



Date: December 4, 2008

To: Gary Gensler, Chairman, Obama Transition SEC Review Team
Daniel Brundage

From: Rob Nichols, President & COO
John Dearie, EVP for Policy

Re: Suggestions for the SEC Review Team

The Financial Services Forum very much appreciates the opportunity to provide the following input to the Obama Transition SEC Review Team regarding the issues, action items, and policy priorities that, in the view of our members, should be the focus of the next SEC chairman. Forum members are strongly of the view that the SEC is an important component of our nation's framework of financial regulation, and that a properly focused SEC is a critical aspect of meaningful regulatory reform and modernization.

Please note that this memorandum represents a compendium of the comments we received from members – each item listed should not be interpreted as necessarily reflecting the views of ALL Forum member CEOs.

With that stipulated caveat, here is what we heard from our members:

Short-Term Priorities

Accounting for Illiquid Assets: We suggest the SEC explore ways to provide more accurate accounting for illiquid assets, particularly on assets that are intended to be held to maturity. For example, the high quality asset-backed and mortgage markets continue to suffer from extreme illiquidity, as reflected in pricing, but continue to perform well. Both FAS 157 and SFAS 115 (OTTI) should be modified to allow companies to reflect economic rather than market value in illiquid markets for assets that are intended to be held to maturity.

Short-Selling: The ability to sell securities short is important to maintaining efficiency in markets. To be sure, strong measures are needed to prevent abuses. But buy-in rules need to be consistent with market conventions and practices and not impose additional costs on market participants. Other options to address abusive short-selling practices, such as reinstatement of the up-tick rule, should also be considered.



Public Registrant Costs: The size of 10-Qs and 10-Ks continue to grow, as do the costs associated with producing them. The agency should continue efforts initiated under Chairman Cox to make reporting documents more standardized and cost-efficient to companies, and more relevant and user-friendly to the investor community.

Annuity Disclosure Template: The agency should develop disclosure standards for variable annuities based on the insurance industry-developed disclosure templates.

Money Market and Mutual Funds: The SEC should work with providers to update Rule 2a-7. The SEC should allow more electronic delivery of documents (e.g., mutual fund shareholder reports), all boards to take action through telephonic/electronic meetings on all matters, and update electronic delivery rules issued in 2000 for notice, access, and consent. Also, affiliated trading rules don't adequately address realities of electronic trading (such as dark pools, etc.) It is difficult to report to fund boards on affiliate trading where those trades occur in venues that are by definition not transparent as to counterparties, etc.

Other Immediate Issues: One member expressed concern regarding proposed changes to 12b-1 rules and IA-BD licensing.

Longer-term Priorities

Regulatory Reform: Most members support comprehensive reform and modernization of financial sector supervision and regulation – including eliminating the burden and costs associated with regulatory overlap and duplication, greater regulatory cooperation and consistency, and greater international cooperation and information sharing. Enhancing the President's Working Group (PWG) was suggested as a useful transitional step to more meaningful reform. Such enhancement might entail adding to its mandate a requirement to develop early warning systems to detect potential problems in financial markets, and to recommend coordinated actions to respond. It might also require expanding the PWG to include certain key state regulators.

Federal Regulation of the Credit Default Swap OTC Market: Such regulation should likely involve creating a centralized clearing facility, but should stop short of requiring exchange trading of CDS instruments, or standardization of CDS contracts. It is important to avoid a jurisdictional battle between the SEC and other regulatory agencies over this issue. All efforts should be aimed at enhancing market transparency.

Improving Accounting Standards: The SEC's oversight and enforcement role with regard to accounting standards should be clarified to recognize that appropriate application of standards must entail the value of interpretation. CPA liability tort reform is also recommended.

Improving Audit Standards: More field testing would minimize unintended consequences. Also, size of FASB should be increased (IASB has 13 members), and the level of practical experience and insurance representation should be increased.



IFRS: Members generally support the Roadmap recently announced by the SEC for the adoption of International Financial Reporting Standards. The Roadmap will allow the SEC and important constituencies the time necessary to evaluate important concerns regarding the independence of the IASC Foundation: the ability of national securities regulators to monitor the Foundation; and the consistent application of accounting standards across companies, industries, and countries in order to avoid jurisdictional variants. Pursuant to the Roadmap, several members expressed support for Proposal A, under which companies would make a one-time disclosure on transitioning to IFRS.

IFRS should have adequate representation from United States constituents. The size of our markets and market participants dwarf those of other countries, yet the key committees are staffed and controlled by non-U.S representatives.

XBRL: Members are generally supportive of implementation of eXtensible Business Reporting Language (“XBRL”) over the long term. Some members have significant concerns with respect to the limited time-frame allotted for its implementation and the complexity of the detailed tagging of the financial information. Perhaps the implementation of XBRL data filings can be delayed for one year and should begin with a Form 10-Q rather than a Form 10-K to permit registrants to adopt technology and new processes on a shorter filed document. Consideration should be given to whether management time could be better spent on other important areas such as IFRS.

Some members expressed particular concern regarding the detailed level of tagging the SEC is proposing. It is our understanding that it has not been tested in the voluntary filer program and that there are a significant number of tags that would need to be considered and evaluated. We note that the Progress Report issued by the Advisory Committee on Improvements to Financial Reporting (CIFir) recommends tagging the financial statements and block tagging the footnotes. Perhaps the initial rule should apply this approach and the final detailed tagging should not be required until it has been fully evaluated and tested.

Prudential supervision: While members acknowledge the importance of enforcement, members are also strongly of the view that financial markets, industry participants, and investors would benefit from a more prudential posture by the SEC, similar to that taken by the Fed. Prudential supervision allows greater cooperation and interaction between the regulator and regulated institution, allowing emerging problems to be addressed early and reducing the need for enforcement actions.

The SEC can support this approach by (i) encouraging the efforts of FINRA to develop a principles-based rulebook; (ii) re-examining the SEC’s own rulebook to consider areas where rules may be overly-prescriptive; (iii) fostering a more consultative relationship with regulated entities so that firms feel free to approach it without fear that any communication about a concern could give rise to an enforcement action; legislation to create a federal “examination privilege” for SEC-regulated institutions similar to the bank-examination privilege would be helpful; (iv) as an essential adjunct to the previous point, squaring its enforcement philosophy with a tolerance of reasonable independent decision-making by senior managers of regulated entities.



Regulation of Systemically Important Hedge Funds and Private Equity Funds: Entities entailing systemic significance must be subject of oversight, at least with regard to reporting their exposures and submitting to regulation of leverage ratios. In order to be effective, international coordination of regulatory approaches toward these entities is critically important. SEC registration of systemically important hedge funds may be one approach, but we encourage the SEC to work closely with the President's Working Group on a holistic approach.

Rating Agency Reform: Steps should be taken to further increase the independence of the rating agencies and to address any lingering conflicts associated with the issuer-pay model.

Incorporate Off-Balance Sheet Exposures: Adjustments should be made to capital and liquidity requirements to include all off-balance sheet exposures.

Securitization Reform: Recommendations just issued by the American, European and Australian Securitization Forums and SIFMA are a good starting point. Proposals to require originators and securitizers to retain a substantial economic interest may do more harm than good because the attendant accounting and capital implications would be severe, impairing the economic viability of securitizations going forward, with knock-on negative effects on availability of consumer and business credit in broad sectors of the economy. However, it is also important to have reasonably consistent requirements among major markets, so that if a retention requirement is imposed in one jurisdiction (such as that being currently considered by the European Commission), it should be considered in others to avoid competitive imbalances and potential regulatory arbitrage.

Exchange Reform: The SEC should urge the major exchanges to develop centralized trade reporting and record-keeping capabilities, and should support continued consolidation of exchanges as well as harmonization and consolidation of their rule-books.

FASB Exposure Draft, Disclosure of Loss Contingencies (an amendment to FAS 5 and 141(R)): The FASB has announced that it will "re-deliberate" this proposal to change the rules regard the disclosure of loss contingencies. Along with the Association of Corporate Counsel (ACC) and the Society of Corporate Secretaries and Governance Professionals, at least one Forum member opposed the changes to FAS 5 promulgated in this exposure draft, arguing that the additional information companies would be required to provide under the exposure draft would be highly uncertain and unreliable and far more useful to a company's adversaries than to the intended users of its financial information.

Please see the letters submitted by ACC and the Society in the following links:

<http://www.governanceprofessionals.org/society/NewsBot.asp?MODE=VIEW&ID=2699&SnID=1312734641>

http://www2.acc.com/public/ACCcommentFAS5072508_3.pdf

Attorney-Client Privilege: One member urges the SEC to adopt the Department of Justice's Principles of Federal Prosecution of Business Organizations, as announced by Deputy Attorney General Mark Filip on August 28, 2008.