**For release on delivery**

Statement by

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before the

Government Information and Individual Rights Subcommittee

of the

Committee on Government Operations

House of Representatives

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I welcome the opportunity to convey to this Committee the grave concern felt by the Board of Governors of the Federal Reserve System over the application of the Government in the Sunshine Acts, H.R. 9868 and H.R. 10315, to its monetary policy and bank regulatory functions. In appearing before you, I seek exemption of these functions from the coverage of these bills. We are less troubled by, and thus can accept, application of these bills to the Board's consumer affairs functions -- an area with which some members of this Committee have considerable familiarity.

At the outset I would like to make a few general observations about this legislation. First, let me say that I am well aware of the concerns of public policy that led to these bills. There has unquestionably been an erosion of public confidence in the integrity of government in recent years. People are concerned about secrecy in government, and many have come to be skeptical about the motives of government officials. These are troubling symptoms in a democratic society, and must be dealt with.

But the cure is not to require that all government decision-making be carried on in a public forum. The concept of an "open" government does not mean that responsible officials cannot

properly deliberate in private. The supporters of this legislation often say that government should conduct the people's business in public. But that is a slogan, not a reasoned argument -- and a dangerous slogan at that. There is much of the work of government that should be conducted in private. Indeed, the "Sunshine" bills themselves recognize a number of such areas.

It is particularly important, I believe, that collegial bodies, such as the Board of Governors, be given substantial latitude in determining which of their functions should be carried on in public session. The relationships among members of such bodies are complex; and free discussion, argument and dissent are essential elements of the decisional process. A fundamental precondition to the free exchange of ideas is an atmosphere in which new or unpopular ideas -- or even wrong ideas -- can be put forth for discussion without fear of embarrassment or recrimination.

A requirement that decisions be reached in public session, or even a requirement that closed sessions be transcribed for possible disclosure at a later date, would not create this type of atmosphere. On the contrary, I believe such requirements would tend to inhibit free discussion and to make performers out of the participants. It is naive to believe that agency officials will

debate publicly with the same candor and sense of mutual purpose with which they will debate in private. With a public audience in attendance, or with the potential for public disclosure of a verbatim transcript, such debate will inevitably become somewhat formalized and the participants will often speak not for the benefit of each other, but for the impact on their public audience or for the record. The result will be to diminish the quality of the decision-making process by inhibiting freedom of discussion, or else to force agency members to carry on their real discussion and debate privately and informally. It would be ironic indeed if legislation intended to promote openness in government and to restore confidence in the processes of governmental decision-making actually had the effect of turning public meetings into ceremonial occasions on which decisions previously determined by caucusing were acted out. But this, I submit, is a likely result of the "Sunshine" proposals.

The basic responsibilities of the Federal Reserve involve, first, the formulation and implementation of monetary policy, second, the supervision and regulation of banking institutions. Each of these major responsibilities involves the Board daily in matters of great sensitivity. At virtually every meeting of

the Board -- and we meet at least three times a week -- the discussion covers such matters as the supply of money and credit, financial market conditions, the relationship of the dollar to other currencies, and the condition of U.S. banks and bank holding companies. At almost every meeting we act on applications from banks and holding companies in which one or another of these matters is vitally relevant. Whether we are considering changes in our monetary policy, or revisions in our banking regulations, or the need for supervisory action concerning a problem bank, or the formulation of positions on legislative matters, our deliberations must take account of the impact our decisions will have on the banking system and the health of the economy. I fail to see how the public interest would be served by subjecting these deliberations to the risk of public exposure.

I believe our deliberative process has worked extremely well. Debate is carried on at the Board table freely and in an atmosphere of joint inquiry and mutual respect. Very frequently our consideration of the issues raised by a particular case will prompt far-ranging discussion among Board members on fundamental policy questions. Our meetings thus reflect what I consider to be the great virtue of a collegial body -- the free and uninhibited exchange of ideas and information. I cannot be more emphatic

when I say that the quality of the work of our Board would be seriously compromised if we were required to carry on our proceedings in public, or if our deliberations were recorded verbatim for possible future disclosure. While the exemptions set forth in the bills before the Committee recognize several areas in which public meetings are not appropriate, other provisions of the bills -- to which I shall refer at a later point -- would severely reduce the Board's ability to protect the public interest and to conduct its work efficiently. For these decisive reasons we have concluded that we must ask the Congress to exclude the Board's monetary policy and bank regulatory activities from the coverage of this legislation.

I realize that in seeking exemption for the Board's monetary policy and bank regulatory functions I am not pursuing a popular course. However, I have not taken an oath of office to be popular; I have sworn to perform in a totally responsible manner the duties of my office. These duties and responsibilities require that I make as clear as possible the need for the exemption the Board seeks with respect to its monetary policy and bank regulatory functions.

H.R. 9868 and H.R. 10315 are substantially identical in their provisions. Each would require a multi-member agency to expose to the public such of its deliberations as concern the

conduct or disposition of official agency business. The bills seek to guard against the potential havoc of unrestricted public exposure of agency deliberations by providing ten exemptions from the requirement for open meetings. But I must say that even if the Board conducted all or most of its business in closed session, the requirement of both bills for a verbatim transcript -- which could later lead to public disclosure -- would, in my judgment, effectively destroy the protection provided by closed meetings.

The Federal Reserve is this Nation's central bank and monetary authority. Responsible exercise of the duties assigned to it by the Congress is essential to the strength and stability of the American economy. The Federal Reserve has the duty of providing for the expansion of money and credit that is needed to promote economic growth and full use of human and capital resources. It has the duty of protecting the integrity of our national currency, of preserving order in financial markets, of promoting improvements in the Nation's payments mechanism, and of assuring the soundness of the commercial banking system. Moreover, it has the duty also of serving as the banker for the Treasury and other Federal agencies.

From the foregoing brief reference to the nature of the Federal Reserve's responsibilities, it should be clear that the Board is virtually unique among Federal agencies. This status, I regret to say, is not recognized in either of the bills before this Subcommittee. The requirements of these bills for open meetings and transcript publication may be appropriate for regulatory agencies involved with freight and passenger rates, safety standards, trade regulations, and the like. But none of these agencies has duties that even remotely resemble those of a central bank -- an institution whose deliberations involve highly sensitive and volatile financial matters of national and international scope.

The inclusion of the Federal Reserve's monetary policy and bank regulatory functions under the bills in question would be fraught with no less mischief than the inclusion of meetings of the National Security Council, or meetings of the Secretary of State with his principal aides, or meetings of the Secretary of the Treasury with foreign finance ministers, or meetings in camera of the members of a Federal appelate court. Fortunately for the welfare and stability of this Nation, such an absurd result is not contemplated by these bills. However,

by virtue of the mere fact that the Federal Reserve Board is a collegial body, whose members are appointed to that body by the President, its equally sensitive deliberations are exposed to the full impact of these bills. I can say without fear of contradiction that no central bank in the world functions under the inhibiting, constraining, and potentially destructive conditions that H.R. 9868 and H.R. 10315 would impose.

I am aware of the claim that the exemptions set forth in these bills allow closed meetings under certain circumstances, and thus provide protection against the dangers of which I speak. This claim is inaccurate. For even if we interpret these exemptions to encompass the Board's monetary policy and bank regulatory functions, the procedural requirements with respect to closed meetings would still subject deliberations in those meetings to the risk of later exposure, in full or in part.

Thus, even though the public may be excluded from a meeting, the possibility that a verbatim transcript will be released soon after the meeting would have much the same inhibiting effect on the deliberative process as if the public were present at the meeting. Furthermore, the need to give prior public notice of the subject matter of closed meetings

would not only focus public attention on sensitive deliberations that should be conducted free from public scrutiny, but could encourage market speculation or other undesirable consequences. For example, prior notice that the Board was to take up a controversial holding company application on a particular day could affect the market for the company's securities. Similarly, advance notice that the Board intended to discuss the desirability of a change in bank reserve requirements or in the discount rate could cause market speculation or have other adverse effects.

I am also concerned that the "Sunshine" bills would curtail the free flow of information to the Board. Much of the data we rely upon is furnished in confidence by private sources. Even though Board discussions of such information may ultimately be held exempt from disclosure, the mere possibility of disclosure may well cut off our sources of information. For example, it is my considered judgment that foreign central banks would severely limit their present candid exchanges of views with the Board if the Board were required to give public notice of the subject matter of closed meetings and to record every word spoken at a closed meeting -- to say nothing of the fact that a court might later require that the complete recording

be released to the public. Such a constriction of international exchanges would damage our foreign relations, and destroy economic and financial relationships that have served our country well over the years.

Another area of great concern to the Board is the risk of disclosure of sensitive information about individual banks. Many years have passed since this Nation has been confronted with a major run on commercial banks. This is in large part due to careful bank regulation -- a process characterized by extremely guarded release of data about institutions experiencing financial difficulties. Under the public announcement and transcript provisions of the "Sunshine" bills, however, neither the Federal Reserve Board nor any other agency involved in the regulation of financial institutions, such as the Securities and Exchange Commission, could assure protection from unwarranted release of such information in the future. This is particularly troublesome in the case of H.R. 10315; for, while its provisions enable an agency to delete sensitive portions of a transcript, they also require that agency to furnish the public with a summary of the deleted sensitive portion. The effect of this requirement, in my judgment, is to give withholding authority

to the agencies with one hand and then, for all practical purposes, to withdraw that authority with the other hand.

An example of this consequence, I believe, may be instructive. If, let us say, the Board were acting on the application of a nationally known bank holding company to acquire a bank, and that application raised some troublesome questions about the management or financial condition of either the bank or the holding company, such a meeting could be closed under the bills before us. Assume that after lengthy discussion of the critical management or financial difficulty, the Board denied the application. Under H.R. 10315, the Board would be required to release to the public the transcript of its discussion, although the portion dealing with the sensitive factors could be deleted. Since the Board, by statute, has to consider managerial and financial factors in every case, the very deletion from the public transcript of any discussion of one of these factors would at once lead to the inference that it was a problem area. Further, this inference would be confirmed by the required summary or paraphrase of the deleted portion of the transcript. The foregoing is a simple example of literally hundreds of serious problems that would arise, year in and year out, under this bill. The potential impact on the Nation's financial condition is appalling.

But the opportunity for mischief goes even further, and I therefore must pursue the illusion that the provisions of the bills for closed meetings assure against unwarranted disclosure. If a challenge in the form of lawsuit were made of the Board's withholding of sensitive material from an otherwise published transcript of a closed meeting, it would indeed be possible for a reviewing court to examine in camera the subject matter in question. Up to this point the confidentiality of the material has been protected. However, it is hardly conceivable that pursuit of the processes involved in the judicial review afforded by the bills, including necessary briefs, affidavits, and the like, would not result in harmful speculation about, if not actual disclosure of, part or all of what the closed meeting sought to protect.

Let me now make a final but most essential comment. One of the stated purposes of both bills is to protect the ability of the Government to carry out its responsibilities. In the context of the bills, the responsibilities are those of multi-member agencies -- agencies that by Congressional foresight and intent have been so structured as to encourage and facilitate the free and uninhibited exchange of views among their members. In addition to the full exchange of views among its members, the Board draws on the

knowledge and thinking of its experienced staff officials who, in the atmosphere afforded by the present environment, have always felt free to comment upon, question, and even challenge Board member positions, in the interest of hammering out the soundest possible policy or decision.

I submit that if every word spoken by a member of the Board or its staff were recorded, with the potential of eventual release to the public, either pursuant to the provisions of these bills or as a result of judicial determination, some -- if not all -- of these individuals may quite naturally be diverted from seeking truth to speaking "for the record." In such an environment, there will be less willingness on the part of the Board to be receptive to the direct challenge from members of the staff, and members of the Board -- I dare say -- will be less candid with one another, or even with themselves.

I believe we must face the problem before us realistically. Insofar as the Federal Reserve is concerned, I do not believe that we can afford in the national interest to circumscribe every action of Board members in an endless array of recording requirements and still expect the quality of thorough analysis and thoughtful care which have marked the Board's actions over the years.

If enacted into law, either H.R. 9868 or H.R. 10315 would place sensitive financial agencies in an almost impossible position. On the one hand, they could operate under the law as enacted with the virtual certainty that some of the destructive consequences I have indicated in my remarks will occur. On the other hand, they could go through the motions of adhering to the law's requirements but, as a practical matter, resort to procedures that minimize the law's adverse impact. Since such action would amount to circumvention of the law, or "going underground" in our operations, I must and do reject it as a suitable course for the Federal Reserve.

I hope that as your Committee ponders this legislation, you will consider carefully my grim assessment.

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