CENTER FOR CAPITAL MARKETS COMPETITIVENESS

U.S. Chamber Center for Capital Markets Competitiveness Regulatory Reform Principles November 2008

Since its inception, the U.S. Chamber's Center for Capital Markets Competitiveness (CCMC) has led a bipartisan effort to modernize and strengthen the outmoded regulatory systems that have governed our capital markets. Ensuring an effective and robust capital formation system is essential to every business from the smallest start-up to the largest enterprise.

The present financial crisis has starkly exposed the shortcomings of current regulatory approaches and underscores the urgency of reform. While there is rarely a single acceptable response to a crisis of the sort we are now experiencing, we must be careful to embrace changes that fail to fix real problems and avoid undermining those capital markets functions that work well.

Our common fundamental objectives should be to protect investors and consumers, while also ensuring that our markets successfully supply businesses and risk-taking entrepreneurs with the capital they must have to grow, innovate, and create jobs. To advance these objectives as the nation and the world move toward financial regulatory reform, the CCMC supports the following principles:

1) **Promotion of Economic Stability, Efficiency, and Growth.** In the near-term, government must continue to support the availability of credit to fuel Main Street economic growth and keep people working, particularly in those industries most heavily dependent on the availability of consumer credit. Over the longer-term, we must build well-regulated, efficient capital markets that will enable the vibrant financial institutions necessary to drive capital formation, job creation, and economic growth and stability.

2) **Management of Systemic Risk.** As noted in the 2008 Treasury Blueprint, managing systemic risk is essential and requires a modern approach. The need for systemic risk regulation, including the creation of a systemic risk regulator, should be evaluated in the context of the overall review of domestic and global regulatory reform.

   a) **Appropriate Capital and Liquidity Requirements for All Market Participants.** Extreme leverage is an issue that demands regulatory focus, given repercussions during periods of stress in our financial markets. Capital and liquidity requirements will need to be established for *all* significant financial institutions that can have an impact on the stability of our capital and financial markets. These requirements should encourage meaningful prudence taking into account the firm's risk profile, while permitting critically necessary innovation and thoughtful risk-taking.

   b) **Responsible Innovation.** Recognizing that innovation has historically been central to the success of our financial system, our regulatory system must allow regulators the necessary flexibility and tools to keep pace with innovation.

3) **Internationalization.** The concept of "domestic capital markets" is flatly out-dated. Capital flows are global and regulation (including regulatory standards) needs to reflect this reality. Regulations should be designed to promote open and competitive capital markets, while ensuring interoperability with regulatory frameworks in other parts of the world in order to ensure the efficient global free flow of capital.

4) **Comprehensive Regulation and Oversight.** Created at a time closer to the Civil War than to today, the U.S. regulatory system must take a functional, comprehensive regulatory approach.

   a) **Elimination of Regulatory "Dead Zones."** The current crisis highlighted the voids that exist between the jurisdictions of various regulators (i.e. "regulatory dead zones"). While there is no "one-size fits all" solution, the impact of these dead zones is magnified by the obstacles inhibiting domestic and foreign regulators and standard setters from optimally collaborating with each other. Any future regulatory system must minimize – if not completely eliminate – gaps in regulatory coverage. A "unitary financial regulator" for the United States is an option that should be considered, though it is not the only option or even necessarily a complete answer to the problem.

b) **Elimination of Regulatory Duplication and Remove Layering.** The U.S. regulatory structure was built in a piecemeal fashion after a series of financial crises. The resulting patchwork quilt of regulation has resulted in duplication and contradictions – and excessive cost. We need to take this opportunity to bring clarity and predictability to our structure. We must also diligently work to ensure that the new processes flowing from the Emergency Economic Stabilization Act and the Troubled Asset Relief Program create opportunity for reform and modernization as opposed to additional duplication of effort.

c) **Forward Looking Regulation.** History teaches that most regulatory reactions are backward-looking – i.e. designed to fix yesterday's problems rather than enable us to resolve tomorrow's issues. We must supplement the healthy entrepreneurial instinct for positive innovation with tools equally suited to anticipate what could go wrong. Broadly, we support a regime that prevents abuses rather than one that solely focuses on retrospective punishment.

5) **Increased Transparency.** Information is the lifeblood of our capital markets. Regulators need appropriate information about the firms they regulate. And, as we have seen, without transparency market participants can't make informed decisions and market discipline collapses.

a) **Transparent, Timely Reporting and Data Sharing.** Regulators need access to essential information about the firms they regulate. One of the consequences of our disjointed regulatory structure is that regulators did not have access to the information they needed. This must be corrected. And, market participants also need access to better and more complete information. The goal of all public reporting should be to get information to those who need it, while making appropriate accommodations for the competitive positions of market participants.

b) **Regulation of the Credit Ratings Agencies.** The credit ratings agencies failed to provide accurate information to the market. We support responsible regulation of this industry, including eliminating conflicts of interest and assuring a high level of professionalism and competency in assigning ratings.

6) **Investor Opportunity, Capital Formation, and Consumer Protection.** Individual investors must have the information and opportunity to participate in the marketplace, while being assured that they are receiving the necessary protections. In addition, the system should focus on favorable circumstances for capital formation.

    a) **Strong Consumer and Investor Protection.** Investors, depositors, and consumers have been harmed both directly and through retirement investments. We must seek strong consumer protections, while assuring that they deliver real value, not merely regulation for its own sake. The goal will be to identify both needed protections and mechanisms – including flexibility – that provide real confidence they can actually be effective and to avoid regulation for the sake of regulation.

    b) **Support a Pro-Capital Formation Tax Code.** Main Street depends on effective capital formation and a tax code that incentivizes long-term investments which are essential to fueling the growth of businesses of all sizes and ensuring financial security for all Americans.

    c) **Rational Litigation Systems.** Legitimate claims for redress must be handled through a fair, rational litigation system. The SEC is best suited to provide redress to harmed investors. However, if private securities class action litigation is to be used as an adjunct to government action then it needs to be fundamentally changed to serve its intended functions of compensation and deterrence. To best protect and compensate investors, it is vital that we maintain a rational government enforcement regime and avoid a duplicative inefficient securities class action mechanism that carries substantial transaction costs and decreases shareholder recovery.

7) **Sustaining and Enhancing Financial Reporting.** Independent audit firms have long been the primary source of the validation of financial information required by the capital markets, investors, and regulators. The sustainability of high quality auditing is a matter of vital concern in our litigious society and as a necessary focus of legal and regulatory reform.