific rules and guidelines already are in place (e.g. the FFIEC could continue to enforce its 2005 interagency breach response guidance, and the Department of Health and Human Services could continue to enforce HITECH).
- *Preserve sector autonomy with centralized information aggregation and coordination:* In the Regulatory Framework title, rather than requiring DHS to list critical infrastructure entities for every sector, the sector-specific agencies could make that determination, just as the Financial Stability Oversight Council is responsible for designating Systemically Important Financial Institutions.

Given the likely fluidity of the overall solution, we cannot yet make a definitive recommendation for either approach. We do believe that this question of ecosystem/sector balance warrants careful deliberation.

Law Enforcement

We support the proposal's clarification and strengthening of criminal penalties for damage to critical infrastructure computers, for committing computer fraud, and for the unauthorized trafficking in passwords and other means of access. We also urge similar treatment for any theft of proprietary business information. With this extension to intellectual property, the law enforcement provisions will improve protections for both consumers and institutions, particularly when paired with expanded law enforcement budgets and the recruitment of personnel authorized in later titles. For purposes of this title and others, we presume that many, but not all, financial services systems and entities will be designated as critical infrastructure vital to national economic security, and we look forward to further work on the associated criteria.

Data Breach Notification

We support the migration to a uniform national standard for breach notification. Given existing state and financial services breach notification requirements, this migration will require both strong pre-emption and reconciliation to existing regulations and definitions of covered data. [Please see the 2005 FFIEC Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.] We support the exemptions for data rendered unreadable, in breaches in which there is no reasonable risk of harm, and in situations in which financial fraud preventions are in place.

DHS Authority

We support strengthening cybersecurity authorities within DHS – and the active collaboration of DHS with the National Institute of Standards and Technology (NIST), sector-specific agencies such as the Treasury Department, and sector regulators such as our banking, securities and insurance supervisors. This title demonstrates both the Administration’s commitment to an integrated approach and the challenge of achieving it. Federal and commercial systems, financial and non-financial information, DHS planning and sector coordinating council collaboration, are all addressed here and all will need to be very carefully integrated. Within financial services, we are conscious of the many current mechanisms for oversight, information-sharing and collaboration, but we are also conscious of the need for better alignment with our partners in other sectors. We look forward to further work in this area of integration and harmonization, at both the legislative and implementation stages.

We also believe that two areas mentioned in this section – fostering the development of essential technologies, and cooperation with international partners – merit considerable investment. As DHS and NIST pursue their research and development agenda, and as the Administration pursues its recently announced International Strategy for Cyberspace, we hope to see substantial resource commitments and advances in these areas.

Regulatory Framework

We support all of the purposes of this section, including, especially: the consultation among sector-specific agencies, regulators and infrastructure experts; and the balancing of efficiency, innovation, security and privacy. We recognize that giving DHS a window into financial services’ cybersecurity risks, plans and incident-specific information is an important element of building a comprehensive solution. Reconciling all of these elements – Treasury and our regulators’ sector-specific roles, DHS’ integration role, and the dual objectives of flexibility and security – will be critically important if we are to capitalize on existing oversight, avoid duplication, and avoid the hazards of public disclosures of sensitive information.

Federal Information Security Policies

We are encouraged by the proposal of a comprehensive framework for security within Federal systems. As institutions report more and more sensitive personal and financial data to regulators (and directly and

indirectly to DHS), it is critically important that this data be appropriately safeguarded. Protecting this data, modeling best practices, and using Federal procurement policies to expand the market for secure products, are all good motivations for adopting these proposed mandates.

Personnel Authorities

Because we recognize how difficult it is to recruit the most talented cybersecurity professionals, we support the expanded authorities articulated in this section. We particularly support reactivating and streamlining the program for exchanging public sector and private sector experts.

Data Center Locations

Consistent with our view of financial services as a national market, we support the presumption that data centers should be allowed to serve multiple geographies. We encourage Congress to consider extending this logic for interstate data centers to the international level, while recognizing that the owners, operators and clients of specific facilities and cloud networks must continue to be held accountable for their security, resiliency and recoverability of customer data, regardless of the servers' geographic location or dispersion.

H. R. 174

We share the overall objective of H. R. 174, the Homeland Security Cyber and Physical Infrastructure Protection Act of 2011, and we support many of its specific provisions. Listed below are a few comments and questions that we commend to the Committee as it considers this bill and the overall issue of cybersecurity policy.

By establishing an Office of Cybersecurity and Communications within DHS, and vesting it with the authority to establish and enforce requirements across sectors, the bill provides for the comprehensive treatment of cybersecurity that we have endorsed above. It offers two options for enlisting sector-specific agencies and primary regulatory authorities in the effort:

- *Delegation of authorities and responsibilities:* The Director of the Office is given the option to delegate authority to the sector-specific agencies and authorities. We think it is appropriate to invest the Director with this option, much as the Administration's proposal has invested it in the Secretary of the Department of Homeland Security and the Director of the Office of Management and Budget.

However, given the inherent uncertainties in how this option might be exercised, we do not believe this should be the sole mechanism for employing sector-specific expertise and authority.

- *Oversight through sector-specific agencies and authorities:* Throughout the bill, DHS is instructed to consult with its sector-specific partners, have private entities submit information to them, and operate under their guidance. This approach – with DHS setting ecosystem-level standards and sector partners applying them as intermediaries – will reduce the confusion and fragmentation that otherwise could occur in a dual reporting system. We believe that financial institutions will prefer to have their primary regulators continue to serve as their direct supervisor on these issues, even if the Congress determines that some requirements warrant standardization. We believe that this approach merits consideration, along with the standard-with-exceptions and autonomy-with-aggregation approaches discussed in connection with the Administration’s proposal.

We appreciate the bill’s focus on risk-based, performance-based regulations, rather than prescribed measures. As more detail is developed around this approach, at both the legislative and regulatory stages, we believe it may obviate any need for the more prescriptive International Organization for Standardization and the International Electrotechnical Commission standard 15408 (ISO/IEC 15408).

We appreciate the bill’s commitment to sharing relevant information to the maximum extent possible, and its designation of private sector submissions as sensitive security information requiring commensurate safeguards. If other Federal Authorities are actively involved in this process – consulting on threats, vulnerabilities and consequences, or as members of the interagency working group – we ask that the same information-sharing objectives and protections apply. As the central Department in this process, we see DHS as providing a very valuable contribution by aggregating, analyzing and disseminating this cross-sector information. We encourage the Committee, and ultimately DHS, to leverage the ISACs as a key channel for these communications. We also view research and development as a high value-added opportunity, and appreciate the bill’s attention to this function and enumeration of a potential research agenda.

We think two of the definitions articulated in the bill are particularly important, and therefore warrant close consideration. First, the characterization of Covered Critical Infrastructure as systems and assets diverges from the entity-level approach historically applied in the financial services sector. Whether the systems-and-assets or entity-level approach is selected, we urge the Congress to include in Covered Critical Infrastructure not only the core of the critical infrastructures, but also their mission-critical service

providers. In financial services, both the operational reality and the regulatory approach require that oversight and other controls extend well beyond the institution.

Second, because the definition of Cyber Incident drives reporting and response protocols, we see it as a key threshold. The current definition, as an occurrence that jeopardizes security, may be interpreted very broadly and, without further detail, may set reporting and response thresholds lower than necessary.

Conclusion

We very much appreciate the Committee's interest in the important topic of cybersecurity, and particularly in the role DHS plays in this element of critical infrastructure protection. Because The Financial Services Roundtable is fully committed to enhancing cybersecurity:

- We will continue to strengthen security with our members and partners,
- We will help answer this question of integrating DHS' ecosystem-level program and the financial authorities' sector-specific efforts,
- And we will work to pass and implement the Administration's cybersecurity proposal.

Thank you very much for your time. I would be happy to answer any questions you might have.

Financial Services Cybersecurity Policy Recommendations

Financial Services Sector Coordinating Council – April 15, 2011

Policy Approaches the FSSCC Supports:

- Federal leadership on a national cyber-security framework, implemented with the active involvement, judgment and discretion of Treasury and the other sector specific agencies (SSAs).
- Commitment to two-way public/private information-sharing, leveraging the Information Sharing and Analysis Centers (ISACs), the US-CERT, safe harbors, clearances, and confidentiality guarantees. This must include sharing of actionable and timely information.
- Support focused efforts to address critical interdependencies such as our sector's reliance on telecommunications, information technology, energy and transportation sectors. Continue to leverage and expand on existing mechanisms (e.g., NSTAC, NIAC, PCIS).
- Involvement of Treasury and other SSAs in cyber emergencies.
- Federal cyber-security supply chain management and promotion of cyber-security as a priority in Federal procurement.
- Public education and awareness campaigns to promote safe computing practices.
- Attention to international collaboration and accountability in law enforcement, standards, and regulation/supervision.
- Increased funding of applied research and collaboration with government research agencies on authentication, access control, identity management, attribution, social engineering, data-centric solutions and other cyber-security issues.
- Increased funding for law enforcement at the international, national, state and local levels and enhanced collaboration with financial institutions, service providers and others that are critical to investigating cyber crimes and creating a better deterrent.
- Heightened attention to ICANN and other international Internet governance bodies to enhance security and privacy protection.
- Strengthening of government-issued credentials (e.g. birth certificates, driver's licenses and passports) that serve as foundation documents for private sector identity management systems.
- Enhanced supervision of service providers on whom financial institutions depend (e.g. hardware and software providers, carriers, and Internet service providers).
- Recognize the role of Federal financial regulators in issuing regulations and supervisory guidance on security, privacy protection, business continuity and vendor management for financial institutions and for many of the largest service providers.

Policy Approaches the FSSCC Opposes:

- Detailed, static cyber-security standards defined and maintained by Federal agencies in competition with existing, private standard-setting organizations.
- Establishment of vulnerability, breach and threat clearinghouses, unless security and confidentiality concerns can be definitively addressed.
- Sweeping new authority for Executive Branch to remove access to the Internet and other telecommunications networks without clarifying how, when and to what extent this would be applied to critical infrastructure.