



CENTER FOR CAPITAL MARKETS

COMPETITIVENESS

U.S. Chamber Center for Capital Markets Competitiveness Key U.S. Securities and Exchange Commission Issues in 2009 December 2008

1) SEC and Long-term Regulatory Reform

- Overhaul and restructuring of our financial regulatory agencies that eliminates gaps (“dead zones”) as well as duplication and overlap in current regulation¹
- Short of statutory reform of the U.S. Securities and Exchange Commission (“SEC”)/Commodity Futures Trading Commission (“CFTC”) relationship, work to increase co-operation between the two agencies, particularly with respect to financial products that overlap securities and futures jurisdictions
- Increase information sharing with other agencies and improve coordination to cover regulatory gaps
- Increase role of the President’s Working Group on Financial Markets (“PWG”) as the coordination body for financial services regulation

2) Short-term SEC Modernization

- Modernize the SEC ahead of regulatory reform – enhanced technology, more forward looking regulatory approach and culture, examine unregulated areas of the market that could benefit from greater oversight, sunset outdated regulation, and prepare for possible regulatory consolidation
- Institute more predictable, transparent, and timely processes to make routine decisions including exemptive orders, no action requests, and fine tuning the recent reforms to the self regulatory organization (“SRO”) rule filing process

¹ See Report and Recommendations, *U.S. Chamber of Commerce Commission on the Regulation of Capital Markets in the 21st Century*, Mar. 2007, <http://www.uschamber.com/publications/reports/0703capmarketscomm.htm>



- Fold the Office of Compliance, Inspections, and Examinations (“OCIE”) back into the operating divisions in order to diminish “stove piping” among offices and to improve the internal communication, knowledge, and effectiveness of the regulatory divisions
- Increase SEC transparency, including overhaul of the SEC Freedom of Information Act (“FOIA”) process
- Conduct analysis of the general effectiveness of SEC rulemaking and review of potential reforms, including improved cost/benefit analysis

3) Accounting and Auditing

- Address the significant transition costs and other issues resulting from the movement towards International Financial Reporting Standards (“IFRS”)
- Complete review of the accounting standard setting process
- Evaluation of fair value accounting and its current and future application

4) SEC Rulemaking and Policy Initiatives

- Corporate disclosure reform
 - Conduct a broad review of the effectiveness of disclosure of long and short positions
 - 21st Century Disclosure Initiative² should include EDGAR modernization that was announced in 2005 - a vital national system that is operating with 25 year old technology
- Develop an effective market mechanism that would help thwart abuse and manipulation during periods of significant downward pressure
- Implement additional reforms that would provide rational safeguards against abusive naked short selling and other manipulative practices without imposing unduly burdensome costs or diminishing market efficiency
- Hold SEC Roundtable on litigation reform as proposed by a diverse group of academics
- Modernize the investment company regulatory framework including consideration of a more competitive mutual fund governance structure
- Oppose any radical changes to Rule 2a-7 of the Investment Company Act of 1940 that would eliminate money market funds as a important investment vehicle and source of liquidity for money market securities
- Implement alternative disclosure and oversight reforms as an alternative to elimination of 12b-1 fees

² See The 21st Century Disclosure Initiative,
<http://www.sec.gov/spotlight/disclosureinitiative.shtml>



- Implement recommendations of SEC Advisory Committee on Improvements to Financial Reporting (“CIFR”),³ especially those intended to address non-material financial restatements
- Implement pending recommendations of SEC Advisory Committee on Smaller Public Companies⁴
- Improve regulation of credit ratings agencies
- Increase oversight and regulation of corporate governance ratings agencies
- Oppose SEC rules that would intrude on state corporate governance law and policy, including shareholder access to the proxy
- Further improve disclosure for executive compensation (“CD&A”)

5) Enforcement Process

- Advocate for tough and fair enforcement including the preservation of due process with respect to SEC Division of Enforcement investigations
- Settlements should not be used as an alternative to transparent rulemaking
- Attorney-client privilege waiver and cooperation – reexamine how cooperation is measured in light of the new Department of Justice (“DOJ”) “Filip Procedure.” Arguably, the DOJ’s process is now more rational and fairer than the SEC’s
- Reassess how issuer penalties are sought and measured. Do they harm or benefit shareholders? Is the circularity of Fair Fund penalty distributions consistent with ensuring fair, orderly, and efficient capital markets?
- Address significant deficiencies in closing investigations⁵
- Move SEC Staff incentive structure toward rewarding and promoting staff based on merit performance rather than the number of cases won or amount of penalties imposed

³ See Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission, Aug. 1, 2008, <http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf>

⁴ See Final Report of the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission, Apr. 23, 2006, <http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf>

⁵ See United States Government Accountability Office Report to the Ranking Member, Committee on Finance, U.S. Senate, Securities and Exchange Commission, *Additional Actions Needed to Ensure Planned Improvements Address Limitations in Enforcement Division Operations*, Aug. 2007, <http://www.gao.gov/new.items/d07830.pdf>.