Bachus Statement During Capital Markets Subcommittee Hearing on Mark to Market

March 12, 2009

Mr. Chairman, thank you for convening this hearing at the request of Republicans on the Committee. This is one of the most important hearings we will hold this year.

Since August 2007, we have heard from financial institutions - large and small - all across America that something needs to be done to address the negative impact of mark-to-market accounting rules. Some called for modifications to mark-to-market rules, others called for outright suspension, and others called for changes to bank regulatory capital requirements. Many have claimed that mark-to-market accounting has exacerbated the current financial crisis. While not everyone agrees on what should be done, everyone agrees that something needs to be done and that it must be done quickly.

Last October, Rep. Roy Blunt and I worked to include in the financial rescue legislation a provision directing the SEC to study the impact of mark-to-market accounting. In December, the SEC reported that while existing mark-to-market requirements should not be suspended, additional measures should be taken to improve the application and practice related to existing requirements. Earlier this week, Federal Reserve Chairman Bernanke called for further review of these standards and for modifications that can "reduce their pro-cyclical effects without compromising the goals of disclosure and transparency."

Despite all this, there has been little progress by those who have the power to make the situation better. While the SEC and FASB released some guidance last fall, it has been ineffective in helping our financial institutions report the fair value of their assets with certainty. FASB has announced a number of projects to study various aspects of the mark-to-market rules, but it has also indicated that it does not plan to implement any additional guidance until the end of the second quarter - over three months from now. Given our current market conditions, the lack of urgency on the part of the SEC and FASB is disappointing and unacceptable. Relief is needed now and action must be taken immediately to help bring certainty to the markets.

We are in the midst of a financial crisis and we must respond to problems in the market accordingly. In a crisis environment, it should not be business as usual. While not everyone agrees with the actions undertaken by the Treasury and the Federal Reserve to respond to this crisis, at least they have acted. The SEC and FASB, on the other hand, have not taken meaningful action to address the negative effects of mark-to-market rules in this time of crisis. Such action is long overdue.

The SEC and FASB must act swiftly to address the legitimate concerns about the application of mark-to-market in the current economic climate, including adopting those accounting changes already recommended by our bank regulators and in the SEC report. Likewise, the banking regulators must seriously consider regulatory capital relief in light of the impact that mark-to-market accounting rules are having on bank capital during this financial crisis.

Everyone agrees that Congress should not legislate accounting standards. FASB has this expertise, but they seem oblivious to the impact that this accounting rule is having on many financial institutions. Additionally, the SEC has the power to force FASB to act, or to take action on its own initiative where necessary. If FASB and the SEC refuse to use their authority and provide useful and timely guidance, this Congress may have no choice but to act in their place.

In closing, Mr. Chairman, I just want to make one more point. This hearing is important as an exercise of this Committee's oversight of the SEC and FASB. I was disappointed by a letter I received on October 3, 2008 from the Financial Accounting Foundation suggesting that FASB should be insulated from congressional oversight. I would like to submit this letter for the record and also make it clear that FASB is accountable to this Committee and this Congress. Other independent boards, like the PCAOB, have been the subject of regular oversight hearings by this Committee, and FASB should be treated no differently.

As this Committee begins to work on modernizing our regulatory structure, we need to also examine how to reform FASB and the accounting standard-setting process to better meet the needs of all investors and market participants. We need nimble and dynamic regulators in times of crisis; we seem to be lacking that right now.

###